

# SHERMC 2015

## Medico-Legal Risks from the Use of Electronic Medical Records

Ms Kuah Boon Theng  
Advocate & Solicitor  
Legal Clinic LLC

# EMRs– Blessing or Curse?

## EMRs facilitate better management of medical information

- Improve efficiency and accuracy in documentation and retrieval of clinical information
- Provide quality recording of test and imaging results
- Minimize errors through electronic prescriptions and providing medical alerts for drug allergies or potential drug interactions
- Flagging abnormal findings to the attention of healthcare providers

# EMRs: Blessing or Curse?

## EMRs can increase burdens and legal risks

- Privacy and computer output laws impose legal duties to safeguard confidentiality, ensure system security and implement proper access controls
- With much more data being transported around, and being emailed back and forth, the potential for loss of data is greatly increased
- Expansion of EMRs and incorporation of multiple data sources can also lead to disputes over ownership of health data

# Medico-Legal Risks

## Malpractice Risks:

- EMRs can expose the healthcare provider to more onerous duties in e-discovery of documentation
- This in turn can make it easier for litigants to uncover a wealth of information to be used against the healthcare provider in a lawsuit
- May lead to more legal claims

# Medical-Legal Risks

## Malpractice Risks:

- Malpractice risks associated with use of EMRs can increase during the implementation phase of any new system or capability, or during an upgrading or migration exercise
- Design or other flaws may actually generate more errors
- Availability of improved technology and system capabilities may lead to changes in clinical practice standards and raise patient expectations
- Consequently healthcare providers will have to decide how well and extensively the users need and are expected to make use of EMR features and tools

# Creating a Monster?

- You can gather so much data and information in the EMR that it becomes infeasible to expect users to spend inordinate amounts of time ploughing through the data
- The system may end up having so many features and capabilities, such that proper user training becomes very complicated
- Omissions to use available system tools may increase liability, so can the failure to use them correctly

# Error Risks

- A 2005 study published in JAMA found that commonly used computerized order entry systems were responsible for 22 different types of medication order error risks, for eg, pharmacy inventory displays being mistaken for dosage guidelines, inflexible ordering formats leading to wrong orders, and display screens that prevented a complete/coherent view of the patient's medications
- 75% of clinical staff surveyed admitted that they encountered these risks weekly or more often

# Copy and Paste/Click of a Mouse

- A NEJM article highlighted that over-reliance on a “copy and paste” function can perpetuate mistakes, often creating a long trail of errors that can be hard to identify and rectify.
- In 2010, a doctor in Washington DC wrote a column where he described how he had printed the wrong prescription for a patient because of an accidental click of a mouse



# System Issues

- Discontinuities between information systems may result in prescribed medications being automatically and unexpectedly canceled
- Poorly designed systems that default to a potentially dangerous drug dose by not considering clinical changes can lead to dosing errors if doctors fails to recalculate the dose

# “Lazy” Omissions

- Easy access to electronic patient information may lull healthcare providers into relying on previously recorded medical histories, test results and findings, rather than collecting new information
- It could also lead doctors to simply repeat prescriptions rather than considering the need to tailor the medication based on the patient's current needs

# Basic vs Comprehensive EMRs

- Basic systems start by focusing on:
  - Facilitating electronic access to information
  - Permitting clinicians to make notes
  - Allowing medication and other orders which are quickly conveyed to pharmacies or laboratories etc
  - May even feature cross checking against patient information to flag potential drug interactions, allergies and errors

# Basic vs Comprehensive EMRs

- Comprehensive systems may include enhanced features:
  - Linkages to external systems
  - Messaging between providers as well as provider-patient communications eg request for repeat prescriptions, reporting of symptoms.
  - Clinical decision support, allowing cross checking against practice guidelines, information relating to drug doses etc

# Basic vs Comprehensive EMRs

- The more features the EMR system has, the more it is capable of doing, and the greater the need to ensure that it is user friendly and is able to work well
- Liability may arise if the user is unaware of how to use the system or uses it incorrectly

# Standard of Care

- To prove malpractice, the claimant must show that the established standard of care was breached. As the use of EMRs becomes more widespread, it may reshape medico-legal liability by altering the standard of care
- If for eg. the EMR system generates an alert every time an order appears to deviate from broad clinical practice guidelines, even if it is for valid reasons, there will be an electronic record of non-compliance that could come back to haunt the doctor in a medical negligence suit.

# Standard of Care

- A big concern is that the sheer volume of data being collected will place an unreasonable burden on healthcare providers in terms of how far they need to search for information
- There is therefore a need to have some consensus regarding how onerous that duty has to be, and this is particularly so for linked databases
- Over-reliance on EMRs may lead to complacency which could fundamentally change the nature of doctor and patient communication

# Summary

- EMRs have the potential to prevent harmful errors, reduce medico-legal liability by promoting better documentation and timely access to patient information, facilitating decision making, decreasing transcription errors, reducing duplication of tests and improving communication within the healthcare team
- Introducing more comprehensive features may offer safety nets eg, by generating reminders of practice guidelines and catching errors before they cause any harm.



# Summary

- However while there appears to be some reported anecdotal experience that such features do improve quality of care, so far there is little by way of hard evidence that proves that the use of EMRs actually reduces diagnostic errors
- If the development of EMR systems is not carefully thought out, or is not implemented well, EMRs could actually generate more/ additional types of medico-legal concerns and liability

# Thank You.

Kuah Boon Theng  
LEGAL CLINIC LLC