What you should know about publications and patents
Publicly disclosing your innovation before a patent application is filed adversely affects its patentability
Only inventions are patentable

An invention is “any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof” (from 35 USC §101).
To be patentable, an innovation must meet three criteria:

1. It must be useful
2. It must be novel
   - Not already publicly described by someone else
3. It must be nonobvious
   - More than just an obvious extension or combination of existing technologies
It is the job of the Patent Office (PTO) to _examine_ your application to determine if the invention claimed is novel, nonobvious and useful when compared to the _prior art_.

_upstate medical university_
*Prior art* is anything known publicly before the date your patent was filed.

Anything publicly known *before* filing can be used against your patent.

What is made public *after* filing cannot be used against your patent.
Prior art can be...

Any information disclosed publicly by you or others including, journal papers, conference abstracts, web pages, emails, posters and oral presentations (alone or in combination)
Two Exceptions

1. Some countries have a grace period
   - Public disclosures by an inventor do not count as prior art *during the grace period*
     - Only USA, Argentina, Australia, Brazil, Canada, South Korea, Malaysia, Mexico, Japan, Russia, Taiwan have grace periods

2. Until 3/16/13, the US is a first to invent
   - Only what is known before the date of invention is considered prior art
   - Date of invention is established using signed and witnessed notebooks
Thus, publishing or presenting your innovation before filing a patent means it is no longer novel, and therefore cannot be patented, in all but seven countries, including India, China and the EU.
Why does this matter?

Being able to file for patent protection in only a few countries means companies will be less interested in commercializing products based on your innovation, especially medical ones.
People use products, not research

Commercialization matters: It is through the commercialization of products incorporating your innovation that your research can reach and benefit the greatest number of people.
Turning innovations into products is expensive

Patents allow companies to recoup the high cost of turning an innovation into products by enabling them to keep others from selling similar products in the same market
Non-US patents are most important for medical products

Obtaining regulatory approval is extremely slow and costly, especially in the USA

Currently, most companies prefer to first obtain regulatory approval in a country other than the US where they hold a patent
Without the ability to obtain foreign patents, most companies won’t be interested in turning your healthcare innovation into products that can benefit people.
The Office of Technology Transfer can help you protect your innovation, without delaying publication, but only if you disclose it.