

THE FUTURE OF MEDICAL AI LIABILITY: WHO DEFINES THE STANDARD OF CARE?

A PRESIDENT'S MESSAGE FROM DR. ERIC WARGOTZ

Doctors often fear a "lose-lose" liability trap: being sued for ignoring an AI recommendation that turns out to be right, or being sued for following one that turns out to be wrong. However, legal outcomes will likely be determined by existing medical-legal frameworks rather than new AI-specific laws.

How Courts Determine Liability Today

Current malpractice litigation relies on two primary benchmarks:

- Standard of Care: Did the physician act as a "reasonable" majority of their peers would have in the same situation?
- Clinical Guidelines: Did the physician follow established protocols from professional medical societies?

Predictions for AI in the Courtroom

Unless a new framework emerges, AI-related lawsuits will be judged by these existing standards:

- Adoption Defines Liability: A doctor won't be liable for ignoring AI unless using that specific AI tool has already become the "standard of care" among the majority of specialists.
- Process Over Outcome: It is irrelevant if the AI was "right" in hindsight. The court only cares if the doctor's decision-making aligned with what most peers or guidelines deemed acceptable at the time.
- Peer-Driven Precedent: Doctors, not lawyers, are in the driver's seat. By choosing which tools to adopt, physicians collectively define the legal "standard of care."

To mitigate liability risks, the medical community must take a proactive role:

- Formalize Guidelines: Medical societies should immediately establish clear standards for acceptable AI use in clinical care.
- Curate Peer Adoption: Physicians should advocate for high-quality tools (e.g., OpenEvidence) over general-purpose ones (e.g., ChatGPT). If a subpar tool becomes the "peer standard," it becomes the legal benchmark you are held against.

To conclude, liability is not determined by the AI's accuracy, but by peer consensus. Doctors mitigate their legal risk by actively shaping professional guidelines and deciding as a community which AI tools constitute "reasonable" medical practice.

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