

MAKING YOUR INTERESTS OUR BUSINESS

EMAILS: THINK BEFORE YOU SEND

BY: LARRY FRIEDMAN



The prosecutor in the Harvey Weinstein case began her closing argument with the story of one of his accusers, which included her alleged rape and Weinstein's apparent attempts to keep it quiet. At one point, the Prosecutor displayed an email that Weinstein sent to his crisis PR team two days before his accuser's allegation first appeared on the website of the *New Yorker*.

"This was consensual or deny it," wrote Weinstein. "This was consensual or deny it?" Prosecutor Joan Illuzzi asked in a tone of disbelief "'Consensual' or 'deny it' are the polar opposites of each other."

She whipped around and pointed at the screen: "I submit to you, that's a confession."

We can all learn at least one lesson from Harvey Weinstein, take the time to think about the words you use and the message you want to convey in your email BEFORE you send it. Remember, the words you use shape the thoughts the receiver of your message has. Be clear, use short sentences and only say what you mean to say. It's obvious, that instead of taking the time to compose his thoughts before he sent his email, Weinstein wrote the first thing that popped into his head. "[Say it was] consensual or deny it, with the implication that his lawyers should use whichever excuse worked best. THIS is an example on point.

Emails are too easy and too convenient to send. You can send them from your desk top computer, your laptop, your tablet or your smartphone. You type with one or two fingers and push SEND. The accessibility and ease of sending emails deceives you into thinking that emails are casual ways to communicate. The problem is, they are anything but casual.

Tip # 1: Look before you leap. Think about what you want to say and say what you want in a clear and concise manner.

Tip #2: Carefully reread your email once you draft it. Content mistakes frequently misrepresent the message you are trying to convey and often have adverse consequences. There is nothing better than a content check to make sure you are conveying the message you want the intended recipient to receive.

Tip #3: Force yourself to add clarification if your email does not convey the message you want to send.

Tip #4: You can write your email now and send it later. You can use DELAY DELIVERY on your computer so that you can think about your email and change it at any time before it is sent.

Tip #5: If you don't want to put it in writing, DON'T! Do it the old fashioned way and make a phone call. Calling allows you to say your piece, be descriptive, and interject colorful adjectives into your conversation without creating a permanent record on your company's server.

Emails allow us to express our thoughts so quickly, sometimes without even thinking about the ramifications of what we're saying, we utter our thoughts and push SEND. There is no such thing as a *casual email*, especially in the business world. Every word you write "can and will be used against you" in business, in commerce and in a court of law. Emails we send while at work originate on a company server, the email belongs to the company, not the individual sending the email and is generally stored forever—even after you have left or sold the company.

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BY: LARRY FRIEDMAN

Whether sending an email from a private domain or from your personal accounts, any email that originates from the company's server is a company email and belongs to the company. There are very few applicable privileges or privacy protections that safeguard any such email or the contents of such emails from disclosure or discovery. In fact, all emails, except those that legitimately (i) constitute attorney-client communications; (ii) contain personal health information; (iii) contain personally identifiable information; (iv) constitute trade secrets; or, (v) contain confidential information, are subject to production in response to a valid subpoena.

Compose your emails knowing that they may be read by more than the intended recipient and may one day show up on a 10-foot screen being analyzed and interpreted (or misinterpreted) by a jury of our peers. You should compose even your most routine emails as though they will be viewed by your mother, your pastor and a jury. It is imperative when composing an email to leave out any crass, vulgar, or offensive comments and NEVER use profanity even if it is intended as a joke. Profanity will always be read out of context. And, never have the meaning that you intended it to have. Keep it clean, you will enhance your credibility.

Omit anything that could be detrimental to you, your company, your co-workers, or anyone else—even when sending emails to a friend, a partner, a co-worker or subordinate. Never express frustration, i.e. "I wanted to smack the %@#& up the side of his/her head..." While that might be the truth or intended to be humorous, it will undoubtedly be misconstrued by strangers reading the emails after the fact without the knowledge of the proper context or the benefit of your smile, facial expressions or body language.

In fact, certain emails can even lead to lawsuits for business defamation or business disparagement and may even expose your company to liability. A company can be found liable for actions taken by its officers, directors and employees while in the course and scope of their duties. The best "rule of thumb" is to omit sending anything in an email that you would not be comfortable saying from the pulpit in your church.

Employers are permitted to search employees' workspaces because the workspaces are owned by the employer. This includes the right to track and monitor their employee's use of company equipment, including its computer equipment and email system. Generally, employers also are permitted to access employee's emails, even personal ones that went through the employers' computer system. Employees should not have any expectation of privacy when they use company equipment to send or receive business and personal emails.

Think before you send an email ... and then think again!

Sincerely,



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SENATE BILL 1264 REDUCES HEALTHCARE PROVIDERS' OUT-OF-NETWORK PROFITS

BY: DORIS DIKE



Texas lawmakers continue to fight patients' surprise medical bills aggressively. State legislators crafted Senate Bill 1264 to protect Texans from being charged out-of-network healthcare fees.

Out-of-network care and balance billing

Generally, in-network health providers contract to provide healthcare services to members of a health insurance plan. In-network care offers its members services at a discounted rate. Here, in-network providers agree to accept insurance payment as payment in full (less any applicable copays) for any service performed.

An out-of-network provider holds no contract or agreement with an insurance provider. In this case an out of network provider can bill the patient directly for any outstanding balance after the insurance company pays for services at its usual and customary rates. This process is called balance billing.

However, what happens when the insurance company doesn't cover out-of-network care at all? In this scenario, the provider bills the entire invoice to the patient.

Why do patients go to out-of-network providers?

Balance billing occurs when a patient cannot determine if their provider is out-of-network. This happens when a patient sees a provider in the emergency room, sees certain specialist physicians, or uses ambulance providers in an emergency. Balance billing also occurs when a patient receives planned care, for instance visiting an in-network facility (e.g., a hospital or ambulatory surgery center), but the treating

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provider (e.g., an anesthesiologist or radiologist) is not in-network. In either situation, the patient cannot choose the provider or determine that provider's insurance network status.

Senate Bill 1264

SB 1264 protects patients who carry health benefit plans offered by insurers and health maintenance organizations that the state regulates, as well as the Texas Employees Group, the Texas Public School Employees Group, and the Texas School Employees Uniform Group. SB1264, which took effect January 2020, shields patients from unexpected medical bills in emergencies and in cases where patients were given no choice about the provider.

Exceptions:

The current rule carves out an exception where a patient chooses an out-of-network doctor or provider at an in-network facility. However, this waiver can't be used in an emergency or when an out-of-network doctor takes a case, such as an anesthesiologist assigned to a surgery.

Consumers must sign a form 10 business days before receiving out-of-network care if a provider wants to "balance bill" the patient instead of requesting arbitration or mediation.

The law only applies to state-regulated insurance plans.

According to Republican State Sen. Kelly Hancock, "The whole premise of this bill is to make sure that we protect patients." Hancock said, "We take them out of the process of balance billing, where they don't have to initiate it." Prior to this law, the state addressed this issue only if the patient requested mediation by the Texas Department of Insurance (TDI). SB1264 does away with patient requested mediation to resolve disputes. Instead, the mediation and arbitration process no longer involves enrollees and only applies to a health benefit claim submitted by an out-of-network provider in a facility or by a health benefit plan issuer or administrator.

SB1264 and Licensing Boards:

Texas Medical Board

Texas physicians should be aware that the Texas Medical Board is now processing complaints from the public about physicians who do not follow all provisions of SB 1264. In fact, under the Medical Practice Act, violations of SB 1264 and TDI rules include, but are not limited to, violation of state law connected to the practice of medicine and unprofessional conduct.

Podiatrist and health providers governed by Texas Department of Licensing and Regulation (TDLR)

Finally, TDLR will investigate complaints and take disciplinary action against TDLR licensees for violations of SB 1264, including as interpreted by TDI rules. Any person who believes that a TDLR-licensed health care provider has committed a balance billing-related violation may file a complaint online with TDLR. Additionally, TDLR and TDI will work together to ensure that any complaints filed with TDI regarding TDLR licensees will be referred to TDLR and investigated.

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"AN OUNCE OF PREVENTION IS WORTH A POUND OF CURE"

There is currently no vaccine to prevent coronavirus disease 2019 (COVID-19). The best way to prevent illness is to avoid being exposed to this virus. The Centers for Disease Control always recommends every-day preventive actions to help prevent the spread of any respiratory disease, including:



Avoid close contact with people who are sick.

Avoid touching your eyes, nose, and mouth.

Stay home when you are sick.

Cover your cough or sneeze with a tissue, then throw the tissue in the trash.

Clean and disinfect frequently touched objects and surfaces using a regular household cleaning spray or wipe.

Wash your hands often with soap and water for at least 20 seconds, especially after going to the bathroom; before eating; and after blowing your nose, coughing, or sneezing.

If soap and water are not readily available, use an alcohol-based hand sanitizer with at least 60% alcohol. Always wash hands with soap and water if hands are visibly dirty.

Please visit www.cdc.gov for more important information about keeping your worksite employees safe, healthy and informed.



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FRIEDMAN & FEIGER, LLP EMPOWERS WOMEN WITH ESSENTIAL ENERGY “WOMEN IN BUSINESS” NETWORKING EVENT FEATURING CELEBRITY SPEAKER KIMBERLY FRIEDMUTTER AT TOOTSIES

Sponsored by Friedman & Feiger, LLP, the recent Essential Energy “Women In Business” networking event featured Celebrity Speaker Kimberly Friedmutter.

Kimberly is a world-renowned hypnotherapist and author of *Sub-conscious Power* with a client list of well-known celebrities such as Sharon Stone, Martha Stewart, Mike Tyson, Quincy Jones and Jennifer Hudson among many others. According to Jennifer Hudson, “Kimberly inspires women to be better versions of themselves.”

Founded by Janelle Friedman eleven years ago, Essential Energy is a community service affording women in business the opportunity to network, exchange ideas and business cards to enhance their businesses. Each event features a networking reception and motivational speaker.

Additional sponsors include GoodJanes and Tootsies. If you would like to be invited to the next Essential Energy reception, please send your contact information to lmarsh@fflawoffice.com.



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