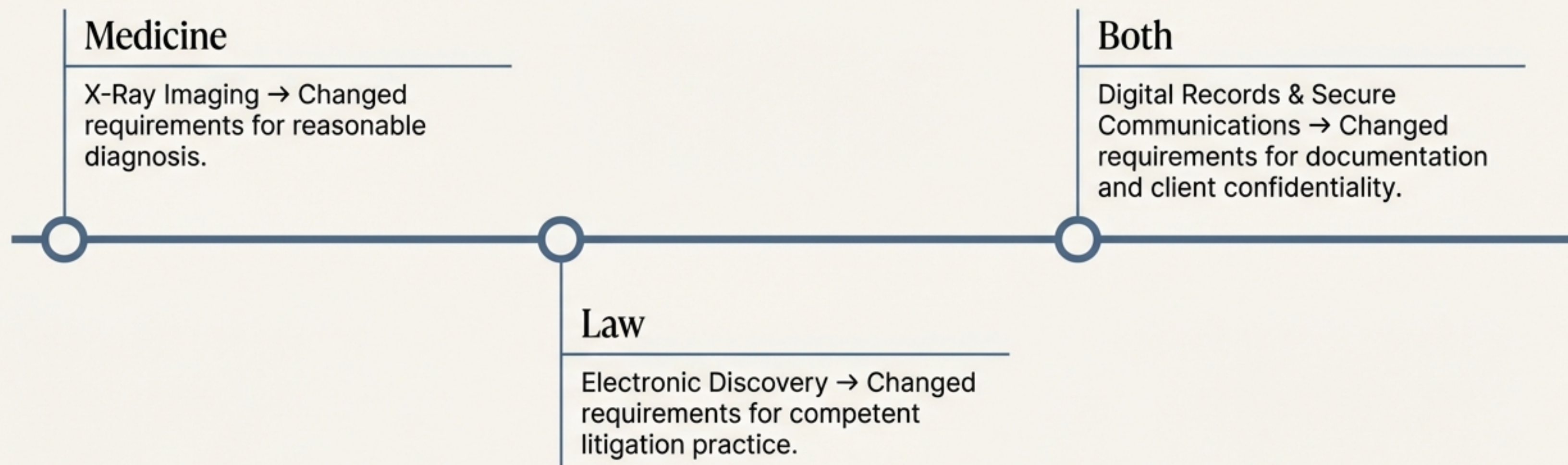


The AI Standard of Care: Navigating the Twin Perils of Use and Refusal

How Professional Liability is Evolving
for a New Era of Technology

The Standard of Care Has Always Evolved with Technology

For licensed professionals, the benchmark is not an ordinary person but a reasonably prudent practitioner. This standard has consistently adapted to new tools.

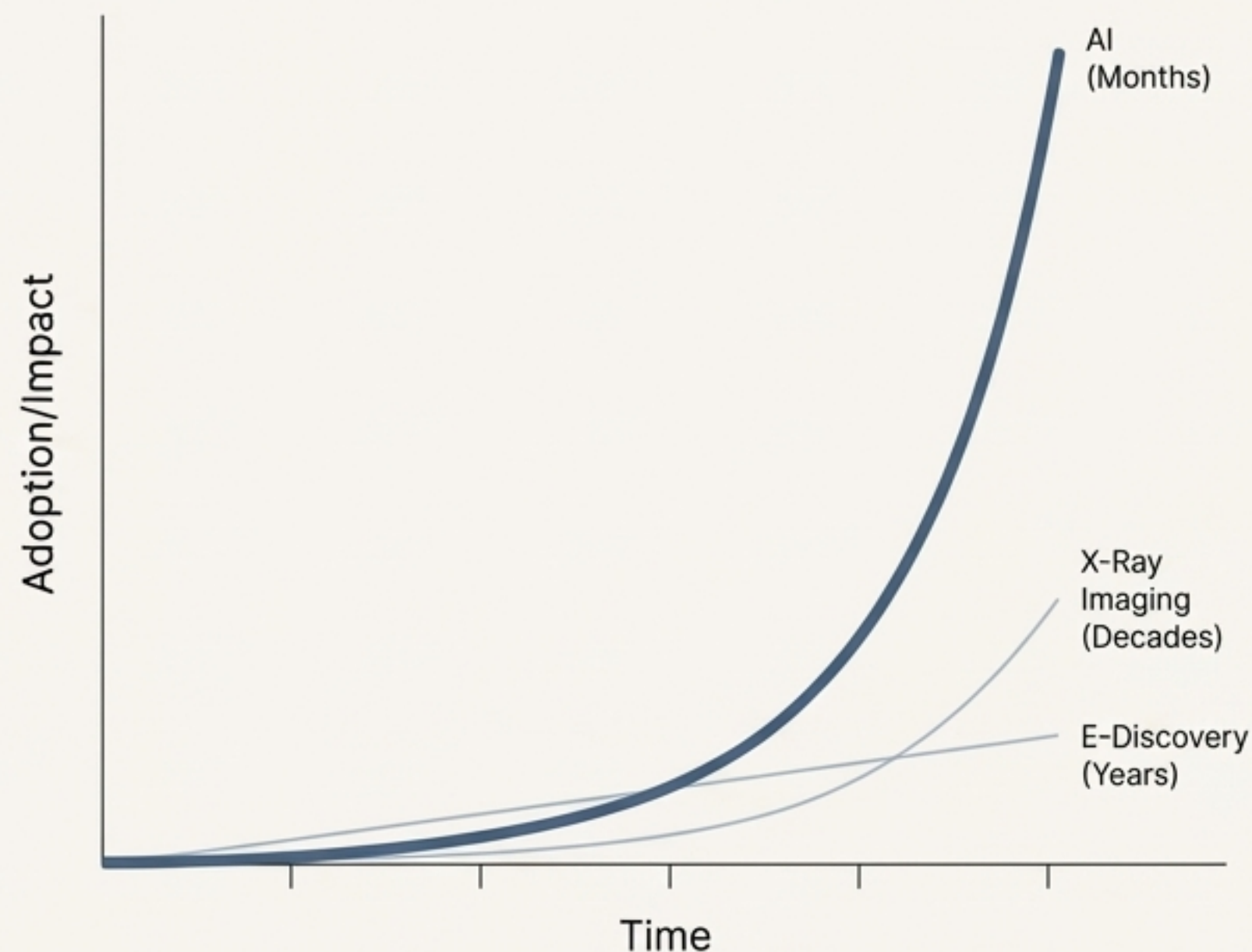


AI is not the first disruption. The question is not *if* the standard will change, but *how fast* and in *what ways*.

AI Is Compressing Decades of Evolution into Months

Unlike previous tools, AI's rapid advancement is fundamentally altering the timeline for adoption and expectation. It is moving from experimental to ordinary at an accelerated pace.

“Artificial intelligence is now compressing that evolution into a much shorter time frame. Courts and regulators are beginning to ask not only whether professionals are misusing AI, but whether there are circumstances where ignoring reliable systems may itself fall below the standard of care.”



The First Peril: When Using AI Becomes Negligence

Uncritical reliance and failure to verify AI outputs can directly breach duties of competence and confidentiality. The professional remains fully responsible for the final work product, regardless of the tool used.

“If a lawyer adopts an AI tool’s output as her own, she is professionally responsible for that work product.” - *North Carolina State Bar, 2024 Formal Ethics Opinion 1*

KEY RISKS



Factual Hallucinations



Hidden Algorithmic Bias



Confidentiality Breaches

Evidence of Overuse Risk is Already Clear

The Sanctionable Offense: Fabricated Citations

Mata v. Avianca, Inc. (S.D.N.Y. 2023) - Lawyers sanctioned for submitting briefs with fictitious AI-generated case citations and failing to verify them. This case is a direct warning about delegating professional judgment.

The Clinical Danger: Unvalidated Algorithms

A 2023 systematic review in ***Frontiers in Medicine*** highlights concerns about clinicians relying on algorithms without understanding training data, performance, or potential bias profiles, keeping primary responsibility with the human professional.

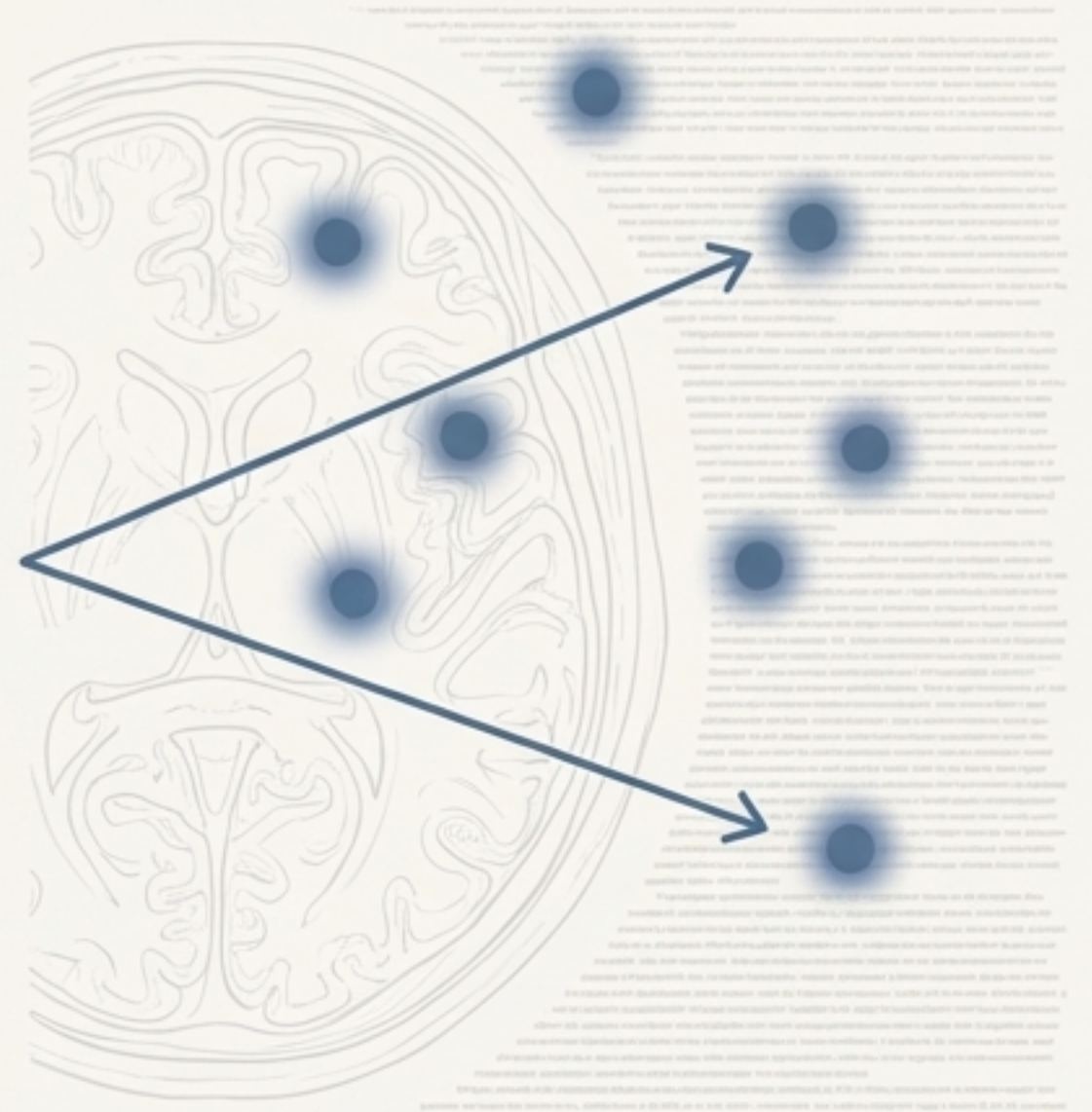
The Ethical Mandate: Verify Outputs

ABA Formal Opinion 512 (July 2024) explicitly states lawyers must understand AI systems enough to verify outputs and protect client interests.

The Second Peril: When Ignoring AI Becomes Malpractice

Core Concept: As AI demonstrates superior performance on specific, narrow tasks, a new question arises: can a professional's refusal to use a widely available, validated tool fall below the standard of care?

Key Question: If a tool is proven to reduce errors and is embedded in practice guidelines, could a clinician or lawyer who ignores it be seen as failing to employ a readily available risk-reducing measure?



The Emerging Argument for an Obligation to Use

The Medical Perspective

When AI Outperforms Human Experts

Missouri Medicine article (May-June 2025) explains that plaintiffs may soon argue that failure to use widely available AI tools that demonstrably reduce diagnostic error is itself negligent.

- Radiology (detecting subtle patterns)
- Stroke detection
- Sepsis alerts

The Legal Evolution

The Evolving Competence Baseline

The **NYC Bar Association's 2025 survey** notes that while no jurisdiction *currently* requires lawyers to use AI, a time may come when understanding and using certain AI tools is part of the competence baseline, per ABA Model Rule 1.1, Comment 8.

The Question is Not *If* to Use AI, But *How* to Govern It



The emerging consensus from professional bodies is that AI should **support**, not **replace**, professional judgment. The professional's accountability is the constant.

Medicine

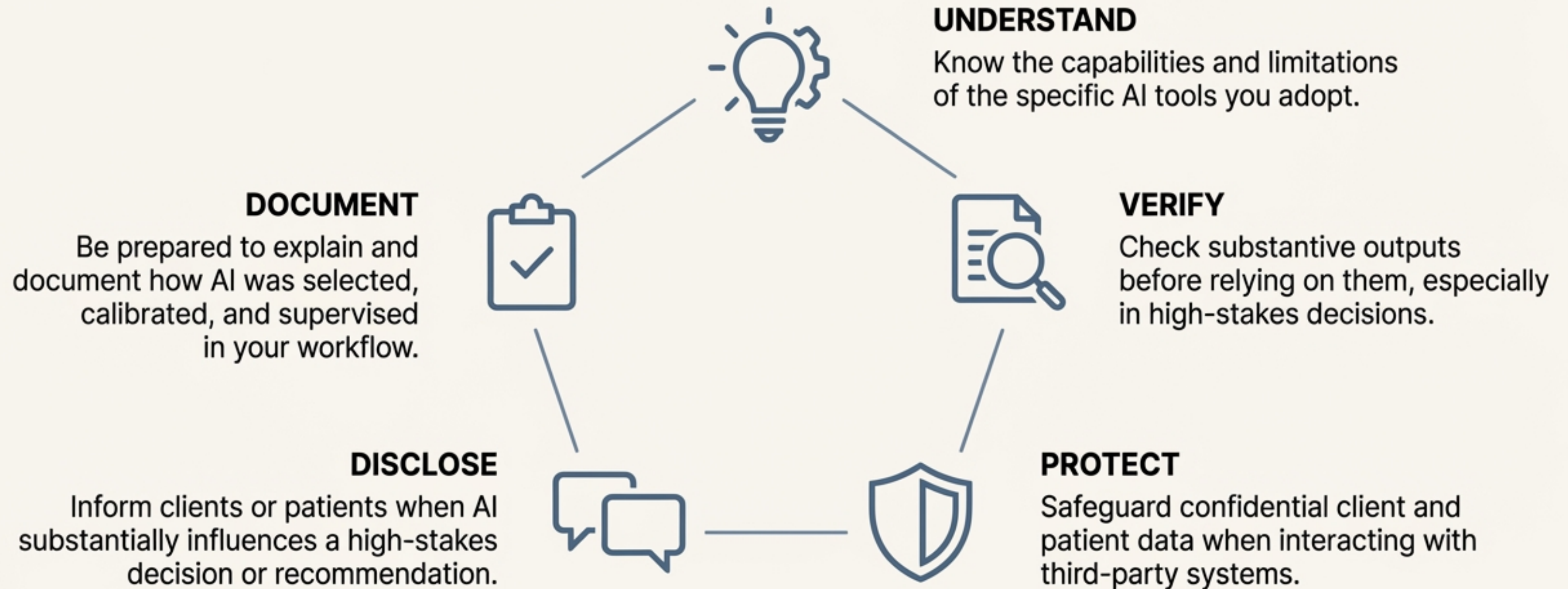
"AI should support, not replace, clinical judgment...
clinicians remain fully accountable."
– *Canadian Medical Protective Association, 2024*

Law

"Lawyers remain fully responsible for accuracy,
confidentiality, supervision, and billing."
– *ABA Formal Opinion 512, 2024*

The Five Pillars of a Defensible AI Practice

Ethics opinions, medico-legal guidance, and governance frameworks converge on five core expectations for professional conduct.



Governance Frameworks Are Your Evidence of Reasonable Care

In a negligence case, an **organization** that can show it followed a recognized framework can argue it exercised reasonable care.

National Standard



The **NIST AI Risk Management Framework (AI RMF 1.0)** provides voluntary but authoritative practices for mapping, measuring, and managing AI risks. It is now cited by agencies and bar groups as the benchmark for prudent governance.

Professional Standard



The **Arizona Supreme Court's ethical best practices** urge firms to inventory AI tools, restrict use to approved systems, and provide training. This shows courts are actively defining "reasonable" use through policy.

The Insurance Perspective: Coverage and Risk Assessment are Shifting

Professional liability insurers are now actively assessing AI-related risk. Your governance posture may directly impact coverage and premiums.



Key Questions for Your Firm

- Does our current malpractice policy explicitly cover AI tool usage?
- Do we need separate cyber or technology liability policies to cover AI-related failures?
- How are we demonstrating to our insurer that we are managing AI risk effectively?

Proving Causation: The Battleground Will Be in Your Records

Plaintiff's Burden

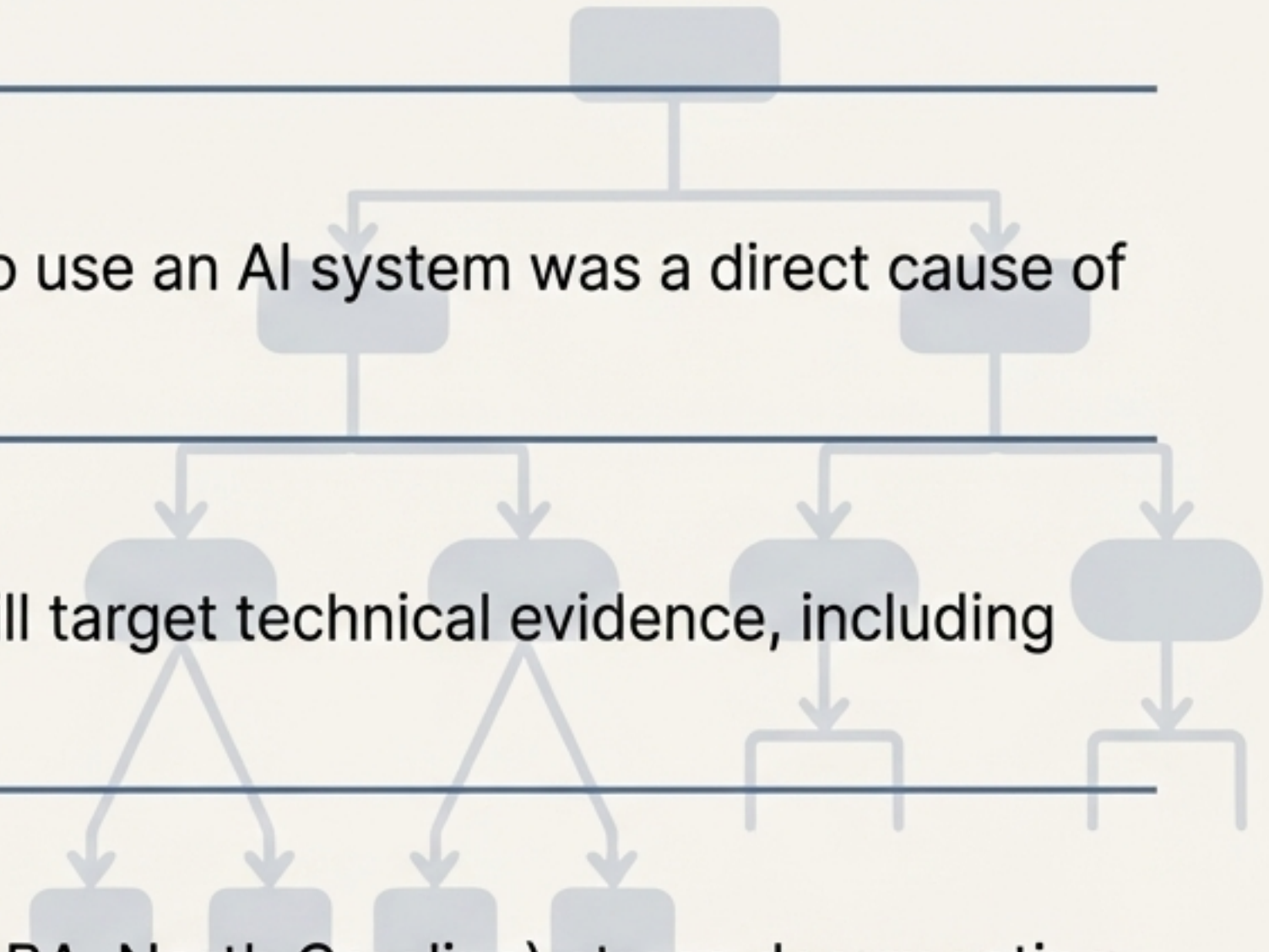
Plaintiffs must still prove that using, misusing, or failing to use an AI system was a direct cause of the negative outcome.

The Evidentiary Challenge

This requires reconstructing decision paths. Discovery will target technical evidence, including validation data, performance metrics, and usage logs.

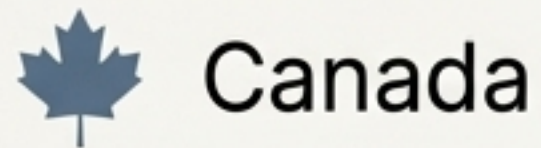
Your Defense Strategy

Your internal documentation is central. Ethics opinions (ABA, North Carolina) stress documenting how tools are selected, calibrated, and supervised. This documentation becomes the primary evidence of whether your reliance on AI was reasonable.

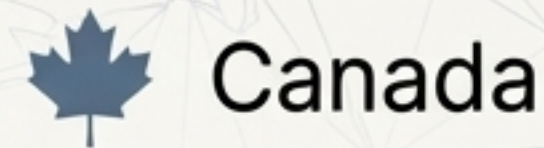


This is a Global Shift in Professional Duty

AI tools and professional services cross borders, creating overlapping regulatory expectations. International guidance provides additional reference points for what courts consider “reasonable.”



The **Canadian Judicial Council's** guidelines on AI use in courts emphasize that AI assists, not replaces, judicial decision-making.



The **Canadian Medical Protective Association's** medico-legal papers underscore continued professional accountability for AI-assisted decisions.

This is not just a U.S. phenomenon. The principles of governance and accountability are becoming a global professional standard.

Your Judgment Is Irreplaceable. Your Governance Is Your Defense.

**The standard of care is not being defined *by* the AI.
It is being defined by the professional's *governance of it*.**

Professionals remain responsible for the tools they choose,
the outputs they accept, and the workflows they design.

Your accountability is the constant.

Key Sources & Authoritative Guidance



ABA Formal Opinion 512 on
Generative AI (American Bar
Association)



**NIST AI Risk Management
Framework 1.0** (U.S. National
Institute of Standards and
Technology)

Missouri Medicine: “How
Physicians Might Get in Trouble
Using AI (or Not Using AI)”

The Medico-Legal Lens on AI Use
(Canadian Medical Protective
Association)

**Arizona Supreme Court Steering
Committee on AI**: ‘Ethical Best
Practices for Lawyers and Judges’

Association of Corporate Counsel:
“Legal Ethics Concerns When Using
Generative AI”