

(Some) Legal Pitfalls With EMR Documentation

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Medical Record

- Medical record is information maintained by a provider relating to past, present or future physical or mental health of a patient.
- Defined by statute.
- Owned by the organization rendering the care.



EMR Hx

- Concept of EMR started in the late 1960s.
- 1991, Institute of Medicine recommended that by 2000, all providers should be using computers to improve care and practice.
- 2009, Health Information Technology for Economic and Clinical Health (HITECH) Act.



Mixing EMR and Litigation

- Evolution of EMR over past 15 years has impacted discovery and litigation.
- Changed availability and amount of data/ documentation to prove or defend a lawsuit.



Litigation Issues With EMR

- Presentation of medical record creates changes different from that of paper record.
- Attorneys don't see screen shots that provider or clinician see at time of entry.
 - What could have been a 75 pages of paper can be hundreds more with EMR once printed.
 - How it's organized – can make it more challenging because of the way it reads when printed, something that witnesses can struggle with when testifying.
- Introduction of metadata into discovery process.



Metadata

- Automatically captured audit trail of:
 - Who is accessing the record
 - When the chart is accessed
 - Where/terminal from where chart is accessed
 - What action user takes within chart (*e.g.*, viewing it, entering data, etc.)



Metadata Cont.

- Ideally, audit trail should correspond to the patient's medical chart or record.
- If an entry in the audit trail shows data was added, changed or deleted, a corresponding entry should appear in the patient's chart, and vice versa.
- Electronically stored data generally discoverable, though it has to be balanced against need versus burden and expense of collecting it and in accordance with rules of procedure.
- May require bringing in IT staff as witnesses.



When Metadata Provided a Defense

- 65 year old patient with hand surgery performed by orthopedist.
- Several weeks into recovery, patient was putting away Christmas lights and felt he pulled on surgery site when lifting boxes. Goes to ER, has fluid aspirated from site, positive for infx.
- Orthopedist never receives complete ER record, culture report – proven by EMR, was dismissed.



Rely Less on Copying & Pasting

- Copying and pasting can create headaches down the road.
- Repetitious typos in EMR perpetuate inadvertent charting errors that you wouldn't expect to see in a paper chart.



EMR Typos Can Be Used to Argue Case

- 30 year-old woman, mother of two, sees GYN and requests hysterectomy for variety of symptoms, including symptoms associated with pelvic organ prolapse.
- Pelvic exam performed, uterine prolapse found, but MD's use of EMR charted it as "no uterine prolapse" on first visit and that carried through the next four to five visits.
- Pt. had hysterectomy and is now claiming she never needed procedure, relying on typos in EMR. Case ongoing.



Free-Text Can Add Significant Context To Record

- Avoid boilerplate language when you can.
- Liberal use of free text.
- Often provides better description of a patient than drop-box options.



Confirming Charting Was Saved

- Some EMR software requires this, others do not.
- Case example where failure to ensure charting was saved framed Plaintiff's case:
 - 48 year old man transferred to tele floor for observation following aorta-femoral bypass.
 - Nurse performed assessment at approximate noon arrival and was in process of entering the assessment at approx. 1730 when same patient coded; she rushed to code and didn't hit "save" & didn't later confirm data was in chart.
 - Nurse was personally sued, claim was that she failed to give proper attention to patient as evidenced by failure to assess, as evidenced by lack of charting.



Be Mindful

- To time your entry – EMRs differ with how this is presented.
- To save your entries and notes.
- If EMR has section for receipt of phone messages, there should be corresponding response entered acknowledging and/or responding to the message