How Electronic Medical Records Have Increased Medical Malpractice Litigation: What Precautions Can Diminish The Problem

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No Financial Disclosures
EMR should provide:

- Health information
- Results organization
- Ability to enter orders (drug interactions and allergies)
- Treatment support (practice guidelines, clinical reminders, safety alerts)
- Electronic communication (medical staff, patients, other providers)

EMR consists of both healthcare data and metadata

Metadata

- Time stamps
- Input of orders
- Who accessed data
- Alterations of the medical record

Increased Medical Malpractice Risks

- More data (some may be unknown to physician)
- Potential increased legal duty
- Unintended suggestion of a standard of care
- Limitations imposed by “drop-down” menus
Increased Risks

• EMR may not reflect the data that was being reviewed when critical clinical decisions were being made

• Medical record systems are constantly being upgraded and hospitals are not required to maintain copies of the old environment

Poor documentation

• Lacks clarity

• Lacks specificity

• Poorly organized

• Cutting and pasting/cloning

• Delayed charting

Atty: If the emergency consult was ordered at 11:30 AM why did you wait until 6:00 PM to see the patient?
MD: I saw the patient within ½ hour
Atty: Where is that documented in the chart?
MD: It isn’t. I saw the patient and wrote the note later

Atty: So you are now claiming that you saw this critically ill patient within ½ hour but didn’t feel it was important enough to write a note documenting your findings?

Risk of check boxes

• Palpable pedal pulses in patients with amputations

• Comatose ICU patients with normal review of symptoms
Shifting of liability

- Physicians assuming liability for vendor
- 42% of EMR related malpractice claims were attributable to system factors

Increased risk

- Initial implementation
- Inadequate training
- Upgrades to the system
- Email communication
- Departure from clinical support protocols

Changing the medical record

- Do not review documentation unless there is a reason to do so
- Specify reason for changes
- In cases of litigation or potential litigation do not review chart until you speak with your liability insurer

Conclusions

- EMR is here to stay
- Be certain that you are fully trained and updated on your medical record system
- Avoid vendor liability

Conclusions

- Document reasons for deviating from recommended treatment protocols
- Avoid unnecessary review and changes of the medical record
- Document in a timely manner
- READ YOUR NOTES