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# Lessons learned from EHR-related medical malpractice cases

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Dr. OkenThe physician's pen has been replaced by the electronic health record (EHR) resulting in improved medical record documentation and legibility. The EHR also has been heralded as the best tool to help physicians achieve the triple aim of better care, better population health and lower health care costs per capita. However, malpractice insurers report that EHRs can be a source of medical liability.

A national medical liability insurer's recent review of EHR-related malpractice claims revealed that 42% were derived from system errors and 64% were from user factors (see table).

Becoming aware of and preventing potential and real risks of EHR errors is the best policy.

The following factors can play a role in EHR liability.

**Interoperability**

While the percentage of office-based pediatricians who are using an EHR rose from 58% in 2009 to 79% in 2012, limited pediatric functionality and multiple EHR systems and platforms contribute to interoperability problems (Lehmann CU, et al. *Pediatrics.* 2015;135:e7-e15).

Primary care pediatricians may not realize that they do not have immediate access to data on emergency department visits, hospital admissions, subspecialist reports, laboratory results and acute care provided outside the medical home due to interoperability issues. Fragmented EHRs may contribute to serious errors in medical management, exposing patients to harm and pediatricians to professional liability.

Therefore, providers should ask patients about interim care at other locations and advise parents to direct summaries from other providers to the medical home.

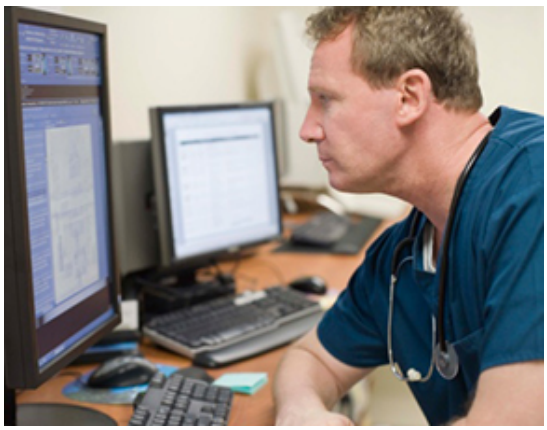
**E-prescribing**

Nearly 50% of pediatric practices have replaced prescription pads with electronic prescription programs transmitting directly to pharmacies. Not all programs are able to validate the pediatric drug dosage, check drug interactions or include prescriptions from other physicians. Lack of pediatric functionalities in many EHRs, such as weight-based dosing, pose significant safety risks to children.

Pediatricians should verify that the EHR uses pediatric-specific drugs, calculates correct pediatric dosages, and alerts the provider of dosing errors and potential contraindications.

Most e-prescribing programs do not store information from other providers using other e-prescription programs. This may compromise patient safety, which must be paramount.

**Copy and paste**



Copying and pasting clinical information from previous medical encounters can be a benefit or a risk. This technique, also known as cloning, often results in over-documentation of the actual findings — especially when the document cites items that have changed or were not examined in subsequent visits. Such blatant mistakes damage the credibility of the record in a liability action and cause other parts of the record to be questioned. Automatically duplicating incorrect information from a past visit can have tragic results (see case example below).

**Security**

Stolen laptops, lost thumb drives and cyberattacks are real threats. Therefore, using EHR security features is critical.

All devices containing patient health information should be encrypted, password protected and meet other security requirements of the Health Insurance Portability and Accountability Act (HIPAA).

Pediatricians should confer with their liability insurer regarding coverage for data breaches and other HIPAA violations.

**Reports**

Busy practices with EHRs often receive more than 100 lab, X-ray and consultation reports electronically every day. Electronic reports not examined by the responsible provider before being incorporated in the EHR pose a significant malpractice risk.

Adopting a robust system to examine and validate incoming patient reports to EHRs is vital to preventing medical errors.

**Transition, retention, contracts**

Transitioning from paper to electronic charts can be risky. Pediatricians need to comply with relevant federal and state record retention laws before destroying any written records.

All EHR vendor and service contracts should be scrutinized and legal review secured. Some contracts shift liability deriving from faulty software design or inappropriate clinical decision support to the EHR user or may impose gag clauses preventing purchasers from disseminating information about problems.

Pediatricians should know where protected health information is stored and the relevant risk of loss. They should implement EHR continuity plans in case a practice dissolves, an EHR vendor fails or solo practitioner retires.

**Upcoding**

Some EHRs have features that automatically calculate CPT codes based on the services documented in the EHR. They may be prone to coding pediatric services at a higher level than warranted. Improper coding can lead to overpayments and fraud and abuse allegations.

Most pediatricians have used EHRs and found them to afford many advantages, including patient safety protections. They value EHR benefits and could never go back to paper. Adverse EHR events are rare, but

the risks are real. EHRs are not a panacea for preventing medical errors.

Because there is a three- to four-year time lag between adverse events and claims filing, EHR-related malpractice claims are just starting to surface. Lessons from these cases should be used to prevent future problems.

*Dr. Oken is a member of the AAP Committee on Medical Liability and Risk Management.*

**Case example of EHR-related malpractice claim***

Upon returning from a country where tuberculosis (TB) was prevalent, a toddler presented to his physician's office with fever, rash and fussiness. Considering a bug bite or influenza, the physician treated the child with fluids, antibiotics and flu medication.

His office EHR note incorrectly indicated the patient had not been exposed to TB. This note was copied and pasted during subsequent office visits for this problem. Two weeks later, the toddler was diagnosed in the emergency department with tuberculosis meningitis, which resulted in permanent and severe cognitive defects.

| EHR-related medical malpractice claims* | |
|---|---|
| **EHR system errors** | **EHR user errors** |
| Failure of system design | Incorrect information in the EHR |
| Electronic systems/technology failure | Hybrid health records/EHR conversion |
| Lack of EHR alert/alarm/decision support | Prepopulating/copy and paste |
| Electronic data routing system failure | EHR training/education |
| Insufficient scope/area for documentation | EHR user error (other than data entry) |
| Fragmented EHR | EHR alert issues/fatigue |

*Source: Troxel D. "Analysis of EHR contributing factors in medical professional liability claims." *The Doctor's Advocate*. The Doctors Company. First Quarter 2015.