

Study: Everyone, not just physicians, should know their state's wiretap laws

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Wiretapping laws, also known as "eavesdropping" laws, govern the recording of in-person or telephone audio conversations. Many of these statutes were developed in the 1960s and 70s, but despite that, they still

apply today. Over the intervening decades, smartphones and other audio and video recording devices have become ubiquitous and these laws impact many of our day-to-day interactions.

However, most [clinicians](#) and in fact, most people, are unaware of the wiretapping laws or don't know specific details about them. For example, there are some states that require just one party to consent to being recorded, while other states require all parties involved to give permission.

In an effort to fill this [knowledge gap](#), researchers from Boston University Chobanian & Avedisian School of Medicine, have compiled a list of all federal and state wiretap laws, as well as the criminal punishments and civil remedies for violations. They also list some examples where hospitals or physicians have asserted rights or claims under applicable wiretap statutes in litigation.

Additionally, to help clinicians see the applicability of these laws in the clinical realm, they provide several hypothetical case examples along with an approach for managing a potential violation of wiretap statutes in the [clinical setting](#).

"Because these actions affect our daily lives as clinicians, ranging from patients recording healthcare provider statements made during rounds, the birth of their baby, or clinicians recording interactions for transcription purposes, it is imperative that all physicians are aware of these wiretap laws," explained corresponding author Karolina Brook, MD, assistant professor of anesthesiology.

In assembling the list of federal and state wiretap laws and enforcement measures, the researchers searched government [online resources](#) and then cross-referenced findings with reputable legal sources. They also searched within the Westlaw legal database to provide examples of cases

where clinicians have asserted rights or claims under applicable wiretap statutes.

According to Brook, everyone, not just clinicians, should be aware of the implications of audio recording in general and in clinical situations specifically, and the potential punishments that could be imposed for violations.

"Most people think that [video recording](#) is benign, especially if it is done for 'good' reasons. An example we like to give, which we also discuss in the paper, is of a high school student who recorded a bullying incident. When he brought the video to the school principal, they actually contact the police and the recording student was charged with violation of the wiretap statute. Many also think that the law protects any potential recording, meaning it would not be admissible in court—which is not true," adds Brook, who also is a pediatric anesthesiologist at Boston Medical Center.

In fast-moving clinical situations where there often isn't time to look up these laws or seek [legal advice](#), Dr. Brook stressed that it was imperative for people to educate themselves on their jurisdiction's statutes governing audio recordings.

These findings appear online in the *Journal of Clinical Anesthesia*.

More information: Flavio G.A. de Meneses et al, Wiretap laws and the perioperative physician—The current state of affairs, *Journal of Clinical Anesthesia* (2023). [DOI: 10.1016/j.jclinane.2023.111178](https://doi.org/10.1016/j.jclinane.2023.111178)

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