



PROFESSIONAL ISSUES

## Massachusetts considers requiring all surgeries to be videotaped

**Doctors and plaintiff lawyers are the bill's biggest critics, saying the doctor-patient relationship would become a Hollywood production.**

By [Amy Lynn Sorrel](#), AMNews staff. April 23/30, 2007.

---

Massachusetts physicians are not smiling about the possibility of being on camera in the operating room.

Legislation introduced there in January would require licensed hospitals to make video and audio recordings of all surgeries. Failure to do so would result in a yet-to-be-determined fine.

With this article

- See [related content](#)
- [Regional news: Northeast](#)

State Rep. Martin J. Walsh, a Democrat and the bill's sponsor, said he hopes to protect patients and shed some light on medical errors. Walsh anticipates modifications to the early-stage proposal, including an amendment that would require the patient to request the videotaping for it to take place.

At press time in early April, no hearings were set on the bill. But public debate was well under way.

Physicians and plaintiff lawyers alike say the idea might seem like a useful tool for providing hard evidence in medical liability cases as to what happened in the operating room. But in reality, they say, it will do more harm than good.

"It becomes an imposition on the physician-patient relationship and starts out by saying, 'I don't trust you to do my surgery,' " said Kenneth R. Peelle, MD, president of the Massachusetts Medical Society, which opposes the bill.

The measure also comes at a time when, anecdotally, doctors and legal experts say many hospitals over the past several years began prohibiting patients from taping births because of liability concerns.

But ob-gyn B. Dale Magee, MD, said the intent of the current bill is even more dangerous.

"You're not capturing a touching event here, but recording primarily with an eye toward catching evidence," said Dr. Magee, MMS president-elect. "It's not as though we are trying to cover up what's going on so much as it's one more distraction that can impair [a physician's] judgment."

Officials at the Massachusetts Hospital Assn., which also opposes the bill, said hospital policies vary on taping births or recording procedures for educational purposes. Hospitals that do allow recordings, though, first take patient and staff privacy into consideration. A videotaping mandate would violate both, said Karen S. Nelson, RN, the hospital association's senior vice president of clinical affairs.

More important, it would "interfere with the communication process that we have learned is one of the most important things to prevent errors," she said.

Boston plaintiff lawyer Barry D. Lang, MD, a retired orthopedic surgeon now specializing in medical liability cases, agrees that the bill puts patients and doctors in an adversarial relationship from the beginning and promotes unnecessary litigation.

"Patients don't start treatment with their doctor with the thought of suing them in mind," he said.

Additionally, surgical errors represent only a small percentage of liability claims, Dr. Lang said, "so why spend a lot of time and money videotaping something that's almost never going to happen?"

Walsh acknowledged that the bill "is not going to solve every problem, but it can at least provide some type of history of what went on in the operating room if something did go wrong. Some people want that comfort." The legislation originated with a constituent whose mother died during hip surgery in 2000, he said.

### **An accurate picture?**

Dorothy Clay Sims, a Florida lawyer who specializes in cross-examining defense medical experts in personal injury cases, said she would welcome such a measure to keep expert witnesses honest and reduce litigation.

"I've seen an incredible amount of fraud and abuse by expert witnesses, and having something like this levels the playing ground and helps plaintiff lawyers more accurately screen their cases," she said.

Some defense experts agree that a videotape also could assist defendant doctors in showing that nothing went wrong during surgery. But other negative repercussions outweigh the benefits, said New Orleans attorney Bruce A. Craner, chair of Medical Liability and Health Care Law for DRI, a 22,000-member national organization of defense lawyers.

In one case he defended, an orthopedic surgeon gave a patient a videotape of his knee surgery. Unhappy with the experience, however, the patient sued the surgeon, claiming that the doctor altered the tape or substituted it with another patient's. The judge ultimately tossed

the case.

"But I can assure you that's a claim that will be made even by a defendant surgeon," Craner said. "And if a tape disappears, plaintiffs have a claim against the hospital for destroying evidence, and that results in a new cause of action where there might not have been one."

As a practical matter, doctors and lawyers question the financial cost of implementing the policy, as well as how to truly capture an error.

Most procedures require a surgeon to work inside the patient's body, where nothing short of a camera at the doctor's fingertips would be of value, Dr. Lang said. He said an operative note would provide more useful details than an average camera.

A typical surgery also involves at least four people in the room, making it difficult to focus on any one person, the Massachusetts Medical Society's Dr. Peelle said.

"To record everything that happens in an operating room would be so impractical and expensive," and direct attention away from patient care, he said. "Are we doing surgery or are we making a movie?"

[Back to top.](#)

---

Copyright 2007 American Medical Association. All rights reserved.

**RELATED CONTENT** *You may also be interested in reading:*

[Mass health reform: Still a work in progress](#) April 2

[Tort reforms boost some states' liability outlook](#) March 5

[Court looks at consent in emergencies](#) Dec. 18, 2006

[Liability insurance rates mostly hold steady or drop this year](#) Dec. 11, 2006

[Doctors fear criminalization of medical mistakes](#) Nov. 27, 2006

[Show and tell: Letting outsiders see into the OR](#) July 26, 2004