

The Legal Health Record Challenge, Part 2

The adaptation to EHRs has raised lots of questions due to lack of agreement on definitions and processes.

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Leslie: This month's column wraps up our three-part series on the legal EHR. Last month we discussed the legal challenges around genetic information with Barbara Fuller, JD, RHIA, assistant director for ethics, deputy ethics counselor, National Human Genome Research Institute, National Institutes of Health (NIH).

Patty: This was such an interesting conversation about the treatment of DNA information. Highlights from this conversation include the three key topics for HIM professionals to have on their radar: 1) genetic non-discrimination laws, 2) release of genetic information and 3) special protections within the EHR for genetic test information.

Leslie: In Part 1, Michelle Dougherty, RHIA, director of practice leadership at the American Health Information Management Association (AHIMA) framed the dialogue around the legal EHR. Three themes emerged: 1) defining the legal EHR, 2) EHR system functionality required for a business record, and 3) disclosure processes. Michelle and Gwen Hughes also provided a great list of resources for HIM professionals to include in their legal EHR tool kit.

Gwen: I am going to join you again this month and suggest that we visit the topic of e-discovery, the disclosure of information in electronic form.

Patty: Good idea Gwen. This is a growing concern for HIM professionals, health care attorneys and risk managers in an era where the e-discovery rules for health care are just being played out in the legal process. We can look to the Federal Rules of Civil Procedures to guide current thinking on e-discovery as we lead our organizations in the development of processes that support e-discovery. Everything is fair game from e-mails, voice files and meta data, the data about data.

Gwen: Organizations are also evaluating to what extent EHR prompts and alerts are discoverable. It's likely that case law will determine how prompts and alerts will be handled in the future, but for now, it's important that provider organizations include how they treat prompts and alerts in their legal EHR definitions, specifically as it relates to when and how they store this information.

Leslie: It seems to me that it is very important that HIM professionals understand how data, including voice, pictures, videos and waveforms are collected, where they are stored within their organization and how to access that data. This information is likely to be asked during the discovery process. Given the nature of hybrid records and best of breed systems, it is likely that information is stored in multiple information systems.

Patty: It would be interesting to hear what an actual discovery experience is like using electronic records.

Gwen: Let's touch base with our colleagues Judy Veazie, director of business and revenue services, and Christy Cornwell, RHIA, HIM operations coordinator. Judy and Christy work at Valley Medical Center in Reston, VA.

They recently went through a discovery process.

Patty: Great idea. Hi Christy and Judy. Gwen and I are interested in learning about your recent experience with e-discovery. Let's start first by talking about your EHR. How is the legal health record defined in your facility?

Christy: We consider our legal health record a computerized record that consists of scanned images, as well as electronic documentation and results that are interfaced to our electronic document management system.

Patty: What percentage of your record is scanned?

Christy: Fifty percent of our legal health record is originated in electronic form. The remaining 50 percent is paper-based but becomes electronic or digitized when it is scanned shortly after discharge.

Patty: Did you have to address your legal health record definition during the discovery process?

Christy: I brought a copy of what we define as the legal health record to the deposition. I was asked to describe my experience in medical records, whether I had a medical background, and how long the hospital had been using the document imaging system we now use.

Gwen: What were the issues surrounding this discovery?

Christy: I was asked by the risk manager to address two issues: The first issue related to the fact that there was a stat emergency department transcribed report timed with a "0000" time stamp. The second issue was that there were two versions of the emergency department transcribed report, the original with the "0000" time stamp and the updated version, which included the corrected time.

Leslie: What kinds of questions did the attorney ask?

Christy: During the deposition, the attorney asked me to describe a number of things. I was asked why the hospital generates a medical record and what constitutes a medical record. I was also asked about the date on the printed copy of the EHR. I had to explain that this was the date the record was printed.

Gwen: What about the time stamp on the transcribed report?

Christy: I was asked to explain the "0000" time stamp. I explained that when a stat dictation is sent to the transcription vendor, the time defaults to "0000."

Patty: What about the updated version of the transcribed report included in the emergency department (ED) record?

Christy: I was asked to explain what we call the "corrected copy," which is an updated or amended version. I explained that when the time was corrected in the original stat dictation, the new document was labeled with "corrected copy." I produced the original for side-by-side comparison. During the actual court case, the attorney was able to show the original and corrected version and illustrate that the only difference was the correction of the time.

Leslie: Were there other questions?

Christy: They asked about diagnostic tests, and I explained that we store the summaries of the results and not the raw data.

Patty: Were you asked about your processes for managing and storing records?

Christy: They asked a number of process questions. For example, they asked about our e-signatures processes and also wanted to know how physicians log into the system and how deficiencies are assigned. They also asked about our relationship with the transcription vendor, and how transcribed reports get into the electronic record system. I understand they also deposed the transcription vendor on this case.

Gwen: Were you asked any workflow questions?

Christy: I was asked about the flow of the record after the patient leaves the ED. The defense attorney appeared to want to assess how long the paper record stayed in the ED, the time it takes for ED visit documentation to get to the HIM department and what happens once it's in the HIM department until the time it's scanned. There were questions around trying to determine if physicians have access to the paper record during the process prior to scanning.

Patty: Were you asked about what happens to the paper documents once they are scanned?

Christy: I was asked what happens to the paper after the record is scanned, how difficult it would be to access and alter those records and whether the ED physician could access stored paper records when the patient returned the day after discharge.

Leslie: That seems like a prime question. How did you answer?

Christy: I described our scanning process. I was also able to demonstrate that we had scanned the record in question before the patient had returned, demonstrating that the physician did not have access to the source documents in paper media. I also explained that once the record is scanned, users use the electronic rather than the paper record.

Judy: Shortly after our discovery experience, we had a physician who wanted to change the paper record after it had already been scanned. Our experience reinforces not allowing that, but rather following a documented process for amendments within our EHR.

Patty: That makes good sense and it helps to communicate these practices to health care providers when you have a discovery experience to demonstrate why adhering to the practice is so important.

Leslie: Were you asked to produce the paper record?

Christy: I was not asked to produce the paper record, even though I could have at that time. I got the sense that the defense attorney wanted to know our business practices and whether we deviated from those practices in this case. We have since implemented destruction practices as we reflected on the likelihood in the future of having to pull paper records if we still had them. Given our confidence in our system, it doesn't make sense to keep them any longer once they have been scanned.

Patty: It sounds like HIM professionals need to be fully prepared today as the discovery questions go beyond whether the record is complete and kept in the normal course of business.

Judy: It's important to be ready and to be able to articulate business practices as succinctly as possible.

Gwen: Based on your experience with depositions, what do you recommend HIM professionals do to be

prepared?

Judy: I've done a lot of depositions and it can be maddeningly precise. I don't read into an attorney's questions. I have no trouble asking him to restate the question. He may have to restate it several times until I can say, so what you're asking is X. I think Gerry Spence's book *How to Argue and Win Every Time* is a great resource for HIM professionals.

Christy: I agree. And the hardest part may be keeping our answers simple and brief because we get so passionate and enthused about our profession.

Judy: Be prepared because everything is on the table. In the past, testifying was much easier.

Christy: In the past, I just had to testify that the record was true and complete and hadn't been tampered with. This took less than 5 minutes. Today, it's easy to be deposed for 45 minutes or more.

Patty: Thank you Christy, Judy and Gwen for a terrific conversation on discovery in the era of the EHR. We appreciate the sharing of your experience with us and our readers. This concludes our three-part series on the legal EHR. For more on the current state of the legal EHR, don't miss AHIMA's legal EHR conference to be held in Chicago on June 18-19. More information about this conference can be found at www.ahima.org/meetings/legalehrindex.asp.

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