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MED-MAL MATTERS

Change, especially technological change, is all the rage among legal commentators today. As the American Bar Association puts it, lawyers, firms and judges have historically been slow to adapt to change, but recent advances in information technology have revolutionized the industry. Automation and artificial intelligence (AI) are transforming the legal profession by making it more efficient to review contracts, search documents and synthesize electronic discovery.

Attorneys have an ethical responsibility to possess the legal knowledge and skills to competently represent clients. This includes reasonable proficiency in the technological tools firms utilize internally, including software used for case management, word processing, remote meetings, legal research and analytics. In short, don't hallucinate case citations.

If too much focus is placed on the internal trees, there is a risk of losing sight of the external forest, as changes in healthcare – how it's provided, taught, reviewed and memorialized – explode.

In any current discussion of innovation, AI is the buzzword, particularly in healthcare. AI by itself, however, is merely a parlor trick or a chess partner. It's the integration of AI (or lack thereof) into preexisting healthcare systems and modalities that makes it interesting to those who prosecute or defend medical malpractice cases.

According to Dr. Shiva Varnosfaderani in a 2024 National Library of Medicine paper, the integration of AI into hospitals and clinics has caused a paradigm shift in how medical care is delivered and managed. In clinical settings, AI is used to assist in diagnosing diseases, predicting patient outcomes and personalizing treatment plans. AI is already integrated into radiology, pathology and cardiology where various algorithms are used to analyze radiographic or pathologic specimen images, EKG patterns and to more accurately calculate ejection fractions.

Obviously, in any given case, attorneys need to be familiar with the technology used to create and interpret the plaintiff's radiologic or pathologic images, or utilized as prompts or decision-making tools in the electronic record. The integration of AI algorithms into existing video monitoring systems, however, is a potential new vein of gold in the discovery mine.

Bedside video monitoring in neonatal intensive care units is offered as "patient engagement," allowing loved ones to view a live-streamed feed from the isolette. NicView



GET IT ON TAPE

As providers enhance AI, lawyers must obtain vital information

By THOMAS A. DEMETRIO & KENNETH T. LUMB

and AngelEye Health are two companies that offer such solutions. Another company, Caregility, offers telemedicine and bedside video monitoring for adult applications.

AngelEye plans to integrate AI, computer vision and machine learning into its NICU camera systems. Caregility promises continuous AI-supported patient monitoring.

Without AI integration, both systems merely provide a video feed which cannot be preserved and can be turned off at will by the healthcare team. With integration, however, they arguably become part of the electronic record system with requirements for preservation and production of data to the patient and attorneys.

Operating room video is another potential source of relevant and discoverable information. A company called Surgical Safety Technologies is marketing its OR Black Box, a system that records a situation in the OR via panoramic cameras, microphones and anesthesia monitors and then uses AI to analyze it. One feature is called Automatic Outlier Detection, which uses an AI-powered event detection algorithm "...to flag cases where patient physiologic data or procedural factors exceed the clinically-validated ranges."

The system's creator, Dr. Teodor Grantcharov, argues that the system is designed for quality improvement and its data and images are therefore privileged, according to a June 7 MIT Technology Review article. Data or

applications used in clinical decision making do not become peer-review protected simply because they can also be used for quality improvement later. Any video or audio of a procedure, or any real-time analysis or prompts by a black box are relevant and discoverable information.

None of this information can help prosecute or defend a case if the lawyers don't know it exists. Simply requesting photos or video of the plaintiff or the incident is not enough and boilerplate production requests and interrogatories handed down from previous generations must be upgraded. Ask general questions about what type of technology was in use and ask specific questions about specific programs, systems or products and their manufacturers. Ask about how and where the data is stored and seek it out from the defendants and their vendors.

Ask and ye shall receive. [CL](#)

Thomas A. Demetrio is a founding partner of Corboy & Demetrio, representing victims of medical malpractice and personal injury. He can be reached at tad@corboydemetrio.com

Kenneth T. Lumb is a medical-malpractice attorney and managing partner at Corboy & Demetrio. He can be reached at ktl@corboydemetrio.com