



# What Health Care Providers Need to Know About E-Discovery

By Janet Callahan, Esq., Hancock & Estabrook, LLP

## WHAT IS E-DISCOVERY?

Any information relevant to a patient that is in the possession of a hospital or other health care provider, whether recorded on paper or in electronic format, can be subject to disclosure in a lawsuit. "E-discovery" refers to the production of electronically stored information (ESI). Recent statistics show that more than 99% of new information is stored electronically, including patient charts, billing records, spread sheets, word processing documents and even instant messages. Whether you are a physician in a two-person practice or the CEO of

a large health care conglomerate, you may be called upon to produce ESI. On December 1, 2006, amendments to the federal rules took effect, which will impact how ESI is created and managed. Health care providers need to establish procedures for complying with the new rules and to communicate those procedures to staff.

## WHO NEEDS TO UNDERSTAND THE RULES?

Information technology (IT) specialists, medical records keepers, health information management (HIM) personnel,

financial officers, risk managers and corporate officers should understand the rules to make sure their practice or organization is protected. HIM personnel should work with IT staff and with the organization's attorneys to address privacy issues regarding HIV, mental health, substance abuse and employee records as they are impacted by the new rules. HIM personnel should be prepared to handle issues regarding the organization's information management systems, including location, retention and accessibility of electronic health information. In-house counsel should be conversant with the new rules in order to work with outside counsel to establish, implement and enforce internal policies and procedures to ensure compliance.

## WHAT MUST BE PRODUCED AND HOW?

Some practices store information about patients on disks, while others use palm PCs to access patient records. Some hospitals link medication records to pharmacies using infrared handheld computers. Computerized medical charts are used in labor and delivery, anesthesia, emergency rooms and intensive care units. All of these types of ESI may be subject to production in a lawsuit. Issues, such as the format in which data are to be produced and how much to produce, will need to be addressed. Under the new rules, the requesting party has the right to specify the form in which it wants ESI to be produced and the other party may object. If the parties can't resolve their differences, a court will balance the burden of providing the ESI against its potential benefit to the lawsuit, considering factors such as the cost of production, the respective financial



## Mind Your Own ~~Business~~ **PRACTICE**

*Need more time for your growing Practice?*

Tend to your patients and **leave the rest to us:**

- Human Resources
- Employee Benefits
- 401(K)
- Payroll
- Profit Sharing
- Workers' Comp. Mgmt.

Your employees will be more satisfied. You'll stay compliant with all employment regulations. And most important of all — you'll have time to do what you do best: *mind your own Practice.*



**STAFF LEASING**

*Helping make your Practice... perfect!*

890 Seventh North Street, Liverpool, NY 13088

(315) 641-3600 ▪ 1-800-31-STAFF (78233) ▪ [www.staffleasing-peo.com](http://www.staffleasing-peo.com)

## legal ease

resources of the parties and the significance of the ESI. HIM personnel will have to provide their counsel with relevant information to resolve such disputes.

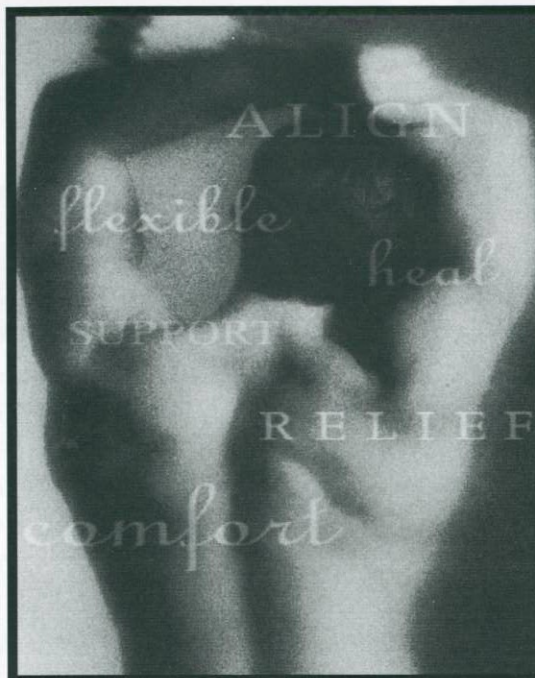
### WHAT SHOULD YOU BE DOING NOW?

Certain steps should be taken immediately to avoid running afoul of the new rules. Identify your most knowledgeable IT and HIM people and have them review your record management and retention policies. Develop a protocol for immediate and complete preservation of ESI. If you have reason to anticipate a lawsuit, key personnel within your organization should be advised to preserve all ESI that is likely to be relevant. Work with outside counsel to develop a compliance strategy.

Proper handling of ESI is essential for health care providers to protect themselves in the event of a lawsuit. A knowledgeable attorney can help you devise systems for managing, storing and accessing ESI that will enable you to respond quickly and effectively.

*Ms. Callahan, a partner with Hancock & Estabrook, LLP and the leader of the firm's appellate practice group, has more than 20 years of general civil litigation experience. As well as appellate practice, she concentrates on the defense of lawsuits involving professional liability, product liability, premises liability, construction accidents, motor vehicle accidents and veterinary malpractice. She also represents clients in insurance coverage disputes. Prior to joining the firm, Ms. Callahan served as confidential law clerk to Hon. J. Robert Lynch, Supreme Court Justice and Associate Justice of the Appellate Division, First Department, and Hon. Thomas J. Lowery, New York Court of Claims. Ms. Callahan lectures on various appellate practice and civil litigation topics for the New York state and Onondaga County bar associations. She is a member of the firm's executive committee and hiring committee. Ms. Callahan can be reached at 471-3151. ■*

## The Best In Conservative Care- Finally Brought Together.



## RAISING THE STANDARD IN REHABILITATION CARE

Whether your patients require state of the art physical therapy or advanced chiropractic rehabilitative care, you need only remember one office. By combining doctors of chiropractic and physical therapy under one roof, we are able to offer your referrals the optimum care. Both disciplines are kept separate, thus enabling the patient to receive the appropriate types of treatment and accommodate for the preference of physicians and patients alike.

### Camillus Chiropractic Office, PC

315 Bridge Street Solvay, NY 13209

**315-487-2225**

Dr. Christopher M. Piering • Dr. Jeffrey D. Winston • Dr. Hunter Mollin

### West Side Physical & Aquatic Therapy

315 Bridge Street Solvay, NY 13209

**315-484-9447**

Suzanne Skibiniski, PT • Debra Sniffen, PT