Maximizing Value and Reducing Risk in Your Practice: Labor & Employment

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How to Mitigate Risk in Your Practice

- Employee Handbooks

- Employee Grievance Procedures

- Performance Evaluations

- Effectively Responding to Legal and Administrative Complaints

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Employee Handbooks

Employee Handbooks

- Purposes of a handbook:

  o Summarizes employment policies
    - Always use plain language – avoid grand statements or legalese
    - Some policies required by law

  o Familiarizes employees with benefits and guidelines

  o Employee Relations - Employees are happier and more productive when they know what is expected of them
    - Can help establish workplace culture/expectations

What should be included?

- Reservation of Rights
- Defining the At-Will Relationship
- Equal Employment Policies
- Discrimination & Harassment Prevention Policy
- Reasonable Accommodation Policy
- Family and Medical Leave Act Policy
- Paid Family Leave Policy
- Vacation, Sick & Personal Leave
- Time & Attendance Expectations
- Substance Abuse Policy
- Employee Acknowledgment

Reservation of Rights & Disclaimers

- Reserve the right to alter, supplement or terminate employee handbook provisions and benefits to avoid liability under an implied contract

- Disclaimers should provide:

  o Personnel policies, manuals or handbooks are intended as general policy statements or guidelines – not a contract between the parties

  o Reserve the right to supplement, modify or abolish any personnel policies, manuals or handbooks without notice

Equal Employment Opportunity Policies

- Title VII of the Civil Rights Act of 1964

- Age Discrimination in Employment Act

- Americans with Disabilities Act

- New York Human Rights Law

  o Unlawful Harassment Policy

  o Sexual Harassment Policy

Harassment Policy

- Commitment to maintaining a workplace free of prohibited discrimination and harassment (e.g., hostile environment)

- Require all employees to report

- Provide overview of process

- Describe what constitutes and expressly prohibit retaliation
  o Examples?

- Employer will take immediate and appropriate corrective action when it determines that unlawful harassment has occurred.

Leave Policies

- Paid NYS COVID Vaccination Leave
- Paid NYS COVID Leave
- Paid NYS/NYC Sick Leave
- Paid NYS Disability Leave
- Paid NYS PFL Leave
- Workers' Compensation Benefits
- Unpaid Federal FMLA Leave
- ADA & NYS/NYCHRL Accommodation
- Labor Contract Leave / Procedures / Protections
- Employer / Policy-based Leave

Reasonable Accommodations

- New York State Division of Human Rights regulations provide:

  o Employers should provide applicants, new hires, and current employees notice of their rights with regard to reasonable accommodation of disability and the procedures to follow in requesting an accommodation.

  o Employers should have a written policy and procedure for reasonable accommodation of a disability.

  o Understand the interactive process.

Substance Abuse Policy

- Very important to be clear about what is appropriate conduct

- Statement of Purpose
  - Reasons the policy is being enacted
  - Reasons the policy is important for employees

- Standards of Conduct
  - Define exactly what is prohibited

What else should be included in your employee handbook?

- Handbooks are not one-size fits all

- Ultimately, business needs will dictate optional policies (e.g., remote work policy, dress code policy, etc.)
  - Think about issues that you've had in the past and get out in front of them now

Employee Grievance Procedures

Outlets for Employee Grievances

- Encourage open and respectful communication
- Recognize that employees will have suggestions for improving the workplace (and complaints and concerns)
  - Encourage prompt discussions with managers to resolve such issues
- However, there should be other avenues for grievances beyond direct supervisors
  - i.e., Human Resources, Compliance

Employee Performance Evaluations

Performance Management Matters

- While many employment relationships are terminable at will for a good cause, a bad reason, or no reason at all, employers cannot terminate an employee for an illegal reason

- Examples of illegal reasons for employment decisions include:
  - Age, arrest & conviction history, criminal history, disability, marital or familial status, national origin, citizenship, race/color, religion/cred, sex/pregnancy, sexual orientation, gender identity or expression, military and veteran status, genetic predisposition, status as a domestic violence victim, political activities, and retaliation.

Employee Evaluations

- An evaluation is a learning tool

- You will be bound by what you say in an evaluation

- Sugarcoated evaluations are counterproductive to the business and to the employee
  - Allowing employees to "get away" with inappropriate conduct and/or poor work performance can impact morale and affect business operations.

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Employee Evaluations

- Evaluations must be honest
  - Do not uniformly give satisfactory ratings to employees
- Employers should not exaggerate or generalize during performance evaluations.
  - Feedback should be accurate, candid and <u>specific</u>
  - Give examples
  - Have support for any narratives of performance issues
- If an employee's performance starts to deteriorate, create documentation of that AND present it to the employee
  - Warnings are key to litigation success

Evaluating a Struggling Employee

- If employee's performance requires noticeable improvement, specify the expected improvement and consequences of failing to meet expectation

- Include areas for improvement, even when overall assessment is good

- Outline future goals/expectations

Progressive Discipline

- Progressive discipline is a tool used to correct employee performance issues

- Designed to provide a structured corrective action process to improve and prevent a recurrence of undesirable employee behavior and performance issues

- Examples of progressive discipline include verbal warnings, written warnings, and performance improvement plans

Employer Documentation is Critical

- Documentation enhances credibility in legal and administrative proceedings.

- Jurors, Division of Human Rights Investigators and others all expect that employers will:
1. Keep good records; and
2. Be able to produce those records when there is an issue about actions that were taken and the reasons for those actions.

What Should be Documented

- To defend employment decisions, employers should have documentation showing:
  - How and when employee was put on notice of the employer's expectations and the consequences of not meeting them
  - A fair and objective investigation
  - Inadequate performance and/or misconduct
  - Employer has treated similarly situated employees in a similar manner
  - The discipline imposed is reasonably related to the seriousness of the offense and the employee's past record

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Responding to Legal and Administrative Complaints

How to Reduce Risks of Discrimination Claims

- Treat employees equally – consistently apply policies and rules in the workplace

- Practice effective performance management

- Consistently follow disciplinary policies and procedures

- Document employee issues

What if I receive a legal or administrative complaint?

- Take a deep breath.

- While receiving any complaint is inherently stressful, do not procrastinate responding to the complaint.

- Immediately reach out to legal counsel.

- The stakes can be high - do not attempt handle any responses on your own.

Questions?

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Artificial Intelligence in the Healthcare Industry

October 10, 2024

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Overview

- Introduction to Artificial Intelligence ("AI")

- Common risks associated with AI use

- AI in the healthcare setting

- Practical use examples

- Implementing AI tools in your practice

What is Artificial Intelligence?

- AI simulates human intelligence by leveraging computer processing power and programing to make decisions based on large quantities of data.

- **Machine Learning:** Supervised AI models that are designed to adapt to new additions to structured data sets and user inputs. (Amazon product suggestions, Netflix content suggestions)

- **Deep Learning:** A more advanced subset of machine learning that does not rely on structured or labeled data sets. Deep learning can "read" images, unstructured text, and other forms of data that are not contained within a neat dataset. (Google photo search, generative AI)

- **Generative AI:** Deep-learning models that can generate high-quality text, images, and other content based on the data they were trained on. (ChatGPT, Google Gemini (previously known as Bard))

What is Artificial Intelligence?

Learn Patterns

The model ingests a high volume of data to identify trends, patterns and relationships.

Make Predictions

The model will extrapolate based on identified trends to predict certain conditions not contemplated in the original data set.

Perform Task

These predictions can be leveraged by human operators to perform a variety of tasks covering a wide range of industries from predicting investment portfolio performance to diagnosing cancer.

Common Tools available to the public

- **ChatGPT:** End users can use the model to perform various tasks such as generate and brainstorm ideas, act as a personal assistant, explain complicated topics in layman's terms, coding, and writing assistance.

- **Elon's Gen-AI Chatbot Grok:** This model has "real-time access" to information on the social media platform, X. According to Musk, Grok can answer mathematical queries, among many other requests ChatGPT can perform.

- **DALL-E:** The model enables end users to create images with text to graphic prompts. For example, you can ask the model to create an image of a banana riding a unicycle.

- **Google's Gemini:** The model can help end users write blog posts, generate ideas, and answer questions with facts or opinions.

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Common Risks Associated with AI

- **Accuracy –** is the model producing reliable results?
- **Bias** – is the model disparately impacting an individual, protected class, or other group?
- **Transparency** – is the model capable of being audited and supervised?
- **Privacy** – is the model operating within the scope of consumer consent?
- **Security** – is the model's data protected with administrative, physical, and technical safeguards?
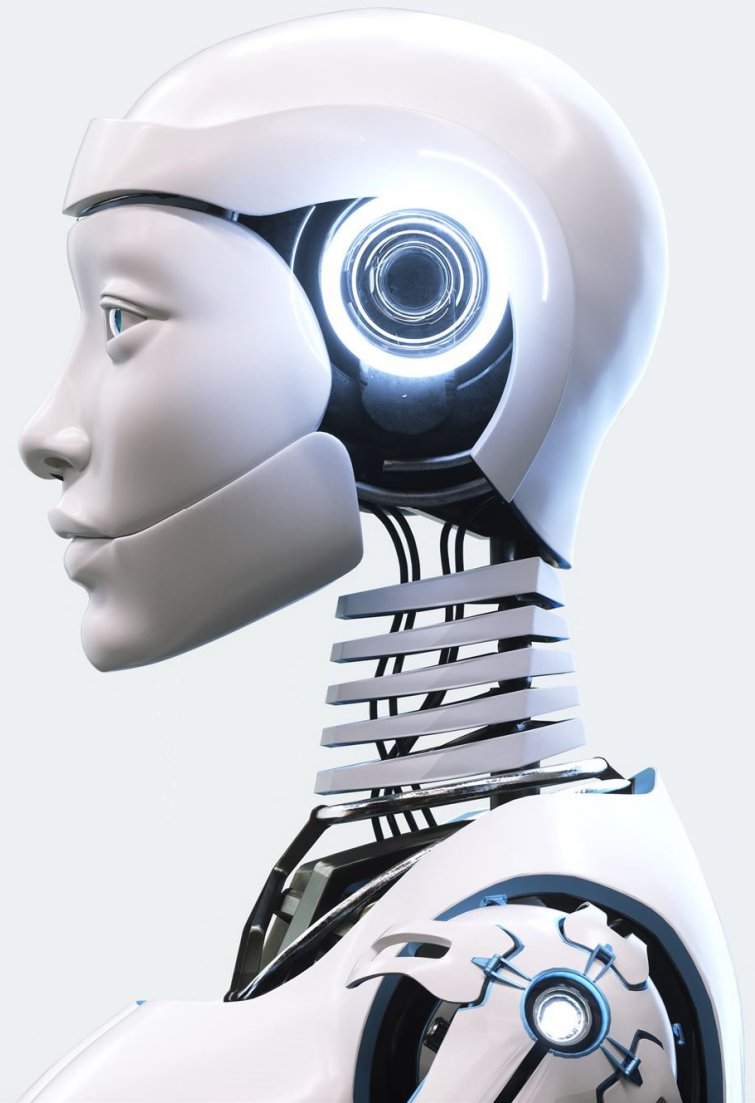
AI Use in Healthcare

- FDA has approved over 900 AI-enabled medical devices and tools.

- **Preventative Care and Decision-making Support.**
  - AI tools can help healthcare providers better understand the day-to-day patterns and needs of patients, and with that understanding providers can offer better feedback, guidance and support for staying healthy.
  - AI tools use pattern recognition to identify patients at risk of developing a condition and can detect condition deterioration due to lifestyle, environmental, genomic, or other factors.

- **Early Detection.**
  - AI tools are used to detect diseases, such as cancer, more accurately and in early stages.
  - Consumer wearables and other AI-powered mobile devices are used to oversee early-stage heart disease, enabling providers to better monitor and detect potentially life-threatening episodes at earlier, more treatable stages.

AI Use in Health Care

- **Diagnosis.** AI tools leverage vast amounts of healthcare data to make quick and accurate diagnoses.
  - AI tools can spot anomalies in images, identify trends in patient data, and link symptoms to potential conditions
  - By learning from past cases and adapting continually, AI tools can improve diagnostic accuracy over time.

- **Treatment.**
  - Aside from preventative insights, AI tools can recommend comprehensive treatment plans for disease management and can identify and coordinate with necessary specialist needed to mange care.
  - AI tools have been used to repurpose existing drugs for rare diseases with no known treatments.

- **End of Life Care**
  - AI tools use prompts and alerts to aid clinicians in deciding whether and when to discuss end of life planning with patients.
  - Recent UPenn study found AI assisted end of life intervention reduced the mean daily health care spending at the end of a patient's life. The savings were the result of reduced chemotherapy, other cancer treatments, and office visits.

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AI Tools In Healthcare

- **LumineticsCore** - After a retinal camera captures images, this tool uses an AI-based algorithm and a separate diagnostic algorithm to detect and analyze biomarkers. It provides a diagnosis at the same appointment, so patients can leave with a referral to an ophthalmologist.

- **Abridge** - With patient consent, the tool records interactions and creates a transcript in real time. The algorithm grabs key pieces of information to draft clinical notes, which providers review before adding to patients' medical records.

AI Tools In Healthcare

- **Woebot –** Woebot is a mental health chatbot that uses machine learning to understand patients' messages and delivers pre-written responses. Replies were created by Woebot's team of clinicians and writers and mimics how clinicians actually respond during interactions with patients.

- **VBrain** – Speeds up brain contouring by about 30%, on average, and improves contouring accuracy by 12% compared with manual contouring. Its FDA-approved deep learning algorithm detects the three most common types of brain tumors: Metastasis, meningioma, and acoustic neuroma.

- **GI Genius –** GI Genius draws on deep learning algorithms, which can analyze and make predictions about unstructured datasets, including images. In a 2020 study, the tool increased the adenoma (pre-cancerous polyp) detection rate (ADR) by over 14%. Colorectal cancer risk drops 3% for every 1% increase in ADR. In a separate study, it analyzed polyps 82% faster than the endoscopist.

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Responsible Use of AI in your Practice

- Identify the areas of your practice where AI implementation makes sense

- Assemble key stakeholders to discuss all possible use cases

- Create and enforce an AI acceptable use policy

- Provide training to staff on acceptable use

- Test different AI tools to determine the best fit for your practice

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AI Tool Evaluation

- Security analysis

- Practical use analysis – demo the products

- Align with outside vendor and service provider guidelines

- Efficiency/productivity analysis

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Thank You

The information in this presentation is intended as general background information.
It is not to be considered as legal advice.
Laws can change often, and information may become outdated.

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