Think Before You Text (or don’t text at all)!

By Jeff Williams, JD

Closed Claim has been here before. Back in November of 2021, we shared a story about inappropriate text messages between medical providers related to a patient. In “A Cautionary Tale”[1], *Closed Claim* shed light on text messages between medical providers that were produced in litigation after a patient passed away due to a medical incident while undergoing an MRI. Some time has passed, and issues related to medical providers sending text messages continue to arise, so it seems appropriate to revisit the topic.. Texting is a quick and easy way to communicate, but as you are about to read, it can be both beneficial and detrimental.

Andy Barrett was a 32-year-old male patient presenting to the hospital for a planned lumbar laminectomy and diskectomy. The anesthesiologist, Dr. Molly Logan, performed the pre-anesthesia assessment. She noted that Mr. Barrett was morbidly obese, had a concerning BMI, and was a pack-a-day smoker with a history of hypertension. Dr. Logan also noted that he had diabetes and fibromyalgia. In her assessment, she observed that Mr. Barrett had a thick beard but otherwise assessed his airway as normal. Certified Registered Nurse Anesthetist, Mike Thomas, was also assigned to the case.

Upon conclusion of her assessment, Dr. Logan sent the following text message to CRNA Thomas:

"Due to BMI and thick beard consider video laryngoscope…"

For those not practicing in the world of anesthesia, a video laryngoscope is a device with a camera on it, used to assist with visualization during intubation. It is typically used in anticipation of a difficult intubation.

Once vital sign monitoring began, CRNA Thomas reviewed Dr. Logan's evaluation. Despite the patient's thick beard, CRNA Thomas placed a standard LMA mask (laryngeal mask airway) and started pre-oxygenation for about five minutes. He made the decision to not use a video laryngoscope and moved forward with the intubation. Soon after anesthesia was started, CRNA Thomas noticed that the pulse oximeter was dropping into the 80s. CRNA Thomas had intubated the patient's esophagus. The errant intubation was quickly recognized and the tube was removed. However, it doesn't take long for serious damage to occur when the patient's airway is obstructed. The patient's oxygen saturation was now 58%, and he was bradycardic. The situation was critical. CRNA Thomas urgently called for a crash cart and a code was called.

CPR had started by the time the code response team arrived. The crash cart was brought in, and the defibrillator pads were placed. "Stand clear!" yelled a nurse before an electric current was delivered to Andy Barrett's heart. CRNA Thomas and a circulator nurse were providing bag mask ventilation. Epinephrine was administered, and shortly thereafter, sinus rhythm returned as did the patient's pulse. Dr. Logan then used a video laryngoscope to accomplish a tracheal intubation. The EKG was showing evidence of a myocardial infarction. Noting the history of cardiac issues, Dr. Logan suspected a hypoxic event as a result of the cardiac distress. His life was saved, but there was concern that serious damage had been done. Andy Barrett was then transferred by ambulance to a hospital for a higher level of care.

He remained hospitalized for nearly a month. Hypoxia was a harsh consequence of the esophageal intubation. When he was discharged from the hospital, Mr. Barrett had made a "remarkable recovery" as noted by a treating cardiologist but was suffering from neurological deficits due to the anoxic brain injury.

The Lawsuit

After some time passed, Andy Barrett filed a lawsuit against CRNA Mike Thomas, Dr. Molly Logan, and the hospital where the incident took place. The suit alleged that Mr. Thomas negligently intubated Andy Barrett's esophagus and failed to properly pre-oxygenate the patient by not ensuring a proper mask seal. The latter allegation regarding improper pre-oxygenation implied that Mr. Thomas should have recognized the patient was at high risk due to his thick beard. The primary allegations against Dr. Logan were failure to properly supervise CRNA Thomas during the induction of anesthesia and failure to recognize that the patient was considered high-risk due to his pre-existing medical conditions and thick

beard.

Shortly after the lawsuit was filed, Plaintiff's counsel submitted written discovery requests to the various defendants. The interrogatories and requests for production of documents are a set of written questions and requests for various documents such as medical records. One of the discovery requests was for *all text messages* amongst the providers related to this incident. Be forewarned, this is a common request in litigation these days.

The text message from Dr. Logan to CRNA Thomas regarding the video laryngoscope was produced. The following text messages from CRNA Thomas to various providers were also produced:

"I can't stop thinking about the patient. I'm scared something else like this will happen to another patient."

"This makes me question how good of a anesthetist I am."

"*Can we compare notes in case lawyers get involved?"*

"Am I going to get sued?"

Eventually, CRNA Thomas testified by deposition and had to answer many tough questions related to these text messages. Needless to say, the text messages made the case difficult to defend.

Throughout the lawsuit, Andy Barrett claimed that he was no longer able to find meaningful employment or develop new skills due to the anoxic injury he sustained. He could no longer work and was on Social Security Disability. His legal team disclosed an expert economist who testified that Mr. Barrett lost hundreds of thousands of dollars due to his inability to work or develop new career skills. Monetary damages in the case had the potential to be extraordinarily high.

As in most medical malpractice cases, medical experts were disclosed against the defendant medical providers. An expert CRNA was disclosed who was critical of several aspects of CRNA Thomas's care. The expert's criticism focused on: 1) Andy Barrett's BMI, which indicated severe obesity; and 2) his thick beard. These two factors, the CRNA expert opined, presented a more challenging intubation. The expert pointed out that the bushy beard made it harder to get a good seal on the mask that was placed on Mr. Barrett's face just before induction of anesthesia. There were several options that CRNA Thomas could have explored to obtain a better seal, but he chose not to. Because there was not an appropriate seal on the mask, Andy Barrett was not properly oxygenated, said the expert. This caused him to desaturate quickly leading to a code. The failure to obtain a good mask seal was deemed a critical error in judgment. The other criticism was: Had CRNA Thomas followed the advice to use the video laryngoscope, the bad outcome could have been avoided altogether.

Back to the text messages. The CRNA expert was asked in a deposition about the text message from Dr. Logan to CRNA Thomas suggesting that a video laryngoscope should be used. The expert's response was simple and straightforward; Dr. Logan's suggestion was reasonable and would have greatly mitigated the chances of a bad outcome during this difficult intubation. This testimony, at least in part, would later lead to Dr. Logan's dismissal from the case.

If the case had gone to trial, the text messages from CRNA Thomas would have been used by plaintiff's counsel as evidence to impeach his credibility. The admissibility of the messages would have been disputed, but most likely the judge would have allowed a jury to see the text messages. This surely would have fanned the emotional flames of the jurors. The defense of CRNA Thomas in front of a jury would have been an uphill battle. The case was resolved without going to trial.

Plaintiff's counsel realized the case against Dr. Logan was defensible and dismissed her without having to contribute to a settlement. Contrary to the position that CRNA Thomas was in, the text message Dr. Logan sent to CRNA Thomas advising the use of the video laryngoscope was seen as sound medical advice within the standard of care. Regarding the negligent supervision allegation, Dr. Logan had expert support that would testify she was well within the standard of care.

While it is admittedly easier to send a text message the standard way, it is recommended that text messages in the medical setting be sent through a secure messaging system. Failing to do so could implicate HIPAA, as Protected Health Information (PHI) should not be shared in an unencrypted text message.

One should assume that text messages will likely be requested during litigation. If an incident occurs during a procedure, the best practice is not to send a text message to anyone about a medical incident regarding a specific patient. There are better, safer ways to communicate effectively about a medical occurrence.

Next time, think before you text, or don't text at all!
