

BROWN BEAR DIGITAL

Plastic Surgery Email Marketing

The rules behind the send: what you are allowed to email, and whether it arrives.

A practice owner's guide | 2026 edition

By Bryan Passanisi, Founder, Brown Bear Digital

brownbear.digital

Contents

10 SECTIONS

01	The short answer Two questions decide every send, and the four moves that answer them	3
02	Were you allowed to send it? The two Privacy Rule tests, and the money trap	4
03	The three-list rule Care, Practice, and Public, and how to build each one	5
04	The post-consult sequence Three phases, and why it runs longer than 30 days	6
05	Did it arrive? The mailbox rules and the six-complaint margin	7
06	Before and after photos in email Three ways it goes wrong, and the safer format	8
07	What to measure instead of the \$36 return Four numbers to report on, and where AI search fits	9
08	Is your email program built to send safely? A 12-question self-audit	10
09	Frequently asked questions Six questions practice owners ask most	11
10	Next steps Where to start, about the author, and references	12

The short answer

01

Every practice email has to pass two questions: were you permitted to send it, and did it arrive? Most guides answer the first with "use a HIPAA-compliant platform," which answers the wrong question. Email is the only audience a practice owns outright. It is not a lead source. It is what keeps a lead alive long enough to become a surgery.

What to do about it:

1

Decide by who pays, not by platform.

Emails about your own services, funded by the practice alone, are generally not HIPAA marketing. Manufacturer money changes that.

2

Run three lists, never one.

Care, Practice, and Public. The lists never merge, and data flows one way.

3

Follow up long past day 30.

The decision window for elective surgery is measured in seasons. Build information, consideration, and return phases.

4

Guard the complaint rate.

A practice mailing 2,000 people crosses the 0.30% spam threshold at six complaints.

THE MARGIN, IN NUMBERS

A retailer mailing a million people can absorb 3,000 spam complaints before crossing Google and Yahoo's 0.30% threshold. A practice mailing 2,000 crosses it at six. One Mother's Day promotion to 5,000 stale addresses hits 0.30% exactly with 15 complaints.

Who this guide is for

Surgeons who have never had a straight answer about what they are allowed to say. Practice managers who inherited a CRM with 4,000 addresses and no record of where any came from. Marketers at multi-location groups where each office built its own audience.

Were you allowed to send it?

A Business Associate Agreement governs how your vendor handles PHI once you give it to them. It says nothing about whether you were permitted to send the message. Two paragraphs of the Privacy Rule decide that, in sequence.

Test	Rule	What it means for email
1. Is it marketing at all?	45 CFR 164.501	→ Marketing is a communication about a product or service that encourages purchase or use. It carves out treatment communications and those describing the practice's own health-related products or services, as long as no third party pays for the message.
2. If it is marketing, what is required?	45 CFR 164.508(a)(3)	→ An authorization for any use or disclosure of PHI for marketing. Two exceptions only: a face-to-face communication and a promotional gift of nominal value. Email is neither. No platform, BAA, or intake checkbox substitutes for a valid written authorization.

The trap: who is paying for the email

The exclusion holds only while nobody outside the practice funds the message. Direct or indirect payment from a third party whose product is described counts. The word doing the work is *indirect*.

Co-op dollars

Co-op marketing money from an injectable manufacturer.

Volume rebates

A rebate that scales with the volume you use.

Free creative

Assets an implant company supplies for you to send under your own name.

Picture a Botox Day email: brand in the subject line, manufacturer images, a co-op credit, sent to everyone who ever had an injectable. It is marketing, it uses PHI, and nobody collected authorization. The compliant platform makes no difference.

THE BRANCH THAT MATTERS MOST

Practice pays and the email describes practice services: inside the exclusion, no authorization needed. Any funding from a manufacturer, device company, or product line whose brand appears: treat it as marketing requiring authorization until someone with the vendor contracts tells you otherwise in writing. The deciding factor is the money, not the wording.

The three-list rule

Most practices run one list, so every send raises every question at once. Run three, and a legal question becomes a routing question. If a message does not belong cleanly on one list, it is not ready to send.

List	Who is on it	What it may carry	Governing constraint
Care	Patients with a scheduled or completed procedure	Pre-op instructions, recovery check-ins, appointment logistics	→ Treatment communication, excluded from marketing. Needs a platform with a signed BAA because the content is PHI.
Practice	Consults and patients who opted in to hear from you	Your procedures, surgeons, financing, events, and education	→ Excluded under the own-services carve-out only while the practice funds it alone. One manufacturer dollar moves a message off this list.
Public	Website, event, or download subscribers with no patient record	General education, brand content, anything a manufacturer helps fund	→ No PHI, so no HIPAA marketing analysis. CAN-SPAM and sender reputation still apply in full.

- ◆ **The lists never merge.** Data flows one way. A Public subscriber who becomes a patient joins Care and Practice. Nobody on Care is ever exported into Public to make a send bigger.
- ◆ **Medspa arm?** Run the three lists per entity. Separate legal entities keep separate databases. One entity keeps separate segments, enforced in the platform.

Building the list without buying one

Do not buy a list. Vendors sell addresses of surgeons, not patients, and a so-called patient list is fabricated or obtained in a way you do not want on your sending domain.

Public

A useful website download, an explicit ask at checkout, and events.

Practice

Consults who opt in during intake, worded as a real choice.

Care

Builds itself, because it is simply your patients.

Separate the lists at the point of capture. A mixed CRM cannot be untangled retroactively, so stop adding to it, start the three lists cleanly today, run one re-permission campaign, and let the non-responders go.

The post-consult sequence

04

The consultation is where most practices stop following up and where the decision actually starts. A working sequence has three phases, and the third is where the surgeries come from.

DAYS 0 TO 30

Information

WHAT TO SEND

- Thank-you and next steps on consult day
- Procedure questions, written as answers
- Financing in the first week
- Results and recovery in weeks 2 and 3
- An invitation back at month end

Answers, not a brochure.

DAYS 31 TO 90

Consideration

WHAT TO SEND

- What recovery looks like week by week
- How other patients described the decision
- The surgeon's own approach and philosophy

The phase almost nobody builds.

DAYS 91 AND BEYOND

Return

WHAT TO SEND

- A question
- A new piece of information
- An easy path to a second conversation, no obligation

A way back in. Not a discount.

A sequence that runs out at day 30 concludes she was not interested. The practice simply stopped talking to her five months before she was ready.

Say a woman consults for a breast augmentation in March. She is serious. She also has a daughter graduating in June and a family trip in July, and no interest in explaining a six-week recovery at either. She will not book until the fall. A sequence still gently present in August gets the call.

TWO NOTES FOR THE PERSON BUILDING IT

Every message here sits on the Care or Practice list and is funded by the practice, so you can build it without touching a compliance question. Put the review request late in the post-surgery arm, after the result has settled, not in the first week.

Did it arrive?

05

A practice can get every word of compliance right and still have nobody read the email. A second set of rules governs whether it arrives. They are the mailbox providers' rules, enforced automatically. Google and Yahoo's sender requirements have been in force since February 2024.

Requirement	What it asks of bulk senders
Authentication	→ SPF, DKIM, and DMARC
Unsubscribe	→ One-click unsubscribe on marketing mail
Spam complaint rate	→ Below 0.30%
Bulk-sender line	→ 5,000 messages per day, which almost no single practice crosses

Under 5,000 a day, the letter of the bulk rules does not bind you, and this is where practices relax. They should not. The complaint rate still governs how your mail is treated, and a small list gives you far less room, not more.

3,000

spam complaints a retailer mailing a million people can absorb before crossing 0.30%.

6

spam complaints put a practice mailing 2,000 over the same line. Nothing on your dashboard shows where you sit inside that margin.

Based on the 0.30% complaint threshold in Google and Yahoo's sender requirements.

One Mother's Day promotion to 5,000 addresses gathered over 11 years draws 15 spam reports. That is 0.30% exactly, and the damage lands on next week's post-op instructions. Nobody connects the two events.

The fix is not a better subject line

- ◆ Send less mail to people who have not engaged, and more to people who just had a consultation.
- ◆ Keep care communication on a separate sending identity from promotional mail.
- ◆ Make the unsubscribe link easier to find than the spam button.

Before and after photos in email

06

Before-and-after images are the most persuasive asset a practice owns. You can send them. There are three separate ways it goes wrong, and only one of them is about HIPAA.

1

Consent

A patient's photo is PHI. Gallery consent is not automatically email consent. 45 CFR 164.508 requires a valid authorization to describe the uses it covers. Read the release, and if its scope is narrow, get a fresh one.

2

Rendering

Many email clients block images by default. An email built around a before-and-after grid arrives as a wall of empty boxes and a call to action with no context.

3

Complaints

Surgical imagery draws spam complaints from people not expecting it, particularly for body procedures and on shared or work devices. The risk sits with the least engaged recipients.

THE JANUARY GALLERY CAMPAIGN

A practice builds its January campaign around an excellent tummy tuck gallery. The images are consented, the copy is careful, the platform is compliant. It goes to the full database. A modest number of consults come back, along with an unusually high complaint rate from the oldest third of the list. The report says success. Sender reputation takes two months to rebuild.

Keep the images one click away. Write the email around the story and the result, and link to the gallery on your own site.

You keep the persuasion, you get the visit on a page you control and can measure, and the message renders for everyone regardless of what their email client blocks.

Practices routinely hold a signed photo release from 2019 and assume it covers a 2026 send to a list that did not exist then. Checking scope properly once beats deciding case by case forever.

What to measure instead of the \$36 return

Most guides open with \$36 back for every \$1 spent, or \$42 for aesthetics. We checked every page ranking for this search, and not one sources either number. Both trace back to general-market email benchmark surveys, averaged across industries where the product costs \$40 and the decision takes four minutes. It is evidence of the wrong type. Open rate has its own problem: privacy features that pre-load images inflate it, so use it only as a trend line against itself.

1

Consult-to-surgery conversion

Measured separately for consults who got the full sequence and consults who did not. The only number that isolates what email did.

2

Time from consult to booking

If the sequence works, this gets longer before it gets better, because you convert people once written off.

3

Spam complaint rate per send

A first-class metric, not a footnote. It is the leading indicator for every other number here.

4

Revenue from reactivated patients

Prior patients returning for a second procedure. The highest-margin revenue a practice has.

Getting there in four steps:

1

Pull your consult-to-surgery rate for the last 12 months as a baseline.

2

Split future consults so a control group is visible.

3

Add complaint rate to the report the practice already reviews monthly.

4

Leave it alone for two quarters. A six-month decision cycle cannot be judged on a 30-day one.

WHERE EMAIL FITS NOW THAT AI SEARCH TAKES THE CLICK

More patient questions get answered without a click, so an email address is worth more than it was three years ago. Watch for informational visits flattening while consult requests hold steady. Report list growth next to traffic, not a tier below it.

Is your email program built to send safely?

08

Answer for your program as it runs today, in-house or through an agency. Each "no" is a gap. Start with the permission questions, the one most guides answer wrong.

Question	Yes	Partly	No
PERMISSION TO SEND			
Do you know which of your emails HIPAA treats as marketing and which it excludes?	☐	☐	☐
Before a promotional send, do you check whether a manufacturer or device company funds it, directly or indirectly?	☐	☐	☐
Do your before-and-after photo releases describe email as a covered use?	☐	☐	☐
LISTS AND PLATFORM			
Do you run separate Care, Practice, and Public lists?	☐	☐	☐
Does data flow only one way, with nobody on Care ever exported into Public?	☐	☐	☐
Does your platform have a signed BAA for everything touching Care and Practice?	☐	☐	☐
THE POST-CONSULT SEQUENCE			
Does your sequence run past day 30 into consideration and return phases?	☐	☐	☐
Do consults hear about financing in the first week?	☐	☐	☐
Does the review request come after the result has settled?	☐	☐	☐
DELIVERABILITY AND MEASUREMENT			
Are SPF, DKIM, and DMARC in place, with one-click unsubscribe on marketing mail?	☐	☐	☐
Do you track spam complaint rate on every send?	☐	☐	☐
Do you compare consult-to-surgery conversion for consults who got the sequence and those who did not?	☐	☐	☐

YES

PARTLY

NO

Frequently asked questions

09

Q Do I need patient authorization to email patients about my own procedures?

Generally no. Under 45 CFR 164.501, a practice emailing its own patients about its own procedures, surgeons, financing, or events is not doing marketing as HIPAA defines it, as long as no third party is paying for the message.

Q Does a HIPAA-compliant email platform make my emails compliant?

No. A BAA governs how your vendor handles PHI once you give it to them. It says nothing about whether you were permitted to send the message. You still need a platform that will sign a BAA for Care and Practice mail.

Q Can we send a manufacturer-funded promotion?

Funding from a manufacturer, directly or indirectly, turns an email describing its product into marketing. If it touches PHI, it needs prior written authorization. Content a manufacturer helps fund belongs on the Public list, which carries no PHI.

Q Do Google and Yahoo's bulk sender rules apply to a small practice?

The formal line is 5,000 messages a day, which almost no single practice crosses. The complaint rate still governs how your mail is treated, and a practice mailing 2,000 crosses 0.30% at six complaints.

Q Can we put before-and-after photos in email?

You can, if the authorization's scope covers email. Images may be blocked by default and draw complaints from unengaged recipients, so write around the story and link to the gallery on your own site.

Q Should we buy an email list?

No. Vendors sell surgeon addresses, not patient ones, and a so-called patient list is fabricated or obtained in a way you do not want attached to your sending domain. Build the Public list from your website, front desk, and events.

Next steps

10

- 1 **Run the self-audit** on the previous pages. Be honest.
- 2 **Sort every message you send** into Care, Practice, or Public, and check who funds each promotional send.
- 3 **Talk to someone who does this for plastic surgery.** A straight read on where your practice sits, and what to change first.

WORK WITH BROWN BEAR

Email programs in surgical practices rarely fail on the copy. They fail on structure, and structural problems are fixable in weeks rather than quarters. brownbear.digital/contact | bryan@brownbear.digital



Bryan Passanisi

ABOUT THE AUTHOR

Bryan Passanisi is the founder of Brown Bear Digital. He has 15 years of experience across SEO, paid search, and AI search strategy, and won a 2025 Semrush AI/GEO award. He started Brown Bear to give businesses direct access to senior search expertise without the agency overhead.

References

1. Legal Information Institute, Cornell Law School. 45 CFR 164.501, Definitions. [law.cornell.edu/cfr/text/45/164.501](https://www.law.cornell.edu/cfr/text/45/164.501)
2. Legal Information Institute, Cornell Law School. 45 CFR 164.508, Uses and disclosures for which an authorization is required. [law.cornell.edu/cfr/text/45/164.508](https://www.law.cornell.edu/cfr/text/45/164.508)

For informational purposes only. This guide is not legal advice, and it is not medical or professional advice. Results are not guaranteed.

Have qualified counsel review your vendor contracts, patient authorizations, and promotional sends before you rely on any exclusion described here.