



Exploring AI's Limitless Possibilities

They range from fraud and Board Certification
to privacy issues and hallucinations.

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Several months ago, we took a closer look at AI, covering the use of it in insurance audits and medical record documentation. Let's look now at several other "issues" concerning AI.

1) Definition

The definition of artificial intelligence is using technology to perform tasks that, historically, only human intelligence could perform, such as identifying patterns and making decisions. Of course, computer programs have been identifying patterns and evaluating the results of EKGs for years. Most healthcare providers have relied on these reports while also conducting their own analysis of the peaks and waves of the electrical patterns generated by the heartbeat and collected by the placement of the leads. Emerging AI tools cannot replace human physicians, and "trust but verify" remains good advice for the future!

Although there is no universally agreed-upon definition of AI, it certainly involves analyzing data and preparing written content. Is a computer using AI truly "sentient"? Is there an awareness and ability to feel and perceive things? These are debates for another forum.

2) The Case of Accused Fraud and Board Certification

AI uses programmed algorithms, sets of rules that the computer is programmed to follow while solving a problem or situation. Consider this real-life scenario. Within one month, a law firm was retained by two different candidates for Board Certification who were unknown to each other. Both had taken and passed the same examination. Both received virtually identical first letters from the certifying board, and after careful analysis (read, AI analysis), it was found that the odds of each achieving the score they did on certain parts of the exam "were as unlikely as trying to calculate all the

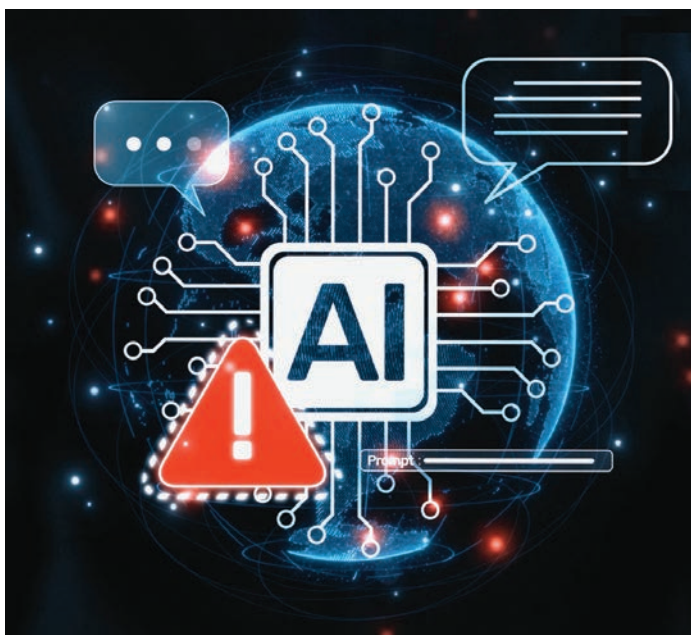
grains of sand on all the beaches." Please note the unusual language. The letters went on to inform the candidates that they were under investigation but would be allowed to re-take the examination under heightened security. Each did. Both scored higher the second time!

It should be noted that both candidates were young, female, originally from developing countries, and brilliant. Neither had any record of prior cheating nor lying. One was in her first semester of pregnancy when she retook the examination. As part of the heightened scrutiny, she was given an emesis bag in case she had to regurgitate. If either candidate needed to use the bathroom during the exam, they had to be escorted. In short, they both were subjected to a humiliating process, and they were each mortified but compliant.

After each of the candidates passed the second exam, they received another letter telling them they were still under investigation. At this stage, the candidates, unbeknownst to each other, contacted the same law firm.

When the law firm analyzed the situation, very little relevant case law was found. What lit-

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the precedent there was insisted that the AI-generated “evidence”, which involved statistical analysis, was legally admissible. However, some actual, more concrete evidence of

3) Hallucinations

A hallucination is something that seems or appears real but is not. We have all heard about the lazy attorney who waited until it was too late and submitted a motion with legal citations generated by an AI program,

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fraud or cheating still was needed. NONE existed.

The law firm decided to send strong letters notifying the certifying body that each physician was contemplating legal action against the certifying board, with a rather long list of reasons. Within a month, each candidate received similar letters from the certifying body congratulating them on achieving their newly obtained board certification.

only for it to emerge that the cases cited in the motion were totally made up. The judge quickly realized what was going on. The attorney was in serious trouble.

The same can happen with medical records and reports. While the software companies can “explain away” the hallucinations and how to correct them, this problem persists.

Just imagine if such a hallucination resulted in the incorrect diag-

nosis or treatment of a patient. Who is at fault? First, if a human being is harmed by this, it is an avoidable tragedy. Second, although the software company may have liability, the physician or healthcare provider, as always, is legally and ethically liable for the care and treatment of their patients. That has not changed. Physicians must continue to review their reports and medical records, even (or especially) when they were generated by AI. They must review the prescriptions and dosage recorded whether or not they choose not to dictate their records using AI, because dictation is not always transcribed accurately. The provider or hospital could be found liable for inadequate training if they’re improperly using AI.

Additionally, the manufacturer of the AI program might be found liable if there was a flaw in the program. That “flaw” might be extremely hard to find given the proprietary nature

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of AI medical software and the complexity of its code. For now, at least, AI is seen as a tool that helps providers make diagnoses. But the provider of the medical care still has the primary responsibility.

There is software that will outline and issue a report of an attorney interviewing a client or potential witness, and the results it produces are truly remarkable. Similar software is available for physicians, but the results should still always be reviewed for completeness and accuracy.

4) AI and Privacy Issues

Many AI software packages being sold to healthcare providers record patient encounters that generate transcriptions and a comprehensive

uses new technology and is concerned with accurate records and documentation. As of this writing, Utah has a state law that requires such disclosure. When it comes to liability, the law has not caught up with technology.

5) Data

AI is dependent on data and lots of it. What if some of that data is outdated or biased? What if some of that data fails to recognize certain terminology? Examples of that would be a program failing to recognize the similarities between hallux valgus and bunion, hammertoe and digital flexion deformity, exostosis and osseous hypertrophy. What if the definition of a term has evolved over time? Any physician attempting to read a medical textbook written in 1926 might find themselves unable to square what

prompt physicians to check in with a patient about how they are doing on the new medication you prescribed on the prior visit. The possibilities are truly limitless.

8) Analysis

With the proper program, AI can perform a detailed analysis of x-rays and scans. It can do the same for pathological analysis and analyzing culture and sensitivities. It is strongly recommended that a competent human “double check” the AI findings. AI can also alert you to various contra-indications in using certain medications, or therapies on certain types of patients in various age groups, genders, ethnicities, etc. Some programs do this function so well that you must be wary of receiving too many warnings. Too many of these can give you warning fatigue, which might result in ignoring a valid contra-indication that gets lost amid the noise of other warnings.

Conclusion

Prior to purchasing and using AI software, know why you want to use it. Know what you want it to accomplish. Sometimes its use will not be appropriate or helpful for your practice. Sometimes only certain uses are indicated. Do not pay for what you do not need. The key is to make AI work for you. We stand either at the first step up a mountain with a beautiful view, or on the precipice of something still mostly unknown. It's probably a bit of both, and using AI responsibly will determine where it can lead you. **PM**



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OPD investigations, as well as Medicare Fraud, Fraud & Abuse, Hospital Actions, RAC Audits, Medicare Audits, OIG Fraud, Healthcare Fraud, Medical Audits, and Health Plan Billing Audits. As a licensed podiatrist prior to becoming an attorney, he served as the international president of the Academy of Ambulatory Foot and Ankle Surgery.

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record of the examination/appointment. The software purports to “delete” the recording within 30 days. However, we all know that not everything is truly, permanently deleted from a hard drive or storage media.

Providers also run into the problem of consent for the patient to have a conversation recorded. Does your office have written consent for each patient encounter? Does it need it? Many states require only one-party consent. The problem with that is, in any doctor's office, medical assistants, RNs, secretaries, relatives, friends, etc. frequently go in and out of a treatment room. In states such as Florida, Maryland, Washington, Pennsylvania, Illinois, and California, all parties must consent. Is the AI-generated recording considered part of the medical record under HIPAA?

HIPAA applies in every state. Regardless of where your practice is located, it is best to obtain a consent from your patients if the software is recording the encounter, even if the recording is subsequently deleted. You can use this as a marketing opportunity to demonstrate that your practice

they've learned with what the conventional medical wisdom or terminology had been a century ago. Emergent AI presents similar potential pitfalls.

6) Personalized Patient Care

AI can create individualized and patient interactive educational programs that will aid the podiatrist and patient and adhere to treatment programs. It can also help enhance their efficacy, including via remote monitoring of the patient. You, as the podiatrist, see the patient for a short period of time. Imagine what can be gleaned by being able to monitor various physical functions all the time.

7) Administrative Duties

AI can streamline and improve administrative chores. It can be programmed to follow up with the patient concerning referrals, prescriptions, and treatment. It will accurately document such interactions in ways that often are lacking in one's medical records. It can facilitate communication with the patient's other relevant healthcare providers. It can