# Legal EHR Roundtable: Views and Needs Differ by Stakeholder



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*Raising awareness and working effectively on an organization's legal EHR depends in part on understanding differing stakeholder perspectives.*

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Many people throughout an organization have a stake in ensuring that its electronic health record can serve as its legal business record. Depending on their roles, however, they likely have different perspectives on what that means and what it requires. Understanding these perspectives can help HIM professionals raise awareness of the legal EHR within the organization. It also helps everyone work together more effectively.

*The Journal of AHIMA* invited participants from AHIMA's 2007 legal EHR conference to discuss their perspectives and needs related to creating a legally sound electronic record. Altogether, the conversations feature the viewpoints of a CIO, an HIM-IT director, a physician, a lawyer specializing in risk management, and a product manager at an IT vendor.

In the first conversation Gregory Veltri and Mary Beth Haugen of Denver Health discuss how they came to work together on the issue and take it to a larger group within the organization. Veltri is chief information officer at Denver Health, and Haugen, MS, RHIA, is director of HIM and IT. In her role, Haugen has oversight of HIM as well as the design, implementation, and ongoing training for the organization's clinical and financial applications.

***JAHIMA:*** When you hear "legal EHR" what do you think about?

**Veltri:** Well, it used to be fairly easy for me, until I gained a little bit of knowledge. In the past, a legal EHR never really meant much to me because, being in the technology world, I dealt with specific applications in the maintenance and support of their data, in order to derive information back to care providers or to the business.

The definition of a legal EHR all of the sudden came to the forefront with an education basically from Mary Beth and getting to understand what the HIM department did. And it scared me enough to want to bring the HIM department into IT to manage the data associated with electronic records.

[The legal record] is someplace that IT really can't, or doesn't, play well. We don't understand what's necessary. We don't understand the regulations. We don't have the policies and procedures. And so we got that by bringing HIM into IT. Those organizations that don't do that-I don't know how the CIOs could figure this out.

**Haugen:** I think for me, like Greg, the more you learn about the legal EHR, the more complex it becomes in defining it. And so for me the most critical piece was to have a written policy on what defines the legal EHR for Denver Health. That is, breaking out and defining what was included in the EHR.
Does it include versioning? Does it include alerts? Just getting written down initially what we define and what we include and what will we produce as a legal document.

***JAHIMA:*** What are some of your specific needs around the legal EHR?

**Veltri:** Most of them are technology needs. For instance, we store a massive amount of data related to the EHR, but there doesn't seem to be any good way to get rid of it. And when to get rid of it?

And how do you get rid of it? It was pretty easy when it was paper—you just shred it and it was gone. From an electronic standpoint, just because you delete it doesn't mean it's gone. And so that whole technology piece surrounding the storage and destruction of data related to an EHR is still a growing concept and policy within our own organization.

And so my side of the thing is really all related to technology—how I can keep applications available that are related to the EHR, how they are presented to care providers, those kinds of things. Mary Beth stays on top of the policies and the regulations and guides me into what I need to do and where I need to be involved.

We were implementing more and more clinical systems that nobody but IT managed, yet they had clinical data in them. And at the same time, Mary Beth was giving me an education about what she did in her areas. We had a medical records system that was primarily a scanning system where you scan paper documents in. We were using that as our legal record, but yet I knew I had a results repository and a lab system and those kinds of things that weren't being managed by [the HIM department]. They were being managed by their data owners in those departments.

So we saw an opportunity for Mary Beth's group to take the best practices that HIM had and apply those to all clinical data, no matter what applications had the data. Not just the medical records application itself.

**Haugen:** For me, what is most critical is putting together those policies, procedures, and guidelines.
We need to start somewhere. And that's been the most critical piece: what do we know, and let's get that documented. And then let's start identifying where we have holes, where we have identified risk, where we have concerns that there's other data out there that maybe we've never included in our legal EHR but is important and it needs to be.

***JAHIMA:*** What were some of those compelling issues that led you to commit some energy and focus to this topic?

**Veltri:** [The 2007 conference] really opened my eyes as to what I didn't know…and that I should get more informed about it. It was an easy sell after that.

**Haugen:** I think our ability to communicate our concerns to the chief financial officer and get her engaged from a money standpoint has been important as well. E-discovery and risk and where we are as an organization-how electronic we are—I think that was the biggest piece of it.

**Veltri:** E-discovery is big. From a monetary standpoint, if you want to do it right, it takes a lot of tools that organizations like healthcare don't really have.

Our systems really aren't designed to freeze updates, and so you have to copy things off, and that increases our storage costs and technology costs. And then there is the expertise of the people involved who have to make these copies and keep this data separate and send all the metadata to the lawyers. That's worrisome as to what it's going to do to IT costs, because we're looking at a lot of investment in this area.

***JAHIMA:*** What about organizations where there are tensions between HIM and IT or the CIO. Could you succeed at it if you don't have a good working relationship together?

**Haugen:** I think at some point they're going to have to set aside whatever the differences are and figure out a way to work collaboratively. For both areas, I don't see how it's going to be an option.

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In a second conversation, Katherine Ball, Jill Callahan Dennis, and Wanetta Edwards gathered to bring to the topic their perspectives as a physician, lawyer, and product manager. Ball, MD, is a fellow of the Division of Health Sciences Informatics, Johns Hopkins University, School of Medicine. Dennis, JD, RHIA, is principal of consulting firm Health Risk Advantage. Edwards, MS, RHIA, is HIM product manager at Siemens Medical Solutions Health Services.

**Ball:** From a physician perspective, I think of the legal EHR as the standard business record and clinical documentation and evidence to support that-that we maintain day-to-day to support ongoing communications for patient care.

The term legal is not foreign to clinicians, because we work in that world. And I don't want to call it defensive medicine, but we know if it's not documented it's not done—and that data is not available for the primary uses for patient health and, obviously, for the secondary uses of data, which include the administrative needs of the data and the regulatory needs of the data.

So the "legal EHR" to me is that data that is supporting the primary use to clinical needs and then the secondary use, the administrative and regulatory needs of the data.

I think the specific needs [for physicians] are that documents, or the query of databases that form a document, accurately reflect the care delivered. And, basically, a snapshot of who knew what, where, and the level of information available at a given time.

***JAHIMA:*** Workflow seems to be a topic gaining recognition in legal EHR discussions. From a physician's perspective, how does workflow support or hurt the record?

**Ball:** Delayed charting is a norm in basic clinical practice regardless of setting—whether you're sitting in my environment of the busy emergency department or whether you're sitting in a private practice office that is obligated to see 30 to 40 patients a day.

Systems have to be able to support the normal clinical workflows, which are disrupted by many different things, whether it is a phone call or an abnormal lab or a patient that has a critical care need. We're usually doing and then documenting.

And in the ordinary maintaining of a business record, we have to have the systems accommodate the delayed charting that is normal in our clinical workflows. Thus the document has to not only show time stamps for the time care was documented, but the time that care was effectively delivered.

**Dennis:** I come from the standpoint of [the legal EHR as] the data that's necessary to provide care and be the business record, but also that meets all applicable regulatory and legal requirements with an eye towards knowing that down the road this record has to be able to meet the criteria for admission in the evidence. It has to be reliable; the authentication mechanism has to stand up to scrutiny.

So you're really trying to come up with something that can't be challenged later on but that meets clinical needs in the meantime and that will stand up for the long term, given that there are multiple uses of that information.

**Edwards:** From the perspective of a vendor, we want to make sure that when information is needed for disclosure for billing, education, or whatever the reason, that we're able to produce that information in a format that can be used.
Also, that our customers—our users—are able to configure that system to meet their needs, because we serve a wide variety of users.

We need to have a flexible system that will meet their needs so that they can produce the business records if and when needed, and also from the viewpoint of the clinician so that they're not hampered by those requirements and they're able to provide care.

Hopefully, the technology can keep up with requirements and criteria that are being put forward [in the industry] and keep cost-effective. The total cost of ownership for our system is very important from the customer's point of view, and we need to make sure that we're able to provide them a system that they can afford and also meets the standards and criteria that may be developed.

**Dennis:** I think one of the things that makes me nervous from a risk standpoint is that the industry is sort of out ahead of the standards. And as a result, I think many vendors—I don't know if this is true universally—are developing products based on customer wants, which ordinarily is a highly appropriate thing to do and a highly smart thing to do from a business standpoint. But sometimes the functions the customer may want have some risk implication.

You get features that sound great from a certain user's perspective but can potentially cause problems down the road in terms of admissibility; [for instance,] where you're cutting and pasting other people's documentation and making it your own.

So I just think it's kind of a hazardous time in the development of the systems, simply because the demands and the systems are out ahead of the standards. Early adopters have to beware as they're making these choices, because we don't fully understand all of the risk implications of some of the functionalities that we're building into these systems.

***JAHIMA:*** An example such as cut and paste is so prevalent in applications that you probably wouldn't think of its risk in the same way. And because it is so prevalent in the technology, it is difficult to control.

**Dennis:** Absolutely. And so [organizations should] use it as a policy challenge, as a training challenge. It's all of those things.

**Ball:** You cannot hard-code policy. We have had work-around in the paper world, and we will continue to have work-around in the electronic world.

I appreciate the perspective that the industry is ahead of itself by not having all the right stakeholders at the table from the development level. And I think this is an opportunity that we can discuss—why risk management should be at the table from now forward, why information management and records management needs to be at the table.

And, from my perspective—from clinical provider and medical informatics—why we need to be at the table. For example, the logic behind decision support tools is essentially putting vendors in the world of artificial intelligence in writing clinical code and writing the textbook.

And so I think that there is a sense that we all see the vision of where the medical information highway is going. But we want to make sure the appropriate stakeholders are working with the vendors and the market forces to bring out the best products needed for all the primary and secondary uses of the data.

***JAHIMA:*** How do you build awareness of the legal EHR within your organization?

**Ball:** I've changed my perspective: the legal EHR really is a function of the enterprise's best business practices, not just under the microcosm of medical records. Because you have to couple your legal EHR with the compliance of your entire organization and the culture of that compliance for record and documentation management.

So I think it's much broader than I realized when I first started exploring concepts related to the legal EHR, because you have to toggle in and out related to your corporate compliance policies, not only for billing and coding but for records management.

I think, organizationally, don't be afraid to have this discussion with your executive team.

**Edwards:** One of the things that we did this year [was start a] campaign to provide education across the various disciplines to make sure that they understand the concept of the legal health record. Because we provide a wide variety of solutions that are components of the electronic health record.

Another thing that we did is work with our customers to build awareness through our intergroup task forces for the legal health record—sharing the best practices not only from within our customer base, but trying to make sure that we understand the industry at large.

We also looked at strategies for the data storage component of the legal health record. They might be used for disclosure. We know with discovery that's much wider, but for the subset of information that comprises the legal health record we were looking at storage strategies, best practices, and recommendations to help our customers manage discipline and move forward.

**Ball:** Greg Veltri in the previous dialogue commented that he doesn't necessarily feel there are some firm guidelines related to the full life cycle of the data management—for when you can say, "I don't need it anymore."

I think that's very important for stakeholders to get together and discuss the data elements that have to be retained for the various secondary uses and primary uses, and what are the ones that they can just get rid of. The industry as a whole cannot continue to maintain and store everything forever. It becomes noise.

And I think there really needs to be a focus on the output and the readability for routine business uses and legal uses of these documentation systems, because there is a frightful fear from the provider side that these outputs are so long—the ankle sprains that are 17 pages, the critical care patient that has a 9,000-page record that is not meaningful for day-to-day use.

Whether it's from a risk management or legal discovery perspective or whether it is for someone who wants to just know what happened to the patient during that hospital or provider interaction, more is not necessarily better.

**Dennis:** I want to echo the point about having all of the right people involved in any legal EHR discussion, because you can't do this on your own. And if you try to do it on your own—from an HIM perspective, or from a clinical perspective, or even from a legal perspective—you're going to fail. You're going to make some decisions that you wish you could do over.

So I think it's really important to have everybody sitting around the table and everybody chipping in on what their needs are.

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