Focus PERSONAL INJURY

Health records going far beyond hard copy

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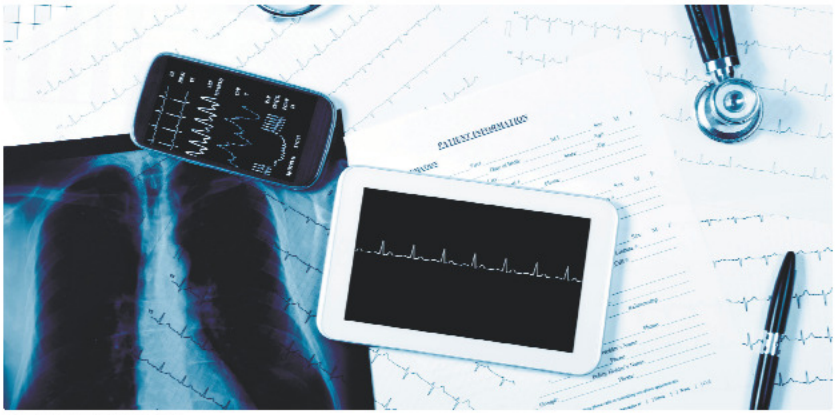

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Medical records have been developed by putting pen to paper for centuries but are gradually being replaced by electronic medical records (EMR) or electronic health records (EHR). Signatures have been left behind for sign-ins, information is stored electronically and documentation is completed with the click of a mouse. Most health-care facilities across Canada now have a combination of paper and electronic files. In either format, the medical record is the foundation of most professional liability cases, so requesting, reviewing and understanding it is key.

In 2011, the Federal/Provincial/Territorial Advisory Committee on Health Infostructure defined the electronic medical record as "a longitudinal collection of personal health information of a single individual, entered or accepted by health care providers, and stored electronically. The record may be made available at any time to providers, who have been authorized by the individual, as a tool in the provision of health care services. The individual has access to the record and can request changes to the content. The transmission and storage of the record is under strict security." What distinguishes the EMR from the paper record is that it can contain voice, video and diagnostic imaging. Data is collected over time from a variety of health care professionals who can access the information. This can include physicians' offices, testing facilities, hospitals, health units and pharmacies. Unique identifiers facilitate effective linking of information.

When requesting the EMR, it's helpful to understand that it was originally developed to enhance information and improve communication between health providers. It was also designed to offer decision-making support for health providers through prompts, alerts and reminders, and to assist with administrative, reporting and research functions. The information is in an electronic code made for data sharing and integration into other systems such as billing, patient census and other administrative functions. EMRs were not developed with litigation in mind. In fact, health authorities hoped that the EMR would reduce litigation by decreasing the types of errors associated with illegible handwriting, and more technical errors such as incorrect medication orders. In support of this, a 2008 study at Harvard Medical School revealed that physicians who used the EMR paid fewer malpractice claims and that their payments were considerably less, versus those who used paper records. That said, the majority of malpractice claims stem from misdiagnoses; a problem which has yet proven to be solved by the EMR.

While health authorities predicted that use of the EMR might reduce litigation, some lawyers say that it is the overwhelming complexity of reviewing the records that will eventually drive numbers down. The traditional request for "any and all health information" can produce a crushing amount of paper in a highly confusing format. There's no single way to avoid this problem because software systems, reporting capabilities and stages of conversion vary between regions. However, a discussion with health information, access and disclosure specialists within the medical records department can help to ascertain what types of reports are available and the formats in which they can be produced. Their advice to lawyers is to be as specific as possible with the request for information, including dates, locations of facilities and specific information contained within the clinical record, personal demographics, hospital visits, surgeries, laboratory test results, diagnostic imaging results, medication information, drug alerts, allergies and records from all health providers. Additional narrative records, internal staff communications and graphic summaries may also be available.

The obvious advantage of the EMR is, of course, readability. There's no doubt that printed text is easier to decipher than illegible handwriting and medical abbreviations. But the EMR printouts will not bear any resemblance to what the physician or nurse was looking at when he or she made clinical decisions. A careful review of each page will facilitate understanding of the information and provide the details required to develop a chronology of events. Even then, an accurate picture of clinical status may not emerge due to the limitations of the predetermined parameters available in the drop-down menus. Most systems have capability for the input of free text which, if available, can more adequately describe the clinical status; requesting and reviewing this information can be critical to understanding the case.

Most health record systems across Canada are still paper-based, or a combination of paper and EMR. As a result, records can be fragmented and the co-ordinated sharing of information hoped for has yet to be seen. Health records departments across the country say that it will be at least 10 years before this goal is fully realized. But the EMR is here to stay, along with the need for a new skill set and a new generation of IT, computer forensic and medical and nursing informatics experts.

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From sperm donor to third-wheel dad

A Kansas man who donated sperm to a lesbian couple will appeal a ruling that he was the "presumptive father" of a now 4-year-old girl and possibly liable for child support, the Topeka Capital-Journal reports. In a case that has attracted international attention, a Shawnee Country district judge ruled late last month that because William Marotta and the couple didn't secure the services of a licensed physician during the artificial insemination process, he wasn't entitled to the same protections extended to sperm donors under state law. "In this case, quite simply, the parties failed to conform to the statutory requirements of the Kansas Parentage Act in not enlisting a licensed physician at some point in the artificial insemination process, and the parties' self-designation of (Marotta) as a sperm donor is insufficient to relieve (Marotta) of parental rights and responsibilities," Judge Mary Mattivi wrote. Marotta answered a Craigslist ad to donate sperm to the same-sex couple, and signed an agreement waiving his parental rights and responsibilities. He told the Capital-Journal he was "almost" at the point of going to jail if the court orders him to pay child support. – **STAFF**