EMR and EHR Users Beware Deceptive Leasing Tactics

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The study was recently published in a prestigious academic journal shortly after we started using an EMR in our Dermatology practice. It revealed that on average, your physicians spend 2 hours inputting data and clicking through their Electronic Medical Records (EMR) for every hour of direct care with patients.

I was skeptical reading the study that EMR's hurt physicians, after all, the Health Information Technology (HIT) company which leases us our EMR system, an expensive EMR used by 35% of the US dermatologists, had assured us that their rented software and purchased hardware would make our practice more efficient, productive, safer, improve our outcomes and speed compliance with new Federal Regulations to avoid a host of looming Federal penalties and enhance value based care (outcomes/costs). The company only rents access to its software to physicians from the highest reimbursed medical specialties. Their advertisements and marketing state that their EMR is, "*Transforming how healthcare information is created, consumed & utilized to increase efficiency & improve outcomes*".

Today, after approximately 8 months of using EMR's in our practice I and the dozen doctors in our practice can definitively report that our EMR has a negative value on our patient's outcomes and our practice. There is not one aspect of our electronic medical records system which has made our practice more efficient, productive, and safer, improved our clinical outcomes, saved our patients or ourselves expenses or time or facilitated our compliance with Federal Regulations.

Our staff and physicians have nicknamed our system 'The PDS' (Practice Destroying Software). It's gotten so bad for our patients and staff that our doctors must spend the first part of every history and physical exam apologizing for the inefficiencies and disruption of the practice due to the interference of EMR. Our doctors regularly complete and finalize their charts after hours or at home doing "Pajama Time" despite having experienced several training sessions and hours of training videos in addition to live patient care. There is nothing clinically intuitive or click or time efficient about our EMR user interface.

Despite the fact that we've added more staff to input patient data and MIPS histories and decreased our physician's scheduled patients by 10-20% per day, our patients have to wait sometimes well over an hour to see physicians who for decades have practiced with little or no wait time. Laboratory tracking resembles a Rube Goldberg schematic fraught with potential for physician or medical assistant errors. Clinical tasks and record keeping which used to take a few seconds with our clinically organized and focused paper charts now take minutes of redundant clicking in the presence of patients to reveal pages of infantile, redundant, scattered and clinically incoherent default content programmed by the EMR company to support billing, Federal MIPS requirements and audits and not to benefit patient care or outcomes. Doctors and their MA's turned scribes huddle around our despised 'Rectangles' or iPads throughout every patient visit trying to determine just why the patient is in the

exam room and how to enter or find patient data coherently. Automated billing functions consistently overcode office visits, which fulfills another marketing promise that 3rd party reimbursements will increase. However, Robo-Overbilling costs the physician extra time in the office after hours, in order to reformulate and reinput an accurate and honest billing code. EHR's have been proven to increase the medical malpractice liability for physicians, thedoctors.com/ehrstudy. My EHR company has therefore installed annoying and distracting pop ups and signature pages with paragraphs of never-read legal content indemnifying the EMR company from charting errors which must be click-signed by the physician prior to saving any inputted patient data adding an additional workflow burden to the physician while legally limiting liability for the EMR company. Our dermatologists call it ‘click a mole’ and our EMR based practice ‘Our Clicking Lives’. We have learned that people shouldn't text and drive and physicians shouldn’t EMR and practice medicine. Our EMR, like all those in our nation are not interoperable with other EMR’s outside our office walls preventing us from communicating in real time electronically with our referring physicians and colleagues or efficiently gathering important medical data from the community. Our EMR Company charges us thousand$ of dollars of base and recurring fees for sending secure faxing or emails, incorporating our path lab data and for several other modules such as MACRA/ MIPS compliance tracking, staff training and staff surcharges further profiting off professional communications, tasks and functions which used to cost physicians pennies. Our paper charts never extorted over a hundred thousand dollars in cash from our practice. It took our practice almost a year to 'discover' that we could use free HISP Address Direct mail to communicate with referring physicians instead of the costly EMR company based secure email software. Of course there are no HISP address directories available from our EMR company. Software "bugs" or errors in the EHR are inherent with any health information technology (HIT). However, a good measure of a companies

commitment to their contracted physicians is the time it takes to settle a 'ticket' or work order to fix a software problem reported by the physician to the EHR company. Our EHR company takes days to weeks to fix most software problems. We have no idea how other companies compare in this customer service category of error correction because the data on frequency of bugs and repair interval is not revealed by the industry. Recently our EHR company informed us that while they were digitally manipulating patients chart data to sell to industries for profit they accidentally mixed up some patients charts and names placing the wrong private content in the wrong patients charts. Some EHR companies require doctors to sign a 'muzzle' or 'gag' agreement in order to electronically return patient charts and data back to the doctor upon EHR termination. Gag or muzzling of physicians by the EHR company using 'hostage' patient charts makes exiting an abusive, non productive and inefficient EHR company more difficult. Silencing physicians public discussions is more consistent with "Oath of Omerta" used by organized crime or racketeering than normal transparent capitalistic competition based on product value.

Even more demeaning and violating to the physician and their patient is the sale our patients aggregated and individual personal health information (PHI), photos and lab data by the EHR companies to other ancillary health care industries. This bizarre business arrangement forces physicians to pay the EHR company to input their patient medical data which is then sold by the EHR company solely for the use and profit of the EHR Company. The individual patients data or aggregated patients data and its buyer or sales price is never revealed to the physician or patients. The national market for private patient data runs in the $10s of billions of dollars so you can imagine what your inputted patient data gift to the EMR company is worth. Much worse than free labor, the EHR renting physician is essentially a indentured data inputter or 'share cropper' for the EHR company which returns no financial or clinically beneficial remuneration to the field worker (doctor) for his/her produce

(patient data). Before renting an EMR, ask your EHR company if they sell your patients charted data or patient images and if they'd be willing to remunerate you for providing them with this free inputted data for resale. Nothing exemplifies the EHR industries manipulation of Federal Laws at the expense of physicians and patients for profit more than Federally mandated MACRA/MIPS quality reporting. Everyday EHR companies tabulate and sell a pipeline of chart data and patient images to ancillary healthcare industries. Instead of automating and electronically submitting a few of these chart variables to the Government in order to satisfy MIPPS quality reporting which are already tabulated by EHR companies and piped for profit to ancillary industries, EHR companies require physicians to manually unscrew the pipe containing the chart data, take a eyedropper and extract 5-6 bits of clinically irrelevant data from the pipeline, close the data pipeline, drop that minuscule amount of chart data into a test tube and return the test tube containing drops of chart data to the EHR company along with a check so the EHR company can pipe that redundant data to a Government Office. My EHR company charges us $500 and $2400/year per physican in recurring fees to teach one doctor to manually extract and input MIPS variables back into their EHR. The fees rise to $3500 with recurrent charges if "you want to ensure that our EHR company gets that data to the government properly". Thus, without too much trouble, the EHR companies have figured out how to redistribute MIPs quality rewards from the Government meant for physicians into their company with the 'manual inputting labor' once again performed by physicians. My EMR company also has begun colluding financially with Amazon, using the patients chart PHI data algorithms to steer patients to OTC Amazon product purchases. This creepy, voyeuristic and intrusive grab for earnings using what is essentially 'spyware' would be more appropriate in the 'Dark Web' of Putin's Kremlin or the pages of George Orwell's novel, and has no place in the exam room or physician-patient bond. The liability for interfering with optimal outcomes with EHR

company linked OTC product purchases is borne solely by the physician, and the revenue for sales of Amazon's OTC products shared solely by the EMR company and Amazon. *Who's data is it anyhow, the patients and doctors, the government or the EHR companies? Our EHR Company claims all the chart data is theirs.*

In addition to interoperability, Physicians and their patients really need API and UI which streamlines the scourge of insurance company prior authorization diagnostics and treatment rationing. This function could be easily delivered to physicians simply by cross-linking insurance company drug formularies with patients insurance plans using several prescription tracking companies already contracted with EMR companies and used daily in pharmacies. In addition, diagnostic and treatment prior authorization rationing functions can be directly interoperated with the insurance company bureaucrat who oversees patients diagnosis and treatments. However, due to the low earnings and low profitability potential of prior authorization API software combined with data blocking by all Pharmaceutical Industry Benefit Managers (PBM's) and insurance companies, EMR companies have placed this most desired clinical function on the back burner of their development roadmap in favor of things like beta testing retail loops to Amazon for OTC cream sales. EHR companies delivering future artificial intelligence without concomitant software to overcome prior authorization rationing will negate any benefits of AI clinically for the patient or physician. Think about this, sometime in the future, an EHR company using machine learning population value analysis suggests to the physician diagnostics or treatments, however the patients insurance company or PBM using prior authorization rationing techniques makes these EHR generated diagnostic or treatment suggestions unobtainable. Without coupling prior authorization rationing relief software, the EHR AI simply will simply end up 'pushing on a string', placing the physician and patient at risk while simultaneously charging the physician for the

clinically useless AI, which is the modus operandi for the EHR industry.

Congress and the Administration recently created Federal laws called ‘Meaningful Use and MACRA 'strong-arming or mandating'physicians to lease EMR’s and purchase appropriate hardware. This government mandated technology is the only IT used by any industry in America which doesn’t improve the cost or quality of the products produced by that industry (clinical outcomes). In addition, it’s the first new technology or device in the history of modern medicine used by physicians with patients with zero or negative improved clinical value for physicians and their patients concerning preventive, medical, surgical or palliative outcomes.

When someone rents a house, car or boat ‘buyers beware’ risk relieves the owner of after-sale responsibilities or liability. However, when one purchases or rents a house, automobile or boat, the dealer is required by law and capitalistic market competition to provide the potential renter or leasee with a minimum of information concerning fixed and additive operating costs and functional data such as SPEED, horsepower, mileage, property taxes, etc. Our Government created the profitable EMR industry shifting valuable resources from patients and their physicians to HIT companies by forcing physicians to lease these clinically valueless and very expensive tools and purchase expensive new hardware. One can only imagine how bad Fords would be if the government forced every citizen to buy or lease an automobile, removed the window stickers which informed consumers of operating metrics and costs, and then compounded the farce of the forced car lease by building no roads (interoperability).

To protect the physicians’ leasing these technologies and their patients and to create a capitalistic quality based market, the government must force the profitable EMR industry to post the average workflow time per chart function of their EMR’s along

with expected up front and running costs per year per physician. Since our EMR company informed us that it would take 6-12 months with their software to become "more efficient", work flow time per chart function data must be revealed to doctors in order to weigh the efficiency of the EHR. Unlike when testing automobiles, Physicians can't simply demo or take an EMR out for a test drive since it takes months or years to learn how to become a subsistence EHR software user. Instead of giving physicians detailed backend workflow and cost data, one dermatology EHR company is offering physicians a drone as a gift and promises to deliver the controls to this model aircraft if they can demo their EHR to the physician using their own expert data input operator to rent. Most doctors continue to input data late into the evening in the office or at home, this fact is never found on an EMR advertisement or marketing tool. This lag in user efficiency and operational, workflow and cost data is tabulated on the back-end of every EMR corporation in the world and never shared with potential buyers. The obfuscation of user workflow data is an industry-wide 'coincidence'. However collusion might be occurring in the EHR Industry against physicians and institutions because since the initial draft of this paper our practice has been solicited by several EHR companies, all of whom have refused to give us requested physician workflow data. All physician leasors of EMR's are therefore guessing regarding the costs and quality and deleterious consequences of an EMR for their practice regardless of which EHR company they're vetting. Automobile dealers must paste sticker tags with the costs, mileage and expected expenses on the window of each car for lease or sale in order to give consumers informed choices. Transparent informed choice with hard data concerning workflow and all potential costs is non-existent in the EMR 'marketplace'. Our practice performs it's own billing in-house. Our EHR company offered us a practice management component to their EHR and offered to do our insurance billing. We inquired with our EHR company about their average reimbursement time from submission and re-submission, average lagging AR's and absolute total costs for all their billing subscribers and they refused

to provide this information.

The EMR industry not only fails to provide physicians with the information physicians need to make informed EMR leasing and equipment purchacing decisions but the EMR industry also remains secretive, clandestine and ‘slick’ in their marketing using the leverage of government MACRA and MIPS penalties on physicians in their advertising. EMR companies in their marketing suggest improvements in productivity, efficiency and practice time with patients, but never definitively present any conclusive evidence beyond anecdotal single-user quotes supporting their 'suggestive benefits'. The number of patients the doctor sees per hour, the number of Medical assistants or scribes used in the patient exam room (and the salary of the scribes hired to input EHR data) and the direct or indirect compensation of the doctor providing the marketing testimony on behalf of the EHR company is never disclosed in the advertisement. It appears that the unregulated marketing Chutzpah of the market share grabbing, MACRA-fueled EHR industry knows no bounds. EHR renters must be especially vigilant and skeptical regarding social media EHR marketing. Recently I was informed that a Dermatology colleague who happens to use the same EHR as our practice was 'outed' by a member of the FB Practice Management Group after he failed to disclose he either owned equity or had an undefined 'financial interest' in the EHR company which he was praising to the group. Here again, the EHR industry seems to be exempt from medical marketing disclosure norms, ethos and sunshine. If a physician accepts a hamburger from a pharmaceutical rep educating him or her about a drug he may or may not use, the physician is subject to fines, public ridicule and censure if this burger is not disclosed. If a physician owns a piece of an EHR company or is being indirectly or directly compensated for pitching and trolling on the internet and is discovered not to disclose the conflict of interest, he or she may just slither off to hawk their wares on

another blog or social media site despite the fact that the technology he or she is pitching may interfere with every aspect of a physicians practice, history, physical, assessment, plan and treatment. Here again, doctors must beware any colleague who's pornographic descriptions of an EHR contrasts with peer reviewed published workflow or cost data. In the EHR world, if something appears too good to be true, simply ask the person pitching the product or the company for the workflow, clicks, time of use or direct and indirect costs data to back up those amazing claims. The infamous query 'Where's the Beef' seems most appropriate when a physician interacts with an EHR marketing team.

There's simply no aggregated system-wide evidence which is given to doctors to support the CEO of my EMR company's claim that their software, "*Makes for better doctors, it makes much better patient experience and leads to better patient outcomes*". If the clinical outcome, patient experience and doctor rating data does exist in the EHR companies darkest servers supporting their claims, then using clinical outcome data solely for marketing purposes without helping doctors or patients clinically is especially unethical and heinous. On the same day the CEO of my EHR company said their technology makes better doctors, Governor Scott of Florida said that EHR's make physicians practices more efficient without presenting any workflow or cost data to back his claim. Some EHR companies quote industry wide surveys when peddling their wares. All non-peer reviewed EHR surveys do not measure outcomes, efficiency, productivity, costs, doctor quality ratings or patient experiences. The company that leased us our EHR received a top rating on interoperability from the often quoted 'Black Book Research' in 2017 even though our EHR has ZERO interoperability with EHR's outside our office walls. These non-peer reviewed industry survey's have been described as akin to polling condemned death row inmates on the amenities of their particular prison, or trying to identify the solid stool in a bowl of diarrhea. If a EHR company salesperson or marketeer

extrapolates clinical outcomes, physician quality or or practice efficiency claims from these industry survey's they're simply fabricating. Physicians in America are being forced by the government to lease the first medical technology (EMR's) which contributes no benefits regarding outcomes or costs. One would expect buyer beware 'gotcha' marketing and deceptive advertising not to ethically apply to any product which can effect both lives and livelihood of both physicians and their patients. Physicians and small group practices aren't the only ones being fleeced by deceptive marketing practices of the government fueled predatory EMR and EHR industry. The Partners Corporation in Boston recently reported a loss of over a billion dollars in productivity due to it's EHR which is similar to compensation package of the CEO of the company which manufactures Partners EHR. One doubts if during the marketing pitch to the Administrators of the Partners Corporation and MD Anderson Medical Centers the Epic EHR Company warned of possible billion dollar deficits in efficiency and productivity due to their EHR. One wonders whether the diminished productivity and efficiency of EHR's is creating a 'virtual physician shortage' in America. One wonders whether the diminished productivity and efficiency of EHR's is preventing physicians from staying current with the medical literature or innovating. One wonders whether the diminished productivity of EHR's is preventing physicians from spending more time with their families and extracurricular activities. Without transparency of EHR company back-end workflow data, all these questions will be difficult to answer. A EHR generated physician shortage may be realized if physicians proof read their EHR's during office hours to combat a 8% increase in EHR related medical malpractice lawsuits documented this year.

Congress and the Administration must protect doctors, patients and healthcare institutions by forcing the federally subsidized EMR industry to inform physicians

regarding the quality and quantity of workflow and fixed and running expenses of their health information technologies. Without this aggregated time motion and cost data for all charting functions, physicians and hospitals will remain ignorant lessors and buyers forced to rent this software by law, and their practices and patients will suffer the consequences of poor user interfaces and EMR's which provides industry and investors massive profits but no value=outcomes/costs for either doctors or patients. Forcing the EMR industry to reveal back end time-work -motion, cost and outcome data would enable a capitalistic market place to evolve in the EHR industry creating technological quality which currently doesn't exist, leading to improved user interfaces and lower instead of rising EHR costs for doctors and their patients.

Industry deception is uncommon but not rare in America. Theranos, Enron, World Com, HCA, Volkswagen, Madoff, Retrophin, Turing, Takata, Mylan, eClinicalWorks and others demonstrated how easy it is to manipulate non existent product value to customers in order to raise corporate EBITDA and investors ROI. While no FTC investigation or indictments have been levied against the government subsidized EHR industry, one wonders how long the industry can sustain such an imbalance in ROI and product value between corporate investors and practicing physicians and their patients with so little data transparency. At least when Madoff perpetuated the sale of valueless equity he was dealing with peoples livelihoods, not peoples lives as per healthcare.

The 'investment' physician EHR users have in their EMR systems more closely resembles an equipment lease or rental agreement than a purchase since physicians don't own the patient data they pay to enter in the medical records system nor do physicians own the back-end or API EHR software system in which they experience escalating itemized expenses which they are mandated to use. Fixed rental costs which would diminish the revenue stream for my EHR company do not exist.

Recently I was informed that several early stage investors in my EHR company who are dermatologists in the same clinical practice as the founder of my EHR Corporation refuse to use the EMR he developed and they invested in despite receiving huge cash multiples for their initial investment. If true, much like corporate insiders unloading stock, any early stage equity physician owners in a EHR company who refuse to use the companies EMR product should be a red flag for potential physician customers.

Physicians need to determine whether the government fines and clinical benefits of using paper charting outweigh the financial and clinical inaccuracies and productivity detriments of leasing an Electronic Medical Records System simply to satisfy mandated Government MACRA requirements.

Our practice clearly made the wrong choice in switching from paper charts to EMR at this time. Our physicians have experienced a negative clinical and financial return on the investment we made on the most expensive Dermatology EMR. Hopefully with some transparency in the marketing practices of EMR companies creating capitalistic competition based on quality and cost, other physicians and their patients will not suffer the same consequences. When purchasing or upgrading EMR's Physicians must ask tough questions about workflow, clicks, login time and costs of their EMR companies and the government subsidized EHR industry must provide transparent information. The government must do something to protect physicians and their patients from an EHR industry run amok.

When physicians are shopping for EMR's they are operating in the dark.

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