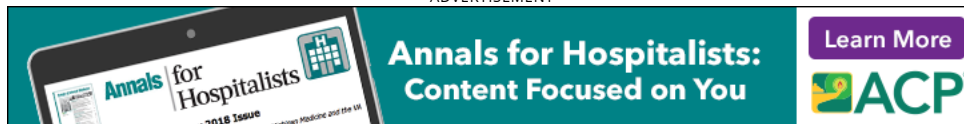


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## When visits become 'on the record'

With recording technology becoming ubiquitous, more patients are recording their encounters with physicians, sometimes without their knowledge.

*By Mollie Durkin (/staff/)*

**A**li Seifi, MD, FACP, hadn't considered the implications of patients or caregivers recording visits until he saw it happening without his permission.

A few years ago, during a meeting with a very ill patient's family members, he noticed that they were recording the conversation with a smartphone. "Honestly, at the beginning, I was feeling a little bit uncomfortable," said Dr. Seifi, associate professor of neurosurgery and neuro critical care and director of the neuro intensive care unit at the University of Texas Health Science Center at San Antonio. "I wasn't even sure if I could ask them to stop the recording, or is it something that's going to be against me?"

He then reached out to lawyers and colleagues about the legal and ethical rights of doctors, patients, and families and published a viewpoint on the issue in *JAMA* in March 2015. It turned out that, in Texas, it was legal for the family to record a conversation without his consent, even though it was off-putting. "Then, when I looked from a different angle, I found it's actually very helpful for the patient," Dr. Seifi said.

The issue of recording visits has come up in the past, but cell phones make it easier than ever for patients to hit that red button. "Practically everybody has an audio- and video-recording device in their pocket now," said Tom Bledsoe, MD, FACP,

chair of ACP's Ethics, Professionalism and Human Rights Committee and clinical associate professor of medicine at the Alpert Medical School of Brown University in Providence, R.I.

Because of the ubiquity of recording devices today, physicians should be prepared to respond to patients and families who want to record visits (either in secret or with permission), experts said. They offered advice and outlined the benefits and drawbacks of being on the record.



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## Legality and prevalence

In 39 states and Washington, D.C., it's perfectly legal for someone to audio record another party without his or her permission, as long as one party consents (and this can be the person who is recording), according to a *JAMA* viewpoint published in August 2017. The 11 states that have statutes requiring consent from all parties are California, Florida, Illinois, Maryland, Massachusetts, Michigan, Montana, New Hampshire, Oregon, Pennsylvania, and Washington.

It's difficult to pin down exactly how many patients may be taking advantage of their opportunity to record. One survey of about 130 U.K. patients found that 15% had secretly recorded visits, and 11% knew of someone who had done so, according to results published in 2015 by *BMJ Open*.

Even more patients would consider recording: 35% said they would do so secretly, and 34% would ask permission first. "My feeling is that that estimate's probably about right, and probably rising," said lead author Glyn Elwyn, MD, PhD, MSc, professor at the Dartmouth Institute for Health Policy and Clinical Practice in Lebanon, N.H.

People may want to record for many reasons, such as when there are challenges to language, memory, or recall, or when caregivers want to capture all the details of a patient's complicated regimen, he said. A smaller group of people may be on the litigious side and want to have everything on record in case something goes wrong, Dr. Elwyn added. "But I don't think that's the majority whatsoever," he said. "I think most people want to have a recording for recall issues."

Dr. Seifi said that he now gets requests to record every week, mostly from family members of unconscious ICU patients who want to share updates with others near and far. In outpatient practice, however, the phenomenon seems to be uncommon, experts said. For Dr. Bledsoe, it's uncommon to the point of being rare. "It definitely makes doctors nervous. Because it's not common, many doctors will immediately worry about risk management issues, especially if recorded surreptitiously, wondering, 'Is there a problem in my relationship with this patient?'" he said.

Ana María López, MD, MPH, FACP, ACP's President-elect, said that patients in her oncology practice will occasionally ask to record visits, although it's not standard practice. She routinely agrees without feeling uncomfortable, "simply because it is complex, and people want to share the information with their loved ones."

## Addressing the situation

When it comes to recording visits, clinicians often voice concerns about altering the patient-physician relationship or incurring malpractice lawsuits, whereas patients typically react positively to the idea, said ACP Member Timothy P. Lahey, MD, an associate professor at the Dartmouth Institute for Health Policy and Clinical Practice who has written about the issue. "These disparate reactions to the concept

are probably the thing that drives me most strongly to think it's a good idea to establish some ground rules," he said. "Our patients are requesting it. Doctors are worried. Negotiation seems like the right next step."

However, if a patient asks to record, experts said that it's OK for a physician to decline. "There should be a shared decision in which the goals and values of both the patient and the physician are taken into account," said Dr. Bledsoe. "A unilateral decision, either by the patient to record surreptitiously or the physician to refuse the request, may have negative consequences."



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Dr. Lahey agreed, especially when the situation arises in states where it's illegal to record someone without consent. "It's probably inadvisable for [doctors] to say no, but I think it's their right as a person that's being recorded," he said.

Dr. López recommended that physicians who do not want to be recorded have an honest conversation with the patient to clarify the reasons why and come up with alternative ways to address them. For instance, writing down recommendations can help patients remember them, and bringing in loved ones or calling them on the phone during the visit may be another way to share information, she suggested.

Although Dr. Lahey said he's never declined a patient's request to record (which only happens about once a year in his practice), he gets the sense that his young patient population may be doing so in secret. "They all have their phones out on the desk, so my guess is sometimes those things are on, and that's fine," he said, even though he practices in New Hampshire, where the law requires consent to record.

Since covertly recording visits seems to be an unavoidable issue, clinicians need to prepare by starting an open conversation about managing the situation, said Dr. Lahey. "That would help lessen some of the fear," he said.

A [recent ACP ethics case study](http://www.acponline.org/clinical-information/ethics-and-professionalism/ethics-case-studies) (<http://www.acponline.org/clinical-information/ethics-and-professionalism/ethics-case-studies>) modeled that scenario by presenting a hypothetical example of a patient who, after a visit with his doctor, pulls out his phone and presses a red button at the bottom of the screen, prompting his doctor to suspect he was covertly recording. Case study author Jon C. Tilburt, MD, FACP, recommended asking the patient in a face-to-face follow-up visit if he was recording and initiating a frank conversation about it. "Sometimes we infer what the patient's motivations are when we catch something that looks surreptitious, but my general sense is that we're too spooked sometimes when we ought not to be," he said.

Other potential responses to encountering a secret recording include saying nothing but being very guarded or even suspicious of the patient in the future, brushing it off without regret, or firing the patient, Dr. Bledsoe said. If that last option sounds drastic, consider this: Colleagues gasped in horror when he recently presented the scenario to them. "There was really a dramatic, toxic reaction to it," Dr. Bledsoe said.

However, their attitudes shifted when he twisted the case around to reflect a positive, long-term clinical relationship and a patient who asks for permission to record at the beginning of a visit for clear reasons. "Most of them said, 'Well yeah, I've had people do that,'" said Dr. Bledsoe.

In general, patients should ask permission to record, and it would probably behoove doctors to set some ground rules, such as no videotaping during sensitive parts of the physical examination, such as a pelvic exam, Dr. Lahey recommended. But physicians shouldn't worry too much about being recorded without consent, he

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said. “If you are behaving in a way that makes it so you have nothing to hide, then you might feel a little put off by the fact that you're being secretly recorded,” Dr. Lahey said. “But in the end, is it really that big of a deal?”

Clinics may consider establishing office policies that address audio and video recordings. Because of the prevalence of social media, patients may not even realize they should ask before recording, said Dr. López, who is a professor of medicine at the University of Utah School of Medicine in Salt Lake City. “It's like the culture seeping in, so I think being able to ... proactively let people know how the practice is choosing to address this might be helpful in this time period,” she said.

Individual practices may find it helpful to involve a patient and family advisory council in discussions about the root problem—that patients or their families have trouble remembering clinical recommendations, for instance—when coming up with a viable solution, Dr. Bledsoe suggested. “One of the possible approaches might be to record the visits or offer to record the visits,” he said. The Barrow Neurological Institute in Phoenix, for example, routinely offers patients video recordings of their visits, according to the 2017 *JAMA* viewpoint.

## Pros and cons

Experts agreed that one of the biggest benefits of recording visits is improving patients' recall and understanding of their medical conditions.

Back in a 2012 blog post, [internist Eric Bricker, MD, recommended that patients audio record their doctor visits](http://www.compassphs.com/blog/health-activation/can-patients-record-doctors-office-visits/) (http://www.compassphs.com/blog/health-activation/can-patients-record-doctors-office-visits/). As chief medical officer of Compass Professional Health Services in Dallas, he had noticed that when patients called the health care technology and consulting company for help navigating the health care system, they often didn't know, for instance, which specific scan they needed—or even their doctor's full name. “I think recording doctor visits behooves all parties involved because it helps ensure the patient has an accurate understanding and record of the care being prescribed,” Dr. Bricker said.

Furthermore, recordings allow patients to accurately share information with caregivers and family members, no matter how far away they live, Dr. Bledsoe said. Dr. Seifi agreed, adding that “It's like they are sitting in that meeting and they know exactly what I said.” He noted that he even encourages his own parents to record their doctors' visits. “Interestingly, before they recorded, they didn't remember anything after the session, but now because they can replay the record, they have better care,” Dr. Seifi said.

An on-the-record visit could also lead to better behavior on the doctor's part, Dr. Bledsoe said. “Some doctors are abrupt or brusque or even rude, and if the tape is on, their behavior may actually be improved,” he said, adding that if something goes wrong, a recording can serve as documentation of the recommendations given.

As far as the downsides, there is no guarantee that patients will actually go back and listen to their recorded visits and reap the aforementioned benefits, said Dr. Tilburt, professor of medicine and biomedical ethics at Mayo Clinic in Rochester, Minn. However, a scoping review, published in June 2014 by *Patient Education & Counseling*, found that across 33 studies, an average of 72% of patients listened to their recorded clinic visits, and about two-thirds shared them with others.

Another drawback is the potential for questions to arise during playback, added Dr. López. “One of the things I say to folks is that ‘We're here together, and I'm able to answer your questions, but when you're going to listen to it again, other questions may come up for you, and I'm not right there to help clarify,’” she said.

In addition, patients might not realize that the recommendations given at the end of the visit are the most meaningful and may neglect to listen through to the end of the recording, Dr. Bledsoe said. “My history-taking methods, my physical exam, and my planning are being built through the course of the visit, and what I say earlier in the visit may not be where I end up,” he said. “My assessment and my plans for the patient at the end of the visit is really what I want to share.”



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Patient privacy is also always a concern, and there is a chance that people with bad intentions could obtain sensitive recordings and share them publicly, noted Dr. Seifi. “So the patient should be careful to keep their own information private,” he said. “That’s their downside, and that’s their responsibility.”

Recording visits is only going to become more common as time goes on, and people will more than likely become increasingly relaxed about it in the future, according to Dr. Elwyn. “My advice would be assume somebody is recording you ... [and] always behave as if you’re on record,” he said. ♦

## Additional reading

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**Wolderslund M, Kofoed PE, Holst R, Ammentorp J.** Patients' use of digital audio recordings in four different outpatient clinics. *Int J Qual Health Care*. 2015;27:466-72. [PMID: [26403974](#) [\\_\(http://www.ncbi.nlm.nih.gov/pubmed?term=26403974\)](http://www.ncbi.nlm.nih.gov/pubmed?term=26403974)] doi:10.1093/intqhc/mzv069

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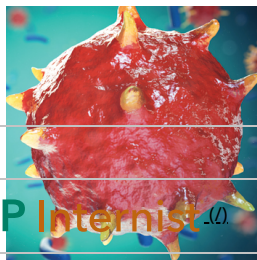
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*By Robert B. Doherty. (/staff/).*

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