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AI and Ethics in Health Care:

Navigating an Evolving Landscape



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Agenda

- AI Risk & Governance
- Impacts Across the Organization
- AI Implications for the Legal Department
- AI Implications for Consumer Laws
- Takeaways, Questions & Discussion



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AI Risk & Governance

How is AI unique as a technology?

Computation: Traditional computing calculated numbers and stored data. Inputs and outputs were a function of formulas (programming) and decision trees. "Incorrect" answers were a function of programming errors that could be identified (debugged) and fixed.

Correlation*: Artificial Intelligence has the ability to assist users in analyzing and synthesizing data. Rather than simply calculating a response, AI correlates data, appearing to "think" through the problem with the user (or may act autonomously). Prior technology was a tool used by humans to reach conclusions; AI provides conclusions.

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The Risks associated with AI?

- **Traditional IT concerns**. Is data access, use, disclosure and retention consistent with legal and policy requirements (traditional IT concerns)?
- **User Subject Matter Expertise**. Is the output of the AI Tool safe with bias and harm mitigated? AI models drift, requiring ongoing monitoring, not just implementation governance.
- **Net new risk and compliance**. Does the use of AI create new compliance implications
  - Does the AI function to replace human decision making in prohibited manner?
  - Does the use of AI create new metadata concerns regarding how healthcare services are rendered? What do we know now about our users we didn't know before?
  - What are the implications if the AI does something dumb.

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A few illustrations…

Scenario #1.
A physician has had a packed schedule and is looking at a long list of draft AI generated notes to sign before heading out for vacation. Working quickly the physician scans the proffered notes and accepts the notes as accurate, with minimal edits. The ambient platform captures user meta data showing that the physician performed only 3 edits on 12 notes and approved all 12 notes in 6 minutes. A subsequent malpractice claims asserts that in the encounter the physician and patient discussed a potential skin condition as abnormal however the note reflected the physician's conclusion as normal.

Scenario #2.
A physician leader is concerned that a proposed arrangement may have implications under Stark and Antikickback. In compliance with the system AI policy, the physician leader uses the enterprise Copilot instance to assist in framing the issue for the general counsel. Copilot applies the facts presented by the physician leader and concludes that the arrangement presents a compliance risk. The physician leader forwards the Copilot analysis to the General Counsel for the General Counsel to confirm the conclusion.

Scenario #3.
Senior leadership meets to discuss business strategy in a competitive market. Leadership carefully discusses the role of certain physician practices as integral and necessary components of a clinically integrated network, and the possibility of some of those physicians becoming members of a joint venture ASC. To ease the burden of note taking in the meeting an AI note taking tool is activated. After the meeting the AI tool sends an e-mail to all attendees and summarizes the purpose of the meeting as establishing a joint venture ASC in order to compensate physicians for referrals.

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The NIST standard for AI Governance

AI Governance: Is a process used to make informed decisions about use of artificial intelligence in an organization.

Core of the Framework

- Govern - Policies, processes, procedures and practices across the organization related to the mapping, measuring and managing of AI risks are in place, transparent, and implemented effectively.
- Map – Context is recognized and risks related to context are identified.
- Measure – Identified risks are assessed, analyzed and tracked
- Manage – risks are prioritized and acted upon based on projected impact

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AI Risks and Trustworthiness

Valid and Reliable

- Valid - confirmation, through objective evidence, that the requirements for the intended use have been fulfilled.
- Reliable – ability of an item to perform as required without failure for a given time interval, under given conditions.
- Accuracy – closeness of the results to the value accepted as being true
- Robustness – ability of the system to maintain its level of performance under a variety of circumstances

Safe – AI should not be deployed in a manner that endangers human life.

Secure and Resilient – ability to withstand unexpected adverse Events (Secure) and ability to return to normal function after unexpected adverse event (Resilience).

Accountable and Transparent – Clear ownership, documented data provenance, and accessible operational information exist so actions and decisions can be traced and understood.

Explainable and Interpretable – The underlying mechanisms, logic, and output meanings can be clearly communicated and understood by humans

Privacy – Human dignity and autonomy are protected by implementing privacy-preserving technologies and data safeguards

Fair with Harmful Bias Managed Systemic, computational, and human-cognitive biases are actively identified, monitored, and mitigated to prevent discriminatory impacts

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The cybersecurity analogy

When cybersecurity became an existential threat, health systems didn't just add firewall budgets — they created CISOs, restructured reporting lines, and added board-level risk committee oversight of cyber.

Today, data privacy and security is a significant consideration.

AI represents a similar moment, but broader in scope because it touches clinical quality, liability, workforce, and financial performance simultaneously rather than primarily IT infrastructure.

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Who is responsible for AI?

No single C-suite role owns AI.

An ambient documentation tool simultaneously affects physician productivity, billing accuracy, malpractice exposure, burnout, and clinical quality — across the CMO, CFO, CIO, and General Counsel.

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The Emerging Organizational Response: New Roles & Redistributed Authority

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New Roles Emerging

Chief Health AI Officer (CHAIO)

Cross-functional authority spanning clinical, operational, financial & ethical AI governance.

Chief Data & AI Officer (CDAO)

Combines data strategy with AI lifecycle oversight and model performance monitoring.

Board-Level AI Governance Committee

Provides board visibility into AI risk (investment in governance), performance, and regulatory exposure.

Redistributed Responsibilities

CMO

Gains AI clinical safety oversight — accountable for algorithmic tools influencing care. Increased responsibility for safe use of technology shared with Peer Review or Patient Safety Organization.

CIO

Narrows toward infrastructure as AI strategy becomes a distinct domain.

CFO

Gains AI ROI complexity and novel vendor risk in AI-driven revenue cycle tools. Must budget for new administrative functions of AI Governance and workforce training.

General Counsel / Chief Compliance Officer

Owns the growing federal and state AI compliance and liability surface. AI risk is an unknown and potentially outside of insurance.

Board of Directors

Must govern material AI risk with structured visibility — not just periodic updates.

Only 23% of health systems have formal AI governance — yet 78% plan clinical AI deployment within 24 months. (NEJM AI / AHA, 2025)

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Impacts

Workforce (general)

- General guidance on how and where AI can and cannot be used
  - Data Privacy Policies
  - Security Policies
  - IT policies
  - Processes for reporting compliance concerns
  - Conflict of interest
- Data Governance
- Training on how to use each AI Tool safely based on the use case of the AI governance process
- End user engagement in all AI monitoring programs
- Education on how AI tools are changing cyber security risks

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Medical Staff

- Vendors provision of AI tools directly to Medical Staff, targeting personal devices.
- Vendors providing AI as an update or upgrade without clear disclosure of risks.
- Increased participation of medical staff in administrative functions related to IT systems.
- Increased understanding and desire to implement technology to solve provider problems and the associated implications for the applicable standard of care.
- Increased need to understand how technology works to provide patients with sufficient information to give Informed Consent.
- New sources of information about how providers are performing clinical tasks.
- Need for greater understand of the scope of safe and permissible use of clinical tools.
- Evolving role of Peer Review Committee and Patient Safety Organizations.
- Navigating automations in reimbursement and authorization processes.
- Implications for patient engagement, patient understanding and quality of care.

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Administration

1. Data as an asset – duty to guard against excess private benefit, private inurement
2. Compliance
    1. Identify reporting process for reporting concerns on AI
    2. Broaden the scope of compliance consideration, with particular focus on consumer protection laws as AI is used for a tool of patient engagement
3. Allocate sufficient resources for monitoring AI Use cases at the appropriate department (i.e. financial integrity, Peer Review, Patient Safety Organization).
4. Managing the metadata.
5. Monitor for shadow AI and other non-compliance.
6. Evaluate Insurance coverages and risk allocation for AI exclusions and reliance of professional liability and errors and omissions policy when risk is a function of non-human error.
7. Life cycle of AI startups may be accelerated and require quicker action.

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Data Privacy and Security

Impacts.

Data Privacy-

AI is feeding the demand in the data market

AI is challenging traditional concepts of data de-identification

AI tools represent a new pathway for data privacy concerns.

When controlled data is used for AI training, consideration should be given to whether restricted data may be disclosed through subsequent prompts to the model (AI red teaming or AI Security testing)

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AI Implication for the Legal Department

Opinion 512

ABA Standing Committee on Ethics and Professional Responsibility

Formal Opinion 512 is the ABA Standing Committee on Ethics and Professional Responsibility's first formal opinion on generative artificial intelligence. Issued July 29, 2024, the Opinion applies six Model Rules to lawyer use of GAI.

To ensure clients are protected, lawyers using generative artificial intelligence tools must fully consider their applicable ethical obligations, including their duties to provide competent legal representation, to protect client information, to communicate with clients, to supervise their employees and agents, to advance only meritorious claims and contentions, to ensure candor toward the tribunal, and to charge reasonable fees.“

Opinion 512, syllabus (p. 1).

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Rule 1.1

Competence in Representation

"To competently use a GAI tool in a client representation, lawyers need not become GAI experts. Rather, lawyers must have a reasonable understanding of the capabilities and limitations of the specific GAI technology that the lawyer might use."
Opinion 512, at 2–3.

The duty is ongoing. A one-time training does not satisfy Rule 1.1 years later if the tool, the model, or the firm's use of it has materially changed. The Opinion is explicit:

"This is not a static undertaking. Given the fast-paced evolution of GAI tools, technological competence presupposes that lawyers remain vigilant about the tools' benefits and risks."
Opinion 512, at 3.

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Rule 1.4

Communication with clients

Communication with clients about the means of representation falls under Rule 1.4. Opinion 512 imposes no blanket duty to disclose GAI use on every matter. Facts control. Disclosure is required in five categories:

- The client asks whether GAI was used.
- The engagement letter or outside counsel guidelines require disclosure.
- Informed consent is required under Rule 1.6 because client information will be input into the tool.
- GAI use is relevant to the fee basis under Rule 1.5.
- The tool's output will influence a significant decision in the representation.

"[L]awyers must disclose their GAI practices if asked by a client how they conducted their work, or whether GAI technologies were employed in doing so, or if the client expressly requires disclosure under the terms of the engagement agreement or the client's outside counsel guidelines."
Opinion 512, at 8.

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Rule 1.6

Confidentiality

Rule 1.6 prohibits a lawyer from disclosing client information without informed consent. Rule 1.6(c) requires reasonable efforts to prevent inadvertent or unauthorized disclosure.

When informed consent is required, the Opinion is explicit:

"[B]ecause many of today's self-learning GAI tools are designed so that their output could lead directly or indirectly to the disclosure of information relating to the representation of a client, a client's informed consent is required prior to inputting information relating to the representation into such a GAI tool."
Opinion 512, at 7.

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Rules 5.1 and 5.3:

Supervisory duties

Under Rules 5.1 and 5.3, managerial and supervisory lawyers are responsible for the conduct of other lawyers and nonlawyer assistants. Opinion 512 places GAI tools within this framework. Internally, managing partners must establish firm-wide policies. Supervisory lawyers must train and oversee staff use. The Opinion's formulation:

"Managerial lawyers must establish clear policies regarding the law firm's permissible use of GAI, and supervisory lawyers must make reasonable efforts to ensure that the firm's lawyers and nonlawyers comply with their professional obligations when using GAI tools."
Opinion 512, at 10.

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Heppner: Non-Attorney AI Use Defeats Privilege

United States v. Heppner (S.D.N.Y. 2026): a client's self-directed use of a consumer AI tool is **neither privileged nor work product.**

1 **No attorney–client relationship** with the AI platform.

2 **No expectation of confidentiality** under the vendor's terms of service.

3 **No communication for legal advice** As the exchange was not made to obtain counsel or at counsel's direction.

Portability: the reasoning potentially reaches civil, regulatory, and internal-investigation contexts — and the underlying communications because it tracks the standard privilege requirements: attorney-client relationship, confidentiality, communication for purpose of legal advice.

United States v. Heppner, No. 25-cr-00503-JSR, 2026 WL 436479 (S.D.N.Y. Feb. 17, 2026).

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IT is hard. AI is harder. Be Curious.

Closing

- What does the technology do?
- How will our users/patients interact with the technology?
- What data will flow into, out of and be generated by the technology?
- What new information do we know about our users?
- Is there a plaintiff claim here?

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Take aways

AI is not just a technology issue and the impact is not limited to a single department.

AI is a material consideration in advising clients.

Liabilities associated with AI arise under a variety of existing laws.

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Questions

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