Draft (updated 11/9/17)
Initial Interrogatories and Requests for Production
EMR Audit Trail / Metadata

Interrogatories

1) Did Defendant create, use, or maintain any "electronic protected health information" [hereinafter "health information"], as defined in 45 C.F.R. § 160.103, during Defendant's treatment of Plaintiff?

2) If the answer to the previous interrogatory is in the affirmative, list the names of any and all electronic "information system(s)" [hereinafter "EMR system(s)"], as defined in 45 C.F.R. § 164.304, that contain or previously contained the health information of Plaintiff.

3) Provide a copy of any and all data dictionaries for each EMR system(s) identified in the previous interrogatory.

4) Identify the medical provider(s), database manager(s), or other administrator(s) whose current job responsibilities include performing queries of defendant's audit database of EMR system(s).

5) Did defendant accept Medicare payment (for care rendered to <u>any</u> patient) at any time during the course of plaintiff's care?

> *NB: The purpose of this interrogatory is to establish the applicability of Medicare requirements for EMR audit trails, in anticipation of defense's argument that audit trial data is not available

6) Has defendant attested to meaningful use and/or accepted incentive payments for meeting meaningful use objectives under Medicare and Medicaid HER Incentive Programs?

> *NB: Providers who attest to "meaningful use" are required to have certain minimum information monitored and stored in audit trails, including date and time of event, patient identification, user identification, and documentation of additions/deletions/changes, etc.

7) <u>FOR HOSPITALS ONLY</u>: Indicate whether defendant was accredited by the Joint Commission (formerly Joint Commission on Accreditation of Healthcare Organizations [JCAHO]) during any time when plaintiff was a patient at [Defendant] Hospital.

> *NB: JCAHO requires that hospitals have written policies addressing the privacy of health information, including monitoring changes to the health record.

8) Does defendant's EMR system(s) offer integrated portal for third parties to review patient's medical record in native format (i.e. as medical record would appear to medical providers at defendant health center)?

> *NB: This interrogatory was included not for the purpose of securing audit trails/metadata, but to see if we could actually be provided with access to Epic or other EMR systems to make our review of the records more efficient. This technology clearly exists. *See*, *e.g.*, http://www.epic.com/software#CommunityConnect

9) If the answer to the previous interrogatory is in the affirmative, please produce via internet link and/or CD/USB drive.

By Way of Production

1) Provide a copy of all policies and procedures governing HIPAA Compliance.

2) Provide a copy of all policies and procedures governing Data Security.

3) Provide a copy of all policies and procedures governing implementing, maintaining, updating, fixing, and utilizing any and all EMR system(s).

4) Provide a copy of all policies and procedures for implementing, maintain, updating, fixing, and utilizing any and all EMR system(s) audit trails, including but not limited to any and all standardized request procedure(s) and/or sample form(s) for requesting audit trail data (whether intended for hospital personnel or third party use).