

Governance Feature

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Legal and Compliance Considerations for Using AI to Generate Board and Committee Meeting Minutes

By Anne M. Murphy, *ArentFox Schiff, LLP*

Hospital and health system governing boards and governance committees are confronted with AI issues and tools at a rapidly accelerating pace.

One way in which AI can be potentially helpful to governance processes is by using AI notetaking tools to generate meeting minutes. While there are efficiency and transparency opportunities in doing so, governing boards and their staff should proceed with caution. If these tools are deployed, it should be done carefully and thoughtfully to assure appropriate consent, a means to assure accuracy of the minutes, data privacy and data security, and preservation of attorney-client privilege as applicable. Ultimately, one of the biggest risks is the potential chilling effect that AI notetaking might have on candid board and committee discussions.

The Opportunities

There is little doubt that AI notetakers, by virtue of applying natural language processing, can provide an array of features well beyond creation of conventional minutes, such as highlighting key portions of discussions, including visuals, and identifying follow up action items. It also has the effect of freeing up the governance professional to be more actively engaged in the real time process of meeting involvement and support. Finally, the very transparent nature of AI notetaking can be helpful when there are internal board trust issues, given that a neutral “party” is creating the first draft.

Provider Point of View

Matthew K. Doonan, Senior Vice President & Chief Legal Officer, Inspira Health

“Specific to AI, the concerns as I see are as follows:

1. **Confidentiality.** It will be important to ensure that whoever creates the AI tool will not have access to the information provided to the AI so that its output can remain under the sole control of the organization and inaccessible to anyone it does not authorize. Someone with technical expertise should be involved to make sure that is the case.
2. **Discoverability.** Minute takers are generally discouraged from taking minutes verbatim and from using recording devices to record proceedings to help them create minutes later, out of concerns that they might be subject to production in the future. Many organizations adopt a record retention policy that allows the minute taker’s notes to be appropriately classified as “ephemeral records” and safely destroyed or deleted shortly after the minute taker creates the initial draft minutes. As a result, in many cases, a human minute taker’s notes might not be available for production. If AI were used, some consideration would have to be given to the information the AI retains, if any, and how and when it may be discoverable. If the AI “purges” its memory and does not leave a “digital footprint,” it may resolve that concern, but only someone with a technical background can validate that for an organization.
3. **Accuracy.** As with any minute taker, an initial reviewer should review draft minutes for accuracy and completeness, and then they should be provided to the membership of the body for review for the same purpose before they are adopted and approved at the next meeting. This is no different than when a human is the minute taker.

Ultimately, the board secretary has the fiduciary responsibility to ensure that accurate meeting records are taken and maintained, and currently there are no legal cases I am aware of that indicate reliance on AI to generate the draft minutes is not reasonable. At some point in the future, there might be legal precedent that addresses the issue one way or another.”

The Risks

Several risks should be considered when deciding whether to use AI notetaking in generation of minutes:

- 1. Consent to record.** In two party consent jurisdictions, all parties, including directors, committee members, staff, outside consultants and clinicians, should consent to the recording. If participants reside in multiple jurisdictions, this should be considered.
- 2. Possible chilling effect on meeting participation and candor of discussion.** As mentioned above, governance meeting participants may change their behavior if they know a meeting is being recorded, which could adversely impact openness of conversations. In contrast, a trusted governance professional typically will be nuanced in minute formation, which creates a degree of comfort level in the boardroom.
- 3. Data privacy and security.** A board should assure that it carefully selects a vendor with robust data privacy and security protections, and that transcript storage is managed carefully internal to the board. Given the highly sensitive information in minutes about employees, finances, strategy, quality of care, potential mergers and affiliations and the like, the vendor contract and a written procedure for implementing AI notetaking should only occur after careful legal review and input.
- 4. Potential failure of AI tool to recognize nuances; bias.** An AI notetaker may have challenges placing a board discussion in context, whether because of use of humor, sarcasm, or other emotions and opinions expressed during the meeting. Similarly, there is some risk of bias in the portrayal of board meetings.
- 5. Attorney–client privilege.** It is important to assure that any AI notetaking preserves attorney–client privilege, as appropriate, and is implemented in a manner that anticipates record demands in future litigation.

Recommendations for Evaluating and Implementing AI Generated Minutes

- 1. Assure board and committee comfort with, and consent to, being recorded.** Remember that other participants in a meeting, whether internal or external, also must consent in a two-party consent jurisdiction. Implementation of AI notetaking may not be advisable if the board has discomfort with it, in view of the possible chilling effect on candid and robust board discussion.
- 2. Work with internal or external legal counsel.** This will be important to address compliance with data and employee privacy and security laws, to select and negotiate with an AI vendor that has appropriate protections, and to assure that attorney–client privilege and record retention issues are managed.

3. **Consider a phased-in approach.** It may be sensible to implement AI notetaking initially with committees that create a relatively low level of legal risk.
4. **Implement a written protocol for AI-generated minutes.** This policy should address the procedures and considerations described above and should be very clear regarding the process for reviewing and finalizing drafts of minutes.

TGI thanks Anne M. Murphy, Partner, ArentFox Schiff, LLP, for contributing this article. She can be reached at Anne.murphy@afslaw.com.

