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Health Care Update

## LEADERS DISCUSS TRENDS AND CONCERNS IN ELECTRONIC HEALTH RECORDS IMPLEMENTATION

Murtha Cullina LLP attorneys Paul Knag and David Menard recently hosted and moderated a Crossroads Venture Group event on the use of, and the market for, electronic health records (“EHR”). Panelists at the event included Edward M. Kennedy, Jr., (CEO of The Marwood Group), Daniel J. Barchi (SVP and CIO of Yale New Haven Health System), Ludwig Johnson (VP – Information Services of Middlesex Health System), and John Chobor (CEO of E-Health Solutions).

In his presentation, Mr. Kennedy discussed merger and acquisition activity in the EHR market. Mr. Kennedy discussed the increased trend of EHR adoption, as well as the development of solutions by larger existing software companies. However, Mr. Kennedy did not rule out the ability of new companies to develop competing and innovative technologies that could impact the EHR market. Mr. Barchi and Mr. Johnson discussed the development of EHR over the years, and the complexity of installing systems in large institutional environments, where there are many different systems communicating with one another. In most institutions, even those that have adopted EHR, the EHR systems are still being installed and developed, as new features are added continually. One significant issue that remains is finding and adopting systems among insurers, institutions and physicians that are capable of continually exchanging information with each other without error. Mr. Chobor spoke about the challenges that face entrepreneurs in the EHR software space.

Use of EHR has increased significantly in the past five years. In 2008, only 17% of physicians and 9% of hospitals reported using EHR, whereas more than 50% of physicians and 80% of hospitals use EHR today. The increased use of EHR reflects not only the availability of technology advances, but also significant changes to the law. In 2009, the Recovery Act provided for incentive payments to be made to eligible physicians, hospitals and critical access hospitals that participate in Medicare and Medicaid and also adopt, upgrade, or demonstrate meaningful use of EHR technology. These incentives were strengthened by the passage of the Affordable Care Act. Currently, physicians can receive incentives up to \$44,000, or over \$44,000 for participation in designated Health Professional Shortage Areas. Incentive payments for institutions begin at \$2,000,000. Certain states have gone even further than the federal government. For example, Massachusetts instituted a law in 2008 that requires hospitals and community health centers to use EHR, and physicians to be able to demonstrate a level of competency in using EHR, by 2015 or face loss of licensure.

**MURTHA**  
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If you have any questions about the issues addressed here, or any other matters involving Health Care law issues, please feel free to contact:

Heather O. Berchem  
203.772.7728  
[hberchem@murthalaw.com](mailto:hberchem@murthalaw.com)

Marcel J. Bernier  
860.240.6087  
[mbernier@murthalaw.com](mailto:mbernier@murthalaw.com)

Melissa A. Federico  
860.240.6042  
[mfederico@murthalaw.com](mailto:mfederico@murthalaw.com)

Robert V. Giunta, Jr.  
860.240.6033  
[rgiunta@murthalaw.com](mailto:rgiunta@murthalaw.com)

H. Kennedy Hudner  
860.240.6029  
[khudner@murthalaw.com](mailto:khudner@murthalaw.com)

William J. Keenan, Jr.  
860.240.6028  
[wkeenan@murthalaw.com](mailto:wkeenan@murthalaw.com)

Paul E. Knag  
203.653.5407  
[pknag@murthalaw.com](mailto:pknag@murthalaw.com)

Mark F. Korber  
860.240.6030  
[mkorber@murthalaw.com](mailto:mkorber@murthalaw.com)

Kenneth L. Levine  
860.240.6121  
[klevine@murthalaw.com](mailto:klevine@murthalaw.com)

Michael E. McDonough  
860.240.6056  
[mmcdonough@murthalaw.com](mailto:mmcdonough@murthalaw.com)

Hugh F. Murray, III  
860.240.6077  
[hmurray@murthalaw.com](mailto:hmurray@murthalaw.com)

Elizabeth Neuwirth  
203.772.7742  
[eneuwirth@murthalaw.com](mailto:eneuwirth@murthalaw.com)

Lissa J. Paris  
860.240.6032  
[lparis@murthalaw.com](mailto:lparis@murthalaw.com)

Physicians and institutions alike face many challenges when instituting or updating EHR solutions. EHR systems require monitoring for compliance with existing and soon-to-be-implemented federal and state laws and regulations. In addition, the selection and installation of an EHR system provides for significant licensing, installation and software integration issues. A large number of system-wide software installations fail, including EHR systems from reputable vendors. Finally, EHR, by its very nature, interacts with many federal and state privacy and protected information laws. Murtha Cullina's attorneys regularly deal with all of the above issues and many others related to EHR. If you have questions about any of the above issues, or are installing an EHR system, please do not hesitate to contact the attorneys of Murtha Cullina for assistance.

Alfred E. Smith, Jr.  
203.772.7722  
[asmith@murthalaw.com](mailto:asmith@murthalaw.com)

Stephanie Sprague Sobkowiak  
203.772.7782  
[ssobkowiak@murthalaw.com](mailto:ssobkowiak@murthalaw.com)

Louis B. Todisco  
203.772.7718  
[ltodisco@murthalaw.com](mailto:ltodisco@murthalaw.com)

Maria Pepe VanDerLaan  
860.240.6128  
[mvanderlaan@murthalaw.com](mailto:mvanderlaan@murthalaw.com)

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