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Dr Rachelle Love, Chair

Te Kaunihera Rata o Aotearoa - The Medical Council of New Zealand (MCNZ)

Consultation on Using Artificial Intelligence (AI) in patient care

Tēnā koē Rachelle

Te Whare Piki Ora o Māhutonga – the Royal Australasian College of Surgeons (RACS) is pleased to have the opportunity to contribute to the development of your Statement on using AI in patient care.

RACS has established an *Advisory Group on Artificial Intelligence in Surgery* which is guiding responsible integration of AI into surgical practice. We are committed to playing a leading role in shaping AI governance, training, and patient care in Australia and Aotearoa New Zealand. RACS Fellows must and will be well placed to deal with this rapidly changing technological advancement as it increasingly enters our daily lives and surgical practice. Chaired by RACS Councillor Associate Professor Matthew Clark from Auckland, the Advisory Group has a brief to champion the responsible use of AI in surgery, improving outcomes, communication, and access for patients while safeguarding professional standards. Associate Professor Clark endorses this submission and is available to support you in finalising your Statement.

While RACS supports the majority of the draft Statement circulated, we have some concerns and comments detailed below and we note it will be challenging to apply in practice. As the use of AI increases within all aspects of medical practice and patient care, the issue of patient consent and the implications for patients who decline treatment will become both more nuanced and more significant. We suggest a fuller discussion of these matters with the medical sector and within the statement.

Introduction/scope

> ***"This statement outlines what doctors need to consider when they use AI in activities directly related to patient care. This includes scribing tools that support clinical note-taking. The statement does not apply to AI tools that assist with business or administrative activities, such as inbox management, although these AI applications should also be used with caution."***

The seemingly straightforward differentiation between patient care being in scope and business administration not in scope requires further clarification. For example, triaging of referrals would be in scope, inbox management would not; scribing tools would be in scope, but transcription/typing from notes/dictation would not.

AI is likely to form the backbone of the organisational structure and administration of many medical practices, with no option of a human being undertaking:

- booking and amending appointments for clinics, procedures, and scans
- administration, transcription, and typing.

We suggest further engagement within the medical colleges to improve clarity on this distinction.

Accountability and duty of care

We agree with the majority of statements made, with the following concern regarding the second sentence in point 6:

> ***"You must document when AI has been used, including whether you accepted or rejected any recommendations made by the AI tool, and record your reasons in the patient's records."***

This is likely to be an cumbersome expectation. AI is only one tool practitioners can use – there is not an expectation a practitioner will justify why they have applied certain guidelines or published research or rejected their findings for their specific patient. There is not a current requirement for them to record their critical appraisal in the patient records of these other tools. It is not clear why this is expected for AI tools and will make the clinical record and use of AI unwieldy, potentially unmanageable. It is not clear the intent of the statement above; it appears unnecessary and onerous.

> ***"7. You must never use an AI tool to represent you in the practice of medicine, for example, by using an avatar, chatbot or deep-fake video to carry out a consultation."***

We agree with the statement above. You may wish to add a side note indicating the restriction applies specifically to patient care. There will be a useful role in future for AI Avatars in education or other settings. Safeguards required will be along the lines of 'the avatar can provide generic information only, not specific medical advice, and AI generated content must be clearly labelled'.

Informed consent

> ***"9. Explain the AI tool to your patient, including how and why you want to use it, the tool's benefits, limitations and how you are managing any potential risks. Be prepared to answer your patient's questions and address any concerns. You should advise the patient of any potential implications that declining the use of AI may have for the nature or availability of their care. Document in the patient's records whether informed consent was given."***

Patient consent will become a more nuanced consideration in future as the use of AI increases within all aspects of patient care and treatment.

Doctors will need to consider the important question of the implications for patients who chose to decline an AI element which is fundamentally integrated into a service. Can we offer them options? Will their care be jeopardised or possibly declined? It is likely that the service will not be able to function in the future without integration of AI and there may be no alternative for patient care.

We suggest the issue of requesting and confirming patient consent be covered more fully in the Statement and would welcome the opportunity to engage further on this issue.

Patient data privacy, data security and patient safety

We endorse the statement position on patient data privacy, security and safety, particularly with regards to meeting the requirements of the Health Information Privacy Code and upholding Māori data sovereignty. There is no reference to the clinician preventing unauthorised access to patient data and this could be included.

Continuing professional development

The sentence ***"This includes staying up to date with the use of AI as recommended practice in your specialty."*** could be expanded to include being aware of evolving regulations, standards and best practice guides.

Other comments

One area to consider is how much clinicians should be expected to advocate for responsible AI development and deployment, supporting policies that promote transparency, fairness, equity and accountability in AI tools. There is also no expectation for the clinician to report any issues or adverse outcomes associated with AI use.

RACS is committed to playing a leading role in shaping AI governance, training, and patient care in Australia and Aotearoa New Zealand. RACS Fellows must and will be well placed to deal with this rapidly changing technological advancement as it increasingly enters our daily lives and practice.

We look forward to working with you and the other medical colleges to open up the opportunities offered by AI to improve surgical practice and health outcomes, communications, and access for patients in our diverse communities.

Nāku noa, nā

Ros Pochin

Chair

Aotearoa New Zealand National Committee

RACS is the leading advocate for surgical standards, professionalism and surgical education in Aotearoa New Zealand and Australia. Our mission is '*To improve access, equity, quality and delivery of surgical care that meets the needs of our diverse communities'*. Health advocacy is a central competency of a surgeon, and a core value of this College.

RACS represents more than 8300 surgeons and 1300 surgical Trainees and Specialist International Medical Graduates across Aotearoa New Zealand and Australia. We are the accredited training provider in nine surgical specialities. Surgeons are also required by RACS and MCNZ to continue with surgical education and review of their practice throughout their surgical careers.