7 Costly Mistakes Made When Purchasing Electronic Medical Records and Health IT – And How to Avoid Them

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Introduction

As I travel the country advising providers, administrators, CEOs, and healthcare managers on selecting and negotiating contracts for Electronic Medical Records and Health IT, I've run across numerous scenarios where EMR vendors try to take advantage of customers by trying to pass off poorly structured deals and one-sided contracts and agreements. Unfortunately this happens all too often.

The problem is, more often than not, that purchasers of EMR and Health IT don't have the expertise needed to successfully select a vendor and negotiate contracts and agreements in order to get the best deal and protect their long-term interests. Not reviewing and negotiating your EMR contract or agreement is the worst mistake you could make as you'll live for years with the “rules of the road” set forth in these documents – “rules” that can cost you thousands of dollars in real money, lost time, and frustration.

You can avoid these problems, but as one provider said to me, “I went to school for years to learn how to heal people. No one taught me how to negotiate a contract for an IT system.” Written specifically for medical practices and groups, community hospitals, community health centers and other purchasers of Health IT, this report is for you if you’re:

- Worried that you'll be put in the position of signing an EMR or Health IT contract that’s one-sided with little protection or legal recourse for your organization.
- Not sure how to negotiate the best price from your vendor or if you don’t know if you’re getting the best price.
- Concerned about receiving poor support from your vendor, or worst yet, winding up with a failed implementation.
- Tired of spending endless hours searching for the right technology only to be more confused than when you started.
In this report you’ll find seven of the top mistakes health care organizations make when it comes to purchasing EMR systems plus advice on how to select the right EMR, get the best price, negotiate a favorable contract, and ensure that you receive adequate support and a successful implementation once you’ve signed the dotted line. Helping organizations select EMR and Health IT, structure technology deals, and negotiate technology contracts is my work and passion. I hope you find this report of benefit to you so that you can take control of the process and fight for your best interests.

Regards,

Michael Uretz
Executive Director
The EHR Group
Mistake #1
Selecting the Wrong EMR

When it comes to selecting an EMR, you could do any number of things to help you choose the right EMR, including:

- Spending hundreds of dollars at Starbucks on triple shot espressos while surfing the Internet late at night, reading dozens of opinions, comments, and testimonials and hoping that one vendor will rise to the top.

- Buying your colleagues numerous expensive lunches in exchange for their thoughts and opinions about EMR systems.

- Having each of the 50 vendors you’re considering buy you lunch and then get brain overload trying to absorb the 100-200 features being explained to you during your meal.

- Wasting hours of time sitting through countless unmanaged vendor demonstrations – with no clear end game or objectives – where the vendor shows you what he thinks is important, doesn’t answer the important questions, and keeps trying to close the sale.

The problem with these methods? You walk away more confused than ever with time ticking away to get an EMR, patients to see, and a business to run. This usually leads to a poor selection of an EMR, a selection that isn’t based on analyzing the facts or following a methodical process with clear objectives, but more on sheer exhaustion and a need to “just get it done.” Or worse yet, you just shut down, “manyana” syndrome sets in, and you never make a decision.

I’ve had clients come to me for help after looking at EMR systems for two or three years. They laugh about the fact that they’ve become “professional EMR researchers.”
Of course this is in addition to their regular job. The good news is there’s a light at the end of the tunnel if you choose to follow a proven process for selecting technology.

**How to avoid selecting the wrong EMR**

Why not let the vendors do a lot of the work for you with a nice little tool known as the Request for Proposal (RFP)? Request for Proposals are important documents because they:

- Communicate your needs, priorities, and expectations
- Provide for side by side, apples to apples vendor comparisons
- Document vendor commitments and promises from a legal standpoint

And, best of all, soliciting RFPs from various vendors doesn’t cost you anything, except some “sweat equity.”

Because of the work involved from the vendor side in answering an RFP, the RFP process gives you a good idea of the vendors willing to work with you and develop a partnership with you as well as which can best address your needs. The RFP can consist of a number of areas, and at a minimum should have the following:

1. A Vendor profile consisting of a laundry list of quantitative measures, such as financial information, customer base, staff breakdown (R&D, support, etc.), product maturity, etc.
2. EMR feature requirements you are interested in prioritized into a list of “must have” and “nice to have” features. For example, ePrescribing (electronic prescribing) might be a high priority, but online access to labs for your patients might be low on your list.
3. The underlying technology used (Is the technology standard or proprietary? Will it grow with you? Does the vendor have online capability? etc.).
4. A description of implementation, training, and support processes (this could be a big differentiator).

Once you analyze vendors based on their RFP responses, you can then typically reduce the vendor list to a short list of vendors you are interested in – which leads you to the next step: vendor demonstrations.
Vendor demonstrations is where practices and groups make their biggest mistakes. Instead of being in control of the vendor demonstrations, they let the vendors run the show, spend more time than necessary at the demo, and walk away unsure of what they just saw. This scenario can be prevented by going into a vendor demo with clear objectives, a set timeframe, a list of the clinical encounter scenarios that you typically see, and knowing what’s important to you and what you want to see demonstrated.

In addition to addressing your topics, vendors should also exhibit certain “soft skills” such as the ability to understand your needs and demonstrate what you ask for, a desire to engage you by asking questions, and a willingness to think outside the box and get away from their normal script.

Conversely, be wary of those vendors who exhibit “red flag” behaviors. Be wary, for example, of vendors who tend to have a one-sided conversation, discussing solutions before they even understand your needs. You’ll know this is happening if you feel that the vendor is in “sell mode” all the time. The liberal use of technical jargon to impress or confuse is a red flag. And, watch out for vendors who make promises about great features to come as these features might not materialize (these are known in the industry as “vaporware.”). If the vendor exhibits these behaviors during your interview, politely excuse yourself.
Mistake #2
Overpaying for your EMR

Let’s face it, everybody wants a good deal. And vendors are very adept at making you believe that you are getting a great deal. But how do you really know if you’re getting one? As one of my clients put it, “Sometimes I feel as if I’m buying a used car!” when it comes to purchasing EMR software.

You can, however, develop a win-win pricing negotiation with your vendor, as the following email from a physician points out:

“When we negotiated our deal we learned that the vendor was very interested in breaking into our size practice market in our specific geographic area. We were able to get substantial discounts.”

I had a large multi-specialty client who asked me to negotiate their EMR contract and when I saw the pricing, I asked them if I could have a crack at getting them a better deal. The CFO replied that he thought that they had negotiated the best price possible, but that I was welcome to try. After intense negotiation, I saved them a substantial amount on top of the original deal. This is because I knew the market and understood the “game” vendors play with pricing.

How to avoid overpaying for EMR products and services

Because I have personal experience as both a software purchaser and a vendor, I’ve been on both sides of this equation and can tell you that you need to focus on the win-win nature of successful price negotiations.

Yes, you can try to bully the vendor into accepting your terms, but my experience has shown that you can be much more successful if you’re willing to spend the time to understand how important you might be to a vendor and/or how you can help the vendor in other areas. If you try to understand your vendor’s situation and needs, you may find reasons for your vendor to give you good pricing.
Perhaps, as alluded to in the email above, your vendor has the added pressure of getting the deal done to make a quota and it’s just the right time. Or, maybe you could be a great referral site for potential customers, or your vendor doesn’t have much of a presence in your specific geographic area or your particular specialty. Sometimes a discount can be negotiated if the vendor “needs” you to help their business growth strategy. Get to know your vendor and ask them how you could help their efforts. That type of relationship is worth something.

Regarding vendor quotations, try not to get confused by their complexity. A few years ago, I was asked to join a steering committee to come up with a standardized EMR quotation format in order to make it easier for providers to compare vendors’ costs apples-to-apples. Our committee was charged with this task because vendor quotations are so confusing.

Vendor quotations include costs for many items including, but not limited to, licenses, data conversions, implementation, training, lab and device interfaces, third-party databases, and maintenance and support. You might get a good deal on your licenses, but to make up for it the hourly training rate might be overpriced and your support percentage might be higher than the norm. Also, you need to consider all of the items, such as interfaces, that you might need down the line because once you sign that deal, you lose a lot of leverage. Vendors employ a great deal of “smoke and mirrors” when presenting costs to you. So, ask your vendor to break down your costs in detail. And remember, all of these items should be negotiable.

Above all, try to understand pricing in the marketplace. The more pricing knowledge you have, the better. If you negotiate price with a vendor from a position of knowledge, you’ll be in a much better position and vendors will tend to play fewer games. Obtaining this pricing information takes a bit of research and work, but if you can go into negotiations knowing what’s normal and reasonable, what’s fair and customary, then a vendor has to at least respect your knowledge.

Finally, it’s important to understand that there are many ways to get a better deal on your contract. I worked with a cardiology group, for example, that saved over $200,000 when I changed a few words in the licensing clause of their contract.
Mistake #3
Accepting Poor Payment Terms

If you were a vendor, you would want most of your money up front – correct? And, in fact, when you look at EMR contracts, this is typically what vendors ask for. But where’s the accountability in this? This past year I had a large physician group contact me after they had signed a poor contract that required almost 80% of the money before the system was up and working. They had problems with their vendor, but because they had paid so much up-front, they didn’t have much leverage to convince the vendor to take care of things. As Murphy once stated – “anything that can go wrong – will.” The question is “How are you prepared for this?”

I had another group tell me at a conference that the vendor didn’t implement their software on a timely basis. When I asked how much of the total they held back, they seemed surprised and it wasn’t until after I explained the concept of milestone-based payments that they understood what they should have done.

How to get favorable payment terms from EMR vendors

Never pay a vendor most of their money up-front for work that has not been completed. Instead, ask for what is known as milestone-based payments. This means that as the vendor completes certain milestones in the project as promised, they receive a portion of the payment. A milestone-based payment system is the best incentive for the vendor to complete the project successfully and in a timely fashion.
Mistake #4
Giving up your Rights to Data and Intellectual Property

Your patient data is a valuable commodity, especially to an EMR vendor who, given appropriate contractual rights, can perhaps make a few extra bucks by sharing it with certain “partners.” I was recently asked by a medical group to review an EMR contract – where I noticed a statement that was very disconcerting: “Customer agrees that [Vendor] may use Customer information for research purposes . . . And Customer further agrees that any product of the foregoing uses shall be the property of [Vendor].” So, what does “research” mean anyway or what do they mean by “property of the vendor”? Do you really want to chance agreeing to this stipulation?

How to avoid giving away your rights
Never accept any clause in a contract in which the vendor has the right to use your data for “research” purposes, unless you are planning on getting something in return, since “research” is one of those terms that can be interpreted a number of ways. You spend time and energy compiling your client data over time, and at the very least, if you do agree that the vendor can use the data for various purposes, make sure that it’s specifically stated how it will be used. You’ll want to ensure the contract wording excludes the vendor from realizing any financial gain from its use.

Or, how about ownership of your personal templates? I helped a large group with their EMR contract, which stated – before we had the Vendor modify it – that any programming done by the client would be considered the intellectual property of the Vendor. Vendors like to believe that just because you’re using their software, the templates you develop should be theirs. At the time, the group planned on spending a great amount of time and resources developing templates. But, according to this contract, once their project was complete, the Vendor would own the copyright to all custom templates. Don’t accept this premise – and ensure your contract states that any templates you develop remain your property.
Mistake #5
Not Planning for Worst Case Scenarios

Have you ever thought about what could happen if you purchased an EMR system and your vendor went out of business, changed direction, or dropped adequate support for your product? In my EMR seminars and workshops, this is a concern and worry that comes up time and time again.

How to prepare for worse case scenarios

You have the right to request that your vendor put their software and documentation in escrow for a rainy day should the vendor not be there at some point in the future. The mechanism to do this is known as “software escrow” or “source code escrow.” With the vendor’s intellectual property at your side, you have a better chance of taking care of problems should the vendor go out of business.

It’s also important that you have access to the vendor’s database schema in case you have to transfer to another vendor. “Database schema” is a technical term that describes the roadmap of how your data looks inside the system. In short, the schema is the formal structure of the database, including the tables, forms, and fields, and their relationship to each other. Not having this schema could prove very costly should your vendor go out of business as you’ll have to pay an IT consulting firm to reconstruct for you.

When negotiating a contract, ask that the database schema, including all associated documentation, be included as an exhibit to the contract. Technically, you own your clinical and billing data, but if you need to transfer it to another system for whatever reason, it can be a very expensive endeavor if you don’t have the “roadmap.”

Finally, make sure that the vendor agrees to help you with a transition to another system should you decide to go this route later on. With this understanding and agreement, you can save considerable time, money, and hassle and assure smooth functioning of your practice should you need to part ways at some point with your vendor.
Mistake #6
Accepting Inadequate Warranties

Vendors will throw many promises and assurances your way during the sales process, so it pays to ensure you're covered after you sign the contract and begin making payments. Warranties hold the vendor accountable for what they have represented. I had one physician attending my seminar tell me the story of his financial dispute with his EMR vendor. As he was arguing with the vendor, one day his software just stopped working. After all, the vendor had never warranted that the software would be free of “intentionally disabling mechanisms.” So, the vendor simply shut the system off remotely!

You can associate penalties and even termination for failure to adhere to some warranties. Although most vendors have some type of warranty clause in their contracts, these warranties are typically inadequate in terms of the actual warranty period and the scope of what they cover.

How to ensure you're covered:
Although this is by no means an exhaustive or complete list, you'll want to think about the following common warranties:

- System will work and perform in accordance with user documentation.
- Vendor is not involved with ongoing or pending litigation.
- Vendor cannot intentionally add disabling mechanisms to software.
- Support will be provided per service level agreement.
- System will be installed in accordance with the agreed to implementation schedule.
Mistake #7
Not Asking for Service Level Guarantees

For some reason, Murphy's Law seems to come to the fore once a system is installed, the final payment is tendered, and the practice is now dependent on the technology. I wish I had a nickel for each story I've heard of vendors that closed the deal and then “just didn’t show up” when the customer had problems or issues.

Ever heard of the term “turnkey system”? The generally inaccurate assumption regarding turnkey systems is that they’re installed, the “key is turned,” it works, and all will be fine. Wrong. There is no such thing as a system that doesn’t need a solid plan for maintenance, support, and upgrades and enhancement. And this is where many contracts fall short – they don’t take into account the “after” implementation problems in enough detail.

During the sales process, sales people are quick to assure you of great support, but can your vendor “walk the walk” as well as “talk the talk” once the system is in place? If you do run into problems, how long will the vendor have to address these problems – immediately or in two to three days? What are the penalties if the vendor doesn’t meet stated commitments? Sales people will commit to taking care of you, but unless there are real consequences for the vendor, you might not be the “squeaky wheel” you thought you’d be.

How to avoid support problems
To address support concerns, the Service Level Agreement or SLA, is the standard mechanism to document vendor commitments. These agreements outline various areas of accountability in which the vendor is willing to make a commitment to service and support. After all, you’re paying a percentage of the license fee on an ongoing basis for your support, so you have the right to demand good service.

Some of the standard areas you will want to address include:

Hours of support
Don’t accept such terms as “support during standard business hours.” What if your vendor is based on the East Coast? Standard business hours for your vendor might be
8:00 AM to 5:00 PM Eastern, but if you’re located on the West Coast, this means you can’t get support after 2:00 PM your time. Instead, have your contract specify “local time.” You’ll also want to specify how support works during off-hours and whether the vendor will charge you an off-hours fee with proper notification.

**Problem Escalation & Triage**

Whether it be your phone company or bank, you’ve probably become frustrated by the lack of knowledge or problem resolution by the immediate support person and have had to ask to “speak to the manager.” The same holds true for your EMR vendor. It pays to ensure that the levels of escalation are specified ahead of time. This can include having the vendor’s support person actually come on site if the issue can’t be resolved by other means.

**Response Time Guarantees**

These need to be clarified in your contract as well. If response time is an issue that affects patient care, you need to know if you’ll be expected to wait two days or if you will receive help immediately. Be aware that different functions of the EMR system might warrant different response times. For example, documentation problems or bugs might need immediate attention, while a problem with a patient education component might not be as urgent. Your contract should spell out response guarantees along with associated penalties. Don’t accept a vendor telling you that they have a history of great service. Get in it writing. Be the “squeaky wheel.”

**Introduction of New Updates or Versions**

What about changes, updates or improvements to your licensed software as time goes on? I’ve seen contract clauses where vendors have the right to reduce or even drop support for a system at some point in time if you haven’t upgraded to the newest version. You should always expect that a vendor will support the current version and the previous version of your system. You might not want to install the newest version right away, as the time to test and install a new version is not trivial and can possibly impact your internal resources and the operation of your practice. Also, in terms of always upgrading to the newest version, make sure the additional features add value to your practice needs and warrant an upgrade. Sometimes, the old saying “if it ain’t broke” has validity.
Summary

As you can see, purchasing an EMR system that successfully serves your practice—and doesn’t take you to the cleaners financially—includes much more due diligence than simply choosing a vendor, thinking you have a good deal, and signing your name on the dotted line. The common mistakes and remedies outlined here will hopefully help you begin to understand some of the issues medical groups run into when selecting and purchasing EMR systems.

But, these issues are just tip of the iceberg, as negotiating a great deal and favorable contract is both an art and science. If you learn anything from this paper, I hope you come away feeling empowered to stand toe-to-toe with the vendor when it comes to EMR selection and contract negotiation. My years of technology consulting have taught me that, at the end of the day, with thorough due diligence and aggressive contract negotiations you can have a successful EMR experience.

About EHR Group

The EHR Group is committed to providing consulting, education, and training to individual practices, medical groups, community health centers, and community hospitals attempting to navigate through Electronic Health Records and Health Information Technology vendor selection, price negotiation, contract negotiation, and implementation. In addition the EHR Group helps clients select and negotiate contracts with IT firms and IT contractors.

The company’s Executive Director, Michael Uretz, has been involved with all aspects of technology acquisition and implementation for over 25 years. He has analyzed and selected hundreds of technology vendors and has negotiated numerous technology contracts from both the vendor and purchaser perspectives. Over the past few years Michael has focused on helping Providers, Administrators, CEOs, and Healthcare Managers select EMR vendors, negotiate pricing, structure and negotiate contracts, and ensure projects meet budget and timeline requirements.
Michael is frequently asked to conduct EMR Vendor Selection and Contract Negotiation seminars, workshops and Webinars on both the state and national level and is the author of the popular, “How to Survive Your EMR Contract.” Michael has been a judge for various EMR Vendor Awards and has served on the Ambulatory Workgroup for CCHIT (Certifying Commission for Health Information Technology) a Standards Organization that is responsible for certifying EMR Vendors.

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