

# Is Your Electronic Record a Legal Record?

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EHR systems can provide many benefits to patient care. But an EHR system that does not meet the basic requirements of the organization's business record or legal medical record puts the practitioner or organization at risk.

The risk is real, because the industry has yet to focus sufficiently on the legal requirements of electronic records, say Reed Gelzer, MD, MPH, CHCC, and Patricia Trites, MPA, CHBC, CPC, EMS, CHCC, CHCO, CHP. Gelzer and Trites presented the session "EHRs: What You See Is Not (Legally) What You Always Get."

Gelzer and Trites, of Advocates for Documentation Integrity and Compliance, discussed steps for assessing how your organization's EHR meets the basic documentation principles of business records and legal medical records. They offered HIM professionals thought-provoking issues to bring to organizations that are choosing an EHR system or assessing a current one.

## Raising Interest within Organizations

An organization whose EHR does not meet legal requirements faces risks in many areas: care of the patient, documentation of that care, billing and reimbursement, compliance with state and federal rules (e.g., HIPAA), and compliance with employment practices. Assessing your current or proposed EHR system is the first step in managing the legal risks it may present, said Gelzer and Trites. Because HIM professionals are the record custodians in their organizations, raising that need for due diligence will likely fall to them.

Gelzer and Trites discussed several topics that HIM professionals can use to generate organizational interest in due diligence. One is the growing problem of healthcare fraud. Another is the ability of EHR systems to over-document by using "carry-over" and repetitive "fill-in" functions. Trites told the group that currently "in many, if not most EHRs, there is no system that accurately conveys to the user of the information or the auditor that the information was copied forward, defaulted, or even reviewed by the provider."

## A Record That Is Evidence, Not Hearsay

"Any organization using an EHR or planning implementation of an EHR should recognize that EHRs have been developed in advance of meaningful standards for functions as true medical records and legal business records," noted Gelzer. Compounding this issue is the fact that current EHR systems can create records that appear to be accurate and complete but in reality do not always accurately reflect the patient's condition or provider's work performed.

However, though the technology may be new, the legal standards are not. The sources of rules that ensure the validity of the electronic record are the same as those that apply to the paper record. The records must meet the rules of evidence requirements as well as medical record content requirements.

Trites and Gelzer covered the rules of evidence for business records, the standards that any health record must meet in order to be admissible in a court of law and not be considered hearsay. All HIM professionals should be familiar with them:

- The record was documented in the normal course of business
- The record was kept in the normal course of business
- The record was made at or near the time of the matter recorded
- The record was made by a person within the business with knowledge of the events, conditions, opinions, or diagnoses appearing in it.

They went on to discuss the additional rules for electronic records, emphasizing that the HIM professional must be aware of them because of their roles as the record custodian and the one most likely to be called to testify to the admissibility of the

record as a business record.

Gelzer and Trites covered the new civil rules of evidence as they relate to electronic record discovery. Trites used recent case law to illustrate these rules, and she emphasized that all HIM professionals should be familiar with the rules as they work with electronic record systems in their facilities.

## Maintaining Information Integrity

Gelzer and Trites then reviewed how to transfer the rules of documentation in a paper record to documentation in an electronic format, and how to maintain the principles of information integrity. They showed how some of the “built in” business rules in electronic record systems may actually be deceptive, even while saving the practitioner time.

One example is the “global cue.” With this function, a practitioner checks “all systems reviewed,” and the system then checks all body systems listed as “normal.” While this may be what the practitioner did, it is very hard for a reviewer to know if the practitioner actually checked off each system or used the global cue built in to the EHR.

Trites and Gelzer recommended that organizations test and verify their current and proposed EHRs for the compliance issues common in business records. They covered several examples of EHR elements to investigate and audit in order to ensure the integrity of the EHR system. Many of these elements were eye-opening as features one might not know even exist within a system. Lastly, Gelzer and Trites discussed mitigating the risks of the EHR that cannot be changed or improved through clinical documentation and organizational auditing policies.

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