

AI Scribes: Medico-legal Issues

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There has been a rapid rise in the use of Artificial Intelligence transcription tools (“AI scribes”) among health practitioners. Several software vendors have entered the Australian market, offering products that integrate with existing electronic health record platforms. This makes them popular and easy to use.

How does it work?

AI scribes capture an audio recording of a consultation, convert it to a written transcript, and then adopt large language models to generate a relevant summarised medical record. Once a progress note is created, users can review and correct the note before it is finalised. This means that clinical consultations must be verbalised, including the physical examination process and findings.

Does MIPS support its use?

MIPS does not endorse or recommend the use of specific products, services, or providers. MIPS understands that many practitioners have already started using AI scribes and have found them to save time and to increase the accuracy of their medical records. In deciding whether to incorporate AI scribes into your practice, you should consider the information contained within this article.

Am I covered for the use of AI transcription software to generate medical records?

Yes. Subject to the terms and conditions of your MIPS Indemnity Insurance Policy, there is no specific exclusion for the use of AI scribes. However, it is important to understand some of the medico-legal issues that can arise when using the software to minimise the risk of any claims, complaints or privacy breaches arising.

Medico-legal issues to consider

Surveillance devices legislation

Legislation in every state and territory regulates the audio recording of conversations. This includes clinical consultations.

In Victoria, Queensland, and the Northern Territory, it is not unlawful for a practitioner to record a conversation if they are a party to the conversation. However, there may be limitations on how those recordings can be used. Elsewhere in Australia, it is a criminal offence to record conversations without consent. In addition, under the Telecommunications (Interception) Act 1979 (Cth), it is unlawful anywhere in Australia to intercept a communication passing over a telecommunications system. This could apply to recorded telehealth consultations.

In 2014, a patient was sentenced to an 18-month good behaviour bond for unlawfully recording a consultation without the GP's knowledge or consent. Practitioners must therefore obtain consent from patients before using an AI scribe to avoid potential criminal proceedings or penalties.

Privacy considerations

Australian privacy laws regulate the collection, use, disclosure, and storage of health information. As each AI scribe works slightly differently, it is important to understand the potential privacy implications of any AI scribe that you choose to use:

- **Data retention:** In Victoria, ACT and NSW, health information must be retained for at least seven years from when a patient was last consulted or until a child reaches the age of 25 years, whichever occurs later. Elsewhere, personal information can be deleted when no longer required. However, these requirements only apply to identifiable information. If information stored on servers has been deidentified, then the provisions of the privacy legislation may not apply. Therefore, it is important to understand whether software vendor stores any patient data on their servers, and if so, what information is stored and for how

long.

- Secondary use: Some software vendors may use health information collected during a clinical consultation to improve how the AI scribe functions. Consent would need to be obtained from patients to this type of secondary use of identifiable secondary patient data. Again, it is therefore important to understand whether software vendors re-use any patient data for this purpose and if such data is identifiable. Many patients may not agree to such use of information.
- Overseas data transfers: Privacy laws also regulate overseas data transfers, making it essential to understand where any servers storing or processing health information are located. If transcripts are stored or processed overseas, patient consent must be obtained and the overseas jurisdiction must have similar privacy laws to Australia.

Obtaining consent

You must obtain consent from patients before using an AI scribe. Consent should cover the use of a recording device and the privacy considerations outlined above. Consent can be verbal or in writing. If verbal consent is obtained, the details of the discussion and the patient's consent (or refusal of consent) should be clearly documented in the medical record.

Patients should be given the opportunity to withdraw their consent at any time. To ensure that patient consent is informed and free of coercion, it would be prudent practice to provide patients with sufficient written information about how health information will be collected, used, and disclosed, and where and for how long it will be stored. Patients should be given sufficient time to digest this information and be given an opportunity to ask questions before consenting to any recording during a consultation.

Some software vendors have developed their own consent forms. This can be helpful but is not a substitute for discussing the process with patients and answering their questions. Practitioners could also alert patients about the proposed use of an AI scribe on the clinic website, in the clinic's privacy policy, in new patient registration forms, at the reception desk, and/or in the waiting room through the use of posters or information pamphlets.

Consent needs to be obtained (and recorded) prior to each consultation. This is because, in states where non-consensual recording is a criminal offence, the recording of each consultation without consent may be a separate offence. While the consent process prior to the first recorded consultation may be detailed, the process prior to subsequent consultations may be more limited.

Professional obligations to check for accuracy

No AI scribe is 100% accurate and errors in transcribing or generating records can occur. It is practitioners' responsibility to carefully check any AI-generated medical records before finalising them. Failing to do so could result in patient harm or privacy breaches, and could give rise to claims or complaints.

Therapeutic Goods Administration requirements

AI scribes are exempt from TGA registration. In the absence of regulation, it is important that you trial any software before purchase to ensure that it meets your requirements and is fit for purpose.

Independent medical examinations

Finally, practitioners using AI scribes to conduct independent medical examinations should be aware of additional court requirements. The Supreme Court of Victoria has issued [guidelines](#) that require expert witnesses to disclose if AI was used in the preparation of the content of an expert report. The Supreme Court of NSW has issued a [practice note](#) that stipulates that generative AI must not be used to prepare the content of an expert report without the Court's permission.

Take-home messages

AI scribes have the potential to increase the speed and accuracy of medical records generation. However, before deciding whether to adopt this new way of working into your clinical practice, it is important that potential medicolegal risks are recognised and addressed.

- You must obtain consent before using an AI scribe to record a clinical encounter. Recording without consent may constitute a criminal offence in some jurisdictions.
- You must always check the accuracy of any AI-generated output. Unidentified errors could lead to patient harm or privacy breaches.
- Talk to software vendors before deciding whether to use an AI-scribe or before deciding which one might be right for you.
- Read the terms and conditions of any service agreement and seek advice before signing. It is important to understand whether data is stored and, if so, what data is stored, where it is stored, whether it is reused and for how long it is stored.

The [Australian Health Practitioner Regulation Agency](#) and the [Royal Australian College of General Practitioners](#) have also released guidance on the use of AI scribes in clinical practice.

If you require any specific medicolegal advice in relation to the use of AI scribes, then please do not hesitate to contact MIPS on 1300 698 509 or info@mips.com.au.

Medical Indemnity Protection Society ABN 64 007 067 281 | AFSL 301912

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Information is only current at the date initially published.

If in doubt, contact our claims and 24-hour medico-legal advice and support team on 1300 698 573.

You should consider the appropriateness of the information and read the [Member Handbook Combined PDS and FSC](#) before making a decision on whether to join MIPS.
