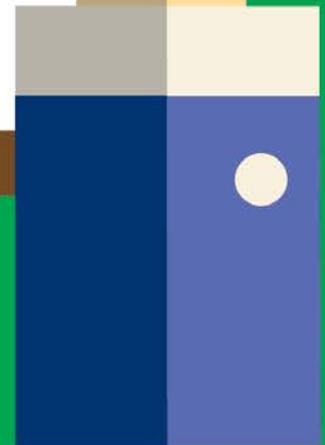
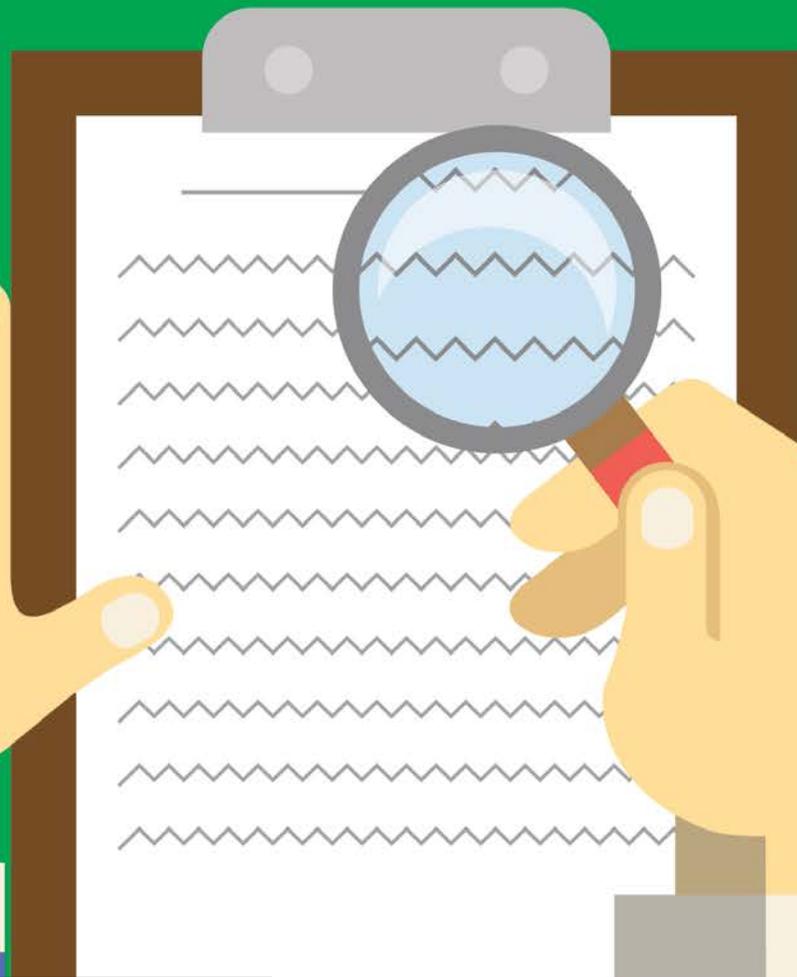


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The Legal Issue



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Tale of the Tape

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What if there were a technology that would offer better patient outcomes and better protection from medical malpractice claims?

Such technology has existed for decades, but in my years of defending medical professionals in court and before medical boards, I've found that few physicians use cameras to capture videotape footage of their interactions with patients.

Physicians offer endless explanations as to why (concerns over patient privacy, fear that the footage will be used against them, increased red tape). But from a legal and practical standpoint, in the vast majority of cases, I've found that those reservations are all washed away when the cameras come into play. Let's look at how medical video cameras can benefit your medical practice, from the legal perspective.

Stopping Claims Before They Start

A lot is running through patients' minds when they are in a healthcare setting. They might have just been under anesthesia and are recovering from a complex procedure. This might be the first time the patient has been admitted to a hospital. Although your one-on-one discussion with the patient likely will make a strong impression, unfortunately he or she might not recall pertinent instructions given to help speed recovery. That's why a video reminder can prove invaluable to your patient — and to your practice.

Rarely will a healthcare provider be sued by a patient who had a successful outcome. A recent study¹ showed that nearly 9 out of 10 patients found that reviewing the video footage of their doctor visits was helpful. The vast majority of patients also said that watching the videos helped them remember their physician's instructions.

It's pretty simple: To avoid lawsuits, keep your patients happy. Patients who see that you care enough to send them home with a DVD containing your videotaped instructions will

feel the care they are receiving is even more personalized and more effective.

A patient who takes the DVD home likely never will give thought to the legal insulation a videotaped record of the visit can provide you. Using video cameras during your informed consent discussions with patients records your description of the procedures and risks, and your instructions for recovery. Just as important, the cameras record your patients' acknowledgements of the information, any questions or concerns they have prior to the procedure, and, of course, their consent.

Healthcare providers who use video cameras during surgical procedures might not avoid litigation if there's a negative outcome, but having the footage could deter some lawsuits. Regardless, it's almost always better to record the procedure than to wish you had.

Smile, You're on Camera

Video technology is so ubiquitous that people often are surprised when there isn't footage of an event. Police in most major cities will be wearing body cameras soon, if they're not already. Restaurants use video cameras to discourage employee theft and to defend themselves against claims that they overserved alcohol to customers. Drivers employed by major trucking firms work with two cameras running at all times — one facing traffic and another facing them.

The increased use of cameras isn't a coincidence. Video cameras are everywhere because they eliminate ambiguity. As a lawyer who has defended medical professionals against hundreds of medical malpractice claims, I've handled several cases where video footage was part of a case's evidence. In every instance, the footage helped to effectively counter claims. Among these was a complaint that a physician used excessive force during a procedure (the footage showed that he didn't) and that the procedures were

performed incorrectly (videotape disproved that claim as well).

In my decades of working with healthcare providers, I've found that the vast majority do their jobs correctly, and they do them well. They instruct patients on how to handle their conditions, injuries and illnesses. They perform procedures with expertise and consistency. Especially now, with ballooning patient volumes, medical providers administer the same advice or warn patients of the same surgical risks several times in the same week. Usually, when a medical complaint crops up, it's when a patient says a healthcare provider strayed from the norm, gave bad advice, didn't warn them about the risks of a procedure or a medication, or didn't follow good medical procedures.

Because most healthcare providers don't use video cameras, courts and medical boards are left to contend with "He said" / "She said" disputes. When a med mal case lands on my desk, my heart leaps when I'm told a camera captured evidence that can be used in our case. An 800-pound gorilla has entered the room, and there's good chance he's in our corner.

Reviewing Game Tape

For decades, coaches and players have reviewed film of what they did right or wrong on the field. Knowing the X's and O's can give them a distinct advantage in their next meeting. Medical professionals can find that reviewing their interactions with patients to be equally beneficial. Did the meeting with the patient go poorly? Is there anything that could have been done or said differently? Tony Romo and Peyton Manning see missed opportunities while reviewing game film on Monday mornings, and physicians always can spot ways to improve their bedside manners by going over the tape. Obviously, physicians aren't required to review the footage, but it's nice to have if they ever want to do a little Monday morning quarterbacking.

Another Tool in the Doctor’s Bag

Despite having defended against med mal claims for nearly 30 years, I am constantly amazed by the skill and dedication of healthcare providers, and by scientific leaps in medicine. That’s why I’m perplexed that physicians and entire healthcare organizations don’t widely embrace video camera technology. There’s little doubt that cameras one day will be as common in physicians’ offices as they are at ATMs. Until then, we’ll make do as though video camera technology never existed. **DMJ**

1. <http://www.cureus.com/articles/2849-patient-reported-use-of-personalized-video-recordings-to-improve-neurosurgical-patient-provider-communication>.

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Frequently Asked Questions About Cameras in Medical Care:

Q: Don’t video cameras compromise patient confidentiality?

A: Videotape footage of physician visits and medical procedures is just another form of medical record keeping. They remain confidential and can be shared only with patients or with whom the patients specify.

Q: Do I have to obtain patient permission to record video of medical procedures or patient visits?

A: No. As with any means of recording health care given to patients, physicians need not obtain special permission to obtain videotape footage during the patient care process.

Q: Can’t the video footage be used against a healthcare provider in lawsuits and medical board hearings?

A: Like any information obtained during medical care, video footage can be used as evidence by individuals claiming faulty medical care. I’ve even had cases where plaintiffs tried to use our videotape evidence against us. However,

the footage, when properly explained, exonerated my clients.

Q: If a healthcare provider opts to record patient visits or surgical procedures, does he or she have any discretion on when/what to record?

A: The medical professional has complete discretion on when he or she videotapes patient interactions. Many physicians use them when they’re discharging patients from procedures, to help remind them of the instructions they gave, to speed their recoveries (and, perhaps, to create a legal record of the medical instructions given).

Q. How long should medical videotape footage be saved?

A: I recommend that healthcare providers preserve their videotape footage indefinitely. If a legal action crops up, and if a physician is unable to produce the videotape footage that was captured, a jury may presume it contained information damaging to the physician’s case.

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