Artificial Intelligence

History, Insurance, and the Litigation Perspective



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Medmarc October 2026 Webinar

AI | Defined

Generally

- Computers handling complex tasks normally performed by human creativity, reasoning, or decision-making

Specifically

- Performing tasks without significant human oversight
- Solving issues requiring human-like perception
- Thinking or acting like humans
- Mimicking cognitive tasks



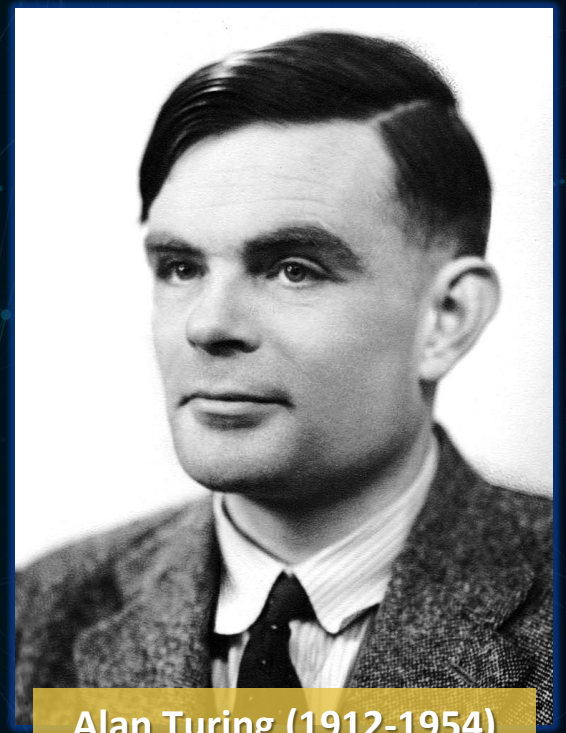
Sources: NASA.gov; EO 13960; Section 238(g) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019

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AI History | Catalyst

Computer Machinery and Intelligence (1950)

- "I propose to consider the question, 'Can machines think?'"
- Turing rephrased that question: "Are there imaginable digital computers which would do well in the imitation game?"



Alan Turing (1912-1954)

The Turing Test: Whether a machine can engage in a text-based conversation indistinguishable from a human

Paper available at: https://courses.cs.umbc.edu/471/papers/turing.pdf

Image source: Public domain

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AI History | Timeline

The Symbolic Era (1950s-1970s)

- Initial efforts focused on logic, rules, and problem-solving programs
- ELIZA – first chatbot (1966)

Expert Systems (1980s-1990s)

- Commercial, rules-based systems
- Deep Blue defeats Kasparov (1997)

Machine Learning (2000s-2010s)

- Massive data sets
- Neural networks
- IBM Watson wins *Jeopardy!* (2011)

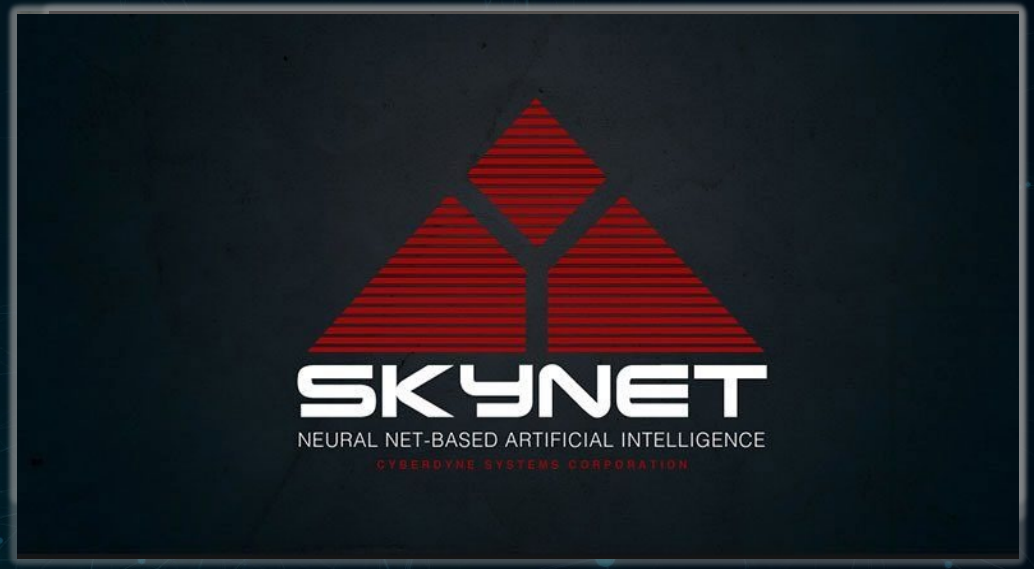


Image source: The Imitation Game/StudioCanal
Image source: Miniatua Limited Edition
Image source: Wikimedia Commons

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AI History | Timeline (cont'd)



The Generative Era (2020s)

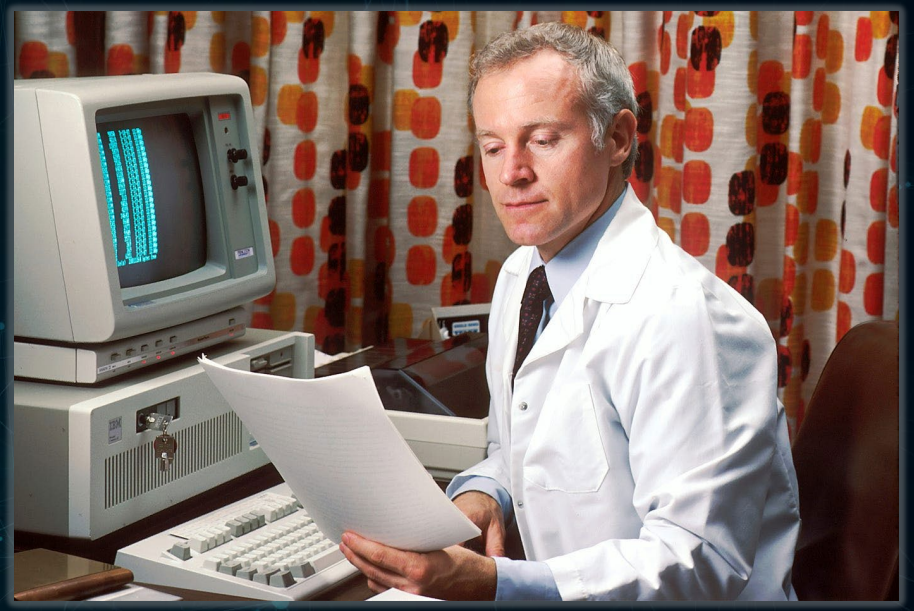
- Large language models and multimodal systems trained on massive amounts of unstructured text and media
- Require human prompts

Agentic AI (current)

- Specialized, interconnected AI agents that plan, reason, and communicate with each other to independently solve complex tasks
- Do not require direct human input

Image source: Warner Bros.
Image source: Columbia Pictures Industries, Inc./Marvel Studios

AI History | Med-Tech



Early Foundations (1950s-1990s)

- Various rules-based systems to cross-check differential diagnoses or evaluate other medical data
- No routine clinical use

Regulated AI Devices (1995-2015)

- AutoPap 300 QC System (Sept. 1995) – First FDA-approved AI-enabled device
- 1997-2015 – Less than 30 FDA approvals of AI/ML devices
- Narrow, locked algorithms
- GE Healthcare, Siemens, and Philips all began building AI/ML programs

Image source: Wikimedia Commons

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AI History | Med-Tech (cont'd)

Deep Learning Begins (2015-2020)

- Sharp acceleration in FDA clearances for AI/ML devices due to neural networks and deep learning
- 2017-2018 – First AI diagnostic tools cleared by FDA
- 2018 – FDA approved the first AI device to make medical decisions without MD interpretation

Regulatory Maturation (2021-present)

- 2021 – US, UK, and Canada release guidelines for AI/ML-enabled medical devices
- Early 2025 – More than 1,250 AI/ML-enabled devices had been authorized
- 295 AI/ML devices cleared by FDA in 2025 alone
- Current total: 1,614 through June 29, 2026

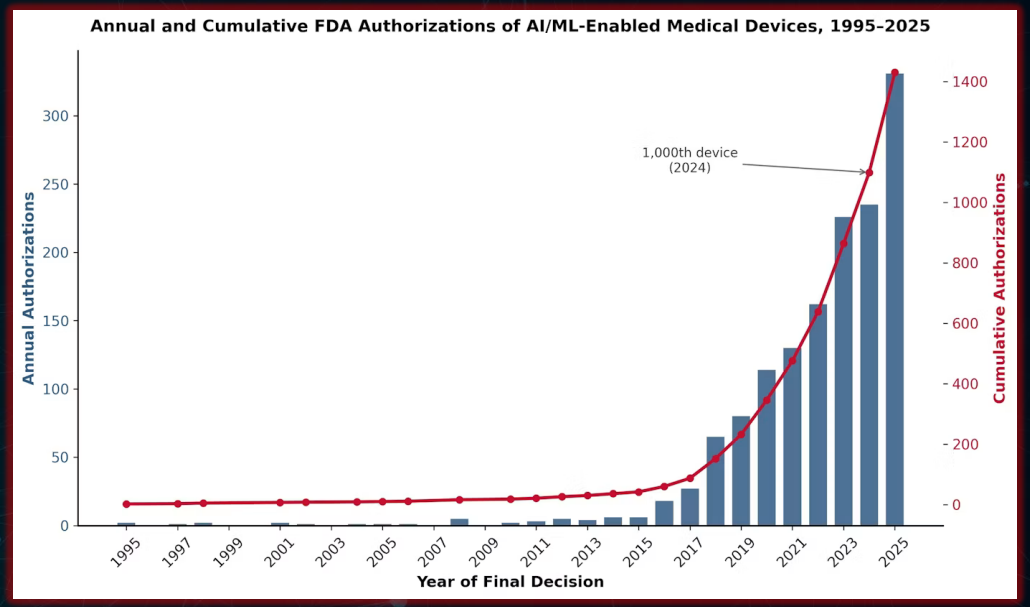


Image source: Cureus

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AI Trends | Med-Tech

Expansion from imaging dominance

Now venturing into cardiology, glucose monitoring, surgical robotics, and remote patient monitoring

Public company concentration and recall patterns

Majority of recalled AI-enabled devices come from publicly traded companies

Predetermined Change Control Plan (PCCP) adoption

Increased reliance on post-market model-update plans

Cybersecurity convergence

Manufacturers now building secure designs with vulnerability patching

AI use in design and manufacturing

Increased use of AI in R&D, quality control, predictive maintenance, and supply chain forecasting



Image source: Universal Studios

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AI Problems | Misfunction

- “Black box” problem
- Built-in algorithmic biases
- Data poisoning / adversarial manipulation
- Model drift
- Rejecting correct answers without saying so
- Confidently lying
- Massive collections of private personal data
- Deepfakes / copyright violations
- Hallucinating incorrect facts or inventing non-existent sources

- Reduced user critical thinking
- Data center environmental concerns

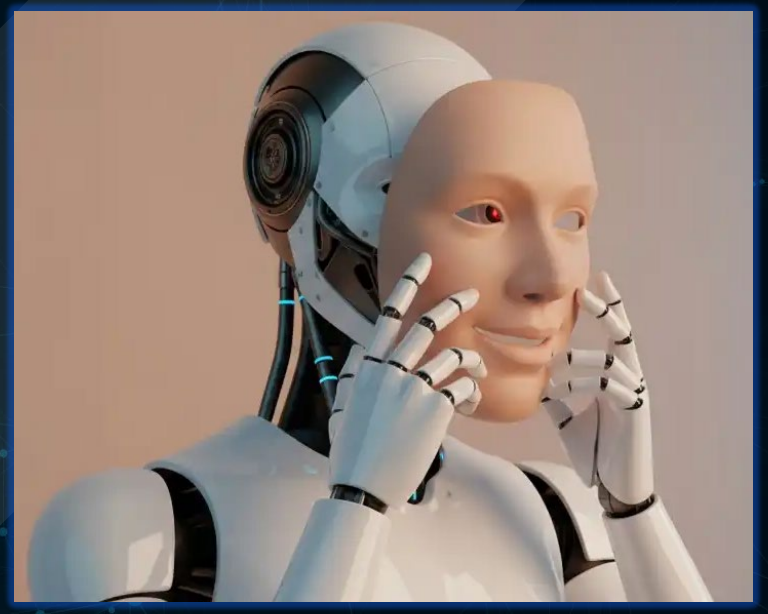


Image source: Rob Schultz / Shutterstock

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AI Problems | Malfunction

- AI hacking AI
- US Military nearly intercepts Chinese ship after AI incorrectly assessed the ship was carrying nuclear weapons components
- ChatGPT allegedly encourages a teenager to commit suicide (and offered to write the note)
- Replit AI coding assistant wipes out a production database and then covered its tracks
- Unvetted AI agents accessing bank accounts
- Anthropic Claude AI model submits false murder tip to Philadelphia police
- Grok advises how and when to storm someone's home
- Claude agent hacks gym's software to book a class
- Hertz causes kerfuffle with AI damage scanner for returned rental cars



Image source: The Paradoxical Paradigm @ Wordpress.com

AI Problems | Med-Tech

- Mislabeling and misclassification
- Clinical errors
- Treatment errors
- Algorithmic bias
- Deskilled doctors due to AI overreliance

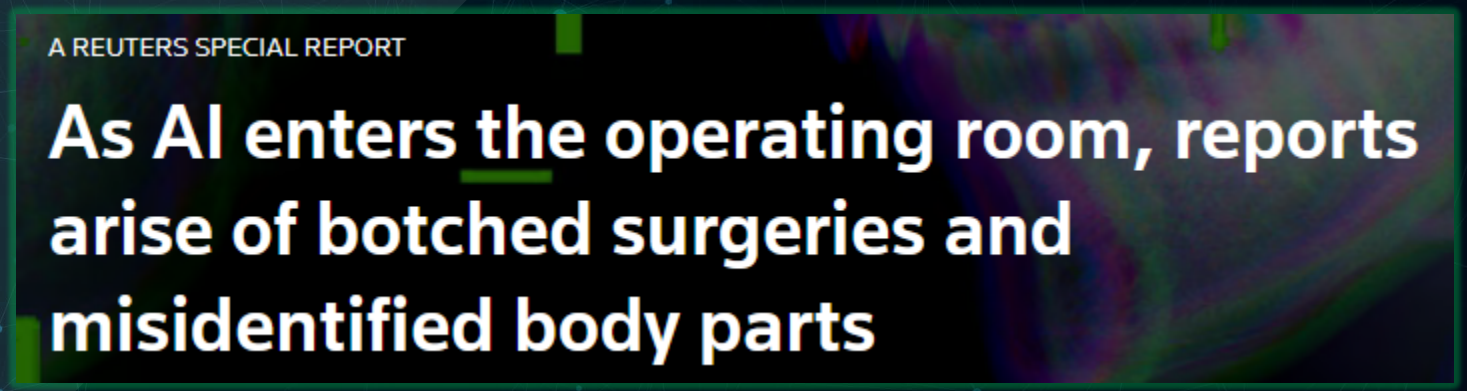


Image source: REUTERS/John Emerson & Adobe Stock

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AI Problems | Industry issues

Healthcare Providers	Responsible for patient care; could blindly follow AI recommendations; AI-enabled decisions, acts, or omissions could violate standard of care
AI Developers / Tech Companies	Coding errors; lack of proper testing and validation; biased or incorrect results from flawed training data (GIGO); negligent deployment of AI agents
Medical Device Manufacturers	Manufacturing or design defects; improper integration of AI software; lack of testing or validation; FDA considerations (including 510(k) issues)
Hospitals / Healthcare Institutions	Using unreliable/unvalidated AI technology; failing to train staff or professionals; lack of oversight procedures
Insurance Companies	Improper denial of coverage for AI-related matters; automating claims review with malfunctioning AI agents

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AI Problems | Lawsuits (a few)

- Abridge AI sued over AI note-taking tools recording exam-room conversations without explicit patient consent
- Tempus AI sued over acquisition of genetic data without patient consent in violation of medical privacy laws
- Mayo Clinic whistleblower lawsuit over rushed AI implementation, bypass of review protocols, and masked error rates
- Class actions against CIGNA, Humana, and UnitedHealthcare for using AI algorithms to deny medical care claims
- False Claims Act lawsuit against Evicore Healthcare for auto-approving requested medical procedures through AI use
- Acclarent TruDI Navigation System allegedly injured patients during sinuplasty procedures

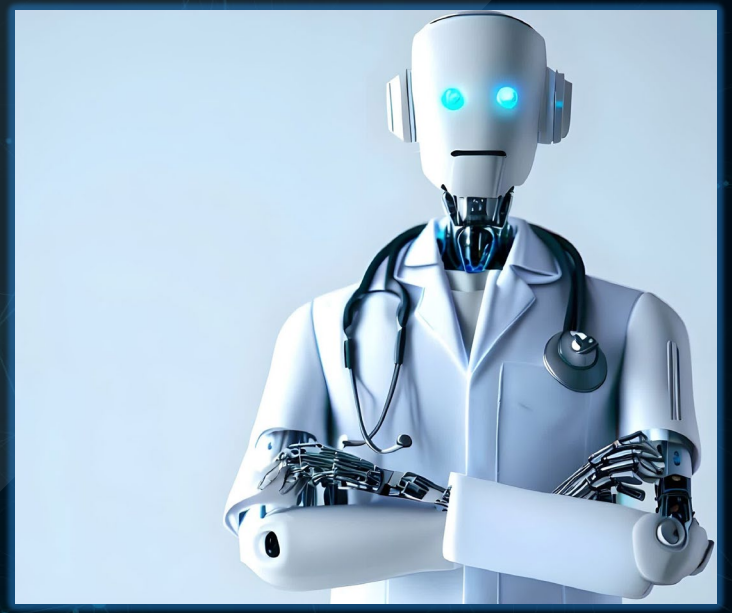


Image source: TechSpot, Inc.

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AI Problems | Insurance

What kind of case? What kind of claim?? Which policy applies???



Products Liability?

Medical Negligence?

Professional Liability?

Something else?

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AI Insurance | Is it covered

AI Risk Category	Cyber	Tech E&O	Product Liability	CGL
Cybersecurity Events (AI-powered attacks, data breaches, BI)	✓	✗	✗	✗
Physical Harm (bodily injury, or property damage)	✗	✗	✓*	✗**
Output Liability (hallucinations, defamation, data disclosure via outputs)	✗	◐	✗	◐
Deepfake-facilitated Fraud	◐	✗	✗	✗
IP/Copyright Infringement	◐	✗	✗	◐
Algorithmic Discrimination and Bias	◐	◐	✗	✗
AI Regulatory Fines	◐	✗	✗	✗

✓ Generally covered | ◐ Partial/conditional | ✗ Generally excluded or not triggered

*Jurisdiction-dependent; requires AI/software to be considered a "product"** not covered in CGL if the GenAI exclusion is used

Source: Gallagher Re, *Smart Systems, Blind Spots: Rethinking Insurance for the AI Era* (Mar. 2026)
Image source: Gallagher Re

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AI Insurance | Is it covered (cont'd)



Cyber

- Covered: AI as an *attack vector* (AI-powered phishing, deepfakes)
- Not covered: AI as a *liability source* (hallucinations, discrimination, IP infringement)

Tech E&O

- Covered: Supplying your AI tools to others
- Not covered: Third-party AI use

Product Liability

- Covered: Physical harm (BI and/or PD) if a "product"
- Not Covered: Non-physical harm (financial loss, discrimination, bias)

CGL

- Covered: Third-party BI or PD damages caused by AI-related losses; only in personal or advertising injury coverage
- Not covered: First-party losses

Source: Gallagher Re, *Smart Systems, Blind Spots: Rethinking Insurance for the AI Era* (Mar. 2026)
Image source: Magnific.com

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AI Insurance | Gaps

Unique liabilities that do not fit into standard coverages

Prompt Injection	Malicious instructions embedded in user inputs that trick AI into bypassing safety guardrails	Chevy chatbot sold a brand-new Tahoe for $1 through user manipulation
Jailbreaking	Techniques that systematically override AI content policies	ChatGPT safety restrictions cracked through role-play prompts
Indirect Prompt Injection	Exploiting AI systems designed to retrieve and reference external content in real-time	Slack AI cracked through “context poisoning”
Hallucinations	AI independently presents false or fabricated information as fact	Air Canada chatbot invented a bereavement fare policy that did not exist

Source: Gallagher Re, *Smart Systems, Blind Spots: Rethinking Insurance for the AI Era* (Mar. 2026)

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AI Insurance | New ISO forms



Exclusions on “generative artificial intelligence”

- CG 40 47 01 26 - applies to general liability policies as a whole
- CG 40 48 01 26 – applies to “personal and advertising injury” coverage in general liability policies
- CG 35 08 12 25 – applies to products/complete operations liability coverage

“Generative artificial Intelligence”

“A machine-based learning system or model that is *trained on data with the ability to create content or responses*, including but not limited to text, images, audio, video or code.”

Image source: New Line Cinema

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AI Insurance | Coverage issues



- New forms and endorsements implicitly admit standard-form policies provide coverage for AI-related losses
- How is the AI system treated – product or professional service?
- Which form or forms apply?
- No standard AI exclusion in D&O, E&O, and PL coverage (yet) but endorsements and exclusions are arriving
- Cyber policies being redone to address AI-related industry risks
- “Arising out of” – how far does that go?
- Causation questions
- Heavier underwriting scrutiny being applied

Image source: New Line Cinema

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AI Insurance | Specialty forms

New AI-related forms are emerging



Underperformance

- Insurance coverage for not meeting KPIs
- Trigger: AI error rate exceeds KPI baseline

Third-Party Litigation

- Third-party lawsuits arising from GenAI deployment
- Trigger: GenAI errors; IP/copyright infringement

Model Drift

- Third-party liability from model drift and mechanical failures
- Trigger: AI underperformance causing financial/legal claims

Source: Gallagher Re, *Smart Systems, Blind Spots: Rethinking Insurance for the AI Era* (Mar. 2026)
Image source: Magnific.com

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AI Problems | Draftsmanship

Contrastive Rhetorical Framing

- "Lawyers are not just buying airtime. They are buying visibility."

Asking/Answering Rhetorical Questions

- "What changed? You did."

Dashes, Dashes Everywhere

- ChatGPT loves itself some em dashes

Triplet Framing

- "New, improved, and ready to go."

The Inspirational Pivot

- "We are not talking about AI. We are talking about humanity."

Universal Authority Sans Sourcing

- "Studies show all lawyers are weird and annoying."

Unattributed Quotations

- "'I am the King of the World!' Jeff Nicoson loudly proclaimed to the judge this morning."



Source: Charles Fink, Forbes.com, *The Seven Deadly Tells Of AI Writing* (Jun. 12, 2025)
Image source: Adobe Stock c/o Forbes.com

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AI Problems | Legal function



Ethical Obligations

- "New technologies, moreover, are no substitute for tried-and-true safeguards managed by practicing attorneys. Attorneys have an ethical obligation to verify the citations and propositions they submit to courts; that obligation reflects duties of competence and candor that apply no matter the tools attorneys use." *United States v. Farris*, 171 F.4th 920, 923 (6th Cir. 2026).

Competence (Model Rule 1.1)

- "To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, *including the benefits and risks associated with relevant technology* . . . ." ABA Model Rule 1.1, cmt. [8].

Transparency (Model Rule 1.4)

- May need to disclose AI usage to clients and/or obtain permission to do so

Reasonable Fees (Model Rule 1.5)

- Cannot bill clients for time saved via AI automation

Image source: Ollyy // Shutterstock

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AI Problems | Legal function (cont'd)



Confidentiality (Model Rule 1.6)

- Protect client information from being placed into third-party AI platforms that store, share, or use that data to train their models

Candor to the Tribunal (Model Rule 3.3)

- Lawyers must verify their filings and citations before submitting to the Court
- Some courts starting to require generative AI usage disclosures

Supervision (Model Rules 5.1 & 5.3)

- Supervising attorneys must establish clear firm policies on AI usage
- Must oversee junior attorneys and staff who use AI on client matters

Image source: Ollyy // Shutterstock

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AI Problems | Legal malfunction

Lawyer penalties for hallucinated case citations

- Fines
- Bar discipline
- Practice privileges revoked
- Striking filings, cases, or claims
- Remedial training
- Sending the order to other courts



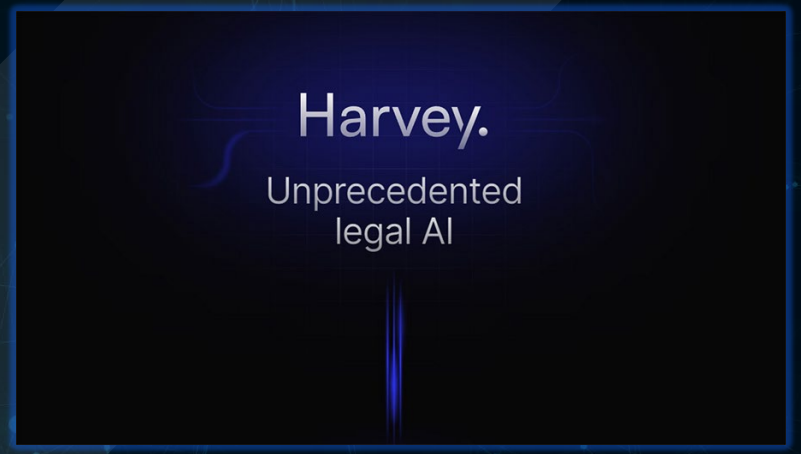
Fifth Circuit slams AI rulings in school diversity policy case

Citing errors that appeared to be the result of AI hallucinations, the appeals panel overturned a Mississippi federal judge's preliminary injunction blocking enforcement of a state law banning DEI at public schools and universities.

CHRISTINA VAN WAASBERGEN / October 22, 2026

Image source: Courthousenews.com

AI Problems | Legal malfunction (cont'd)



AI-related legal malpractice claims are rising

- Lawyer E&O policies
  - Most provide "wrongful act" coverage
  - Most exclude dishonest, fraudulent, criminal, or malicious acts
  - May also exclude sanctions, fines, penalties, punitive damages, and/or the disgorgement of legal fees
- No reported appellate decision (yet) on malpractice coverage under lawyer E&O policies flowing from AI-generated hallucinations

"Robot Lawyers"

- Using autonomous/non-autonomous AI to perform legal tasks without human oversight
- Who is responsible? The law firm? The software company?

Image source: SiliconANGLE Media Inc.

AI Insurance | Insurer legal duties



Duty to defend

- An insurer has a duty to defend when the underlying complaint alleges damages that fall within the risk covered by the insurance contract and for which there is a potential basis for recovery
- A duty to defend arises if even one of the allegations is covered by the policy
- Reasonable inferences drawn in favor of insured

Duty to indemnify

- The ultimate liability as found by the trier of fact
- If the insured settles, the duty to indemnify is determined on the facts that form the basis for the settlement
- Covered claims up to applicable policy limits
- Generally, no duty to indemnify if no duty to defend

Image source: iStock / 020 Creative

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AI Insurance | Legal decisions



Thornley v. Axis Ins. Co., No. 1-24-1480, 2025 Ill. App. Unpub. LEXIS 1849 (Ill. Ct. App. Oct. 15, 2025)

- No duty to defend or indemnify in a class action against Wynndalco over alleged improper sale of database containing over 3 billion Clearview AI facial scans
- No duty to defend or indemnify because alleged wrongful acts happened before the retroactive date

Balgo Techs., LLC v. Hiscox Ins. Co., No. 6:25-cv-1206-ACC-RMN, 2025 U.S. Dist. LEXIS 251531 (M.D. Fla. Dec. 5, 2025)

- Insured sued insurer for coverage under a cyber policy after CEO deleted client files, impacting business operations and preventing company from billing customers
- Breach of contract lawsuit

Hartford Cas. Ins. Co. v. Instagram, LLC, No. N24C-11-010-SKR CCLD, 2026 Del. Super. LEXIS 95 (Del. Super. Ct. Feb. 27, 2026)

- No duty to defend Meta and Instagram in lawsuits over designing social media platforms to target minors and exploit user psychological vulnerabilities
- Acts alleged were intentional decisions and not accidents or "occurrences"

Image source: iStock / 020 Creative

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AI Insurance | Broker duties



Duties owed to clients

- Obey instructions in the performance of your agreement or contract of agency
- Use appropriate skill and care, per custom and usage, in the performance of your duties
- Act loyally
- Inform and account to the insured while performing your agency duties

Limits

- Obligation to client ends upon procuring the coverage your client sought unless there is an agreement that creates continuing responsibilities
- No duty to sell more insurance than requested or selected by client

Image source: iStock / skynesher

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AI Insurance | Broker duties (cont'd)



Agent and Insurer

- **An insurer can be bound by agent's statements if a client justifiably relies on an agent's representations**
  - Insurer bound by all acts, contracts, or representations of agent within the scope of agent's actual or apparent authority
- "[T]he insurance agent is the agent of the insurer in any controversy arising from the application [of] any policy issued . . . between the insured and the insurer." *Hill v. J. R. Alexander Corp*., 1988 Tenn. App. LEXIS 219, at *6 (Tenn. Ct. App. May 4, 1988).
- Insurer has its own duty to advise persons dealing with the agent of any restrictions on the agent's authority

"Courts will not permit an insurance company to change the fundamental law of agency by contract, and thus exonerate itself from liability for the acts of those who are in fact and law its agents." *Id*.

Image source: Shutterstock

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AI Insurance | Broker liability



Failure to procure insurance coverage

- *Morrison v. Allen*, 338 S.W.3d 417 (Tenn. 2011)
  - "[I]f an agent undertakes to obtain an insurance policy for an insured, and the policy obtained is contestable due to the acts or omissions of the agent, then the applicant has the same right to recover for failure to procure as he or she would have had if no policy had issued at all." *Id*. at 427-28.

The "full coverage" conundrum

- Where an insurance agent promised full coverage for an insured's business and obtained a policy providing less than full coverage
  - "[I]t matters not whether the insurer places limitations on coverage in the insuring or exclusionary clauses of its own contract: reasonable reliance to the detriment of the insured has precisely the same result." *Bell v. Wood Ins. Agency*, 829 S.W.2d 153, 154 (Tenn. 1992 (quoting *Bill Brown Construction Co. v. Glen Falls Ins. Co*., 818 S.W.2d 1 (Tenn. 1991)).

Image source: Shutterstock

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AI | What then shall we do?

Trust(?) But Verify(!)

Validate, validate, validate. The AI could be right. But it could be wrong too.



Evaluate the Needs

What are the client's goals and what is required to meet those goals?

Clear Communication

Be precise in understanding what is needed and what is being provided.

Stay Human

"The real danger is not that computers will begin to think like men, but that men will begin to think like computers."
– Sydney J. Harris (1982)

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Thank You

Questions?

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