



Personal Health Records

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Primary PHR Legal Concept:

- **There is no PHR Law.**
- **Just laws that impact the development and use of PHRs.**
- **But, the Stimulus Package Changes That (a little bit . . .)**

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PHR Law:

- **It's Not Just Vaporware Anymore.**

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Definition:

- **Many definitions, some of them useful.**

- **Stimulus Legislation:**

- “Personal Health Record”

- “ . . . an electronic record of individually identifiable health information on an individual that can be drawn from multiple sources and that is managed, shared and controlled by and for the individual.”

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Laws Impacting PHRs:

- Laws impacting PHRs are those impacting relationships in the health care system:
 - Consumer and the PHR.
 - Consumer and the sources of health information populating PHR.
 - Consumer and provider who has access to information in PHR.
- For each of these relationships, we are concerned with:
 - Ownership and Custody, Rights to Access and Disclose;
 - Privacy and Security; and
 - Liability.

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Ownership, Custody, Right to Access and Disclose:

- **The Ownership Fallacy.**
- **The Real Relationship Between Consumer and PHR:**
 - **Limited Set of Rights Defined by Contract/License.**
 - **Use of Content.**
 - **Purpose of Use**
 - **Limitations on Use.**
 - **Responsibilities of Consumer.**
 - **Not Medical Advice/Disclaimer.**
 - **Privacy Policy.**

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Consumer Rights in PHR:

- **Determination of Access and Content.**
- **Privacy.**
- **Security.**
- **Breach Notification.**
- **Distinctions Based on Host.**
 - **Stimulus Package Changes**
- **Curious Paranoia About Employer and Health Plan Access.**

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Obligations of Providers:

- **Relationship to Legal Medical Records.**
- **Duty to Provide Copies.**
- **Absence of Content Requirements for PHR.**
- **Duty to Review.**

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Obligations of Providers Part Two:

- **“Do I really have to look at that stuff?”**
 - **Is there a duty to review PHR information?**
 - **Malpractice Primer:**
 - **Duty.**
 - **Breach of Duty.**
 - **Injury.**
 - **Causation.**
 - **How does PHR information differ from other types of information or information from other sources?**

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Legal Medical Record:

- **Content Requirements**
- **Relationship of Patient to PHI**
- **Maintenance Requirements**
- **Limits/Obligations of Provider to Patient**
- **The PHR Conundrum**

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Medical Malpractice:

- **Who can be a party?**
 - **PHI User – Provider**
 - **Infomediary – HIE**
 - **PHI Contributor – Prior Provider**
- **Issues**
 - **Quality/Accuracy/Integrity of Content**
 - **Impact of False Claim**
 - **Use of Information**
 - **Contributory Negligence**

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Liability:

- **Cases on Consultation of Medical Record:**
 - **Primus v. Galgano**
 - **Suniga v. Eyre**
 - **Susnis v. Radfar**
- **But, Judicial Notice of Standard of Care to Review Records**
 - **Chapa v. U.S.**
 - **Hedger v. Reliance**

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Liability:

- **“The Inexorable Progress of American Jurisprudence”**
 - T.J. Hooper
 - Das v. Thani
 - Shannon v. McNulty
 - Helling v. Carey

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Empowerment and Responsibility:

- **Architecture of Choice:**
 - **Vaccination**
 - **Organ Donation**
 - **Fluoridation of Water**
 - **Implications for Physicians? for Healthcare?**

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Questions:

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Thank You.

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