

## 2012 State of the Union Do EHRs Increase Medical Liability

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CEO of AC Group, Inc.

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Healthcare IT Futurist



- CEO of AC Group
- 39+ Years In Healthcare IT
- National Speaker on EHR > 1,000 sessions since 2001
- Consultant to over 25,000 physicians
- Semi annual report on Vendor product functionality , company viability, and Implementation/Support
- Over 400 EHR Search and Selection Projects and 12 community HIE projects.
- Negotiated over 300 PM/EHR contracts with over 50 Different vendors
- Expert Witness in numerous Medical Cases.
- Former CIO of a 2,300+ physician (500+ Practices) IPA
- CIO Position at Three Multi Facility Regional IDN's
- Hated by most EHR vendors, but respected by most.

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## Agenda Today

- Overview of the Market
- Vendor Contracts
- Medical Liability Issues
- Vendor's Response to Research
- Take Home Message
- Q & A

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### What I will not Cover

- Examples of actual Medical Liability cases – All information is confidential
- Not highlight EHR vendors with the worst Medical Liability rankings – also confidential.
- Not recommend any vendors during the session – ask me afterwards ☺

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### The Genesis and the EHR Market

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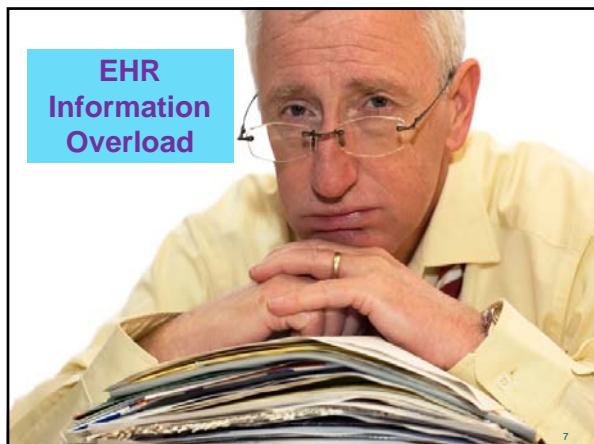
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### The Problem Today

- Physicians are not paid to enter data
- 93% of physician revenue is NOT related to Quality care
- Referral tracking is paper based
- Patients must register each time they see a new Physician
- Patients must provide each provider duplicate information:
  - Social History, Medical History, Family History
  - What Medications are you on?
- Physicians do not have adequate and timely information about the patient at the point of care.

*What the community needs is a new way of connecting and sharing timely patient information.*

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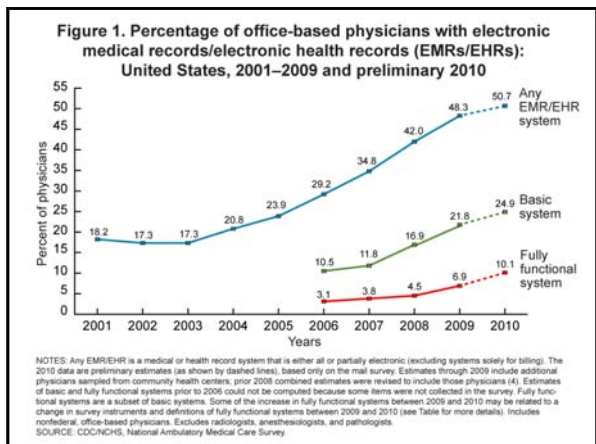
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### The Current EMR Market

- **Crowded**
  - 800+ Vendors indicated in the AC Group Study (March 2012) to have an EMR product for the ambulatory environment
  - Actual number is probably much higher
- **Confusing**
  - Full systems vs. components
  - Delivery Models (ASP vs. Purchase)
  - Technology & tools
- **Volatile**
  - Companies and products come and go
  - Mergers, acquisitions and start-ups muddy the waters

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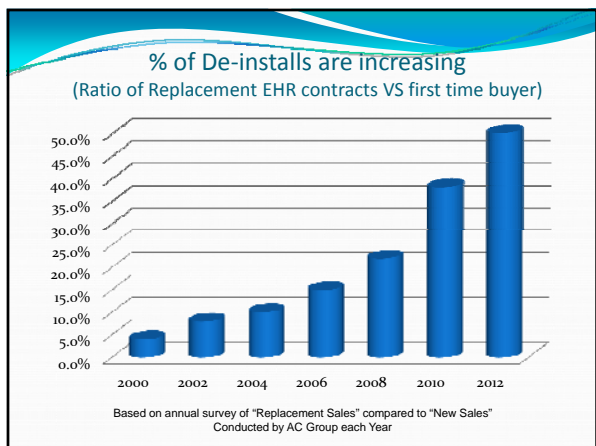
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So why are physicians not embracing EHR?

- 43% have some type of EHR in their Practice, but less than 9% fully use the product
- EHRs cost too much
- EHRs will slow me down
- EHRs have failed in other communities
- EHRs make me change the way I practice Medicine
- EHRs make me change the way I interact with my patients
- EHRs = less patients
- EHRs make the provider a "data entry clerk"

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Value of EHRs

- EHRs save you time
  - EHRs have proven to save nursing and clerical time
  - but it takes much longer to enter the information
  - On average – 9 times longer to enter the data
- The information is readable
  - True, but the clinical note as expanded from 1 page to 5 pages
  - The critical information is lost in the extensive detail
- You have more discrete data
  - yes, over 700 data elements
  - but you only use about 3% of these data elements

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Value of EHRs

- E & M coding improves
  - In theory, but many EHR vendors have no 3<sup>rd</sup> party validation studies.
  - For many specialists, less than 20% of their actual revenues comes from the Basic E & M codes
- EHRs provide orders and alerts
  - But many do not track data
  - No auto updating of HM alerts
  - No Lab result to Medication Alerts
- EHRs reduce errors and improve Quality of Care
  - We assume this is true, but with a 9% adoption rate, the actual results are still pending.

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### Value of EHRs

- Discrete Lab Data in a common view
  - 62% of EHR vendors do not provide LOINC compliant lab result flow sheets
- EHRs decrease Medical Liability
  - Recent studies have shown that the number of malpractice cases are increasing because of the EHR
- EHRs are easy to use
  - Then why is the overall failure rate of EHRs reaching 70%?

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### Provider Meaningful Use

State of the Union

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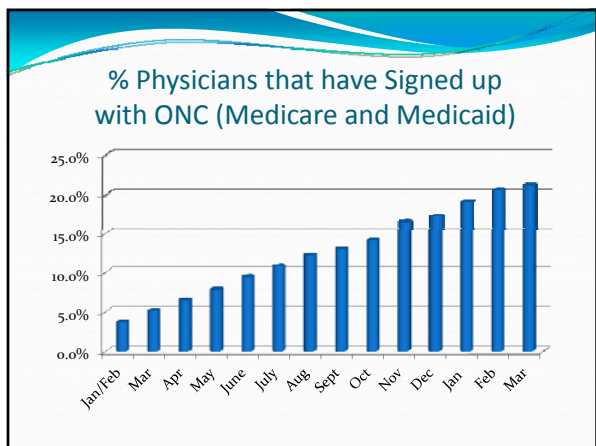
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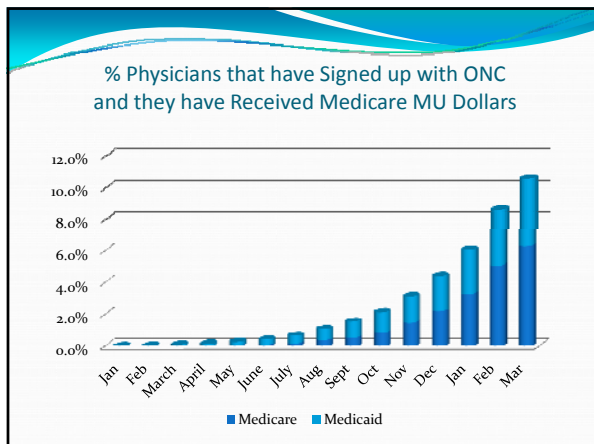
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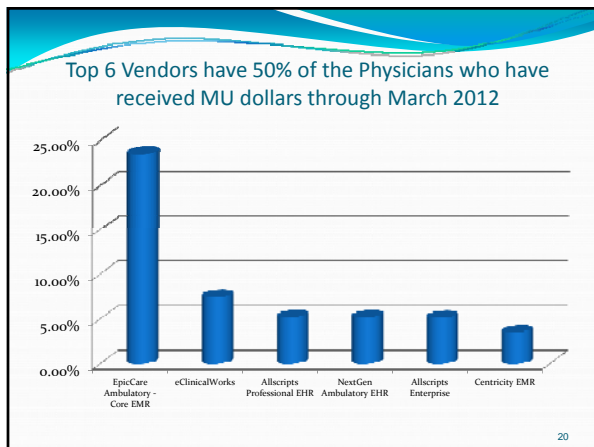
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### Top 20 Products by Physician MU Count

Vendor/Product	Count	Vendor/Product	Count
EpicCare Ambulatory	14741	e-MDs Solution Series	1387
eClinicalWorks	4683	Vitera Intergy (formally Sage)	1356
Allscripts Professional	3264	OfficeMate/ExamWRITER	1197
NextGen	3251	Centricity Practice Solution	1062
Allscripts Enterprise EHR	3219	TRAKnet	841
Centricity EMR	2200	Advantage/EHR	711
Greenway PrimeSuite	1871	Amazing Charts	627
athenaClinicals	1841	Allscripts MyWay EHR	611
Practice Fusion	1678	Follow My Health	464
MEDENT	1492	Practice Partner	451

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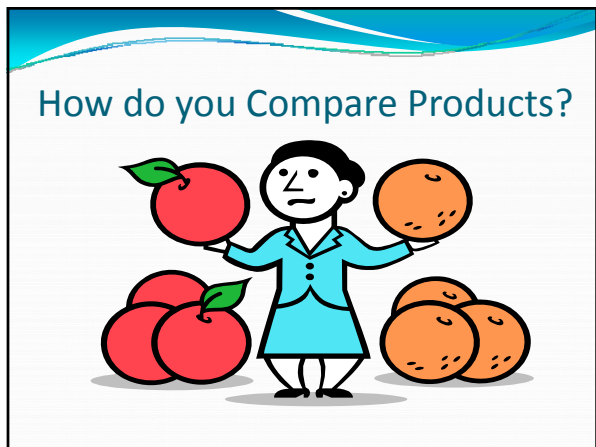
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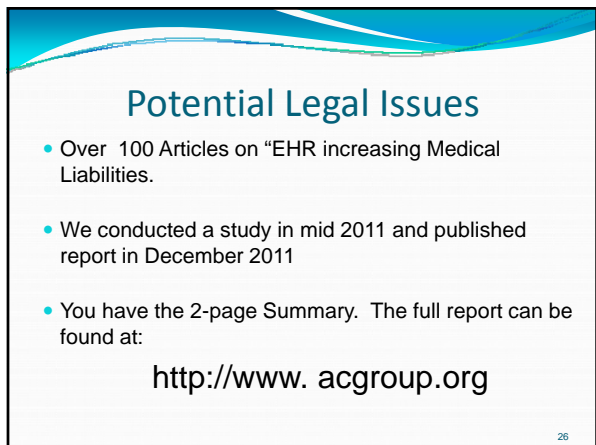
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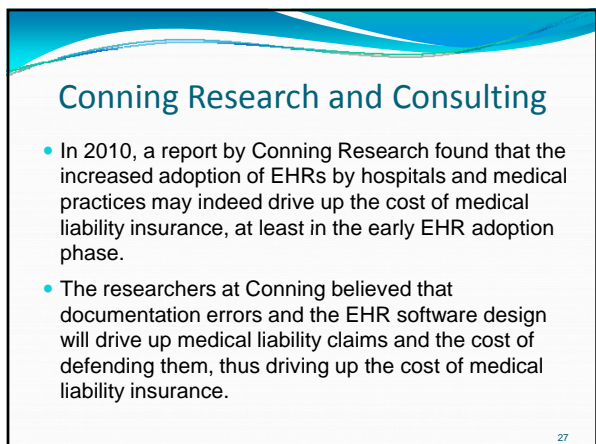
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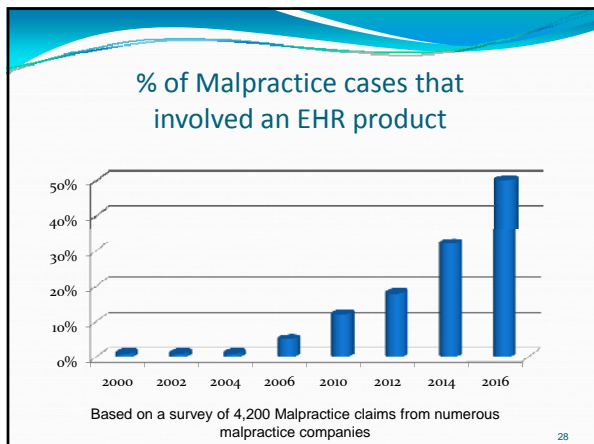
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### Medical Liability Issues With the advancements of Common HIEs

- Who is responsible for entering, managing, and monitoring the data in the EHR?
- What are the patient's rights and what expectations can they reasonably hold with respect to the privacy of their personal health information in an EHR?
- What are the physician's obligations to obtain patient consent for the use and disclosure of information in the EHR to local and regional HIEs or to other providers? For what purposes?
- Can a physician rely on information in the EHR contributed by other health care providers?
- What is the consequence of relying (or not relying) on medical information that was provided by another care provider or the patient electronically?

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### Medical Liability Issues With the advancements of Common HIEs

- If information in the EHR is used in patient care and found to be inaccurate, what is the provider's legal liability?
- How does that change if the information came from another provider, either directly or via HIE?
- How does the liability change if harm is a consequence versus when no harm occurs?
- If information in the EHR from another provider is presumed to be inaccurate, possibly based upon prior inaccuracies, and is not relied upon in treatment, but a harmful outcome occurs, is either provider legally liable?
- What is a provider's liability for not relying on information in a PHR (Personal Health Record)?
- What are the medical liability issues arising from these and other questions?

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### Medical Liability Issues

- EHR Vendors don't tell you what they don't do.
- EHR Vendors don't tell you their weaknesses
- EHR vendors show you short cuts, even though in the long run, may harm the patient
- EHR vendors are not trying to cause problems, they just don't understand or care about Medical Liability
- EHR contracts protects the EHR vendors from any Medical Liability Issue. – Don't blame them

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### The majority of Medical Legal Issues involve six categories of EHR functionality

1. Drug/Lab Alerts
2. Social, Family, and Medical CDS alerts
3. eRX Refills alerts
4. Auto Update of HMA
5. Incorrect Date Alerts
6. Auto update of Alerts

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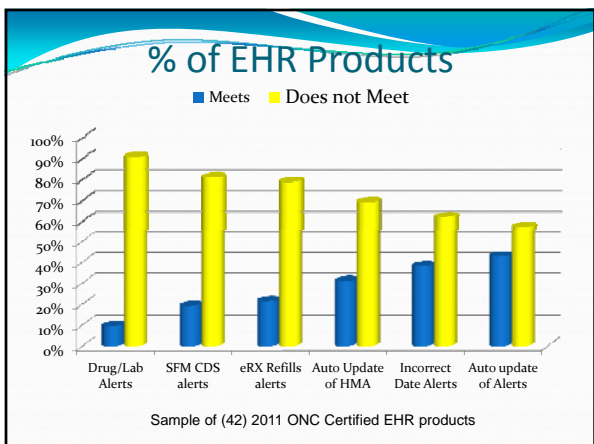
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### Examples of Medical Liability Issues

1. Clinical notes do not highlight the most important patient issues – too many "normal" indicators
  - The actual SOAP note goes from 1 page to up to 6 pages because all of the "normals" show.
  - Then it's very hard to find anything that is "abnormal"
  - Basically, "Normals" and "Abnormal" all show the same on the Soap Note. Nothing is highlight and the data is merged together into a sentence.
  - Very easy to miss something, because nothing stands out.



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### Examples of Medical Liability Issues

2. It is so easy to identify a medical condition as normal, the default setting, that some areas not evaluated and actually abnormal are incorrectly documented.
  - Clinical notes have expanded from an average of one page to eight pages, making it harder to find relevant data, not easier – there is more data, but usable information is harder to find
  - The vendors want to show you how much time you will save by clicking one box that fills in all "normals".
  - However, if you did not check everything, you should never use the "all normals" box.
  - We have found that 18% of EHR generated encounter notes has conflicting "findings" related to SFM, ROS, and HPI.

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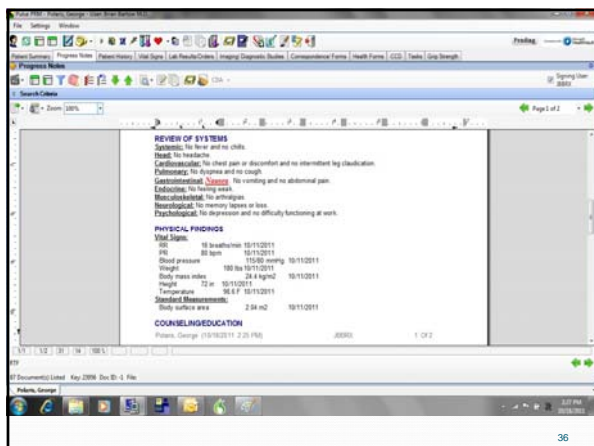
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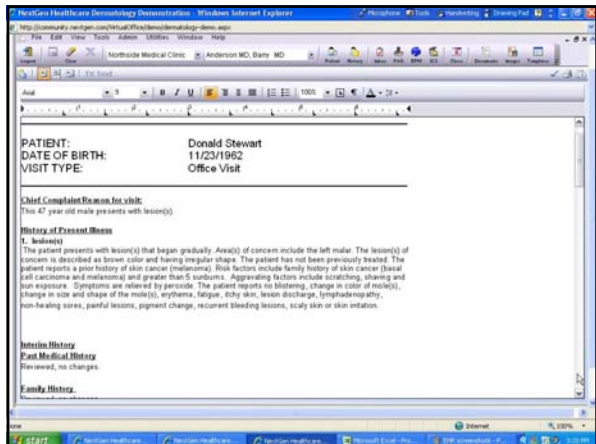
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### Examples of Medical Liability Issues

3. EHRs do not include an area for documenting the provider's actual thoughts, the actual "medical assessment", only an area for documenting the final diagnostic charge code(s)

- 87% of the vendors we have evaluated (245 EHR) do not have a place for the physician's actual "assessment"
- The Assessment section allows for a ICD-9 code(s)
- But where does the physician describe their actual assessment?
- What did I think? What did I rule out? What did I consider?

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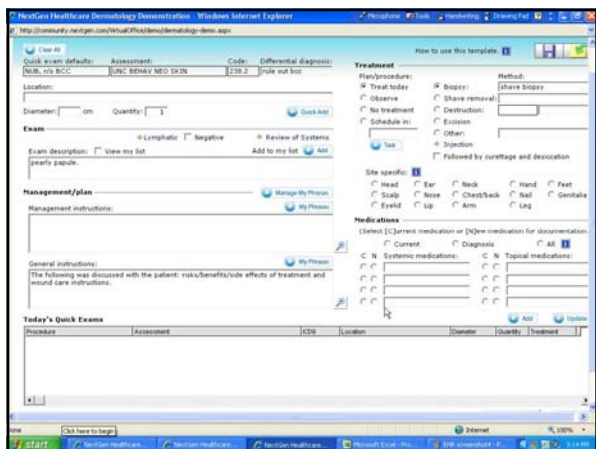
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### Examples of Medical Liability Issues

4. If you receive lab results from multiple lab companies, the results will not display in a flowsheet unless the vendor is LOINC compliant.

- Your patient has lab tests at the hospital and with Quest
- 80% of the EHR vendors only display lab results in a paper format where it is very hard to compare results over time.
- 20% of the EHR vendors can provide a lab result "Flow Sheet" where lab results can be compared over time.
- Of those, only 20% can combine similar lab test results when they come from different lab companies.
- This means that only 4% of EHR vendors are LOINC code compliant where they can combine lab results from different lab companies into one common flowsheet view.

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Collection Date & Time	11/03/2003	11/03/2003	11/03/2003	07/10/2003
<b>Basic Metabolic Profile</b>				
Blood Urea Nitrogen	12			
Cholesterol	102			
Creatinine	1.2			
GLUCOSE	110			
POTASSIUM	4.2			
SODIUM	142			
<b>CBC - Auto Diff</b>				
HEMATOCRIT		50	50	
HEMOGLOBIN		16	16	
PLATELETS		245	200	
WHITE BLOOD COUNT		9.2	14.3	
<b>Lipid Profile</b>				
Cholesterol		188		
HDL CHOLESTEROL		43		
LDL		118		
TRIGLYCERIDES		198		
<b>Prostate Specific Antigen</b>				
Prostate Specific Antigen	1.6			

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### Examples of Medical Liability Issues

5. During the discovery process of a malpractice claim, the printed record shows the current information, but **not the** information that was available to the provider at the time the care was rendered

- With HIEs, data can be added to a chart after the patient was treated.
- What information was available to the physician at the time of care?
- Does the EHR track when the data was added to the database, not just the encounter note.

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### Examples of Medical Liability Issues

6. Data in the HPI and ROS conflict with social, family, and medical histories without generating an alert.

- The Diabetic patient indicated that they had a **prosthetic foot** but the *Clinical note shows that extremities are "normal"*.
- Patient indicated that they had a **"Heart Murmur"** three years ago but the clinical note states *"No Heart Murmur"*.
- 23% of encounter notes had conflicting data.

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### Examples of Medical Liability Issues

7. Prescriptions are refilled without checking for important changes in chronic conditions, labs or other medications since the initial prescription.

- Patient request a medication to be refilled.
- The vendor shows you how to approve the request with one or two clicks.
- However before renewing a medication, most physicians want to review the chart to see if anything has changed clinically since the prescription was initial approved.
- This could take 5 to 20 clicks to view basic information:
  - When was the patient in last
  - What has changed since the Medication was ordered.

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### Examples of Medical Liability Issues

8. Prescriptions are refilled without checking for important changes in chronic conditions, labs or other medications since the initial prescription.

- Does the EHR re-check Drug Alerts on Refills.
- 25% of the vendors tested (108) did not recheck drug alerts on Refills.
- This means that a physician may refill a medication even though that medication may cause harm to the patient

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The screenshot displays an EHR interface with three main panels:

- Top Panel:** A patient schedule for 10/11/2011. It lists appointments with columns for Time, Dr., Patient Name, Reason For Visit, Ref Name, Ref Phys Name, Check In, Patient Location, Status, and Pctation Status.
- Bottom Left Panel:** A 'Tasks' window with columns for Task Type, Priority/Status, Date, Subject, and Patient. It lists tasks like 'Imaging Review' and 'Messages'.
- Bottom Right Panel:** Another 'Tasks' window, similar to the one on the left, showing a list of tasks with their respective dates and subjects.

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### Examples of Medical Liability Issues

9. Social, family, and medical histories don't support alerts or Clinical Decision Support (CDS).

- Why do we ask patients to complete a Family, Social, and Medical History form if the EHR does nothing with the data?
- 90% of the EHRs do not provide any alerts to indicate that the female patient should be added to a clinical registry to monitor potential Breast Cancer.
- Females mother had Breast Cancer at the age of 28.
- CDS usually indicates that a Mammogram should be order more often as a HMA.
- Medical Liability increases because issues are documented without any follow-up.

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### Examples of Medical Liability Issues

10. Providers turn off alerts because there are so many of them, causing alert fatigue / overload.

- Medication Alerts are ignored
- Lab Result Alerts are ignored
- Medication conflicts with other providers are ignored. I didn't prescribe the medication, why should I fix the problem.

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### Examples of Medical Liability Issues

11. Medical guidelines and best practices are not updated automatically, e.g. as evidence changes

- Then vendor claims that they have Health Maintenance Alerts and Pay for Performance clinical guidelines
- However, many vendors do not update the Health Maintenance alerts. This could mean a physician is using the wrong HMAs
- Some vendors do not provide any HMA and expect the physician to add their own.
- However during implementation, the vendor does not tell the physician that the HMA database is blank

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### Examples of Medical Liability Issues

12. The EHR fails to alert providers to medication issues based on specific lab results, for example, failing to show a recent serum creatinine when ordering gentamicin.

- All vendors claim they have medication alerts, including
  - Drug to Drug
  - Drug to Allergy
  - Drug to Food
- However, the vendor does not tell you that their drug data does not provide drug alerts for Drug to Diagnosis and more important, no Drug to Lab Result results.



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### Examples of Medical Liability Issues

13. Cutting and pasting clinical findings from one section of the EHR to another, or from one patient to another, results in the entry of incorrect information into the patient's record

- This is another method that vendors are teaching practices on how to speed up the data entry time.
- Just copy everything from the last visit or from another patient's clinical record.
- 7% of the charts we reviewed showed errors because of "cut and paste"

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### Summary of Medical Liability Issues

- We found a total of 42 areas where the EHR is contributing to potential Medical Liability.
- From 2005 through 2010, Medical Liability carriers were offering 10% to 20% discounts off of your annual malpractice fees if you were using a Certified EHR.
- Starting in 2012, a number of the large malpractice companies are reconsidering the discount.
- Many are actually considering increasing your Medical Liability Rates if you have an EHR.
- Medical Liability Testing is necessary for all physicians using an EHR.
- Many of the EHR vendors are causing the problem, but the physicians are paying the high price of Medical Liability.

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### What do the EHR Vendors Say?

- We contacted over 100 EHR vendors.
- Only 5 contacted us to discuss our findings
- Only two responded to our request to test their EHR product.
- Follow-up calls with the EHR vendors were alarming:
  - ONC does not require any safety issues in Stage 1 certification
  - No one has complained about the issues. Therefore, we see no reason to fix the problem.
  - The physician is liable, not "us"

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### Recommendations

- Openly discuss with your medical liability carriers the advantages and risks of using an EHR
- Reach out to HIM and IT professionals within your organizations, networks, or communities for support to ensure that their EHRs meet their clinical, legal, business, and record management needs
- Ask in-depth questions of potential vendors to ensure that their vendors' products and processes address medico-legal issues

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### Take Home Message

- EHRs Can Improve Patient Service and Provide Financial Benefits.
- Physicians are un-informed buyers and they need help
- Physicians need a “trusted advisor”
- Challenge the EHR vendor when they show you ill advised short-cuts
- Consider Medical Legal issues in your decision making
- Remember, it's your livelihood that is on the line.



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### For More Information

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### Questions?

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