

Robo-doctors spell trouble for negligence claims

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May 24 2018, 12:01am, The Times



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Doctors used to rely on traditional tools to diagnose chronic diseases. Coupled with a patient's medical records, test results were interpreted by the human eye.

But doctors are not infallible and delayed or missed diagnoses make up a significant proportion of medical negligence claims.

Seemingly with this in mind, this week the prime minister announced ambitious plans to use artificial intelligence to help with the early diagnosis of chronic diseases. The aim is to use the technology to identify anomalies in imaging and other pathological tests.

Given the sheer volume of data it will be capable of processing, AI could also identify complex patterns and use them to predict or treat illnesses more efficiently than we can now.

That said, we all know that the NHS and technology projects are difficult hospital bedfellows.

AI is not the silver bullet to early diagnosis, and is there to support rather than replace clinicians' diagnosis skills. If we recognise this we can begin to manage the risk of errors.

As it stands, the necessity for human oversight means that culpability for diagnostic errors will remain with the overseeing clinician and hospital rather than the technology provider.

That said, with the march towards greater reliance on AI, this may not always be so. New types of complications may arise, for example where an AI error leads to an incorrect diagnosis of benign cancer or wrongly categorises a more sinister condition as harmless.

Under present systems, when something goes wrong a patient has the opportunity to raise allegations against those responsible. Determining what caused the harm and the identity of those responsible is generally straightforward.

However, the scenario where AI is at fault is less clear. It may appear unjust to apportion blame to the clinician in these instances, and product liability lawyers may replace clinical negligence specialists to apportion blame. But if AI is to succeed, it will be vital for patients to know who is responsible when things go wrong.

In terms of diagnostics, we are still some way from having to distinguish legal responsibility for errors between clinicians and AI providers. As AI develops, product liability claims may become necessary.

However, it is an unattractive prospect that any number of bodies involved in the design, production, maintenance and/or operation of AI could seek to deflect blame on to one another, thus delaying a victim's access to justice.

There must remain a transparent process, allowing compensation to be recovered from a single entity such as the NHS, regardless of the constituent parts involved in the use of AI.

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