

Q&A with Jonathan Lomurro, Esq.

What inspired you to pursue a career in law?

I love the law. Being an advocate for people who feel they have no voice drove me to move forward in the profession.

When and why did you decide to focus on medical malpractice and personal injury?

Two reasons, the first is personal. I have cancer and I found that out because I had been hit by a car and brought a lawsuit against the person that had hit me. It was only when I received the medical records and read the films that cancer was discovered. I then delved into medical literature to see how this could happen and realized my case was just one of many.

The second reason is, thanks to that delving, I found a passion for providing assistance in the medical field, which is typically one that people shut their brain off to due to the terminology and complicated nature of the issues. I find it fascinating, it's not fearful for me anymore. Now it's an open book and definitions that fit into the practice of law. It's a perfect opportunity for me to give to those people that have been forgotten.

How have you seen the medical malpractice environment evolve since you began practicing?

It has evolved tremendously in regards to electronic medical records and the interplay between the political world: new laws, new requirements, and implementation issues. Then statistics are released that medical errors are the third leading cause of death – eight times more than firearms. How is this possible in a time where we have so much crosschecking and communication amongst practitioners?

Understanding the interplay between electronics and recordings is vital in the field of medical malpractice. By analyzing both we see what really is happening and know how best to serve the future person, whether on the physician side in order to provide the proper care, or the litigants side determining where the care was deviated from. It's important to determine what could have been provided to save or help the individual in order to prevent future incidents.

When you look at the different realms I would say in the medical field the

first time you have this electronic interplay in the field of medical malpractice doesn't have a grasp of technology you're never going to get anywhere.

Talk a bit about EMR's, how you first became familiar with them and why you decided to focus on EMRs as a part of your practice.

What drives me is that no longer can you look at a piece of paper and assume that that's the truth. The truth is created in the Meta data and the underlying information. When we post a photo on a social media site it also attaches to it the IP address from where it was sent, the time it was created, the time it was edited, whether a filter was used, geo location, etc. That's just a simple photo on social media.

When you look at electronic medical records, which as lawyer I receive as a stack of printed papers, it's not the entire picture. I learned that behind the scenes there's a full array of possibilities and information hiding that helps in the search for truth and justice, which is what the law's all about. In that context, you might be able to quickly clear a physician of wrongdoing or you might be able to demonstrate the failings of the system.

My cases started to necessitate looking behind the curtain. I realized that a system that has numerous EHR locations, so it's not just one electronic health record for all patients, there's sub-folders, modules, and extensions. I've also seen how the products interplay with technology and realized that IT is really driving a large portion of the medical practice.

The nurses don't have one on one communication with physicians anymore, now they put a note in the computer and hope the doctor reads it. There are also issues with radiology results and bloodwork being transmitted in the proper amount of time, among a host of other communication problems. This concerns me and needs to be remedied because I believe that technology will make the world a better place if properly implemented.

What are some cases that you've handled pertaining to EMRs?

I had a pathology case which was a misdiagnosis of cancer. Which seems implicit, first because there's one set of pathology slides and therefore assume someone takes a look and makes either a correct or incorrect diagnosis. However, once we obtained the electronic medical record, we learned the slides provided were not the full amount. There were 18 slides and they provided 16, some of which were made after the date of the

misdiagnosis.

While dissecting the electronic record, we found the transcriptionists had said that 19 slides were sent out for analysis and 17 were returned. We checked into the EHR of the pathology assistant, who claimed there were additional stains done that were never in any documents that were provided, nor were they in the medical record, nor were they billed for.

We went down a rabbit hole and got a pot of gold at the end because we then learned that slides completely relevant to this case were hidden or destroyed. This fact allowed us to add an intentional adverse inference count to the case. The key information in this instance exists only in the audit blog of a transcriptionist – that’s how detailed the system is. It wasn’t the creation that was there, the slide dying, the location; it was the transcriptionist’s notation that opened up the doors to the truth. You could look at audit trails and find nothing; you could also look at audit trails and find everything.

We also had a case where there was an EHR and the log showed the doctor was not bedside when the patient was discharged, contrary to what the testimony was, because the doctor was logged into a different computer system on the other side of the hospital.

Talk a bit about the books you’ve published, if they’re relevant to this.

The first book I published was a trial manual for attorneys in New Jersey called *Try It*. Mine is the third edition taking over for a gentleman called Philip Auerbach. Once *Try it* was published I was approached to write a book on the subject of litigation technology – from social media investigation to technological presentation. I realized technology had, for the lack of a better term, “invaded” the field of medical malpractice, though lawyers were very hesitant to touch technology.

I wrote *Litigation Technology for the Modern Practitioner* in an effort to update the New Jersey legal field on presentation and preservation. The response to that work has led me to countless seminars and presentations both to individual firms and broader, national audiences seeking information regarding trial presentation electronics.

I then incorporated a chapter on electronic health records into the medical malpractice book that my firm publishes for ALM. Despite this book being called the *New Jersey Medical Malpractice Book*, it touches on the fact that federal law is what ultimately governs the implementation of electronic

health records. Lawyers typically focus on their individual states and forget that federal law supercedes them in governing the implementation of electronic health records, as well as other federally funded programs such as Medicare and Medicaid. These programs have to abide by these different standards that were created to protect and preserve a patient's rights and prevent fraudulent billing etc.

How can your expertise in the area of EMRs be beneficial to Aviva's clients and or hospital experts' clients?

If a client hires a technical expert they'll navigate the technology side, but will be unable to apply their findings to a particular case. Trying to explain medicine to a technological individual is a monumental task to say the least. So if you were to send in your IT specialist to review an electronic health record, they won't know what is important and what isn't and would think that the medical record which you've already been provided is the most important tool. You also would have to delve into the manuals for that particular case. They wouldn't know the federal law that requires a data map and that would explain to you what you need to request, or what exists in the policies, procedures, and manuals.

I understand how multiple EHR systems interact as well as the medical terminology and practice, allowing me the ability to explain difference between the physician, the nursing staff, the pharmacist and the interplay between all of those when talking about a specific case that has to do with a particular type of medicine.

As for the attorneys, it's very difficult to go from a non-technical background and now have to practice in the field of technology. A lawyer could sit with another lawyer and talk about the allegations or beliefs on a particular case but wouldn't know where to act or what to delve deeper into the technology side.

Because of the fact that I'm a lawyer, I love technology, and medicine is the field that I'm in, I can provide clarity not just by finding the information, as a technician would, but by thoroughly explaining the implications of that information to the attorney.