



WTN MEDIA

Digital Healthcare Conference 2008



Legal and Technical Challenges Posed by E-discovery



Erik Phelps

Technology Attorney, Michael Best & Friedrich LLP



Carrie Killorian

Partner
Michael Best & Friedrich LLP

Shane Brunner

Partner
Michael Best & Friedrich LLP

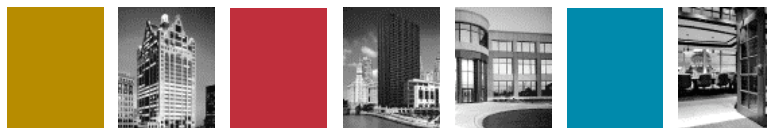


John Scheller

Partner
Michael Best & Friedrich LLP

Joe Olsen

Partner
Michael Best & Friedrich LLP



eDiscovery: Legal and Technical Challenges

Digital Healthcare 2008

May 8, 2008

Overview

- Some Background Questions
- Hypothetical Case – Background Facts
- Scene 1: Scope of Discovery Request
- Scene 2: Discovery Disputes
- Wrap-Up / Questions and Answers

Background – Familiarity with the Following?

- Federal Rules of Civil Procedure
- Document Retention Policies
- Litigation Hold
- “Reasonably Accessible” ESI
- Motion to compel
- Sanctions
- Adverse inference instruction

Setting the Scene

- Valley View Hospital in Anywhere, U.S.A.
- Emergency department with contracted physician group
- Financial pressure on hospital
- Recent internal memo suggests financial issues due to increasing percentage of uninsured patients, especially in emergency

Setting the Scene – December 2006

- Jane Cable, uninsured patient, brought to the emergency room after traffic accident
- Intoxicated, belligerent and refuses treatment
- Dr. Tenner calls security to subdue patient for exam
- No further diagnostic tests (lab, imaging) ordered beyond physical exam
- Patient determined to be stable & discharged to home

Setting the Scene

- Two hours later, patient shows up in emergency again with traumatic head injury not identified in first examination
- Lawsuit follows in March of 2007

The Claims Raised

- Violations of the Emergency Medical Treatment and Active Labor Act (“EMTALA”)
- Private right of action; potential government involvement
- Seeks class action status for all other uninsured patients

Scene 1

When: Shortly After Lawsuit Filed – May 2007
Where: In-House Counsel's Office
What: The Document Requests Have Begun

The Discovery Disputes

- Various claims of substandard production; motions to compel and responses follow
- Allegations that relevant information was deleted or destroyed; request for additional production; refusals; motions for sanctions
- Judge finally throws up his hands and orders the defendant hospital to produce someone with knowledge of the IT systems

Scene 2

When: One Year Later – May 2008

Where: Federal Courthouse

What: Discovery Dispute Hearing

Questions / Comments?

Michael Best & Friedrich, LLP

Shane Brunner

Carrie Killoran

Joseph Olsen

Erik Phelps

John Scheller

608-257-3501

414-271-6560