

AI SCRIBE GUIDANCE TIPS

As AI “scribe” options have quickly proliferated, there are a range of issues that physicians should consider when assessing a vendor’s proposed solution. We have created a list of things to watch for to assist in your decision making around AI, including vendor contracts. If you require assistance in reviewing the contractual terms, OMA will review any AI contract submitted to legal.affairs@oma.org to flag contractual issues for your consideration.

Intro

AI scribe solutions hold a lot of potential to support and improve your day-to-day practice, removing some of your administrative burden so that you can spend more time with your patients. As with any new technology solution, however, it’s important to keep in mind your legal and professional obligations.

Your obligations

As a physician, the Personal Health Information Protection Act (PHIPA) applies to you. Most physicians are also custodians of health information under that law. As well, CPSO policy on record keeping and confidentiality, as well as general rules around professionalism, continue to apply.

STEP 1: Choosing a Vendor – Contractual Terms

When considering working with an AI scribe, keep the following in mind in looking at a contract:

- **Ensure PHIPA Compliance:** Any vendor should generally attest that they are PHIPA-compliant within the contract terms. If in doubt, contact OMA Legal or your own lawyer.
- **Restrictions on Use:** Vendors should clearly state that they will not use Personal Health Information (PHI) except as required to provide the service. They should also clearly state that they will not disclose PHI to anyone other than the physician.
- **Data Retention:** Recordings and Transcripts should not be retained beyond the minimum time required to perform the service, and in no case greater than 30 days.
- **De-identification:** De-identification of PHI for commercial use requires notice to the public in your privacy policy.
- **Data Residency:** If data is held outside of Ontario, notice of such must be included in your publicly available privacy policy.
- **Annual Compliance Confirmation:** Vendor must provide a certificate of compliance with security standards (e.g. SOC2 compliance report) on an annual basis to allow you to verify that they are compliant with industry standards to provide assurance that data is being held and processed in a secure manner.
- **General Terms on Privacy:** review the terms and conditions of the contract to ensure you understand how patient personal health information PHI will be captured, used, and stored, and what you are responsible for versus the vendor.
- **Beta software:** exercise caution in agreeing to any software that has not been fully developed, or agreeing to updates to the service or contract terms that may have a material impact on how data is used.

STEP 2: Implementation in Your Practice

Once you've signed the contract, there are still steps you need to take before you implement an AI scribe solution in your practice:

- **Get Consent:** AI is a bit different from other software. Some forms of AI are “closed” and only process the information based on algorithms previously “trained” on large data bases and do not “absorb” any additional data (such as PHI). Other forms of AI continue to actively “learn” from the data they are given and continue to actively “absorb” new data.

As it can be difficult to determine what a particular AI system is doing with data, we recommend obtaining express consent from each patient the first time an AI scribe is used. You should also update any privacy policies to include reference to AI, de-identification of PHI for use in AI models, and data residency.

Notice of use of recordings and retention periods for use of and the general use of AI in patient encounters should be posted in your privacy notice/signage.

Patients must be provided the ability to “opt-out” of AI and recording encounters without impacting the health care they receive.

- **Ensure you review and edit the AI scribe output each time you use it.** AI scribes don't always capture everything correctly and it is your professional responsibility to ensure that documentation (e.g. SOAP notes) is complete and accurate.

Patient record keeping is your responsibility as the health care provider and as the custodian. As useful as AI can be, physicians have the professional responsibility to ensure the medical records are accurate. Patients also have the ability to correct their medical records under PHIPA.

- **Ongoing Compliance Monitoring:** As the Custodian, you are ultimately responsible for compliance with PHIPA. You should obtain an annual report from your vendors to ensure they are compliant (e.g. SOC2 report) and ensure that any new features or contractual terms continue to be compliant.
- **Breaches:** Privacy breach reporting may be mandatory under PHIPA if a service provider breaches PHIPA, depending on the nature of the breach. In addition, the IPC has the ability to levy administrative monetary penalties, in addition to any required remedial actions, should a breach occur.

STEP 3: Keep Informed

AI is a rapidly changing area. We expect that both the technology and the guidance to be in constant flux over the next few years. As such, it is important that physicians who opt to contract for these services should keep abreast of changes in this space.

With that in mind, we can recommend the following:

- **Be Aware of Professional Updates:** Check for OMA and/or CPSO updates on AI guidance. If you choose to make this part of your practice, you need to ensure you're aware of any changes to the rules.
- **Be Prepared for Change:** We expect the technology to change and improve significantly over the next few years. You may end up wanting to upgrade or switch services, and technology may grow more complex. Be prepared to need to learn how to use new systems or retrain as time goes on.