

Webinar Title: AI Ethics & Liability in Psychology: Essential Risk Mitigation Guide

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As a reminder, this material is proprietary and shouldn't be shared without permission. Next, this program does not offer CE. However, we will email everyone watching live today a certificate of attendance. Certificates will only be issued to those who watch for a minimum of 45 minutes. A recording of this presentation will be emailed to everyone in two weeks' time. The recording will include the presentation slides. During our time together, you will be on mute. You can communicate with us using the Q&A box located on your webinar screen. The Q&A is enabled for attendee interaction with submitted questions.

Attendees can view all submitted questions and upvote those they find important. This helps the presenters identify questions that many attendees want answered. A link to the presentation slides will be posted in the chat box of your webinar screen. If you miss them, don't worry. We will email them to you with the recording. Now, let me introduce our presenters. First, Allison Funicelli. She is Assistant Vice President, Risk Management Group of AWAC Services Company, a member company of Allied World. Cara H. Staus, also Assistant Vice President, Risk Management Group at AWAC Services Company, a member company of Allied World. Welcome, Allison and Cara.

Cara Staus: Thank you for having us today. Allison and I are thrilled to be able to present to you on this important topic. For questions, as mentioned, if you can use the Q&A chat feature, we will occasionally monitor the chat throughout the presentation. In the interest of time and making sure we get through all of our slides today, we will save time at the end to address any questions that you may have. As we get started today, our objectives are very simple. We're going to identify the core ethical principles regarding transparency, bias, and mitigation from APA and industry standards and policies.

We're going to recognize any liability pitfalls while using AI in the practice of psychology, and then apply best practices, risk mitigation strategies, including tool validation and oversight protocols. The background. We all know that artificial intelligence is really embedded into everything that we do. It has become such a significant catalyst for change across so many domains, and that's inclusive of psychology.

The capacity to analyze, recognize trends, looking at forecasts, it really can transform what we're doing, but most importantly, help you all and transform the practice within the field of psychology. It is important that, as technology, and we've seen technology advance rapidly, that we look at the risk management considerations, such as privacy, looking at the need to really take ownership and oversight to fully leverage the capabilities, but also safeguarding the core values and ethical principles of the psychology profession. Allison?

Allison Funicelli: Hi. Good afternoon or good morning, depending on where you are, everyone. Just so we're all on the same page, we just want to give you a couple of just general definitions of what we talk about when we're saying AI and generative AI. Generally, what does AI mean? Artificial intelligence is basically any system that encompasses tasks that you ask it to do that a human could do. It could analyze data, it can summarize information for you, et cetera. Then generative AI, which is really what we're going to be mostly talking about today, is where the AI can create its own code, and it can create new information, not just say analyze data that already exists. It could create new things.

Next slide. The next slide shows you a little breakdown between some of the things that traditional AI does versus the generative AI. Like I said, we're going to mostly focus on generative AI because that's mostly what you would be using in your practice if you choose to use AI. We've all talked for various reasons through chatbots, where it's having a conversation with you. It has to basically artificially think in order to respond to what you're telling it. Same thing where we're going to talk about all sorts of aspects and uses of AI in your practice. That generative AI is the one that comes with a little more risk. That's what we're going to focus on today. Cara?

Cara: Looking at it through the years, when we were developing this presentation, we looked back at the history. This is just a real high-level map of where it all started. Beginning in 1950s, Alan Turing developed the Turing test. Basically, what that was, it was posing a very simple question: could a man-made device act and make decisions indistinguishable from humans? That statement really transformed AI from how it all began. Moving forward into the 1960s, Shakey the Robot. Again, some of you may have heard of Shakey the Robot, but it was considered to be the first robot that could interpret human instruction and perform the tasks that were inputted into the robot for these instructions.

1970s, the first artificial medical consultant. Believe it or not, it was integrated into healthcare in the 1970s, and it was a search algorithm that was designed to arrive at clinical diagnoses based on patient symptoms. In the 1980s, DXplain took place at the University of Massachusetts, and it was a program designed to support clinicians in arriving at these diagnoses. They could input symptoms, and then the system would return a potential diagnosis. Fast forward to the 2000s that we would say

maybe is the modern era of AI, IBM created a system called Watson, which was a question and answering system.

This was a system that could out-compete the top contestants on Jeopardy. Then we take a big leap to today, and we say generative AI. As Allison mentioned, there's a lot of terms that we're going to look at, but generative AI is really the transformative AI where it's adapting and regulating based on the input that those of us who are using AI are putting in. It'll continue to evolve as technology evolves. What are some of the types of AI used in psychology? There's administrative tools. We say tools such as mental health apps or mood apps, calming apps that are used to provide meditation or guidance.

We say the word tool because that's exactly what it is. It's an enhancement or a tool to be used in combination with that human interaction that you all have with the patients that you're providing therapy to. Wearable devices could be considered that for tracking sleep patterns and how that can be utilized in conjunction with any therapy that's being provided. Chatbots, that's going to be discussed down the road in the presentation. There are therapeutic uses of chatbots who are providing emotional support. On-demand mental health care. It's providing that same-day virtual access when individuals sign up.

Again, keep in mind this is just where we're seeing it used. It doesn't mean that any of you are using all of these tools or some of these tools. It's just some of the most frequent tools used in the practice of psychology or in mental health. Then there's the voice-based mental health companion software. It's engaging that verbal aspect and conversations within AI and can provide more context-aware responses. Then lastly, research. The FDA has approved digital therapeutics. They're matching providers with patients based on the input that they may be providing into the AI.

Uses of AI in a psychology practice, patient-focused. This slide really represents all of the areas where you could incorporate AI into the practice. Conversational therapy, it's an AI-driven chatbot that has a text conversation with a user. It's helping to process emotions and challenge negative thoughts in real time. There's coaching and therapy, and psychiatric services that may be used. An example is the app Better Health, which can connect users with licensed therapists, life coaches, or other mental health providers for video or text sessions. There's the creation of treatment plans. It's personalized.

Again, you can utilize this in many formats to come up with a tailored mental health plan, including therapy sessions, exercises, reminders. It provides a potential for increased access to mental health professionals, such through telehealth platforms. Again, there's BetterHelp, Headway, Talkspace, Alma. We do not endorse any of these systems or tools that we're talking about. We're giving you examples of how it can be used in the mental health arena. It will allow clients in remote areas to obtain access via video chat to have that real-time access to therapy.

There's combination therapy, mindfulness, and biofeedback. Again, you're integrating a wearable device to monitor any physiological data, such as sleep patterns, heart rate. Meditation. We have a lot of our individuals that we speak to utilize or make recommendations for their patients to utilize relaxation apps to use in combination with therapy. Then, self-help programs is another interactive program

teaching for CBT strategies and managing anxiety and depression. Then lastly, there is AI tools for a check-in tool for suicide risk assessment, which can have questions about mood, thoughts of self-harm, and safety, and could alert an individual provider in the event they had a patient flagging at risk.

The benefits for patients using AI for care and treatment. Again, this slide is really what we're seeing as the benefits in AI. Timely access to care by having the ability in rural areas or areas where there might be, I say, wait lists or saturation, to where individuals don't have access. By having the ability to type something in in real-time, they could be diverted to another psychologist and maybe another part of the state that they can see. Reduces the stigma. That's a big one that we see is that sometimes individuals are hesitant to reach out or make a phone call or come face-to-face because there's a stigma associated with mental health treatment, and they don't want that stigma.

By being behind an app or having the ability to enter in questions to reach a potential therapist that may be a better fit for an individual, has been a benefit to patients having access. It can be more cost-effective by having technology remote versus maybe having to drive somewhere, take time away from work. There are benefits to it. Improved diagnosis accuracy. Obviously, by having the ability to enter in information, it can provide more streamlined tools, additional information. Pre-crisis early detection. As I mentioned in the prior slide, having that risk for self-harm screen, you may be able to see something flag sooner in the event you are engaging and utilizing tools with your patients.

More personalized based on what they're looking for, what their likes are, what their dislikes are, so it can tailor suggestions to that individual. Then, pattern identification. It's going to look at patterns. What are we seeing? Are we seeing a certain time of the year that there might be an elevation in anxiety or depression, or stress? It can also provide that predictive analytics. Again, predicting what could happen if utilizing these AI tools. Then, improved resource allocation. Having the ability to enter in information into technology that can then sort and direct to appropriate resources. Allison?

Allison: What are some of the risks from the patient's perspective if they're using AI for care and treatment? We want to make sure that if-- Talk to our patients, ask them, "Are you using any AI tools? If so, I'd like to know what you're using and for what purpose." Just have a conversation with them about, like I said, what they're using, why they're using it, and understanding safety. We're going to get into a little bit more detail about that in a few minutes. The first thing is, if a patient's using it, are they using it to help them identify for themselves if they're feeling that they're moving towards a crisis or suicidality?

Because again, depending on what tools they're using, it may or may not have been built for that purpose. Also, it's not perfect. Certainly, they should be told, if you're going to use a tool that helps them, they should also be consulting with you if they have any safety concerns. Potential isolation. We've noticed that over the years, as social media has grown, that it has also been-- While yes, more people can connect around the world through social media, it can also be very isolating. Same thing. If they're interacting with and having conversations with something that is not real, in

the sense of a human, then again, we want to make sure that they're not isolating themselves.

Connecting with people is important, live people. Harmful or incorrect suggestions. We're going to get into some lawsuits that are out there and talk about where people, mostly younger people, have used some of these products. Unfortunately, there was an unfortunate outcome because the product was, number one, not built for what they were using it for, and then, number two, was giving them unintentionally harmful and incorrect suggestions. Does the product have transparency and trust? The same thing. Is this a product that's fully disclosing what its purpose is? Is it something that's trustworthy? Then who's responsible and accountable when AI, just like any other tech, fails?

Again, Cara and I will get into some more details on some of these areas. Next slide. As I mentioned, it doesn't have empathy. It may mimic empathy, but it doesn't feel it. It's not a living thing. Sometimes people, when they're talking, and it says, "I understand you, and I feel for you," and whatever it may be telling them, it's not really feeling anything. It's just giving them programmed responses or code that allows it to create responses based on what the person is sharing with them. Bias. While we can never eliminate bias totally, and even us as humans, we try to eliminate bias where we can, it's not perfect.

If you're using a product, ask the vendor of that product, "What have you done to try to eliminate or significantly decrease bias?" Because that's important. I use this example of when AI was in its early stages, programmers, in a particular study, asked their software, "AI, show me a picture of what a party looks like." We all have different images of what a party looks like. It could be a intimate dinner party. It could be a lot of people. It automatically, every time it was asked that, would generate a picture of people generally in their 20s, dancing at what looked like was a club, and everybody was white.

Again, unintentionally, there was a bias built in there. Certainly, asking it what a party is, it should have produced lots of different options of what that could be. Privacy and HIPAA. It's really, really important that you use products, whether it's AI or anything, that even if it's de-identified, is a product that protects privacy and is HIPAA compliant. If it is a HIPAA-compliant product, the vendor should be willing to give you a business associate agreement, which is basically one saying that we are HIPAA compliant, and two, if there's a breach on their end of HIPAA-protected information, that is an added protection for you as a user of it.

Again, we want to make sure that you and your patients, ideally, are using products that are HIPAA compliant, because even de-identified, if it's a product such as ChatGPT, and I'm not trying to pick on them in particular, but to use them as a common example, it has a place. It doesn't really have a place in healthcare. It wasn't built for that, and any information entered into it, even de-identified, could be used by that vendor, OpenAI, who owns it, any way they choose. There's always those long disclaimers, and a lot of people just check the box. Nobody reads the pages of the disclaimers, but they have the right generally to sell information and use it any way they choose to.

Data breaches. Again, if you're using something HIPAA compliant and you have a business associate agreement and a breach occurs on their end, generally, they should be responsible for protecting you in that regard as well as your patient. I always recommend you should carry cyber insurance. It's just another added protection because your professional liability policy will have little to no coverage for HIPAA breaches, depending on what kind of breach it is. There might be some coverage for HIPAA, but not all sorts of it, every type of cyber breach. There's insurance for that.

Make sure that if you're using anything over the internet, AI or otherwise, that you look into that because, again, you don't want to be stuck with no coverage. Then effectiveness. Is this a product that's effective, and it's appropriate tool for whatever it is that you're using it or your patient is using it for? Just make sure your patients understand that. Uses of AI in psychology from the provider focus. One of the things is documentation. That's one of the number one reasons we get calls on our helpline from providers who may want to use AI scribes.

That's the number one most popular reason that people are using AI, or the reason that they want to get their toe wet, dip their toe into using it, because the documentation can help summarize and streamline your medical record documentation. Treatment plans, diagnosis, and screening. It can be used-- Thank you. Can be used for that purpose. Again, we're going to get into some details about legalities of using these tools in these ways. Especially if you're doing forensics or assessments, it can help you with writing reports. Again, streamline that content besides just doing grammar checks.

It can help you if you're doing research. It can help with networking. Billing. I will tell you health insurers are using AI. A lot of times, a human person with screening. Does the billing have the proper codes? Is it something that matches with the patient's coverage? Now, a lot of health insurers are using AI to do that initial check for those reasons. Tasks. You could use it for yourself. I actually just went to a conference recently that was a mental health conference. I talked to one of the vendors there. I encourage you to do the same if you go to conferences. Talk to the vendors. Ask them these questions and things that Cara and I talk about.

I asked them, and they do have different aspects that you can use AI in their platform, but it was basically originally built to help a provider who is an in-network provider to streamline and properly code their billing. Then it can also be used for productivity analysis, especially if you either own a practice or are part of a practice; it can help with that. Benefits for psychologists using AI. Again, clinical documentation, I talked about that. Report writing. Those treatment recommendations and those data-driven insights. Identification of high-risk patients.

Again, you may have information you want to feed into it that will help you identify if your patient may be moving towards a high-risk situation. Scheduling. It could definitely help with preparing schedules for you. Billing and insurance, we already talked about. Assistance with training and development. There's AI tools out there to help you enhance your practice, as well as if you're training others, especially students. It may also be able to enhance your patient engagement.

Cara: The risks for psychologists using AI in the office practice setting. Obviously, data privacy and security is huge. Making sure that you are using a HIPAA-compliant platform which would cover that data privacy and security. It's so important to make sure that you obtain patient consent, have the conversation that you will be using some form of AI within your practice, and have them consent. In some states, there may be an opt-out that they would opt out from it. Obtain consent or allow them to opt out. Again, having that disclosure.

Even if it's behind the scenes and you don't think that they're aware of it, it's always a good idea to just have that conversation that I will be using AI as form of documentation, or if you're using scribes, things like that, have that conversation. Be mindful of the algorithmic bias that's considered. There are situations where that generative AI, as you're inputting information, it could spit out bias. It's important to make sure that you are, again, when utilizing AI, it's a tool. It's not designed to replace the human brain or interaction. Be mindful of that.

Documentation, accuracy, misinformation, and repetitiveness. There's a great benefit to utilizing AI simply for-- We were talking about this before the presentation is that it does allow for streamlining, putting together information in a concise, clear format. It can reduce redundancies, but also be aware that there could be misinformation. There is some validation that needs to happen. The risks are over-reliance and loss of human contact. We don't want to replace that human interaction. People thrive off of that connection with individuals.

When we rely heavily on technology, I know in everywhere we go, if we're calling a store or we're looking at something online, it's press one, press two. Do you want to talk to the virtual assistant? It does become frustrating. I find myself wanting to press zero a lot because I want to talk to a human. Sometimes that chatbot cannot field questions appropriately. Keep that obviously in mind that that can occur. Then lastly, that legal and ethical responsibility that in your profession, you have your ethics that you all are aware of that APA has. The same goes in line is as technology advances, we need to make sure that we are complementing and being aware of our ethical responsibilities.

Technology is a part of our daily life. It is embedded into everything that we do. How does that fit in line with the ethics? That's the balance that we're all charged with when looking at AI. This slide is really designed to provide a little bit of background and information, just to make all of you aware that there is AI-related federal legislation that is out there. These are just examples. I think the important takeaway for this is to make yourself aware of federal and state guidelines that may be happening and that may be changing rapidly. Back in 2024, the Department of Health and Human Services and the Office of Civil Rights, they issued a letter requiring users of AI is non-discriminatory.

They took a stance regarding that. There's a Senate bill regarding the Health Tech Investment Act. Again, talking about technology, talking about AI. Then there's another executive order removing barriers to American leadership in artificial intelligence. Again, we don't expect you to know the ins and outs of these, but I think it's important to just be mindful that there is federal legislation that's out there that exists now and it will continue to evolve and change. Regulatory compliance. Equally as important is to be aware of the Health Insurance Portability and Accountability

Act, also known as HIPAA, that there has to be HIPAA compliance in the platforms and the AIs that you're using.

Just typing into your own ChatGPT or I have-- My cell phone has Genie. There's other incorporated AI tools. They need to be HIPAA compliant if you are putting any potentially sensitive data into the AI. The regulations set forth by Department of Health and Human Services, the FDA regulates obviously a lot of devices. The FTC, the Federal Trade Commission, has regulatory oversight as well. Then, most importantly, is being mindful of the state in which you're licensed to practice and where those patients may be located, that you're aware of any state limitations that may be more strict than the federal legislation. Allison?

Allison: Again, as Cara mentioned, I'm not going to get into a lot of details, but here's additional federal regulations that are out there. One of them, the final rule on health data technology and interoperability. Just to understand on that one, and we don't expect everyone, like I said, to know all the ins and outs of all these laws, but just be aware that they do exist, that this particular one, if you're using an electronic health record, communicating in an electronic way, especially with HIPAA-protected information, there's the 21st Century Cures Act. That's been around for some years now.

Within the 21st Century Cures Act, they added another part in 2024, which specifically relates to the transparency and the exchange of electronic information that's using AI technology needs to be disclosed. Again, we want to make sure that if we're using something, a product that's AI-- We're going to get into a little bit more on the next slide about lots of legislation regarding the disclosure to patients if you're using an AI product for various things. The next one, the National Institute of Standards and Technology, that one is really more for the tech providers.

Again, it focuses on certain framework requirements for individuals, organizations, and then certainly the society as a whole, on incorporating trustworthiness into the product. You may also hear things when people talk about that AI has hallucinations and stuff like that, makes certain assumptions. Again, these are some of the laws that are trying to reduce and prevent some problems. Then the last one, the National Artificial Intelligence Initiative Act of 2020. The United States has decided that they want to be a leader in the AI space, and so our government has partnered with various technology organizations to try to keep us in the forefront.

As a result of that, we should expect that AI is going to be interfacing with us more and more over time. Next slide. This is a slide, I think it was March of 2026, when it was created by a law firm. There is the information at the bottom of the slide that tells you where it came from, and I encourage you to go to that website because this law firm is trying to keep up with, as best they can, the legislation that's changing in the world of AI. You can see by the different shades of blue and white how many states have passed AI-specific laws as it relates to healthcare.

Again, this law firm is monitoring it from a healthcare perspective. You can see almost every state, if it doesn't have specific laws in place, have bills proposed through either their Senate or their Congress to put in force AI-related legislation. Again, we have to make sure that we're practicing according to whatever the state requirements are. If you're practicing under PSYPACT, it could get a little squirrely

because you may be seeing patients through telehealth in a lot of states. I always say, instead of trying to keep track of every little specific thing that each state is doing, whatever state is the most restrictive, if you follow that for all states, then you'll be good to go.

Next slide. We're going to talk about who's at fault. I know one of the questions I happened to look over at the Q&A was talking about liability. Who's at fault when AI makes a mistake? We're going to get into-- Let's assume a mistake has occurred. First is what kind of allegations may there be when you're using AI? There could be a failure or delay in diagnosis. Again, that can happen without AI, but it also can be incorporated if we rely too heavily on AI. Just be mindful that you, as a provider, as Cara said at the beginning of the presentation, this is a tool.

You are ultimately responsible as the provider for using these tools, AI or otherwise, in the manner in which you feel is appropriate because ultimately you are responsible for the ultimate diagnosis and treatment of that patient. Again, could come up with incorrect diagnosis, incorrect treatment recommendations. Again, is the AI making recommendations that make sense? Is it tipping you into information that you're like, "I didn't think about that." That might be, "Oh, I'm glad that the AI told me that. It made me think of something." Just like we might bounce something off somebody else that we're not thinking about, the AI might help you with that.

Failure of the provider to override or question, as I just said, like overriding doesn't make sense. If you work in a facility that's using AI as a tool and you are required to use that tool to assist you with diagnosis, ultimately, you should have the ability, I should say, to override that if you feel that the AI is not making the correct diagnosis or treatment recommendations. Product liability. Again, if you're using a tool, the creator of the tool is ultimately responsible for the tool and coding itself.

If you, as a provider-- Because I've been to conferences where I've met with psychologists that have been asked to wear the psychologist's hat as their coders, their IT-type professionals, they're creating the software, they want to partner with folks that are actually going to use it. If you're wearing that hat, understand that you could have some liability in the creation of that product. Again, you want to make sure that not just you have all the bells and whistles that are needed on your end for interfacing with the technology, what kind of bells and whistles, and what is that tech company doing to keep up with keeping bad de-doers out.

Again, someone asked about cyber insurance. Yes, cyber insurance could cover you for all different things. I'm not going to endorse any particular product. I'm going to say that if you think you need cyber insurance, go ask an insurance broker professional, someone that does that for a living. Tell them what you're using, what you're doing, and then they will match the product that's best for you. Then again, as we talked about, we want to ask that vendor about algorithmic bias.

Cara: Allison touched upon some of these in the examples of the are you liable. Insurance consideration. These are the types of insurance that you should be considering. Obviously, professional liability as a licensed psychologist providing therapy, that's something that you all have. Cyber liability. You may or may not have cyber liability, but it's something that you should certainly consider. Speak to your insurance brokers about how cyber liability would work, how it would impact your

operations. It's not just again for the use of AI. In general, if you have an electronic health record system, just technology in general that you may be utilizing, it's important to look into that.

Errors and omissions coverage. That's something that really is-- In the event it's protecting you, potentially if you fail to provide adequate care and treatment and you made mistakes potentially using AI-generated recommendations, even if no physical harm occurred, have that question with your insurance professional to see if there is exposure for you. It doesn't hurt to ask the question. Then Allison touched upon product liability. There are products that you may be using, but also we are aware of some individuals who are in the profession of psychology who are looking at or partnering to create apps associated with how to improve outcomes in psychology.

Again, if there's a malfunction or harm, how does that cover you? You may have to expand beyond the traditional coverage that you're aware of, is that professional liability, also known as medical malpractice. Examples of AI-related healthcare lawsuits. We've seen a few unfortunate ones. AI companies with chatbot software claiming to be patients; they were speaking to a live therapist. When individuals found out that it was actually a chatbox, there was exposure on that. Then, a chatbot company allegedly encouraged a teen's suicide, unfortunately.

I believe there has been a couple of those where the information that was being inputted by the teen resulted in the chatbot encouraging them or making the efforts that, unfortunately, did result in the teen sadly taking their life. Then there has been lawsuits regarding claims against health insurers denying care or failing to pay claims based on utilizing AI. There are, as the technology and the advancements come with anything, plaintiffs' attorneys and attorneys out there will look at ways where they can make money. They're in the business to make money, and if there's a weakness, they're going to jump on that.

It's just important to be aware that these lawsuits do exist. Healthcare-related lawsuits says two California health systems have been sued for using an AI-based scribe tool without consent, so in violation of state privacy and confidentiality laws and unfair competition laws. Federal wiretapping. It sounds pretty significant, like you're a spy wiretapping, but those are the regulations that recording information falls under, and that invasion of privacy. It is important for you to be aware of those state laws that, again, may have tighter controls on them and that are greater than what's happening in the federal landscape. Allison?

Allison: In follow-up to what Cara just said, and I did see a question in there about what if I want to use an AI scribe because it saves me a lot of time, and I have a patient that doesn't want to consent to the use of it? I say that there's two ways you can go. For any new patients coming in, if that's now your practice, I would tell the patients before they become patients of your practice to say, "Hey, just want to let you know, there are tools that I use, including an AI scribe. Just so that you understand, I will be using that tool." It will be de-identified. It doesn't have the ability of the vendor to see the information, which I would always ask your vendor if they can.

Most of them make it so they cannot read whatever it's recording. If they ask the question, also be able to answer how long is it kept for is a varying wide range of

how long these companies give you access to the transcription of the information. Anywhere from the provider's got one hour to download it, to as long as they want, up to seven years. Again, just make sure that you are familiar with what the product does and who can interface with it. I would just tell the patients, "This is what I use, this is what I do. If you're not comfortable with that, I respect that you may want to use a different practice."

For your current patients, you're going to have to figure out what you're going to want to do because I don't know that you're going to necessarily want to start terminating all your patients because they don't want to get on board with your practice. That's a decision you're going to have to make. Then there's a whole process that you have to go through if you're going to terminate. Again, is that an appropriate reason in the state where you practice? I think it's better for your new patients and then with your existing patients, if they're not willing to consent, is there a way that you can still continue to treat them and still do it the old-fashioned way?

Malpractice defenses. Let's assume now that there's some lawsuits out there. What's the best way to defend these things? The first thing is, did the AI meet the standard of care and the legal standards? Not just you, but also did the product meet those standards? It's such an early part of litigation right now as far as AI and healthcare. There's very few lawsuits out there where providers have been sued for using AI. I think over time it is going to grow, and it's going to become a bigger litigation, and we're going to see how it unfolds, and see besides ultimately, that the provider's responsible for how they're using the tool, will the creators of the tools get dragged into these cases?

I don't know. We're going to have to see. Again, did the provider's judgment play a role? Your training should speak to also ultimately how you treat your patients. Again, was the AI's decisions reasonable? If you think that there's some defects in the software, maybe you want to go back and tell the vendor, "Hey, I think there's some issues with when I put in information, it's not giving me something that seems to be reliable or reasonable." Again, ultimately, you're responsible for that documentation. If you're using it as a scribe, you have to read that note, make sure it is what you wanted to say, before you save that note.

We cannot have the defense of, "I relied on technology and the technology failed me." We have to be careful about that. Again, getting that informed consent, especially as Cara said, we don't want to violate wiretapping laws. We don't want to lose the trust of patients thinking we're secretly recording them, just like we don't want them to secretly recording us when we're talking to them. Then again, you have to get a business associate agreement. I saw some questions in there about if I have a BAA, then can I use that product? Yes, the answer is yes.

If they're representing that they are a HIPAA-compliant organization and they're willing to give you that business associate agreement, they're vouching for the fact that they are a product that you can use under the HIPAA regulations. Next slide. We're going to sum up now with some of our risk management review here. First, we want to protect autonomy, we want to protect human well-being, we want to ensure that transparency, we want to foster accountability for ourselves and for the software and tech that we use, as well as foster accountability of the patient. They are accountable to tell you what they're using, how they're using it.

Ensuring inclusivity and equity, getting back to that bias. We want to uphold the ethics policy. Look at the American Psychological Association's website and make sure that we're complying with the ethics policy of the APA, of our licensing board, et cetera. Again, we want to use those appropriate tools. We want to integrate that human contact and interaction. We want to avoid over-reliance. Just like we first started talking about years ago of using an electronic medical record, we want to make sure that we are not over-relying on the tool with check boxes and drop-downs and whatever, and copying, paste. We want to do the same thing with this type of tool.

Use those good documentation techniques. Cara's heard me say this many times. We don't need the next American greatest novel, where we have 10 pages we're writing for every visit, but we might need a few more than a couple of sentences. Again, just reread your note. If this was going to be documentation used to support your defense, some years from now, when a malpractice case could occur or a board complaint, does it say what? Does it capture the flavor and essence of what the visit was about? Avoid inconsistencies. Again, using sound judgment. Protect patient privacy. Again, some of the things I've already said.

Next slide. Those final and closing comments. We want to understand the risks associated with the use of AI. We want to be familiar with state and federal regulations, as you could say the-- We want to incorporate AI as one of our policies and procedures. I always like to sum up by saying, especially if you're a solo practitioner or you have a small practice, if you work in an institution, I know there's risk managers there and general counsels there to help you. I don't want folks that are in a small or solo practice to feel like they're on an island alone. Whoever your malpractice carrier is, they usually have risk management professionals to help you. Use them.

It doesn't have to be you contact a risk manager because you have a problem. You can contact your risk professional because you want some resources they may have available to them. Talk through, "Hey, I'm thinking of using this. What do you think? How do you think it'll apply to my practice? What kind of policies and procedures should I institute? Should I be shoring up anything in my informed consent?"

These are all types of things that you can use your risk professional to help you. The next few slides have various resources that you can use to help you with-- Some of these resources we used in creating this presentation. There's some additional ones in there as well. I think now we're ready to take on some questions. We did try to answer some of them in the Q&A. Cara, would you like to take the next question?

Cara: Yes, I'll look at the questions. There appears to be a lot of questions regarding is there a good program or what, I guess, software is out there. The piece of advice that we can give you is to talk to your peers. If you attend any of your annual conferences and meetings, the exhibitors-- Allison and I often when we do attend conferences, we'll go through the exhibit hall and talk to-- There are so many AI vendors that are out there and we ask them questions. Can you talk a little bit about your product? How are you storing the data? Is it going to the cloud? Are you keeping it local? Is it being deleted after a certain number of times?

There's a lot of tech questions. I think these companies are well-positioned to be able to provide with assurances that they're HIPAA compliant. If you don't have a written agreement with an organization that you're-- Then this goes for anything, not just AI, is look at the terms and conditions and have a business associate agreement. Ensure that that vendor is upholding to the same standards that the Department of Health and Human Services under HIPAA requires.

That business associate agreement is a safeguard, is good risk management practice. We can't endorse any particular product. We're not using them, but there are several that are being used out there, and encourage you to just look at whether it's a site online. If you have a message board or a board that you can post questions to, your peers would probably be the best place to start, and then you can research those companies.

Allison: I saw a question here in follow-up to something I said. I'm sorry. Are you done?

Cara: Yes. Go ahead. No, go ahead.

Allison: Am I suggesting that we not let patients have the option to opt out of a scribe? I apologize if I was unclear. I'm saying if you really want to use a scribe because it saves you a lot of time and you have new patients coming in, I would disclose that. Just like you disclose anything else that your practice does. Just like, "Oh, just to let you know, if you're a no-show for a certain number of appointments, that may result in discharge," as an example. If you want to use that as a tool, again, for new patients coming in, I would disclose it upfront and say, "This is my practice policy," to make sure that they're a good fit.

Just like you may say, it's not a good fit if you're available 24/7. You may not be available 24/7 to your patients, and they may want a practice that has more people available to them if they want to have somebody that's available more than just outside business hours. For your existing patients, I'm saying you do need to get consent. If they opt out, I would give them the courtesy of allowing them to opt out, and you go old school with your documentation and how you did it before you used AI.

I wouldn't start discharging patients that you already have established because they don't want to consent to the scribe. I think that's a disservice to the patient, and it's a disservice to you, so I think it's just best to try to do what you can with those patients that already exist in your practice that now you want to integrate scribes with.

Cara: There was a question about, can you talk a little bit more about cyber insurance and what a solo practitioner should have in order to qualify? I think cyber insurance, depending upon the policy, could cover a wide variety of things. Allison and I are licensed insurance brokers, but the cyber insurance, talk to your insurance broker that you're obtaining your insurance from. They can certainly give you guidance on what a policy would cover in terms of technology. It's not just for the AI component. If you have electronic health records or if you're maintaining anything electronic, it could be also there are policies out there that cover from a breach standpoint.

We've had people that have sent emails, and they have forgotten to blind copy, and they've sent out mass emails. It is a broad spectrum of what could be potentially covered under a cyber policy. I think in today's day and age, where we're using technology for many things, you have your voicemail systems, you have your email systems. The word cyber, does it cover faxing? Some people still use a fax machine, or if they're doing a DocuSign. There are endless examples that we could give. It's best to speak to that qualified insurance professional who can give you more information based on your potential risk in your practice.

Allison: I saw a question here that says, since generative AI carries some inherent algorithmic bias that might misinterpret cross-cultural clinical presentations, how can early-career professionals ethically use the tools for case conceptualization without risking a misdiagnosis? I would say it's just as we said from the beginning, it's a tool. If you're inputting information and it's assisting you with a treatment plan or a diagnosis, you're going to have to consider if this tool in any way has some inherent bias in it.

Just like if you ask a colleague, "Hey, I've got this situation," a colleague may have unintentionally some biases. Again, I would ask the vendor of the tool you're using or considering using, number one, what have they done to try to decrease bias? Number two, what do they do to try to continue to better their system? When you get new versions that keep getting released, hopefully, it's getting better and better.

Cara: There was a--

Allison: Nothing's going to be perfect. Sorry.

Cara: Exactly. Good point. There was another, I guess, question, more of a comment regarding someone that is using their clients that are interested in using AI, working with them, having them send an example of prompts that they're using in between sessions. I think that's exactly what we're trying to get at is that it's a tool. It's to complement what you're doing. I think the most important thing, I believe Allison probably mentioned this earlier in the slides, is ask what your patients, clients are using for getting information? What search engines are they going to? Where are they finding their information?

I think that that is an important piece of this, and in your practice and your ethical sound judgment in the practice of psychology, is to direct them to what you feel as the expert is the best tool for them to use. There are apps out there that you may have used yourself, and you feel comfortable. It's no different than, I say, back in the day, where you might have been printing off a hard copy tool of something that you found, whether you found it in a book or it was a study done, and you made a photocopy and you handed it to someone. This is the same thing. Just engage in the conversation and make sure there's some checks and balances to keep them on the right track.

Allison: Just something I'd like to say because we've said it, I know, a few times, but I just really want to reinforce the-- Even if we're de-identifying information, even if a patient's using a product and de-identifying the information, again, if there's any way that if you put information into a system that's not HIPAA compliant, if a patient read the information, would they be able to identify it's about them?

Because it's not just about-- There's 18 different types of things that fall under HIPAA, that if any of those things are in there, it's considered a HIPAA breach. Again, make sure that the patients understand that if you're using a system or they decide they don't need you anymore as a provider, they're just going to go use ChatGPT, that that's not its purpose. It's not meant to replace a provider. With that, I think we're at that **[unintelligible 00:55:30]**.

Cara: [crosstalk] There are HIPAA-compliant versions of ChatGPT for healthcare and OpenAI. Again, look into further having that business associate agreement. There was one question I wanted to just tackle. The question was regarding, do medical providers need to provide as robust informed consent that mental health providers do. Because this individual is saying, I've been to a doctor's office, and they nonchalantly ask and never have you sign anything. The answer to that is there's no difference. If you're in healthcare and you're bound by the HIPAA regulations, the discussions that inform consent, really, we look at it as not just the form, it's the conversation.

Does the person understand exactly what is going on? Have you documented it in the record? Did you sign a general consent as part of the office practice policy? While we can't answer it directly, we can answer it and say that HIPAA applies. No matter what area of healthcare you're in, you're still bound by ensuring and upholding to the highest standards of it. We just make the recommendation because it's the best risk mitigation is to make sure that you have that consent, so no one can come back and say, "You didn't tell me."

Allison: With that--

Cara: I think we're-- Time, yes.

Allison: That's our time. We want to allow the APA folks to do their part of the wrap-up. Thank you. Thank you, everybody.

Cara: Thank you.

Moderator: All right. This topical webinar is paid for by American Professional Agency, the APA provider of professional liability insurance with coverage underwritten by Allied World. If you're interested in learning more, please scan the QR code or visit americanprofessional.com. Thank you so much for joining us, Allison and Cara, and thank you to all our listeners for your participation.

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[00:58:00] [END OF AUDIO]