

DDS GUARDIAN

A Patient Safety and Risk Management Newsletter from Fortress Insurance Company, a medical malpractice company owned and operated by dentists and guided by our mission to champion the industry and protect dental practices.

Now published monthly, this newsletter features an article by David P. Burke, JD of Neil Dymott, which outlines a few of the common litigation challenges related to the use of electronic medical records and recommends risk mitigation strategies.

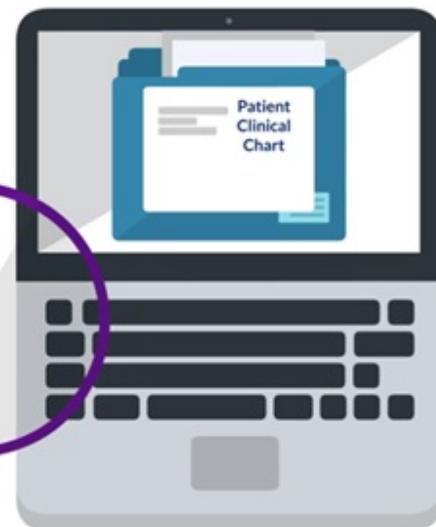
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Avoiding Potential Litigation Pitfalls with Electronic Medical Records

Electronic medical records (EMR) can increase clinical efficiencies while improving overall patient care and outcomes. Despite these benefits, dentists and their practices should be mindful of the potential litigation pitfalls arising from EMR use due to technological limitations, implementation constraints, and other factors. In many jurisdictions, attorneys for patients may request a forensic EMR examination in search of clinical inaccuracies. These inaccuracies may later be used during the course of litigation to challenge a provider's credibility.

This article outlines a few of the common litigation challenges and risks arising from clinical documentation in the EMR and suggests some risk mitigation strategies for dentists and their practices to consider.

In the event of a claim or lawsuit, attorneys may request a forensic EMR examination in search of clinical inaccuracies



Inconsistent timing

With some litigation matters, the timing of clinical events may be in question. The EMR can help practitioners capture the precise sequence of clinical events like procedure initiation, medication administration, and patient discharge. One often overlooked consideration, however, is to confirm the timestamp among the different devices capturing electronic clinical data.

For example, your vital sign monitors may have a different internal clock and timestamp than the electronic systems where the operative notes and patient consents are recorded.

The failure to account for timestamp differences, or Daylight Savings Time, could make it appear (though inaccurately) that a consent form was signed by the patient after the procedure was initiated. While inconsistent timing in the EMR may not directly cause an adverse outcome, in the context of litigation, timestamp inconsistencies may create unfavorable inferences and complicate the explanation of a patient's true course of events. A regular audit of timestamps across your clinical systems may identify and prevent timing inconsistencies.

Imprecise templates

To aid efficiency, many EMRs contain documentation templates with standard language for physical examinations, informed consent discussions, and procedures. However, the reality is that each patient interaction is unique. During litigation, a clinical record may appear unreliable and multiple patient visits appear indistinguishable because an EMR documentation template was not appropriately modified to capture changes in the patient's clinical course. When using EMR documentation templates, it is important to select an appropriate template and update the documentation to reflect changes in the patient's clinical course.

Outdated clinical information

EMRs may automatically transfer information from one note to the next to promote the continuity of care. However, when treating the same patient over multiple visits, it is unlikely their subjective complaint, physical exam, and treatment plan will remain constant. In litigation, EMR entries that repeat identical information visit after visit, particularly if the information is no longer completely accurate, may create the appearance of inattentive charting and care. To create an accurate medical record, providers should review any pre-populated information with each EMR entry for clinical relevance and accuracy.

Third party information

Some EMRs have the capability to integrate with other clinical information systems and import outside radiology results, specialist consultations and other clinical information. However, these integrations may not uniformly identify who ordered the test, when the results were available, and when the information became part of the EMR. Consequently, during litigation, even though a provider may not have accessed time sensitive information for several days, third party information in the EMR may create a misleading impression regarding when a provider knew of vital information. When importing third party information to an EMR, providers should identify the information's lineage, including when the results were imported to the EMR.

EMR entry amendment

In litigation, providers are sometimes accused of inappropriately altering records when their clinical notes are amended, particularly if the EMR editing occurs after a complication is recognized. This raises credibility questions, even if the only purpose for the EMR editing was to correct spelling. Understanding your EMRs internal memorialization of amended entries may prevent allegations of improper record alteration, guide documentation practices and avoid the appearance of self-serving corrections made after a complication develops.

Practice considerations

EMR systems can vary greatly in their designs, features, and functionality. With a thorough understanding of how to use your EMR, dentists may enhance the likelihood that the EMR accurately reflects the patient's clinical course.

To limit potential litigation issues associated with the EMR, consider working with your EMR vendor to design and implement an EMR that satisfies the specific needs of your patients and practice. Once implemented, provide training for all users to thoroughly understand the EMRs capabilities and, as the need arises, work with your vendor to identify and resolve any unanticipated concerns related to EMR use. With these steps, providers and their patients can optimize the available EMR benefits while avoiding some of the potential litigation pitfalls from their use.

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