PLAIN-LANGUAGE GUIDE · LIABILITY

# Who is liable when AI is involved? *It depends which thing went wrong.*

*Three separate questions get collapsed into one. Only one is truly open. The second is covered by law that already exists. The third is already in court.*

## What's inside

- **When a patient is harmed.** The open question, and why nobody can close it for you.
- **How you chose the tool.** Covered by ordinary negligence law, and what that asks of you.
- **Recording the visit.** Two class actions, and the part you can most fully control.
- **Your state changes the answer.** From nothing required to a five-year criminal exposure, depending where you practice.
- **What FDA clearance means.** A fact about the device, not a shield for the practice.
- **Whether an AI can hold a license.** It cannot, and one state has now said so in statute.
- **What you can control.** The record, not the outcome.

## How to use it

Read it once, then take it to your attorney. Every legal statement here is dated. Check the date before you rely on it.

**CURRENT AS OF AUGUST 2026**

**This is a fast-moving area of law. Every legal statement below is a snapshot as of August 2026, including the statements about what has not happened yet. Legislatures sit year-round and litigation is active. Check the date before you rely on any of it.**

# Separating the three questions is most of the work.

Three questions wear one coat, governed by different bodies of law at different stages of maturity. Here is the answer to each.

- **When a patient is harmed.** Open. No court has decided.
- **How you chose the tool.** Covered already, by ordinary negligence law.
- **Recording the visit.** In court now, and the most controllable of the three.
- **Your state changes the answer.** The range between states is enormous. Yours governs.
- **What FDA clearance means.** A fact about the device, not a shield for you.
- **Whether an AI can hold a license.** It cannot. One state now says so in statute.
- **What you can control.** The record, not the outcome.

**A NOTE ON SCOPE**

The malpractice literature cited here uses physicians and hospitals as its running examples, because that is where the case law and the scholarship sit. The same general questions arise for other licensed clinicians and for practice entities, but duties and liability rules vary by profession and by state. Do not assume a physician-specific doctrine transfers unchanged to an NP, a PA or the practice itself.

## When a patient is harmed

**This is the open question, and nobody can close it for you. No court has decided who answers for a patient harmed when an AI tool was part of the decision.**

The most recent academic survey of the field says so plainly:

> *"As of this writing, healthcare AI liability has still not been directly addressed in court cases, mostly because the technology itself is so new and is still being implemented."*[1]

What follows from that survey is analysis of how ordinary tort law is likely to apply, not a holding. And under conventional malpractice the result runs opposite to intuition. A claim ordinarily requires breach of the applicable standard of care. A clinician who rejects an AI recommendation that later proves correct is typically shielded, having followed prevailing practice. One who follows a non-standard recommendation that proves wrong is more exposed, having deviated

from it. As the doctrine sits today it protects the physician who overrides the machine, which is worth knowing before anyone calls adoption the cautious choice.

That may not hold. The AMA expects AI "will be incorporated into what is likely to be specialty-specific standards of care."[2] When that happens, ignoring the tool becomes the exposure instead. How fast it moves is not knowable now.

AMA policy expressly seeks to limit physician liability in three circumstances worth knowing.

- **Developers.** **Developers of autonomous clinical AI "are in the best position to manage issues of liability," and the AMA "strongly opposed efforts to create new physician liability for the use of AI."**[2]
- **Mandated tools.** **"Where a mandated use of AI systems prevents mitigation of risk and harm, the individual or entity issuing the mandate must be assigned all applicable liability."**[2] If a health system, payer or employer requires a tool, read that twice.
- **What you could not have known.** **"When physicians do not know or have reason to know that there are concerns about the quality and safety of an AI-enabled technology, they should not be held liable."**[2]

That last protection attaches to what could not reasonably have been known, so it thins the moment the concerns were knowable and nobody looked. That is the hinge into the second question.

## How you chose the tool

**This one needs no new law. Ordinary negligence principles already reach a poor choice you cannot account for.**

The AMA names the exception to its own protective stance, at page 12 of its November 2024 Board of Trustees report:

> *"Negligent selection of an AI tool, including using tools outside their intended use or intended population, or choosing a tool where there is no evidence of clinical validation, could be decisions that expose a physician to a liability claim."*[2]

Academic analysis of institutional liability arrives in the same place from a different direction. Negligent selection and retention is a principal theory through which direct liability might extend to an organization, on the reasoning that adopting a clinical AI is closer to hiring than to buying, and so carries a duty to look into prior errors and validation. The authors themselves note that courts may find the theory "a step too far,"[1] which makes it a prediction about how doctrine may extend, not an established duty.

You cannot control where a future court places clinical AI liability. You can control whether there is a record of a considered decision. That is a smaller claim than a promise to handle your liability, and unlike that promise it is true.

### What do practices actually have on record?

Most have nothing. An MGMA Stat poll fielded January 20, 2026 with 328 medical group practice leaders found 56% had neither AI governance nor a formal AI-use policy; 20% had an established policy and 22% were developing one. A single-day member poll with no published margin of error: an indicator, not an estimate.[3]

Below is what that record looks like. Print it and mark the ones you could produce today.

- Write down what each tool is for, and what it may not be used for.
- Ask the vendor the clinical-validation questions, and keep the answers rather than the brochure.
- Confirm the tool is being used inside its intended use and intended population.
- Sign a business associate agreement before any patient information moves.
- Keep a current list of what is approved, for what task, with what data.
- Document consent for recording, in the form your state requires, every time.
- Set a date in the calendar when all of it gets looked at again.

None of that is a safe harbor. No safe harbor exists for this question, and nothing above creates one. It is the difference between a decision and a drift.

## Recording the visit

**This is the one already in litigation, and the one you can most fully control.**

The profession braced for a malpractice case about an AI-assisted clinical decision. The litigation that arrived came from a different direction, and there is now more than one.

- **November 2025. Saucedo v. Sharp HealthCare et al., No. 25CU063632C, filed November 26, 2025 in San Diego County Superior Court, a proposed class action. Jose Saucedo alleges an ambient AI scribe recorded his appointment without the all-party consent California requires, and that he found out by reading his own visit notes. He further alleges the tool inserted language into charts stating patients had been advised and had consented, in encounters where he says that never happened.**[4,5]
- **April 2026. Washington et al. v. Sutter Health et al., No. 4:26-cv-03012 (N.D. Cal.), a putative class action against Sutter Health, Memorial Health Services and MemorialCare Medical Foundation, under the California Invasion of Privacy Act, the federal Wiretap Act, and California's Confidentiality of Medical Information Act. The scribe vendor is central to the allegations but is not itself named as a defendant.**[6,7]

Both suits attack consent and recording, not an AI-generated clinical judgment that injured someone. These are allegations, not findings, and both matters are early. And a HIPAA-compliant vendor relationship does not settle it, because separate recording and confidentiality laws impose their own consent requirements.

## Your state changes the answer

**Recording law is state law, and it varies more than anything else in this document. Find out what your own state requires before a scribe is switched on.**

Federal law permits recording where one party consents,[8] and the two ends of the state range are far apart. In Arkansas you may record a visit you are part of without telling the patient, because the statute reaches only someone who is not in the conversation.[9] In Massachusetts that same recording would be a crime carrying up to five years in state prison, because there a recording needs consent from everyone in the conversation, not just from you.[10] Most states fall between. And wherever yours falls, keep going, because no wiretap statute is the whole answer. HIPAA and your state's medical-confidentiality rules apply on top of it,[11] and substance use, mental health and minors are tighter still.[12]

The workable floor, which is not the same as an answer: tell everyone in the room before recording starts, document that you did, and confirm your own state's requirements with your attorney. That will not make you compliant everywhere. It does put you on the other side of what both suits above actually allege, which is more than most practices can say today.

## What FDA clearance actually means

**It is a statement about the device, not permission for you and not protection for you.**

Clearance is a market-entry determination about a device; licensure is a state determination about a person. A vendor telling you a device is FDA cleared has told you nothing about the second, and nothing at all about who answers if a patient is harmed.

The pathway does affect which claims remain available, but against the manufacturer, not against you. In Medtronic v. Lohr the Supreme Court declined to preempt the state-law claims before it involving a 510(k)-cleared device; in Riegel v. Medtronic it held federal law preempted certain claims about a device approved through premarket approval.[13,14] Premarket approval can narrow a manufacturer's exposure substantially, though it is not blanket immunity, and it is largely beside the point here because most AI-enabled devices reach the market through 510(k) clearance instead.[15] Whichever pathway a tool took, none of it transfers your exposure to anyone else.

## Whether an AI can hold a license

**No state licenses an AI to practice medicine, and one state has now written that into law.**

As of August 2026 that holds nationwide. Two states considered moving the other way in 2026, Iowa[16] and Idaho,[17] and neither bill was enacted.

Delaware went the other direction and put the prohibition in statute. House Bill 191, 85 Del. Laws ch. 250, signed and effective April 23, 2026, provides that a nonhuman entity including an agent powered by artificial intelligence may not be licensed as a professional nurse, APRN, practical nurse, physician or physician assistant, and may not use those professional titles.[18]

The consequence is narrow and immediate. Review how any patient-facing AI introduces itself, in a portal message, an after-hours line or an appointment reminder, and whether it uses or could reasonably be understood as using a protected professional title.

## What you can control

**Not the outcome. The record.**

This document does not remove your exposure. Nobody can, and a vendor who says otherwise is describing a product that does not exist. Where the law will finally place liability for clinical injury involving AI is genuinely open, and nothing done this year will decide it.

The answerable question is whether you chose deliberately, used the tool inside what it was built for, obtained consent properly, reviewed it since, and can show all of that. You are not asked to settle an open question of law. You are asked to show your work.

## REFERENCES

Check our work.

*Numbered in the order they are cited. Primary authority first; reporting is cited only where it is the source of the fact.*


1. Price WN II, Gerke S, Cohen IG. Liability for use of artificial intelligence in medicine. In: Solaiman B, Cohen IG, eds. Research Handbook on Health, AI and the Law. Edward Elgar Publishing; 2024:chap 9. doi:10.4337/9781802205657.ch09. Accessed August 30, 2026. https://www.ncbi.nlm.nih.gov/books/NBK613216/

2. American Medical Association. Augmented Intelligence Development, Deployment, and Use in Health Care. Board of Trustees Report. November 2024. Negligent-selection quotation at p 12, section 5, "Physician Liability for Use of Augmented Intelligence-Enabled Technologies." Accessed August 30, 2026. https://www.ama-assn.org/system/files/ama-ai-principles.pdf

3. MGMA Stat. AI governance in medical group practices. January 21, 2026. Polled January 20, 2026; n=328. Accessed August 30, 2026. https://www.mgma.com/mgma-stat/ai-governance-in-medical-group-practices

4. *Saucedo v Sharp HealthCare*, No 25CU063632C (Super Ct Cal, San Diego County, filed November 26, 2025). A case page is available on the San Diego County Superior Court site; the complaint itself is not posted there.

5. Bruce G. Patient sues Sharp HealthCare over ambient AI use. Becker's Hospital Review. December 15, 2025. Accessed August 30, 2026. https://www.beckershospitalreview.com/legal-regulatory-issues/patient-sues-sharp-healthcare-over-ambient-ai-use/

6. *Washington v Sutter Health*, No 4:26-cv-03012 (ND Cal, filed April 7, 2026). Docket record. Accessed August 30, 2026. https://dockets.justia.com/docket/california/candce/4:2026cv03012/467376

7. Felz D, Everett J, Pike J, Pullen S. Your AI scribe may be taking notes (and plaintiffs are too). Alston & Bird Privacy, Cyber & Data Strategy Blog. April 27, 2026. Analysis of the Sutter complaint. Accessed August 30, 2026. https://www.alstonprivacy.com/your-ai-scribe-may-be-taking-notes-and-plaintiffs-are-too/

8. 18 USC §2511. Interception and disclosure of wire, oral, or electronic communications prohibited. Accessed August 30, 2026. https://www.law.cornell.edu/uscode/text/18/2511

9. Ark Code Ann §5-60-120 (2024). Interception and recording. Accessed August 30, 2026. https://law.justia.com/codes/arkansas/title-5/subtitle-6/chapter-60/subchapter-1/section-5-60-120/

10. Mass Gen Laws ch 272, §99. Interception of wire and oral communications. Penalties at §99(C)(1). Accessed August 30, 2026. https://malegislature.gov/Laws/GeneralLaws/PartIV/TitleI/Chapter272/Section99

11. 45 CFR §164 (2026). Security and Privacy. Accessed August 30, 2026. https://www.ecfr.gov/current/title-45/subtitle-A/subchapter-C/part-164

12. 42 CFR §2 (2026). Confidentiality of Substance Use Disorder Patient Records. Accessed August 30, 2026. https://www.ecfr.gov/current/title-42/chapter-I/subchapter-A/part-2

13. *Medtronic Inc v Lohr*, 518 US 470 (1996).

14. *Riegel v Medtronic Inc*, 552 US 312 (2008). Accessed August 30, 2026. https://supreme.justia.com/cases/federal/us/552/312/

15. Sarata AK. FDA Regulation of AI-Enabled Devices. Congressional Research Service; June 10, 2026. In Focus IF13245. "Most of these devices were cleared for marketing through the 510(k) premarket notification pathway for moderate risk devices." Accessed August 30, 2026. https://www.congress.gov/crs-product/IF13245

16. Iowa General Assembly. House Study Bill 766, 91st General Assembly (2026). Bill history. Accessed August 30, 2026. https://www.legis.iowa.gov/legislation/billTracking/billHistory?billName=HSB766&ga=91

17. Idaho Legislature. House Bill 945, 2026 Regular Session. Accessed August 30, 2026. https://legislature.idaho.gov/sessioninfo/2026/legislation/H0945/

18. Delaware House Bill 191, 85 Del Laws ch 250. Signed and effective April 23, 2026. Accessed August 30, 2026. https://legis.delaware.gov/BillDetail/142752