

Legal Considerations in Gynecology

Jeff Woods, JD



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Agenda

DAY 1

Introduction

Data

Tort Reform's Affect on Nuclear Verdicts

Current Defensibility Issues

Artificial Intelligence (AI) in a Clinical Setting

- Digital Scribe/Documentation
- Diagnosis/Decision-making

Questions?

DAY 2

Introduction

Data

Current Defensibility Issues Cont.

Informed Consent

Birth Plans

Discharging Challenging OB Patients

ACOG Guidelines

Question?



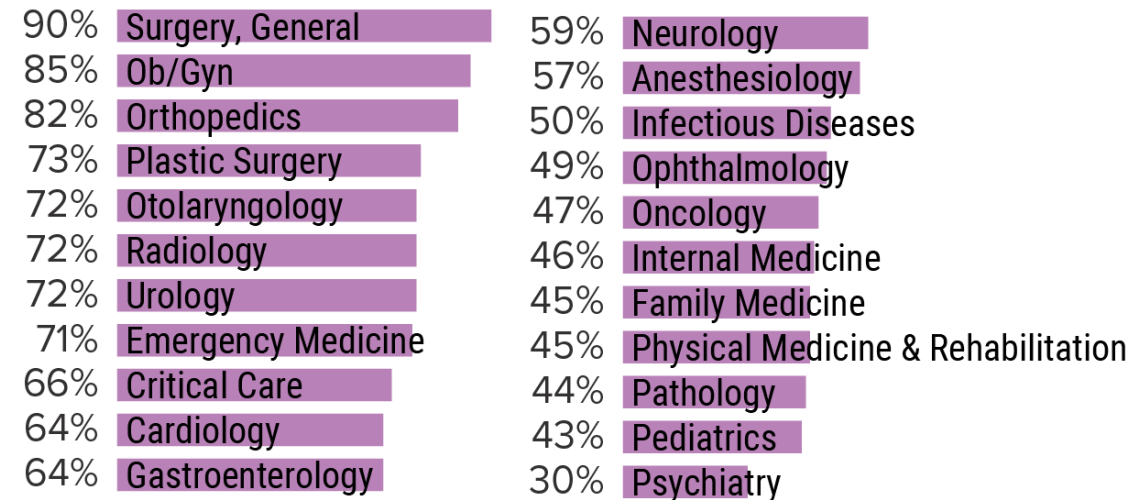




Data

Medscape Lawsuit Frequency (self-reported defendants)

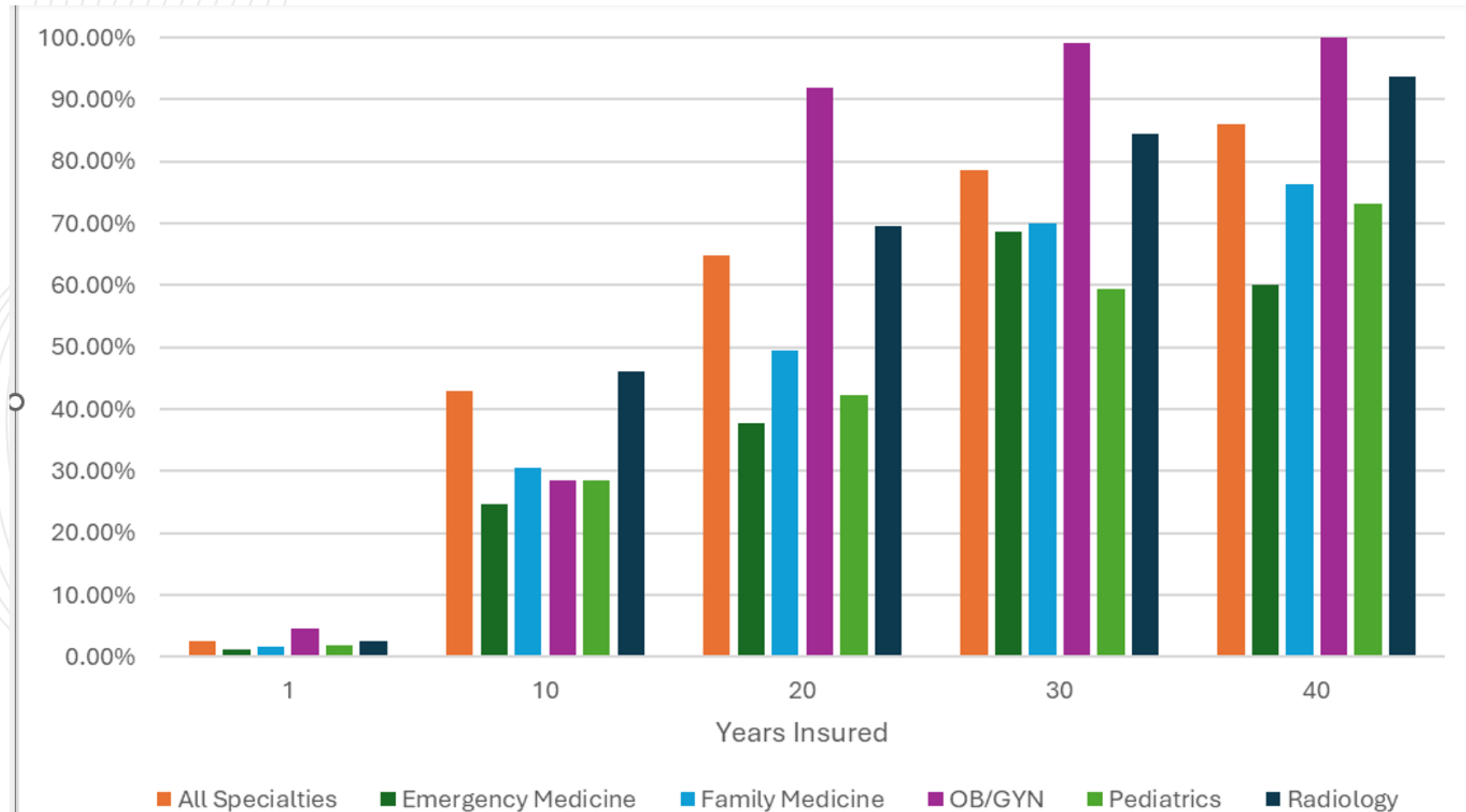
Malpractice Lawsuit Frequency, by Specialty



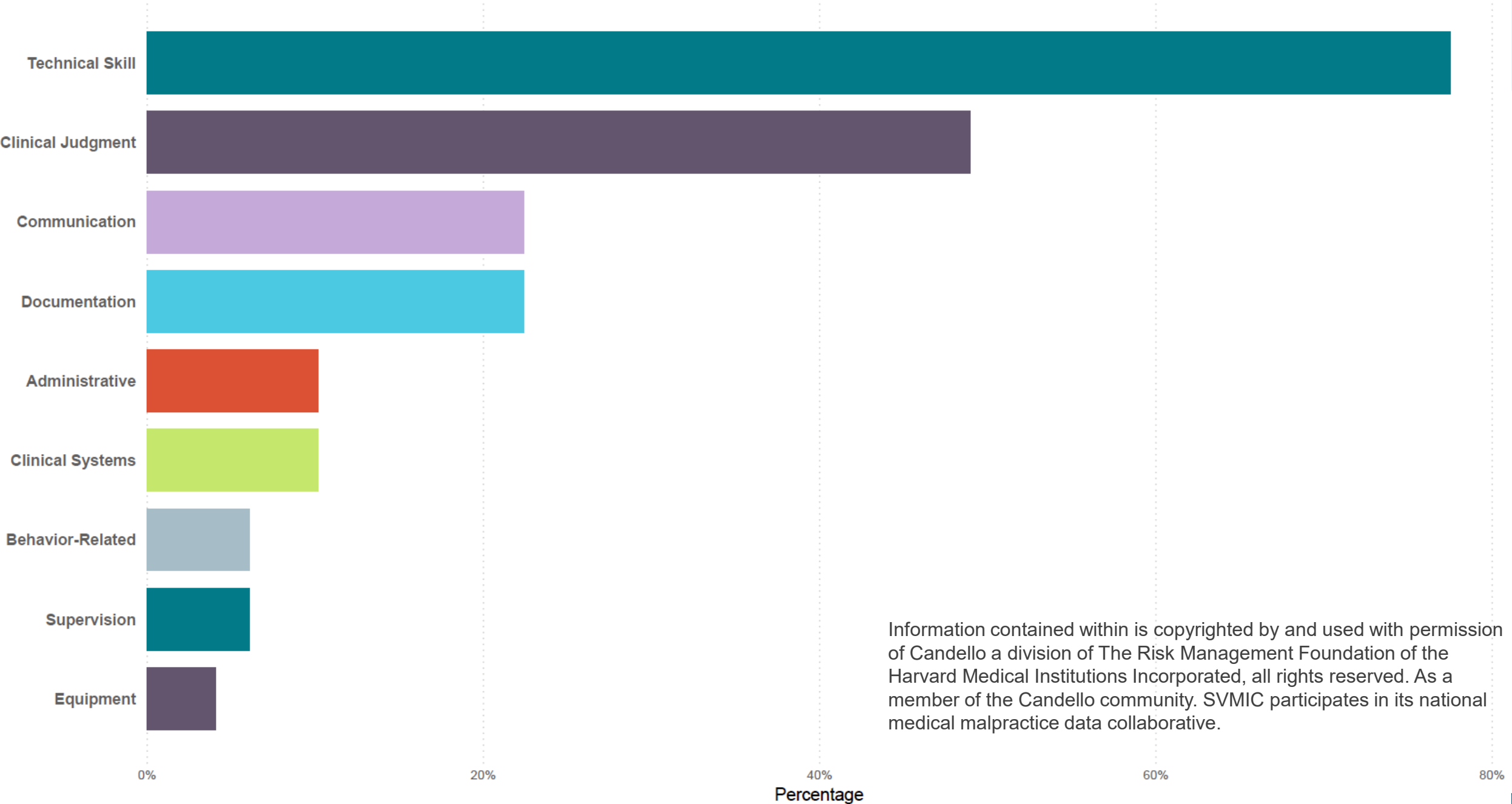
Not all specialties are shown. Respondents said they had been either a sole or co-defendant.

Is Your Risk of Being Sued Climbing? Medscape Physicians and Malpractice Report 2023

SVMIC data



GYN - Contributing Factors

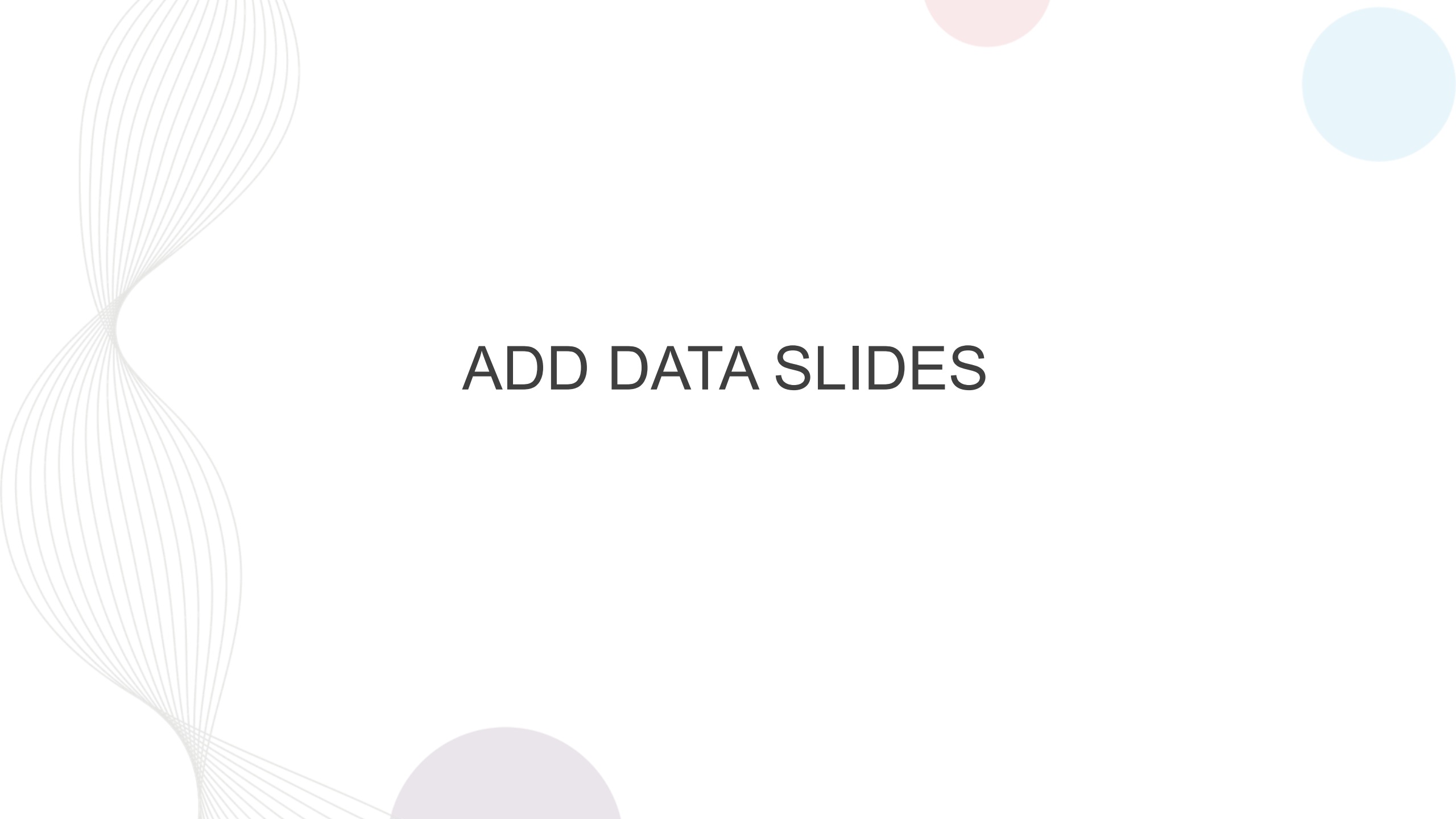


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Major Injuries

- Puncture/Perforation
- Emotional Trauma
- Laceration/Tear
- Malignancy
- Foreign body
- Hemorrhage
- Burn
- Sepsis
- Adverse reaction
- Need for surgery/procedure
- Nerve damage





ADD DATA SLIDES

The Top 5 Largest Medical Malpractice Verdicts in Tennessee

- **\$47 Million** (\$46,993,500) — *Davidson County, 2024* - **Case Details:** A Nashville jury awarded this historic verdict to the family of a girl named Vivian, who suffered permanent brain damage due to severe **birth injuries** during her delivery.
- **\$24 Million** (\$23.8 Million) — *Shelby County, 2009* - **Case Details:** Awarded to a DeSoto County, Mississippi woman whose Memphis OB-GYN and clinic **failed to diagnose a breast lump** over the course of 18 months, which subsequently progressed to terminal breast cancer.
- **\$22.6 Million** — *Hamilton County, 2006* - **Case Details:** This verdict was returned in federal court in Chattanooga for the adult female plaintiff who was admitted to the hospital with a broken leg following an auto accident. Medical staff improperly inserted an epidural catheter for pain management despite the fact the patient was on blood thinners for a mechanical heart valve. This contraindication caused a spinal bleed that permanently paralyzed her.
- **\$16.1 Million** — *Davidson County, 2023* - **Case Details:** An adult male received a favorable jury verdict in a medical malpractice lawsuit involving post-surgery (lap-chole) complications leading to sepsis, which stands as one of the largest recorded judgments in Nashville history.
- **\$8.5 Million** — *Sevier County, 2006* - **Case Details:** This verdict—awarded in East Tennessee against a doctor for medical malpractice for failure to diagnose a treatable heart tumor resulting in a devastating stroke —was the largest judgment in Sevier County

What About These Two Recent Verdicts?

- 2026 - A Shelby County jury returned a **\$38 million** verdict in a medical malpractice and birth injury lawsuit which alleged a delay in performing a C-section. The case was heard in Shelby County Circuit Court, where the jury found doctors at fault for injuries sustained during childbirth, resulting in lifelong care needs for the child.
- 2025 - A Shelby County jury awarded a **\$182 million** medical malpractice verdict in a birth injury lawsuit. However, the presiding judge reduced the final payout to comply with Tennessee's statutory tort limits and later ordered a new trial, essentially wiping out the massive award. The litigation involved severe complications during a child's delivery, initially resulting in an award of \$30 million for the boy's suffering and \$150 million for the parents' consortium interest. The drastic reduction and subsequent new trial ordered by the judge are standard procedures in Tennessee, which limits non-economic damages in medical malpractice claims to prevent runaway or excessive jury verdicts.

Caps in Tennessee: Tort Reform

Non-Economic

\$750,000 Cap

Economic

No Cap

Punitive

Cap is 2 times Economic or \$500,000 (whichever is greater)

Good Faith

Certificate of Good Faith from expert required

Common Issues in Ob/Gyn Liability Cases

- Patient care/diagnosis
- Technical Skills
- Communication
- Documentation
- Failure to adhere to Protocols/guidelines (entity and national/evidence-based guidelines)
- Failure to promptly order consult

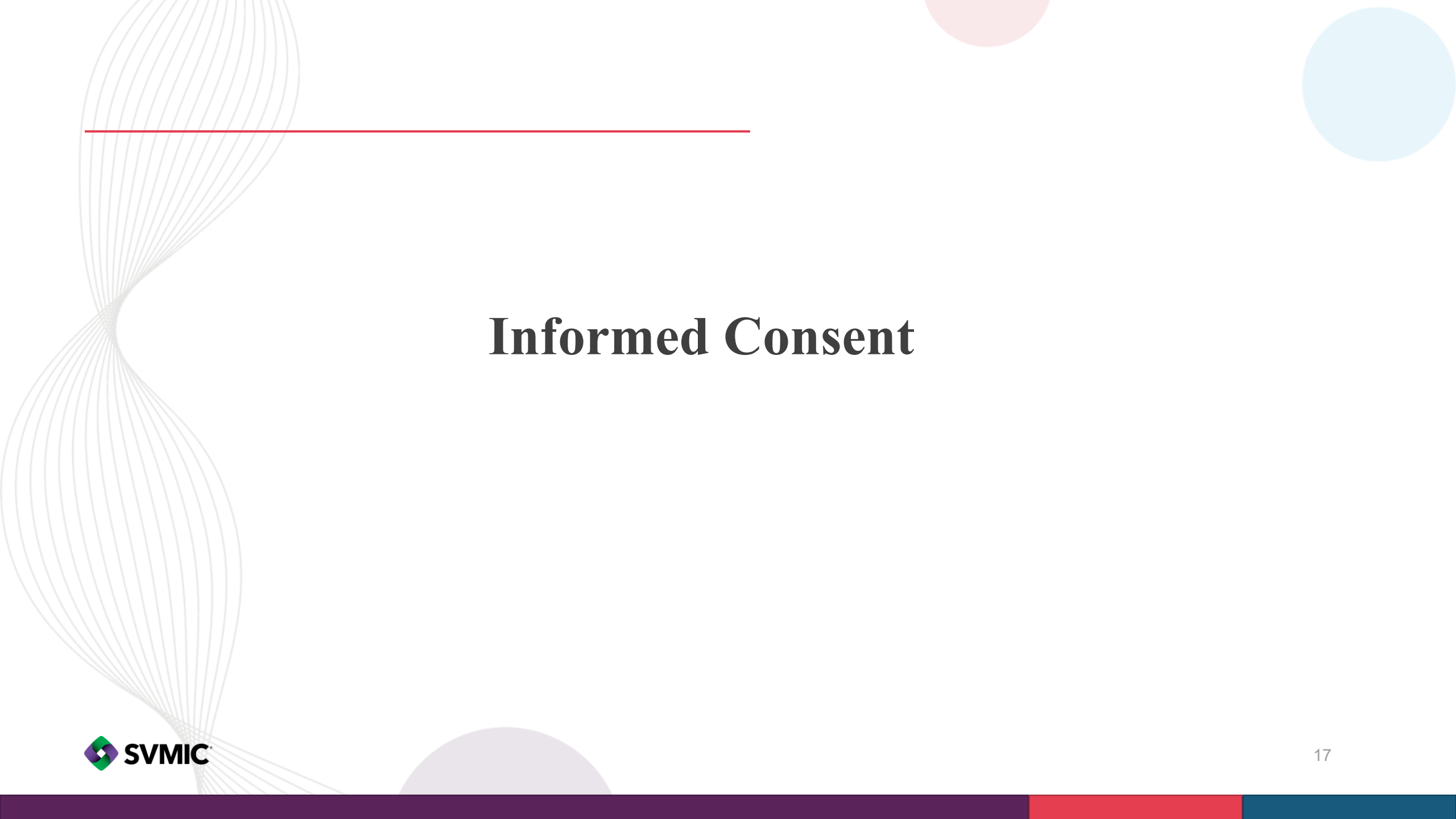
If you get nothing else from this presentation, remember:

#1- Control the Things You Can Control

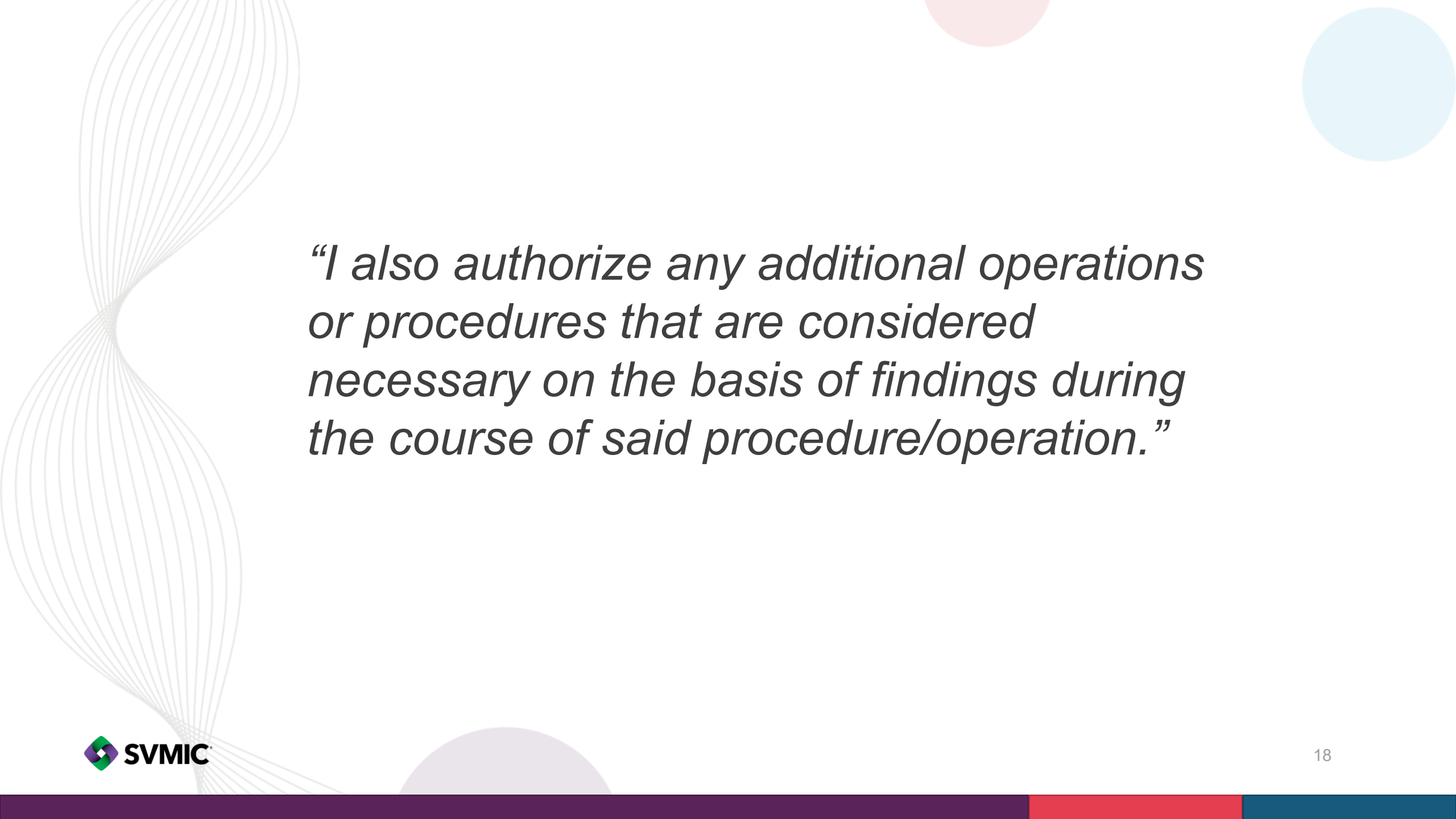
#2 - Develop Good Habits and Skills

Comments From a Senior Claims Attorney

- Informed consent is frequently a key topic in some of these cases – whether Gyn or OB - as with all med mal. So, getting informed consent and documenting it is significant. That includes making it clear in the labor records whether a C-section was discussed, when, and why. Also, whether the option was just discussed or if it was affirmatively recommended. Likewise, if the patient is requesting a C-section but that is not considered an appropriate option then documenting the discussion and why it was not an appropriate option at the time. Then being on guard for anything that would change that medical judgment.
- For Gyn type surgical cases a key would be timely documenting clearly what is done in the surgery. That includes anything outside the normal, what actions were taken and why. I have reviewed a couple of cases recently involving ureter injuries during Gyn surgery when the surgeon did not do a good job in the op report of documenting what they did to protect (or evaluate) the ureters and/or why something abnormal (scarring, etc.) led them to deviate from their normal routine.
- With OB cases I would say that many facilities seem to now have a form the nurses and OB fill out after a shoulder dystocia is encountered and resolved. The form covers the timing, what maneuvers were employed, etc. A main element is marking whether and how much force was applied to the baby's head. Of course, they all have one of the choices being something like 'light/mild traction was used'. Having that or "None" documented can really help the defense of the cases. I believe ACOG has a form for this, but I do not have a copy.
- Another aspect that seems to be creeping in more frequently is whether the OB reviewed the fetal monitoring strips remotely. Most OBs/hospitals have the potential to view the strips remotely. Then the question comes up whether the standard of care required the OB to do so or whether they actually did. The standard of care seems to be sliding closer to them being required to review the strips if they can and especially if issues are raised or the longer time has gone on with no update by the nurses. Or, if it is an inexperienced nurse, etc. But frequently an issue is that, by the time of a claim, the OB does not recall if they viewed the strips remotely or not. Often, they did not document anything in that regard. So, the defense team has to try to get and review the audit trail in the hospital system. **[You don't want the OB testifying in their deposition that they did (or did not) remotely view the strip and then later it is proven otherwise.]** Analyzing the audit trail can be difficult, particularly without alerting the other parties that there could be an issue. If the doctor documents that they did review the strips either remotely or not and outlines their thoughts then some of that concern can be avoided.



Informed Consent



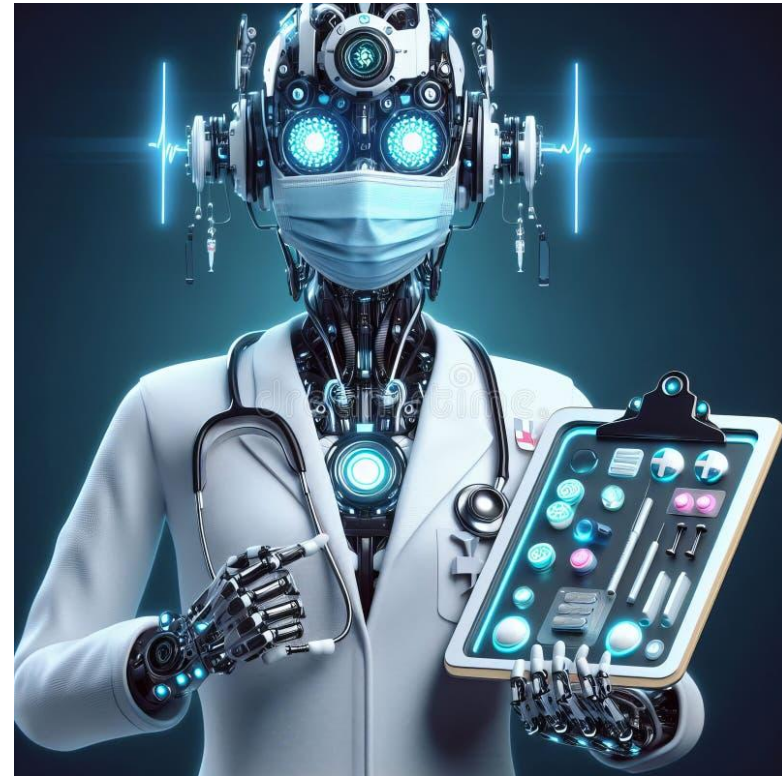
“I also authorize any additional operations or procedures that are considered necessary on the basis of findings during the course of said procedure/operation.”

AI - Two Clinical Uses

Digital Scribe



Diagnosis/Decision-making



Digital Scribe/Ambient Listening

Recording and documenting patient interactions.

Benefits

- **Reduces documentation burden:**

- AI scribes significantly decrease the time physicians spend on administrative tasks, a major contributor to burnout.

- **Improves clinician satisfaction:**

- AI scribes can improve physician satisfaction and allow more time for personal life.

- **Enhances patient care:**

- With less time spent on documentation, clinicians can dedicate more attention to patient interactions.

- **Potential for cost savings:**

- The use of digital scribes has shown potential for cost savings compared to hiring in-person scribes. Also, *potentially* more patients can be seen/treated during the same period of time.

Risk & Limitations

Misinterpretation/Spelling Errors:

- AI can misinterpret context-dependent statements, leading to inaccurate documentation and can make mistakes such as spelling errors.

Loss of nonverbal information:

- AI scribes cannot capture nonverbal communication like body language, which a human scribe might observe.

Contextual limitations:

- Basic scribes may only focus on the immediate conversation. More advanced systems that integrate with the EHR have more contextual awareness, but basic models still have limitations.

Informed consent:

- Patients must be informed about the use of AI, and obtaining consent, verbal or written, is crucial for transparency and trust.

Privacy and compliance:

- Using AI scribes requires careful attention to HIPAA rules, and vendors must sign Business Associate Agreements (BAAs).

Realistic AI Scenario

Risk Professional's Review & Critique of HBOMax' "The Pitt"

1 – 5 Scale



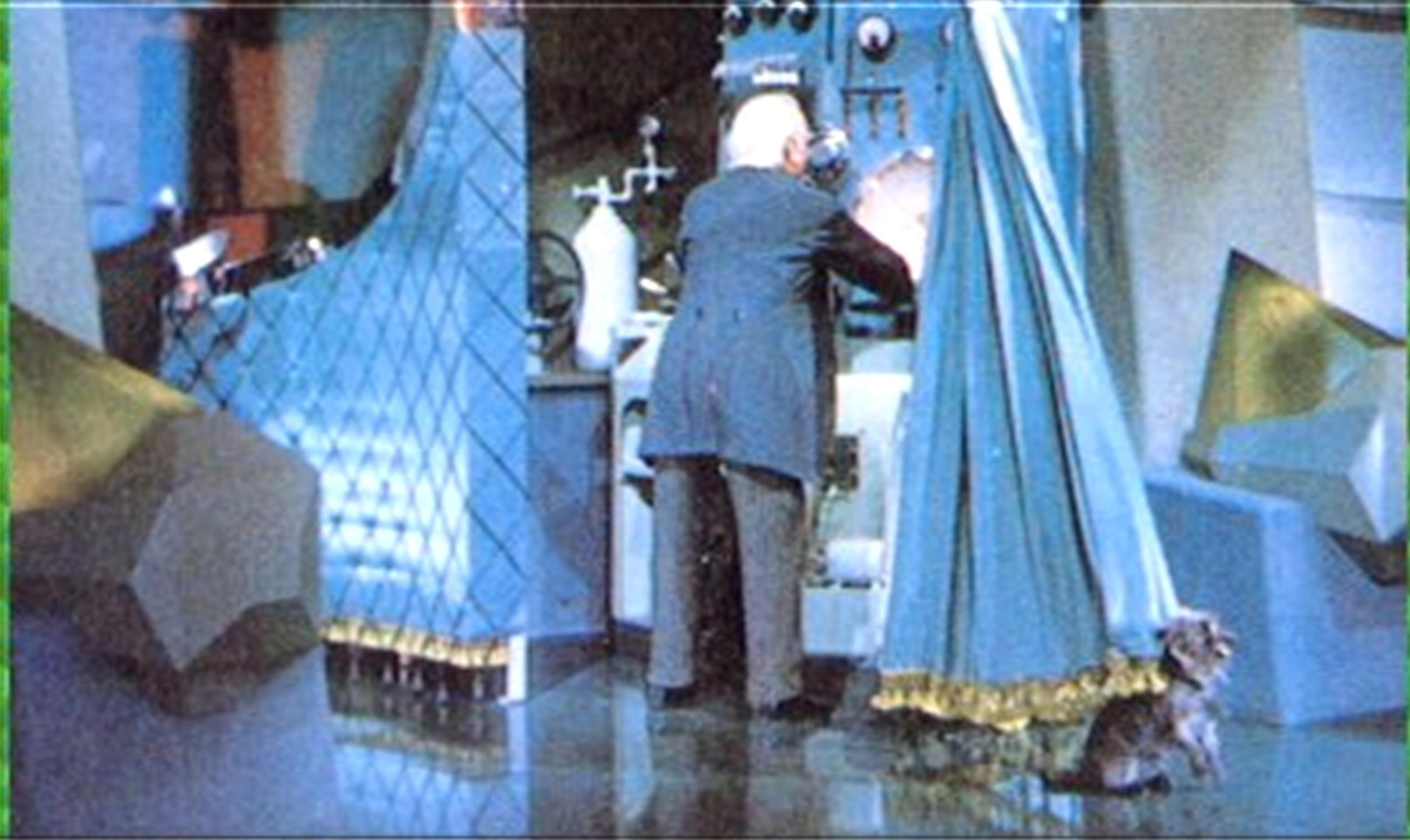
Patient Consent

Obtaining patient consent before using AI as a scribe is critical to ensure legal compliance, protect patient privacy, maintain trust, and uphold ethical standards of autonomy.

- **Verbal or Written Consent**: Consent should be obtained before the recording begins, either through a signed form during registration or a verbal check-in at the start of the appointment.
- **Clear Explanation**: Providers should explain in simple language that: the AI is recording to create a summary, not a verbatim transcript; patient privacy will still be respected, and; the recording will be deleted after the information is transferred to the EHR.
- **Opt-Out Option**: Patients should be given the option to decline the use of the AI scribe without it impacting their quality of care.

Diagnosis/Decision-making

Diagnostic support.



AI Applications and Clinical Benefits

- **Automated Ultrasound & Imaging:** AI-enabled ultrasounds automate fetal biometry (e.g., measuring the baby's head, femur, and abdomen). In rural or low-resource areas, portable AI-ultrasound systems—such as those tested in Zambia and rural North Carolina—allow providers to get expert-level estimates of gestational age, fluid levels, and fetal positioning.
- **Maternal Health & Risk Prediction:** Machine learning models analyze electronic health records (EHRs) to flag early warning signs of preeclampsia, gestational diabetes, and postpartum hemorrhage.
- **Fetal Monitoring:** AI algorithms are used to monitor fetal heart rates in real-time, helping to identify subtle patterns linked with fetal distress and reducing human subjectivity.
- **Fetal MRI:** Advanced AI tools assist in diagnosing complex fetal brain anomalies and evaluating the severity of placenta previa.

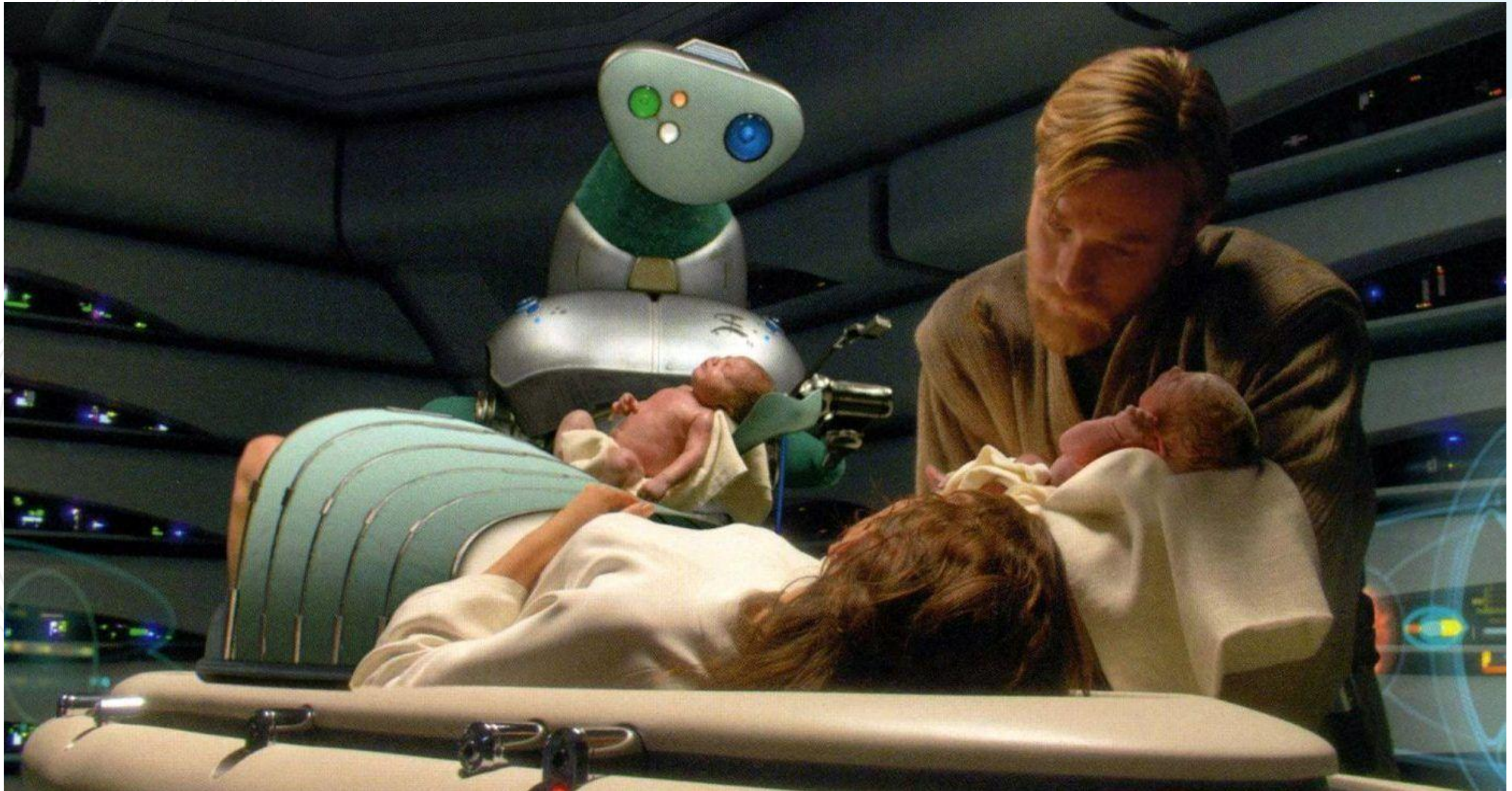
AI Hallucination

“AI hallucination” is when an AI model confidently generates outputs that are false, misleading, or nonsensical. This occurs when the AI fabricates information, such as incorrect facts, non-existent sources, or illogical connections, even though it is presented as factual. These errors can be caused by insufficient or biased training data, incorrect assumptions, or the AI misidentifying patterns in the data upon which it was trained.

(*i.e.* “BSing, confabulation, or delusion” – Wikipedia)



WARNING – DO NOT USE SYSTEMS OR VENDORS THAT STORE PHI OUTSIDE THE U.S.



The Future of AI in Medicine

- **Hybrid intelligence:**

The future lies in combining AI's analytical strengths with human expertise to create a system of hybrid intelligence that enhances clinical judgment.

- **AI literacy:**

As AI becomes more integrated, healthcare professionals will need to develop AI literacy to collaborate effectively with these systems.

“AI will NOT replace physicians. It will, however, replace physicians who do not know how to properly use AI.”

- **Focus on the "human touch":**

AI is not intended to replace the empathy and moral reasoning that are crucial for patient care.

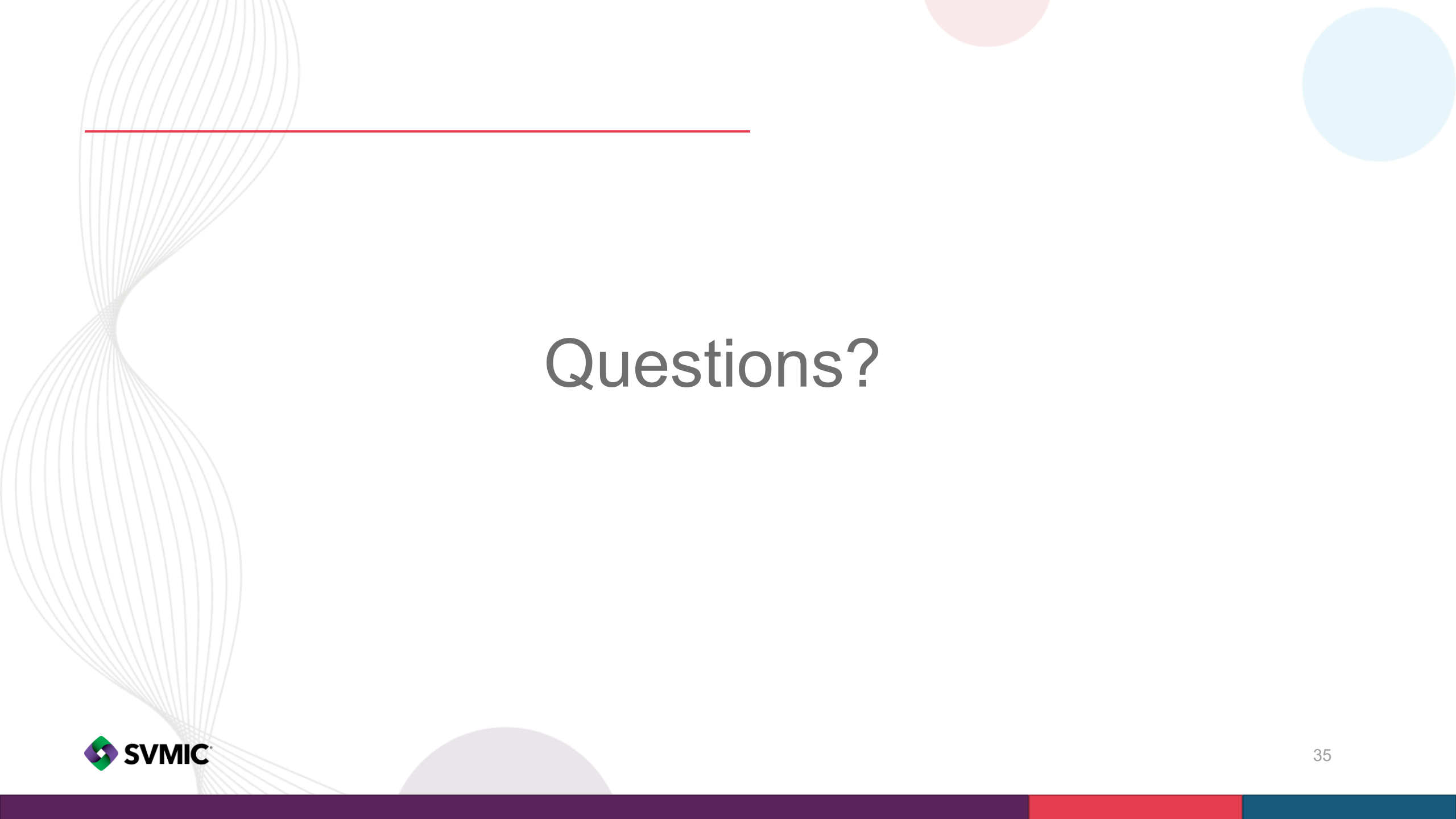
To explore the most recent guidelines and professional consensus, you can visit:

ACOG Health IT and Clinical Informatics

<https://www.acog.org/practice-management/health-it-and-clinical-informatics>

PMC Review on AI in Obstetrics

<https://pmc.ncbi.nlm.nih.gov/articles/PMC11329325/>.



Questions?



thank you