

Digital Medicine Liability and Risk: What You Need To Know



INTERPROFESSIONAL INTERNET CONSULTATION

When adopting any new technology, you will need to understand and assess your liability and risk. Some common legal risks and liability questions associated with digital medicine include:

- Medical liability
- Licensing
- Consent
- Privacy and security

Best practices to apply to understand liability and mitigate risk when implementing digital health solutions include:

- Check to see whether or not your malpractice carrier covers digital health practices under your current policy. Some carriers may require disclosures of these practices to receive coverage.
- Know your state laws around various types of digital medicine. Different states may have different definitions or case law as it relates to the licensing, practicing digital health, and consent. States differ as to whether you need to have an established physician-patient relationship prior to performing telemedicine (and potentially other digital health solutions) and may also have different requirements for informed consent related to telemedicine and telehealth.
- Determine whether you will need to update any informed consent forms. All conversations with patients regarding digital health solutions should be an open, two-way discussion about the benefits, risks, alternatives, and potential consequences in choosing to use (or not) digital health solutions.
- Digital health solutions can be negatively impacted by loss of internet or power, software incapability, interrupted or slow internet transmissions, and more. Delays in care without proper back-up plans can result in serious consequences to patients. To reduce potential liability, it's beneficial to have a plan in place in case the digital health solution fails and to discuss the plan and alternatives with patients.
- Protect yourself and your organization/practice during the contract process with your future vendor partner. Some contract provisions that relate to liability include:
 - **Indemnity clause** - The clause manages and apportions risk between contracting parties. It should specify under what conditions each party must compensate the other party for unintentional harms, claims, or other liability. You can manage and minimize your risk by limiting your overall or total liability to a manageable amount through a specific dollar cap, the amount of your investment, or other ways.
 - **Choice of Law Provision** - This clause dictates what state, federal, or international laws the contract operates under. Make sure you are comfortable with the state or country chosen.
- Technology has increased connectivity and collaboration in all facets of the healthcare delivery systems, so particular attention should be paid to the cybersecurity practices at your organization as well as with your future digital health vendor.