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## Hidden Malpractice Dangers in EMRs

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An estimated 85,000 medical lawsuits are filed annually, which include those against hospitals and individual physicians. One of the highly-touted benefits of electronic medical records (EMRs) is the potential to help prevent malpractice incidents and medical errors. By providing better documentation, automatically checking for medication errors and drug interactions, providing failsafe systems to track test results and follow-up with patients, EMRs can dramatically reduce the risk of malpractice.

While the benefits of EMRs are far greater than the cons, no road is without stumbling blocks. A physician who is not careful when using the EMR could increase his malpractice liability.

Some of the possible malpractice risks are shown below.

### Too Much Information

Because EMRs allow physicians to document easily, paragraphs of information can be generated with a few keystrokes or even a checkmark. Doctors can describe a comprehensive examination in great detail using predesigned templates. Lists of negative findings can appear, neatly printed, with the push of a button.

This bevy of information may help the physician breeze through an insurance audit; however, all of this information can also create pitfalls.

Pages of repetitive documentation can be more time-consuming to review than brief, handwritten notes. When important information is embedded in paragraphs of boilerplate, it can easily be overlooked. The chance of missing critical data increases.

Overlooking important information is, of course, a significant cause of malpractice. A positive finding embedded in a string of negative findings can easily be missed. To avoid skipping over important information, positive findings must be documented in a way to enable the reader to find them quickly -- either by highlighting them or placing them in a separate section of the record.

### Wrong Template Can Bollix Up the Chart

EMRs contain different templates for various types of specialists and types of visits. Templates are helpful for documenting repetitive acts. However, inadvertently using the wrong template can cause potential malpractice problems.

For example, when a neurologist reviewed his records of a neurologic examination of a 1-year-old boy, the neurologist, who had just converted to a new EMR system, recorded, among other findings, that the baby boy was oriented as to time, place, and person. Such a test cannot apply to small children. Needless to say, the neurologist used his template for a normal neurologic examination, without considering that some of the language wasn't suitable for a year-old child.

Fortunately the case did not evolve into a malpractice suit. Imagine the difficulty the neurologist would have had trying to defend himself from charges of documenting findings that were not medically possible to ascertain.

### Changing the Standard of Care

Offices that don't adopt technology integrating clinical practice, documentation, and billing procedures may face

malpractice exposure. Insurers, including Medicare, continue to ramp up their auditing activities. When a doctor's medical record documentation doesn't match CPT codes, demands for huge repayment follow.

Failure to incorporate EMR into a practice may, in the not-too-distant future, be considered a deviation from recognized standards. When an EMR could, arguably, have avoided an adverse result, trial lawyers will be arguing that physicians were obligated to use this new technology. Because EMR systems can catch medication errors and adverse drug interactions, track test results and patient follow-up, and make it far easier for a physician to access and review medical history, failure to embrace it could be problematic.

As the EMR technology becomes pervasive, failure to use it to avoid medical errors may also lead to malpractice claims. It will not be too long before EMR becomes the "standard of care."

### **Attention to the Patient**

Some physicians who do not yet use an EMR have expressed concern that working with an EMR could divert their attention from patient signs and symptoms. They worry that this could potentially lead to a greater malpractice risk. Proper training and ease of use are essential elements of any successful EMR system. Doctors must be sure to have sufficient training and experience using the EMR before widespread implementation. During the initial implementation period, physicians should schedule additional time during office hours to address their use of the EMR, so that inattention and missed symptoms do not occur.

### **Conclusion**

No doctor can ignore the growing pressures to start using an EMR. With the Obama administration avidly promoting healthcare information technology, and tens of thousands of dollars at stake in incentives and future penalties for doctors, more physicians will be implementing EMRs in the coming years. Under the recently passed American Recovery and Reinvestment Act, physicians who demonstrate meaningful use of EMR by 2011 will be eligible for full federal subsidies of up to \$44,000. Failure to implement EMR by 2014 may also result in increased malpractice premiums and increased exposure to malpractice claims, as well as a reduction in Medicare reimbursement, beginning in 2015.

As with all other aspects of their practice, doctors need to be careful and vigilant when using an EMR. Although it's inviting to let templates do much of the heavy lifting, physicians need to be cognizant of the information contained within them, and to not blindly follow templates.

If you have a malpractice question you'd like this column to address, please send your questions to [BusofMededitor@medscape.net](mailto:BusofMededitor@medscape.net).

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Disclosure: Steven I. Kern, Esq., has disclosed that he is employed by a commercial interest and owns stock, stock options, or bonds in Kern Augustine Conroy & Schoppmann, P.C. He