

Can AI Be Used as Evidence in Medical Malpractice Lawsuits? The Legal and Ethical Frontier

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Abstract

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The integration of Artificial Intelligence (AI) into clinical practice, from diagnostic algorithms to surgical robotics, is rapidly transforming healthcare. While promising enhanced efficiency, this digital revolution introduces a profound challenge to the established legal framework of medical liability. The core question for the courts is: **Can AI be used as evidence in medical malpractice lawsuits, and how does its involvement redefine negligence?**

AI-generated records and outputs can be introduced as evidence, but their admissibility and the subsequent determination of liability are complex. The legal system, built on precedents involving human practitioners, struggles to adapt to the unique characteristics of autonomous and semi-autonomous AI systems [1].

The Admissibility Challenge: The AI "Black Box"

For evidence to be admissible in a malpractice case, it must meet established legal standards, such as the Daubert standard, which assesses scientific validity and reliability. AI outputs, such as diagnostic recommendations, must clear this high bar.

The primary obstacle is the **"black box" problem**. Many advanced AI systems, particularly those based on deep learning, operate opaquely. Their complex, non-linear decision-making makes it difficult to explain *why* a specific output was generated. In court, this lack of interpretability presents a significant hurdle, challenging the ability to prove a direct causal link between the AI's error and the patient's injury—a cornerstone of any successful malpractice claim [1].

Defining Liability: Who is Responsible When AI Errs?

The traditional tort law concept of medical negligence requires proving a

breach of the duty of care that directly caused harm. With AI, the breach can be attributed to multiple parties:

1. The Clinician's Responsibility

For **assistive AI** (decision support tools), liability often remains with the physician. The **learned intermediary doctrine** suggests the physician, as the final reviewer, is responsible for critically evaluating the AI's output. Negligence can arise from failing to use an AI tool when the standard of care suggests it, or from blindly following a flawed AI recommendation [1].

2. The Manufacturer's Responsibility

For **autonomous AI** systems, the focus shifts to **product liability**, holding the manufacturer responsible for injuries caused by a defective product. AI complicates this because algorithms evolve; the version that caused harm may not be identical to the original, making it difficult to prove a defect in the initial design [1]. Manufacturers are also expected to clearly provide indications, adverse effects, and report system failures.

3. Institutional and Vicarious Liability

Vicarious liability (*respondeat superior*) can apply if an AI algorithm is considered a "subordinate" of a hospital or physician group. The institution may then be held responsible for the AI's negligence, acknowledging that healthcare organizations bear the institutional risk of integrating these tools [1].

The Legal Vacuum and Proposed Solutions

The current legal landscape is characterized by a significant regulatory vacuum. Existing frameworks are inadequate to address the unique challenges posed by AI, such as the black box problem and the distributed nature of responsibility, necessitating urgent legal and regulatory intervention.

Scholars have proposed models to address this gap:

Common Enterprise Strict Liability: *This model proposes that the physician, manufacturer, and hospital be considered a "common enterprise" for liability. This distributes responsibility, creating strong incentives for all actors to ensure the AI system's safety and reliability [1].* **AI Personhood:** A more radical, though discussed, solution is the conferral of limited legal personhood to the AI device, allowing for direct lawsuits against the algorithm.

The future of medical law depends on establishing effective frameworks that balance promoting innovation with protecting patient safety and ensuring accountability.

For a deeper dive into the intersection of digital health, AI, and policy, the professional insights available at [www.rasitdinc.com] (https://www.rasitdinc.com) offer expert commentary on navigating this evolving landscape.

Conclusion

The question of whether AI can be used as evidence in medical malpractice is settled: it can and will be. The more pressing issue is how courts will weigh that evidence and apportion liability when an AI system contributes to an error. The complexity of the "black box," the evolving nature of algorithms, and multi-party involvement demand a new legal paradigm. Until specific, comprehensive regulations are enacted, legal uncertainty will continue to challenge practitioners, developers, and patients, underscoring the urgent need for a clear, modern standard of care for the age of artificial intelligence.

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References

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