



The Honorable Jerry Hill
Chair, Senate Business, Professions, and
Economic Development Committee
State Capitol, Suite 5035
Sacramento, CA 95814

The Honorable Hannah-Beth Jackson
Chair, Senate Judiciary Committee
State Capitol, Suite 2032
Sacramento, CA 95814

The Honorable Evan Low
Chair, Assembly Business and Professions
Committee
State Capitol, Suite 4126
Sacramento, CA 95814

The Honorable Mark Stone
Chair, Assembly Judiciary Committee
State Capitol, Suite 3146
Sacramento, CA 95814

Re: Request for an Informational Hearing Addressing Artificial Intelligence and its Impact on Consumer and Patient Protection in the Licensed Professions, Especially Medicine and Law.

Honorable Chairs,

By way of this letter, the California Medical Association and the Center for Public Interest Law at the University of San Diego School of Law respectfully request that your committees hold a joint informational hearing addressing the rapidly expanding role of Artificial Intelligence (AI) in the professions licensed and regulated by the state, especially medicine and law.

Professional Licensure Protects Patients and Consumers

Professional licensure protects patients and consumers by ensuring that individuals who are providing services have the education and training to perform those services, meet specified requirements, and are subject to oversight. Licensure is particularly important in the areas of medicine and law where health care professionals and attorneys have legal and ethical duties to provide competent services to patients and consumers.

Thus, California law recognizes the importance of professional licensure and provides that medical and legal services may only be rendered by professional corporations that are controlled by licensed persons.¹ Specifically, California law prohibits lay individuals, organizations, and corporations from practicing medicine.² This prohibition, known as the “corporate practice of medicine bar” is designed to protect the public from possible abuses stemming from the commercial exploitation of the practice of medicine. It provides a fundamental protection against the potential that the provision of medical care and treatment will be subject to the interests of a lay commercial entity. The corporate bar ensures that

¹ Corporations Code §§13400 *et seq.*

² Business & Professions Code §§2052 and 2400.

those who make decision which affect, generally or indirectly, the provision of professional medical services:

1. Understand the quality of care implications of those decisions;
2. Have a professional ethical obligation to place the patient's interests foremost; and
3. Are subject to the full panoply of the enforcement powers of the Medical Board of California, the state agency charged with the administration of the Medical Practice Act.

California's long-standing policy against permitting lay persons to provide professional services or exercise control over decisions made by physicians and attorneys is reflected in statute and has repeatedly been upheld by the courts.

Rapid and Expanding Use of AI

Artificial Intelligence (AI) is the most important general-purpose technology of our era. In particular, "machine learning" or the ability of computers to perform tasks by example and keep improving its performance without relying on human programming has become far more effective and widely available in recent years. This is due, in part, to investments by technology companies in machine learning and the adoption of the technology in our everyday lives. AI is everywhere, from voice, image, and face perception and recognition to cognition and problem solving. These advances are not only replacing older algorithms in many applications, but with advances in machine learning techniques such as deep learning, these systems are now able to do many of the tasks that were once done best by humans.

While AI is most recognizable in technology like smartphones and autonomous cars, AI is increasingly being deployed in the fields of medicine and law. Here are a few examples:

AI in Medicine

AI has the potential to transform the provision of health care. AI can assist health care practitioners with data management, as well as with tasks such as diagnosis, prognosis, and treatment that have traditionally been a core area of a physician's professional and clinical judgment. For example, a [recent study](#) published in the Journal of the American Medical Association showed that deep learning algorithms were more quickly able to diagnose metastatic breast cancer than human radiologists. Similarly, researchers from New York's Icahn School of Medicine at Mount Sinai used 93,303 radiologist reports covering head computed tomography (CT) scans to train AI to interpret x-rays, CT scans, and magnetic resonance imaging (MRI) reports. The researchers were able to develop machine learning capable of interpreting radiologist reports with 91% accuracy, according to a [study](#) published in the journal *Radiology*.

AI can also assist in designing treatment plans. [IBM's Watson for Oncology](#) cognitive computing system is being trained by oncologists at [Memorial Sloan Kettering Cancer Center](#) in New York to interpret cancer patients' clinical information to identify individualized, evidence-based treatment options that leverage decades of experience and research by Sloan Kettering clinicians. "Research like this turns big data into useful data and is the critical first step in harnessing the power of AI to help patients," said study co-author Joshua Bederson, M.D., professor and system chair for the department of neurosurgery at Mount Sinai Health System and clinical director of the Neurosurgery Simulation Core.

AI can assist physicians in analyzing data and records faster and more reliably and help patients monitor their health conditions and treatment plans, including medication management. AI is

also playing an important role in precision medicine and in the research and development of pharmaceuticals.

AI in the Legal practice

Reviewing documents for legal issues, finding the right and most applicable precedent, drafting contracts that are both legal and fit to the needs of the client: these are things that used to require a lawyer's judgment but are quickly being automated.

Artificial intelligence is spreading quickly in the legal world. Lawyers, both in-house and outside counsel, are finding new and innovative ways to capture the opportunities AI offers in terms of reducing cost and increasing quality. The adoption of AI is putting the legal marketplace on the cusp of a revolution. Much like email changed the way we do business every day, AI will soon become ubiquitous — an indispensable assistant to practically every legal professional. Those who do not adopt and embrace the change will get left behind in some manner. In addition to lowering costs, those who do embrace AI will ultimately find themselves freed up to concentrate on the two things there always seems to be too little time for: thinking and advising.

While use for eDiscovery is the most common and best understood, we are already seeing AI used for such things as contract drafting and management, detection and prevention of fraud and other improper employee behavior, merger and acquisition due-diligence reviews, and litigation analysis and prediction of results.

At JPMorgan, an AI-powered program called COIN has been in use since June 2017 to interpret commercial loan agreements. Work that previously took 360,000 lawyer-hours can now be done in seconds. The bank is planning to use the technology for other types of legal documents as well.

A consensus has emerged that AI will significantly disrupt the legal market. AI will impact the availability of legal sector jobs, the business models of many law firms, and how in-house counsel leverage technology.

According to Deloitte, about 100,000 legal sector jobs are likely to be automated in the next twenty years. Deloitte claims 39% of legal jobs can be automated; McKinsey Global Institute estimates that 23% of a lawyer's job could be automated. Some estimates suggest that adopting all legal technology (including AI) already available now would reduce lawyers' hours by 13%.

Request for AI Hearing

CMA and CPIL support technological innovations that have the potential to aid patients and consumers and empower professional licensees to serve them better. However, as AI is adopted by the health care industry, it is important to ensure that professional judgment in the practice of medicine is sound and insulated from profit-motivations and that proper oversight of licensure, ethical obligations, and control of the AI by lay entities are adequately addressed. Given the rapid expansion of these technologies, CMA and CPIL respectfully requests that the Legislature review the legal mechanisms to protect the interests of the patients and consumers, maintain quality of care, and ensure that the commercial interests of an out-of-state lay entity do not erode California's long-standing policies that protect patients and consumers from commercial exploitation.

The hearing we are requesting could address such issues as:

- How is AI technology currently being used in medicine and other licensed fields? To what extent are licensees involved in the development and deployment of these technologies?
- Can and should an AI product that exercises professional judgment be owned, maintained, and operated by nonlicensees?
- What are the civil, administrative, and disciplinary liabilities with regard to AI?
- How is the technology used to make determinations in AI review and approved for clinical accuracy and relevancy?
- How licensees can use AI in their treatment of patients/clients and how will the use of AI be incorporated into the standard of care?
- How will California regulate the use of AI technology (ex. When and/or if it is developed and operated by non-licensed out-of-state entities)?
- Should AI itself be regulated separate and apart from the professions (akin to medical device regulation)?

We thank you, in advance, for your consideration.



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Janus Norman
Senior Vice President, California Medical Association

cc: The Honorable Members of the Senate Business, Professions, and Economic Development Committee
The Honorable Members of the Assembly Business and Professions Committee
The Honorable Members of the Senate Judiciary Committee
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