

AUTUMN 2019



Message from the Editor

In this edition of the Legal Check-Up, our team looks at healthcare and the rise of technology.

During 2018, Epping Associate Deidre Petrakis had the privilege of sharing a stage with Professor Erwin Loh, National Chief Medical Officer of St Vincent's Health Australia.

Professor Loh's insights into the rapid changes to healthcare are fascinating, and in our feature article we share some of his learnings.

Other features include the My Health Record debate, and lawyer Kirsty Osborne highlights the benefits and possibilities of Telehealth technology.

If you require further information about any of the topics discussed in this edition of the Legal Check-Up, contact us on (03) 9321 9988.

Bree Knoester, Partner

Artificial intelligence & healthcare

In the past, the concept of artificial intelligence (AI) was confined to our TV screen and humanoid robots such as C-3PO from Star Wars and sophisticated AI assistants like JARVIS in Marvel's Iron Man belonged to the realm of science fiction

Over recent years however, the healthcare sector has seen tremendous changes in technology through personal monitoring devices, electronic health records and surgical and service robots in hospitals.

Advances in AI technology now permeate healthcare, making the industry more efficient and accessible.

Qualified both in medicine and law, Professor Erwin Loh, National Chief Medical Officer of St Vincent's Health Australia, believes that AI has the potential to revolutionise the practice of medicine and significantly transform the role of the medical doctor.

Could AI replace doctors?

In his article, *"Medicine and the rise of the robots: a qualitative review of recent advances of artificial intelligence in health"*, Professor Loh examines the potential impact new health technologies will have on the current and future health system.

He highlights how AI is starting to replace the role of doctors and other health professionals, providing examples of robots performing surgery, predicting the risk of cardiovascular disease and

even demonstrating a 91% rate of accuracy when identifying individuals at risk of suicide.

With the rise of e-health, it seems unsurprising that AI will enter the field of general medicine and be a tool which general practitioners may use to facilitate increased patient care.

Interface of AI and the law

Of course, as AI use increases in healthcare, legal questions will arise as to who would be liable if something goes wrong.

Who would a patient sue if they have received negligent treatment that causes harm?

You cannot sue a robot - but would the manufacturer, operator and/or doctor be liable?

Whilst no solid answer is provided, it is clear that health professionals and lawyers need to work collaboratively to find solutions to transform the healthcare system and protect patient rights to a proper standard of care.

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The end of defensive medicine?

As algorithms develop and improve, doctors will begin to rely on the superior accuracy and precision of AI.

But who should be responsible when a doctor provides erroneous care at the suggestion of an AI diagnostic tool?

In the United States, it has been suggested that doctors will practice less defensive medicine by foregoing unnecessary tests on the basis that they can rely on the recommendations of a health AI system.

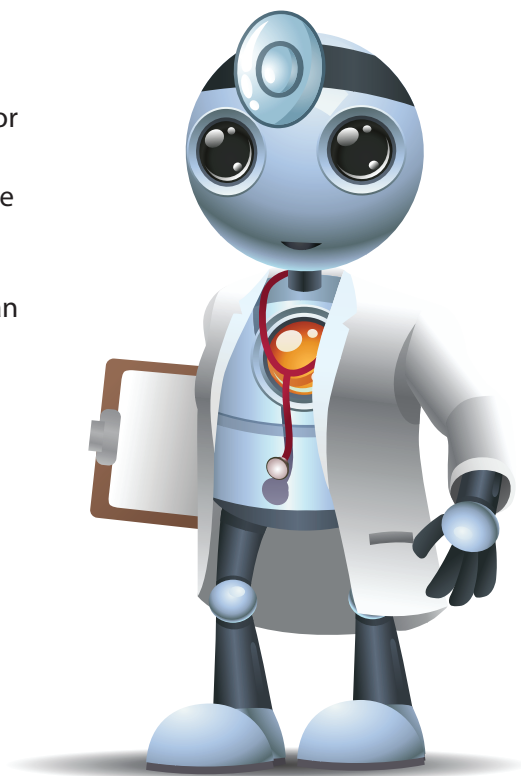
Professor Loh believes there may come a day where it would be considered negligent for a doctor not to adopt the recommendation of an AI system if that was the relevant standard of care.

Implications to doctors

It is important that doctors recognise the increasing role of technology in healthcare and educate themselves on ways to incorporate it into their practice.

Although AI may exceed human accuracy, efficiency and reliability in some cases, it cannot replace the human connection and empathy provided by doctors and so highly valued by patients.

Deidre Petrakis, Associate & **Jyoti Haikerwal**, Graduate



TAC lead compensation and innovation

Major reductions in TAC compensation wait times

Compensation schemes are complex but almost incomprehensible for the severely injured.

In an Australian first, once warring parties have come together to make progressive changes which help those most suffering get compensation quickly.

Working in coordination with the Transport Accident Commission (TAC) and the Supreme Court, Adviceline partner Michael Lombard has worked tirelessly for his clients to secure fast tracked compensation payments for pain and suffering in the shortest time.

In the most devastating cases, there has also been a reduction in the need for clients to appear in court.

Since these changes were implemented last year, a number of accident victims with a serious and permanent injury have been awarded this 'early' payment.

One client, Dr Phillip Worboys, who was struck by a car whilst cycling, obtained a settlement with the TAC without court proceedings.

His claim was resolved within 4 months of visiting Adviceline Injury Lawyers.

Mobile tools for accident victims

In 2017, the TAC launched an app specifically designed for people injured in accidents. The mobile tool allows injured people to be informed of the benefits and services available to them. The app also allows claimants to send messages to the TAC and hopefully have their queries answered expeditiously. Similarly, the TAC can now send messages to their clients through this available line of communication.

A significant and extremely useful feature of the "MyTAC" app is that injured people now have the ability to lodge documents by submitting a photo of a certificate, or filling in a form on the app.

Under this new system, the all-important incapacity certificates should never again be lost and payments not be interrupted.

Combined with the new "Lantern Pay" payment system for service providers, posting in documents to the TAC is now a thing of the past! Other benefits include the overnight processing of payments to TAC providers, and the roll out of the solution to more than 20 healthcare services.

This innovative service is a huge step forward for the injured, making the TAC scheme a leader in social insurance.

Michael Lombard, Partner

Telehealth: Improving access to medical treatment

Often personal injury clients are suffering from very serious injuries that make it difficult or painful to travel to obtain advice

To assist, Adviceline has established six suburban and regional offices to cut down travel times for clients. We also frequently arrange appointments over the phone.

In the past, it has been difficult for clients to do the same with their medical practitioners.

Often clients will have to travel to metropolitan areas to see specialists or independent medical examiners (IMEs) for the purpose of their WorkCover or TAC claims. However, with exciting advances in occurring all the time, this may be changing for the better.

“Telehealth” is the use of technology and online communication platforms to provide access to healthcare services for patients in remote areas.

Advances in Telehealth will be of particular benefit to patients who have injuries that affect their mobility, and may be most appropriate where the medical professional has consulted the patient previously and needs to provide advice about further treatment.

In WorkCover and TAC claims, where medical expenses are paid upfront by insurers, these types of appointments are frequent and can cause distress to patients, particularly if they have to travel long distances to attend. Insurers under these schemes may also stand to benefit from Telehealth as they would no longer have to cover the sometimes substantial travel expenses associated with clients travelling to and from the medical appointments.

In addition to improving the treatment of patients suffering from severe physical pain and restriction, Telehealth may also improve the treatment of psychiatric injuries. Through video conferencing, psychologists and psychiatrists may become more readily available to see high-risk clients at short notice. Teleconferencing may also improve access to treatment for patients whose psychiatric symptoms make it challenging for them to leave the home and allow the treatment experience to be less overwhelming.

Considering these possibilities, Telehealth appears to be an exciting growth area which will hopefully improve health outcomes now and into the future.

Kirsty Osborne, Lawyer

What's possible with Telehealth?

- **Conduct medical consultations by video conferencing;**
- **Provide test results electronically and/or over the phone;**
- **Real time access to metropolitan based specialists in regional hospitals, allowing expedited treatment of emergency cases without the need to transfer the patient to a city hospital.**



“My Health Record” debate: Security vs Accessibility

In 2017, the Australian Federal Government rolled out “My Health Record”, a digital clinical file accessible by individuals and their treating specialists. Patients who did not “opt out” of the system by 31 January 2019 were automatically provided with a “My Health Record”, although they can elect to delete the entry should they chose



What is “My Health Record”?

The “My Health Record” system has been described as a digital patient file, designed to facilitate a more streamlined method of information sharing between specialists.

It also allows for practitioners to access important clinical information when a patient may not necessarily be able to provide this information themselves, perhaps because they are unconscious or severely unwell.

Organisations must register as a secured entity with the My Health Record system in order to access medical material relevant to their patients.

What does it contain?

A standard My Health Record will usually contain information like allergy details, medicines that

the patient is taking, previous diagnoses, hospital discharge summaries, referral letters between specialists and the results of historical pathology tests.

A patient can also chose to include additional information that may be particularly relevant to their circumstances, such as emergency contact information, Indigenous status, Veterans’ status, and details of any advanced care plans or custodians.

Patients can also chose to include up to two years’ of medical data from Medicare as part of their My Health Record entry.

Historical information will not necessarily be loaded onto a patient’s file, although patients can request this information is added if necessary.

Privacy obligations associated with My Health Record

The initial “opt out” date for the roll out of My Health Record was delayed on two occasions because of ongoing fears surrounding the security of the database.

A report from the Australian Digital Health Agency, released in December 2018, indicated that

there were 42 data breaches of the system over the 2018 calendar year. A number of patients still hold significant concerns about the security of their data and as of February 2019, more than 2.5 million Australians had opted out of the system.

For patients who do participate in the program, the system allows patients to personalise their security settings. Effectively, choosing which information is available to practitioners, and can be notified via email or text when particular information has been accessed.

While the digitisation of patient information facilitates access across specialists and practices, it is important to remember that this information is still subject to the stringent oversight of legislation including the *My Health Records Act 2012* and the *Privacy Act 1988*.

These provisions, among others, indicate that inappropriate access of patient information, by practitioners or others, can be the subject of significant penalties, including fines and other sanctions.

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LOCATIONS

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