ARTIFICIAL INTELLIGENCE (AI)

IN MEDICINE AND LAW

By Hon. Robert G. Rassp, Chairman of the Board of Directors, Friends Research Institute (friendsresearch.org) [Updated on 11-7-2025]

Disclaimers: The opinions expressed in this article are those of the author and are not those of the State of California Department of Industrial Relations, Division of Workers' Compensation, or the Workers' Compensation Appeals Board. The opinions expressed herein are based in part on the "Common Rule" 45 CFR 46 that pertains to the ethical requirements in medical research and the protection of research participants. There is no current legal requirement that 45 CFR 46 applies to injured workers whose claims may involve the use of AI.

AI generated "picture of a woman with a parasol." Thanks to Robin Kobayashi, Esq., my editor at LexisNexis. Look very closely – Is there anything wrong with this picture?

INTRODUCTION

During a late 2025 continuing medical education program in Salt Lake City, this author provided an audience of 150 physicians with the picture you see above. About 1/3 of the

audience saw the AI hallucination and laughed out loud, while the rest of the audience was silent.

Artificial Intelligence, or "AI," is taking our society by storm. When computers first became in wide use in business applications, advances in the programming language would occur every five years or so with upgrades in software development that would cause users of computers to replace old operating systems and download the latest operating system applicable to either their Mac or IBM based computer. Today, software is being upgraded by software itself by at least six versions of machine language. In fact, computer programmers can download software applications that are bundled so that applications can easily be embedded in sophisticated computer programs. Have you used a kiosk at McDonald's? Or ordered a coffee from Starbucks lately? Machines are now processing our orders at fast food joints thanks to the sophisticated computer programming. You call a Call Center and you never speak to a human being. You see the "Chat" icons for banks and other services with a web site? Those are run by AI based software. If you want to speak to a human being, you usually have to keep repeating "representative!" multiple times, or hit "0" repeatedly, and you might get lucky and get a live person on the phone or in the chat. It took an hour for this author to get a live person in a phone call to get out of "AI Hell" in order to cancel an alarm company's services.

Call centers for some companies are now voice activated and responses are via a computer program upon verbal or numerical prompting by the calling party. Most of these programs are driven by AI. AI is now affecting much of our daily lives even though we may not even realize a response to something is driven by a computer program. Your physician interacts with you by physician-patient portals that may be driven by AI via link to your medical records and the physician's electronic medical record notes. Did you know that the telehealth appointment you had with your doctor was actually with an avatar while your real doctor was golfing at his favorite course?

The term "Large Language Models (LLMs)" are advanced artificial intelligence systems that understand and generate natural language, or human-like text, using the data the machine has been "trained" on through machine learning techniques. LLMs can automatically generate text-based content, including voice-based reading, which can be applied in a growing number of scenarios. The theory is that AI programs based on LLMs are resulting in greater efficiencies and cost savings for worldwide organizations, including the military.

"Machine learning" involves an integration of data science with other sciences such as medical, legal, logistics, education and any other data-based system. The term "machine learning" is a subfield of artificial intelligence. While the concept of machine learning is difficult to understand from non-scientists, the idea is to use machine learning algorithms to use statistical models to learn from labeled examples (such as the diagnostic criteria for a disease) and then apply that knowledge to new, unlabeled data. Machine learning models for example are learning how to "read" MRI or CT scans and identify abnormalities that may be difficult for a radiologist to detect. The AI-based machine learning involves supervised, unsupervised, reinforcement, evolutionary, and deep learning models that together make up the ability for an AI system to spit out information based on questions that are asked of the system. All that is needed

to achieve these kinds of deep learning models is a set of data, for example, the medical records of patients who have breast cancer. For a specific article on the concept of machine learning, you can read the 167 page "Machine Learning in Healthcare" by Richabha Malviya et. al. (2026) Taylor & Francis pub. Apple Academic Press http://taylorandfrancis.com.

So these software applications absorb information that is fed into the system which is processed and "remembered" by the AI program. If this author had an AI program "read" his entire 2026 edition of "Lawyer's Guide To The AMA Guides and California Workers' Compensation" publication by LexisNexis, the AI program could respond to general and specific questions asked regarding the content of the entire book. Similarly, an AI program could read and absorb the entire 604 page "AMA Guides To The Evaluation of Permanent Impairment, 5th Edition" and could answer questions asked about the entire content of the book. In addition, an AI program could review thousands of pages of health records, say for example, 1600 pages of Kaiser Permanente records, and summarize them within minutes.

Artificial intelligence applications for generative AI are here to stay. In time, these AI programs are getting better, more accurate, and more efficient. The problem is that there is no reliability or verifiability of many of the applications using AI based programs.

An even more complex issue is the use of predictive AI which is the use of machine language-based artificial intelligence to predict outcomes of specific targeted subject matters. These computer models use statistical analysis and machine learning to analyze historical and current data to forecast future outcomes, trends, and behaviors. The goals of the use of predictive AI applications include helping businesses improve decision-making, personalizing customer experiences, and optimizing operations. Predictive AI models could hypothetically be used to provide financial forecasts, personalized product promotion (this author likes Johnston & Murphy clothes and shoes and gets repeatedly bombarded by ads from them if he buys something on-line from them), and even fraud detection.

As time ticks by since November 2022, AI programs are learning and absorbing data for future generative and predictive analytics. These AI programs are here to stay and are affecting our daily lives at an exponential rate. Are AI programs replacing humans? Probably in some industries. There is some evidence that large warehouse operations are using AI programs to mechanically fill orders from customers. There is also evidence that some AI programs can take and fulfill fast food orders from customers. There are food delivery robots that wheel their way around town delivering lunch to workers. Have you taken a ride in a driverless car yet? These are "driven" by AI.

So how does AI fit in the context of medicine and law? This article was originally written by this author as a result of prior notes he utilized for a presentation at the California Society of Industrial Medicine and Surgery Conference that occurred on August 14, 2024 at the Loews Coronado Island Resort. The title of the program was "Artificial Intelligence in Medicine and Workers' Compensation Law." The panel consisted of this author (in the capacity of both a workers' compensation presiding judge and Chairman of the Board of Directors of Friends Research Institute (friendsresearch.org), Dr. Christopher Brigham MD (editor of the AMA

Guides To The Evaluation of Permanent Impairment, 6th Ed. and principal of emedicine.com), Ray Mieszaniec (COO of Evenup – a legal tech company), and defense attorney Negar Matian (who is using AI applications in her workers' compensation defense law practice).

Just about every workers' compensation related convention has a panel on the use of AI. The author of this article attended a conference for the Western Occupational and Environmental Medicine (WOEM) in Salt Lake City in October 2025 and was on a continuing medical education panel on the subject of the use of artificial intelligence within the context of workers' compensation claims. The panel consisted of people who are advocates for the use of AI in the medical treatment and medical-legal aspects of work-related injuries. There is a strong belief among many proponents of the use of AI that AI generated outputs can be seen as "objective truth" even though the large language model could be biased, drifting, or hallucinating.

The bottom line is that AI is here to stay in some form or another in workers' compensation claims – including but not limited to: predictive AI applications for claims severity and outcomes, use of generative AI that utilizes the Medical Treatment Utilization Schedule (ACOEM and ODG Guidelines) in the Utilization Review and Independent Medical Review processes; summarizing medical records, providing impairment ratings, and writing medical and medical-legal reports. We also know that attorneys are using generative AI applications to write answers to emails, trial briefs, Petitions for Reconsideration or Removal documents, writs of mandate, billing, and case summaries. Social media and attorney conferences are being inundated by many AI companies who are selling their AI-based programs and services with the promotions being based on efficiencies, cost savings, and "accuracy."

This author's presentations at recent educational programs have focused on the author's opinion that guardrails need to be placed in the use of AI in the context of medicine and workers' compensation litigation. While there is no question that AI development companies have emerged to focus on specific industries, including our own in workers' compensation claims, a discussion of ethical considerations is necessary as these applications are introduced into our everyday lives. This is especially true in the context of workers' compensation claims and the role of physicians including treating doctors, medical-legal evaluators, claims professionals, and attorneys.

So how do the legal requirements for medical-legal reporting work if a physician utilizes AI software to review and summarize medical records, to communicate with the injured worker, to write reports that are admissible at the Workers' Compensation Appeals Board? Can a defense attorney rely on AI software to write a communication to the employer or claims examiner recommendations for further case handling? Can defense counsel rely on AI to provide an injured worker's deposition summary or to develop questions to ask a physician at a deposition? Can counsel delegate writing Points and Authorities, a legal brief, a Petition for Reconsideration or Removal, or a Petition for Writ of Mandate to the Court of Appeal to a generative artificial intelligence-based software program? Can a workers' compensation judge write a decision with the use of an AI program?

In addition, how reliable and accurate are predictive and generative AI models? After all, the emphasis is the term, "predictive." For anyone who took statistics while in college, you would know that a 95% probability that something is true also means there is a 5% chance that something is not true or is based on "chance." What is the level of probability that a predictive or generative AI program is accurate with 95% confidence interval? Take for example those 1600 pages of medical records from Kaiser. Is there any inter-rater reliability between an AI generated summary of those records? Inter-rater reliability in this context would mean that there are 10 to 100 physicians who manually review the same records and summarize them independently of each other.

A comparison of the summaries should fall within 95% of each other in terms of what important information is captured from the records. This process is consistent with Title 8 Cal. Code of Regulations Section 10682(b)(4): the medical-legal physician shall provide "A listing of all information received in preparation of the report or relied upon for the formulation of the physician's opinion" and with Labor Code Section 4628(a, b, c and j), quoted below in this article. Specifically, if a medical-legal physician has someone else (i.e. a nurse or an AI program) review and summarize medical records, "the physician shall make additional inquiries and examinations as are necessary and appropriate to identify and determine the relevant medical issues." No one has compared the accuracy of an AI program that summarizes medical records with a group of humans who review and summarize the same records. We do not know the accuracy and reliability of AI-generated medical record summaries. In fact, a QME recently got "busted" for outsourcing medical record review and summary in a case and has been called on the carpet for doing so. That case is discussed later in this article.

These issues are all relevant and everyone in the workers compensation system have or will be confronted by how AI affects the way these cases are handled going forward. What is a legitimate role, if any, of the use of AI in the context of workers' compensation cases?

We now know that some attorneys have been sanctioned for using AI applications to write legal briefs, appeals to the California Court of Appeal, Petitions for Reconsideration or Removal all of which have included hallucinations by generative AI programs. Despite regular occurrences involving software hallucinations, bias, or drifting, vendors who are advertising and selling their AI based programs to physicians and attorneys are promoting the efficiencies and time-saving aspects of these applications. From this judge's perspective: Let the buyer beware.

CHATGPT

Most of the public's first exposure to AI occurred in November 2022 with the public launch of ChatGPT which allowed anyone with a computer to seek information from an AI platform. You type in a key word or words and the program would produce a litany of information that the user can obtain from the program. Think in terms of a Google Search on steroids. Sometimes the information would be "garbage in and garbage out" but more on that issue below. Commercial use of AI became the goal of the software developers of AI – how can AI be developed and marketed to assist specific industries in their use of computer based intelligent information processing? The goal was and is to monetize the applications of artificial

intelligence to the public from how to apply in the logistics and warehouse industry, medicine, transportation, legal, educational, and general research. The potential use of AI is endless.

In fact, on October 28, 2024, Apple, Inc. introduced their iPhone 16 featuring what they are calling "Apple Intelligence" which they advertise as:

> "[a] personal intelligence system that uses generative models and personal context to provide relevant intelligence while protecting privacy. It's a built-in feature of Apple's iOS 18, iPadOS 18, and macOS Sequoia. Apple intelligence offers generative AI tools for writing and editing, image creation, and organization. It also includes writing tools, summarized notifications, and the ability to search for things in photos and videos."

What they are not telling us in this advertisement is that "Apple Intelligence" is nothing more than CHAT-GPT. The same is true for the Apple 17 that was introduced in 2025. Recently, someone asked CHAT-GPT or one of the other free AI programs: "How do I make French fries from lettuce?" or "When was Dan Quayle President of the United States?" The AI programs generated a lot of hallucinations because these programs apparently cannot respond in the most human way: "I don't know."

AI IN MEDICINE IN WORKERS' COMPENSATION CLAIMS – GUARDRAILS?

There are two aspects of artificial intelligence that exist in the practice of medicine from an analytical standpoint, not including such things as robotic assisted surgical procedures or other "hands-on" clinical practice. AI in medicine has two forms: (1) predictive analytics and (2) generative AI. Predictive analytics involve such things as AI indicating that a patient has a 75% likelihood of being admitted into an intensive care unit. Generative AI is more prevalent in the context of workers' compensation related medical practice where for example, a computer program using AI using a large language model writes an article. This author guarantees to you, the reader, that this article was NOT generated by AI. Generative AI involves relationships between people.

Further examples of Generative AI include patient-portal messages which can use conversational interfaces for patients to learn about their diagnosis, treatment options, or prepare for surgery (based on patient's literacy level), or for patients to self-diagnose a condition. Can Generative AI be used for a medical-legal physician to "write" a medical-legal report? Can a medical-legal physician rely on a commercially available proprietary generative AI program to review and summarize medical records? There are AI companies who are selling the commercial use of their AI programs that claim, for example, that an accurate summary of 500 pages of prior medical records for an injured worker takes 7 minutes for the AI program to generate. You are reminded that medical records review of over 200 pages are billed by the medical-legal physician at $3.00 per page pursuant to the medical-legal fee schedule under Title 8 Cal. Code of Regulations Sections 9793(n) and 9795. Is an AI generated summary of medical records in a litigated workers' compensation case reliable, accurate, credible, and persuasive evidence of the actual records?

AI IN LAW AND IN WORKERS' COMPENSATION CLAIMS

The use of AI in a workers' compensation attorney's law practice could include such things as researching statutes, regulations, and case law. AI based programs could write a legal brief, a legal article for a legal publication, or establish a best-worst case scenario for the outcome of a claim. AI programs could summarize deposition transcripts of injured workers, witnesses, or physicians. An AI program could "read" a medical-legal report and generate questions for an attorney to ask the doctor in a deposition. Can an AI application be used by a judge to write a Summary of Evidence, an Opinion On Decision? A Report and Recommendation on a Petition for Reconsideration or Removal?

The use of AI is already embedded in legal search engines that attorneys and judges use every day. When counsel enters a word or phrase into the LexisNexis database, an AI assisted search engine can and will generate a list of statutes, regulations, and cases that may be pertinent to the search. Are those search engines accurate? Are trial briefs, Points and Authorities, medical or deposition summaries generated by an AI assisted search engine reliable, accurate, credible, and persuasive? Is a judge's decision or response to a Petition for Reconsideration or Removal reliable, accurate, credible, and persuasive? Can an AI based program write a medical-legal report including providing WPI ratings of an injured worker or write predictive apportionment findings?

Here is an example of an advertisement for a Generative AI subscription that was advertised online:

> With the most robust set of capabilties (sic) in the market, "NAME OF AI PROGRAM" helps you:
>
> 1. **Review Documents**: Ask complex questions about a batch of documents and receive a substantive analysis complete with citations.
> 2. **Search a Database**: Pinpoint relevant documents within a large database of your files.
> 3. **Draft Correspondence**: Draft tailored letters and emails with speed.
> 4. **Summarize**: Condense long, complex documents into succinct summaries.
> 5. **Extract Contract Data**: Obtain precise information about the content of contracts.
> 6. **Timeline**: Automatically assemble chronologies of events described in your documents.
> 7. **Contract Policy Compliance**: Provide a set of policies to identify non-compliant contract language and receive automated redlines to bring the contracts into compliance.
> 8. **Prepare for a Deposition**: Easily identify pertinent topics and questions for investigative projects of all kinds.

Does this generative AI program replace law clerks, staff attorneys, paralegals, secretaries and first-year attorneys? Do you trust a computer application to guide your legal analysis of what may become a disputed issue? Where are the analytical skills about credibility or issue spotting? Can this program identify legal or factual issues that only a practicing attorney

can determine? How do we know that if this generative AI program cannot find a legitimate legal citation that it will invent a fictitious one instead? What is really irritating about this is that speed is not necessarily quality, accuracy or reliability.

A generative AI program cannot replace an attorney's gut feelings or ability to smell a rat or to simply know what to ask in a deposition while on the fly during a deposition. Sometimes an attorney's instincts kick in and will establish a strategy just based on those instincts – which generative AI cannot accomplish. Generative AI does not have human intuition, feelings or empathy. Generative AI has no soul.

OVERLAPPING ETHICAL ISSUES

The use of artificial intelligence in the context of workers' compensation litigation raises significant ethical issues that need to be developed in order to keep pace with the usage of AI. Since no formal ethical code of conduct exists in the use of AI in workers' compensation litigation, a discussion of some basic premises of ethics in medicine may apply.

The analysis of ethical considerations in the medical-legal context begins with the Belmont Report in 1979 that was adopted by the federal government to apply to any federally funded medical research that involved human participants for new drugs, biologics, or devices. This broad ranging mandate was codified under 45 CFR 26 called the "Common Rule" which applies throughout the United States and has been adopted in our own Health and Safety Code [see Health and Safety Code Sections 24170-24179.5]. While ethical requirements in human subject protections in medical research are mandated by law, no such mandate exists in use of AI in legal or medical-legal applications.

But the analogy to medical research is clear – we are all subjects in the overall "experiment" of the use of AI in our society and specifically applying the use of AI in our law practices, in medical-legal reporting, in the UR/IMR processes, and in predictive claims handling. Everyone is using AI in some form or another but there is no actual outcomes research specific to the workers' compensation industry. How accurate are these AI programs? Is it ethical to use AI applications and not disclose their use? Can information obtained through an AI program be guaranteed accurate by the user of the program?

Since there is no law that governs how AI can be used or restricted from use in workers' compensation claims and litigation, the legal protection of human subjects in medical research community can be analogized to form a framework of protection against abuse of the use of AI in workers' compensation claims. We are, after all, engaging in a form of social, medical, and legal research just by using artificial intelligence in certain ways during the course of a workers' compensation claim. We do not have enough data or experience to draw any conclusions about the short term or long-term effects on a claim or individuals involved in a claim when a party uses AI in the prosecution or defense of a claim. As of today, there are no legal or ethical guardrails in place to limit or regulate the use of AI in litigation. That being said, there is emerging case law in California from the WCAB and from the California Second District Court of Appeal that addresses the use and perhaps misuse of artificial intelligence by attorneys. Recent case law is discussed below.

So how do we develop an ethical framework for the use of AI outside of the medical research community? We use medical research guardrails as a guide for the development of ethical usage of artificial intelligence in both medicine and the law. This may be the only avenue of protection against misuse of AI programs unless and until there is formal legislation or case law that governs the use of AI.

The Belmont Report and 45 CFR 46 have a tripartite mandate:

(1) Respect for Person - treat people individually and account for individual variances, perform research [or in our context – use artificial intelligence] in the best interest of a patient.
(2) Beneficence: medical research must provide a benefit to society and improve diagnostics and the treatment of disease [AI should be available to everyone for the benefit to individuals and groups of individuals]
(3) Justice: - apply the concept of equality in the selection of research participants [the benefits of artificial intelligence should be distributed equally among populations and individuals].

In addition to the proposed basis for guardrails for the use of AI in medicine and law, there is also the concept in medicine that medical processes follow FAVES: Fair, Appropriate, Valid, Effective, and Safe. You are reminded that in the context of medical-legal evaluations in workers' compensation cases in California, Title 8 California Code of Regulations Sections 41 and 41.5 govern the ethical considerations for all physicians who perform medical-legal evaluations. Someday there should be a provision in those sections that indicate that if any part of the medical-legal process is performed with the assistance of an artificial intelligence resource or program, a written disclosure statement shall be part of the physician's reporting requirements.

POTENTIAL SHORTFALLS OF THE USE OF AI IN WORKERS' COMPENSATION LITIGATION

There are a number of concerns about the use of artificial intelligence in the context of any form of litigation, especially in workers' compensation cases. For the use of AI in both law and medicine, the FAVES factors should apply because AI can be misdirected to what is financially favorable to the doctor or claims administrator and not of ultimate benefit to legitimately injured workers. The use of AI by physicians and attorneys should be transparent, explainable, and subject to inspection. Remember, no one can cross-examine a computer or a computer program, algorithm, or application. How do you cross-examine a medical-legal physician who uses AI to (1) establish a diagnosis, (2) review and summarize medical records, (3) determine causation of injury, (4) determine WPI ratings, or (5) apportionment? An AI program cannot examine the injured worker can it? Will it some day?

Those of you who are not familiar with the mechanism of artificial intelligence, there are some aspects of it that are very concerning. There are at least six machine languages that have been developed that can allow artificial intelligence programs to write its own codes. Generative AI can have a "hallucination" when it generates a false medical or legal citation. AI programs

can deteriorate or drift from when it was first introduced. In addition, AI could invent its own data set that is not based on reality. This phenomenon is called "performance drift" and must be monitored by human-based evaluation and oversight.

At the time of re-publication of this article in late 2025, there is an organization called the "Coalition for Health AI" (chai.org) which has developed what is called an "Assurance Standard Guide" that divides oversight into three categories:

(1) AI developer's Responsibility – evaluate the AI model thoroughly before deployment to ensure it meets safety and performance standards
(2) End-User's Responsibility – conduct local evaluations to ensure the AI tool fits the specific needs and conditions of the health system
(3) End-User's Monitoring Responsibility – monitor AI tool performance over time, ensuring it remains effective and adapting to any changes in conditions.

The Coalition for Health AI is a public-private oversight organization involving academia, tech companies, and the federal government to develop a national quality assurance laboratory to evaluate the safety and effectiveness of AI in medicine (covering the concept of beneficence). The idea is to prevent AI from making financial decisions in favor of payers rather than decisions benefitting a patient (sounds like Utilization Review, doesn't it?).

Remember, there is no legal mandate (legislative or regulatory) to require these guardrails in the development or use of AI in medicine or in law. The promotors and supporters of the Coalition include major, credible, medical groups including but not limited to UCLA Health, Mayo Clinic, Google, Johns Hopkins Medicine, Boston's Children's Hospital, Kaiser Permanente, UC Irvine, UC Davis, UC San Diego and others. The Coalition plans on monitoring AI models use in medicine, developing best practice guidance for developing and deploying health AI technologies on a use case by use case basis, and to publish an AI "report card" on an accessible registry that has public access.

Is there a similar "Coalition for Law AI" that will do the same things as Coalition for Health AI? Not yet – the only "oversight" of AI-based programs currently being marketed to medical-legal physicians and attorneys is the market itself. Software developers are beginning to saturate the market to sell AI based programs to medical-legal physicians, claims administrators, and attorneys to help streamline the processing of information that is needed in the prosecution or defense of workers' compensation claims.

These include programs that summarize deposition testimony, provide predictive case outcomes based on mechanism of injury and parts of body injured, set loss reserves, summarize 500 pages of medical records in 7 minutes, analyze a mechanism of injury, develop and send a client the "attorney's" recommendations for further case handling, managing a law practice, answering emails or phone calls from clients. Systems are being developed and used that predict the length of time a claim will remain open, and so on.

This raises a serious point: How much inter-rater reliability is there for a summary of medical records that is generated by an artificial intelligence program versus the medical-legal

physician actually doing the summary as well? We would like to see a side-by-side comparison of an AI generated medical records summary with one that is actually done by a human QME or AME. Would a 5% variation be acceptable? There are no studies yet on this issue. Further, who does the claims administrator pay the $3.00 per page above 200 pages of records to be reviewed? Doesn't that alone raise some significant ethical issues for QMEs and AMEs who use artificial intelligence programs to review and summarize medical records?

How does a primary treating or a medical-legal physician who used an AI program to generate WPI ratings from the AMA Guides 5th Edition explain his or her conclusions about impairment ratings? Is there a program on the horizon that uses AI to determine apportionment of permanent disability?

Artificial intelligence is currently embedded in MS Office (WORD especially) and now in a LexisNexis search. All you have to do is type a word or phrase into the search engine and AI will assist the user to obtain a database. We already know that some AI based programs have gone awry – a Federal judge in New York received an AI assisted legal brief from an attorney who did not check the legal citations that were generated by the AI program. The judge did check them and discovered that the citations were a figment of the AI program's imagination – the cited cases never existed. It did not take a computer program to generate sanctions against the attorney who filed the AI generated brief. The same scenario is now occurring in California – in the civil courts and at the Appeals Board.

Counsel is strongly advised to check their work.

ETHICAL CODE OF CONDUCT?

AI is creeping into our everyday lives. Artificial intelligence is becoming part of our normal day-to-day lives. AI is being used even when you do not know it. Artificial intelligence programmers can take the likeness of any person, say Taylor Swift for example, and generate what is known now as a "deep fake" which generates her likeness in an AI generated image and uses her voice to say anything the programmers want that sounds like her real voice. The introduction of our AI seminar at the CSIMS conference in Coronado Island in August 2024 used the likeness of Scarlett Johansson and her voice in a video that was developed using AI. The image and sound were very real but the actual person and her voice were not.

So how would the Belmont Report of 1979 along with the protections of human research participants apply in the context of the use of predictive analytics and generative AI in medicine and law? Respect for persons: (1) there needs to be transparency on how patient data is being used, (2) clarity of the role AI is being used in decision making, and (3) allowing regulators access to the algorithms. Beneficence: A patient should be able to decline using AI as part of the informed consent process. An injured worker should be told that the utilization review process may be determined by AI but the injured worker will be provided reasonable treatment to cure or relieve the effects of the injury that is based on the medical treatment utilization schedule in ACOEM upon review by a licensed physician and/or a licensed physician through the Utilization Review and Independent Medical Review processes of Labor Code Sections 4610, 4610.5 and

4610.6. Justice: any decision-making process or review of a record by artificial intelligence is subject to scrutiny by the Workers' Compensation Appeals Board.

Here is another ethical issue: can a treating physician create an avatar who meets with the patient electronically? Is a physician obligated to disclose to a patient that some of the interactions between the patient and the doctor's office is through an avatar or otherwise from an artificial intelligence-based application? Does a physician have to disclose that the probable outcome of surgery is based on a predictive analytics algorithm from an AI program?

An AI based algorithm has to be "fair" one that provides the same treatment recommendation for all patients with the same clinical features. Can AI undermine or even replace a physician's or attorney's professional role as a fiduciary for a patient's or client's best interests? Ethical considerations exist in both the medical and legal fields of practice. Attorneys are bound by the Code of Professional Conduct [See Business and Professions Code Sections 6080 et. seq. and Code of Professional Conduct Section 3.3] and physicians are bound by their own professional standards and ethics. Specifically, Labor Code Section 133.5 and Title 8 Cal. Code of Regulations Sections 41 and 41.5 govern the ethical considerations for medical-legal evaluators.

Troubling aspects of the use of AI in medical-legal reporting include concerns that personal protected information will be absorbed by an AI program that summarizes medical records. Machine language and large language models are programmed to "learn" information that it is fed into an AI system. There is no mechanism that is publicly described that deletes information that is absorbed by an AI driven program. So what happens to a person's medical records that are "reviewed" and summarized by an AI program? Are there any built in guardrails or assurances that protected health information is not processed into the memory of a large language model AI system? What about proprietary AI-based companies that are reviewing and summarizing medical records at an offshore location? Where are the protections against storage of personal protected information that is electronically sent to an overseas company's location for processing by an AI programmed document summary? Who manufactured the hardware that runs the AI programs? Who knows what is built into the actual hardware machines that run the AI medical record review and summary processes? Are the AI software-based computer's chips manufactured in the United States? If not, is there some application embedded in the hardware that transmits and saves protected personal information for people whose information was fed into a system for a medical record summary or employer's personnel record review and summary?

DISCLOSURE-DISCLOSURE-DISCLOSURE!

There is no formal code of conduct in medicine or in law as to the limitations by practitioners of the use of applications programmed with artificial intelligence. There need to be guardrails along the use of both predictive analytics and generative AI in medicine and law. We need to look to the National Institutes of Health, the Centers for Disease Control and Prevention, and the federal Office of Human Research Protections for guidance. Meanwhile, the California Business and Professions Code or the Rules of Professional Conduct do not specifically cover

ethical considerations for attorneys' use of predictive analytics or generative AI in a law practice. There has to be a movement to build public trust in the use of artificial intelligence in medicine and in the courtroom. A lawyer, like a doctor, has a fiduciary duty to their client. There should be a requirement that if a physician, an attorney or a judge writes anything using generative AI, the physician, the attorney or the judge **must** disclose its use and to attest to its authenticity and accuracy.

After all, the attorney or physician owns what is written and is required to defend its contents. The missing element from written articles or reports that are generated by artificial intelligence is the style or uniqueness of the writer's prose. There is almost an innate ability to tell when something was written by a machine and not by a person. All of us have a certain style of writing and there is always a human touch to how it reads. This article for example has some clunky word usage to it that are a product of this author's unique writing style. The tone and emotion of writing is missing from AI generated prose. You can tell it was not written by a human. It just does not pass the smell test. But the AI-based applications will improve over time. In fact, there are AI programs that can tell if something was written using AI. That program sure is useful in academia – can you imagine a college student writing a paper using AI and the product is not written by the student? Perhaps a similar program can be used to see if a medical-legal physician used AI to write their MMI report in the Smith case? See the *Martinez* case discussed below where a medical record "review" summary was probably not written by the QME.

The narrative of the concept of disclosure is not new or foreign in the practice of medicine or in the practice of law. Informed consent is the hallmark of any fiduciary relationship between a patient and their physician or between a client and their attorney. If any part of a workers' compensation claim has been run through an artificial intelligence application by a physician or injured worker's attorney, the injured worker should have knowledge of that fact. The metrics that are offered for claims administrators are limited as well – no one can predict the outcome of a claim – not every lumbar spinal fusion surgery has the same outcome. Predictive AI probably has very little use in the legal profession other than to give a claims examiner, risk manager, or defense attorney a "best case" and "worse case" scenario that a good defense attorney could already do just by reading the case file.

I SENSE DANGER, WILL ROBINSON!

Do you remember Robot in the television show, "*Lost In Space*?" It shows how old this author is. So how far can a medical-legal physician rely on a currently marketed application that is based on generative artificial intelligence to write a medical-legal report? Can a physician utilize a program that uses generative artificial intelligence to write a summary of 500 pages of medical and legal records? What about our anti-ghost-writing statute?

Since this article is written about workers' compensation claims and the use of predictive analytics and generative AI within the workers' compensation community, a direct quotation of California Labor Code Section 4628 is appropriate. Labor Code Section 4628 is the "ghost-writing" prohibition that says the medical-legal physician writes and signs the report and

must disclose who else contributed to the medical-legal evaluation process and report writing process. Here is Labor Code Section 4628 in its entirety:

> **4628(a) Except as provided in subdivision (c), no person, other than the physician who signs the medical-legal report, except a nurse performing those functions routinely performed by a nurse, such as taking blood pressure, shall examine the injured employee or participate in the non-clerical preparation of the report, including all of the following:**
>
> **(1) Taking a complete history.**
>
> **(2) Reviewing and summarizing prior medical records.**
>
> **(3) Composing and drafting the conclusions of the report.**
>
> **(b) The report shall disclose the date when and location where the evaluation was performed; that the physician or physicians signing the report actually performed the evaluation; whether the evaluation performed and the time spent performing the evaluation was in compliance with the guidelines established by the administrative director pursuant to paragraph (5) of subdivision (j) of Section 139.2 or Section 5307.6 and shall disclose the name and qualifications of each person who performed any services in connection with the report, including diagnostic studies, other than its clerical preparation. If the report discloses that the evaluation performed or the time spent performing the evaluation was not in compliance with the guidelines established by the administrative director, the report shall explain, in detail, any variance and the reason or reasons therefor.**
>
> **(c) If the initial outline of a patient's history or excerpting of prior medical records is not done by the physician, the physician shall review the excerpts and the entire outline and shall make additional inquiries and examinations as are necessary and appropriate to identify and determine the relevant medical issues.**
>
> **(d) No amount may be charged in excess of the direct charges for the physician's professional services and the reasonable costs of laboratory examinations, diagnostic studies, and other medical tests, and reasonable costs of clerical expense necessary to producing the report. Direct charges for the physician's professional services shall include reasonable overhead expense.**

(e) Failure to comply with the requirements of this section shall make the report inadmissible as evidence and shall eliminate any liability for payment of any medical-legal expense incurred in connection with the report.

(f) Knowing failure to comply with the requirements of this section shall subject the physician to a civil penalty of up to one thousand dollars ($1,000) for each violation to be assessed by a workers' compensation judge or the appeals board. All civil penalties collected under this section shall be deposited in the Workers' Compensation Administration Revolving Fund.

(g) A physician who is assessed a civil penalty under this section may be terminated, suspended, or placed on probation as a qualified medical evaluator pursuant to subdivisions (k) and (l) of Section 139.2.

(h) Knowing failure to comply with the requirements of this section shall subject the physician to contempt pursuant to the judicial powers vested in the appeals board.

(i) Any person billing for medical-legal evaluations, diagnostic procedures, or diagnostic services performed by persons other than those employed by the reporting physician or physicians, or a medical corporation owned by the reporting physician or physicians shall specify the amount paid or to be paid to those persons for the evaluations, procedures, or services. This subdivision shall not apply to any procedure or service defined or valued pursuant to Section 5307.1.

(j) The report shall contain a declaration by the physician signing the report, under penalty of perjury, stating:

“I declare under penalty of perjury that the information contained in this report and its attachments, if any, is true and correct to the best of my knowledge and belief, except as to information that I have indicated I received from others. As to that information, I declare under penalty of perjury that the information accurately describes the information provided to me and, except as noted herein, that I believe it to be true.”

The foregoing declaration shall be dated and signed by the reporting physician and shall indicate the county wherein it was signed.

(k) The physician shall provide a curriculum vitae upon request by a party and include a statement concerning the percent of the physician's total practice time that is annually devoted to medical treatment.

CASE LAW AND THE USE OF AI

Since this article was originally written in 2024, some interesting case law involving the alleged use of artificial intelligence in California litigation has emerged. This article is in its third version, now for the first time with new case law that has been issued by California courts in 2025.

Gurrola Martinez v. H&H Wallboard 2025 Cal. Wrk, Comp. P.D. LEXIS 242

This Noteworthy Panel Decision involves a QME who issued four reports and a deposition that were stricken from the evidentiary record by a trial judge because the doctor could not attest to compliance with Labor Code Sections 4628(c), 4628(j), Labor Code Section 139.3, and Title 8 Cal. Code of Regulations Section 10682. The Appeals Board reversed the trial judge and ordered that an evidentiary hearing be conducted to allow the QME due process to explain how the medical record review and summary were obtained.

In his deposition testimony, the QME testified that he outsourced the review and summary of medical records to a "document management company" (the name of the company specifically identified in his deposition). He testified he could not identify who from the document management company actually reviewed the records and who summarized them. The suspicion is that an unknown AI program was used to summarize the records by the private document management vendor who was hired by the QME. In the Appeals Board decision, the panel stated that a QME whose reports are subject to being stricken for violation(s) of the statutory or regulatory mandates for medical-legal evaluators is entitled to due process with a full evidentiary hearing before a workers' compensation judge to determine if their reports and deposition testimony should be stricken from the record.

Counsel is reminded that Labor Code Section 139.2(d)(2) and Title 8 Cal. Code of Regulations Section 10683 involve the "five-strikes and you are out!" rule. If a QME's reports are rejected five times in two years by judges or the Appeals Board, their QME license is not renewed.

In the *Martinez* case. the WCAB record to be developed in a hearing upon remand by the Appeals Board to the trial judge would include the specific identity of the outsourced medical document review and summary company, whether the QME knows who from that company actually reviewed and summarized the records, and how the records were summarized – i.e. by a specific person or by AI assisted software.

The take-away of this case is for counsel to track and trace the processes that a medical-legal physician uses in order to produce their medical-legal reporting and to confirm compliance or non-compliance with the anti-ghost-writing statutory provisions in Labor Code Section 4628, the requirements of elements required in a medical-legal report under Title 8 Cal. Code of Regulations Section 10682, and the declaration under penalty of perjury for the physician's attestation under Labor Code Section 4628(j). [See above in this article for the actual language in Section 4628(j)]. Whether or not the outsourced medical record review company utilized artificial intelligence software to review and summarize the medical records will be determined upon remand from the Appeals Board back to the trial judge in this case. At the very least, the trial judge will discover who actually reviewed the records and summarized them for the QME.

The QME in this case, Dr. Hughes, may be in a position to refund the payments that were made to him in this case since the Appeals Board decision stated that the doctor probably violated Section 4628 by not disclosing who reviewed and summarized the medical records. But due process requires that the trial judge conduct a hearing and create a record of exactly what occurred and to give Dr. Hughes an opportunity to respond to the allegations.

Counsel can refer to the Medical-Legal Quality Assurance Checklist that is published by the DWC at the DWC website section for physicians. The author of this article is also the co-author of the Medical-Legal Quality Assurance Checklist and the Psyche Medical-Legal Quality Assurance Checklist. The checklists can be used to prepare an advocacy letter to a medical-legal physicians or to check their work to confirm compliance with Labor Code Section 4628 and Title 8 Cal. Code of Regulations Section 10682.

John Sedano v. Live Action General Engineering 2025 Cal. Wrk. Comp. PD LEXIS 193

Defense counsel in a workers' compensation case used AI to write a Petition for Reconsideration of a trial judge's decision. Defense counsel cited a number of cases in support of her client's position but it turned out most, if not all of the legal citations were not valid. This case is a clear example of artificial intelligence hallucinating when the attorney purportedly instructed an AI program to write her Petition for Reconsideration. The case names were familiar names – for example the "Barnes" case. But the citation to the *Barnes* case was not a real legal citation. This resulted in a joint and several $2,500.00 sanctions order by the Appeals Board against the attorney, her law firm, and her client - the insurance company she represented.

Jennifer Chase v. Southern Implants of North America (2025) 2025 Cal. Wrk. Comp. P.D. LEXIS 282.

Not to outdo Defense counsel in the *Sedano* case, in the Jennifer Chase case, Applicant's counsel filed a petition for reconsideration of a trial judge's decision that the Applicant did not sustain a psychiatric injury AOE/COE. Applicant's counsel contended that the judge erred and the uncontroverted evidence of a QME and the

Applicant's own testimony established the injury. The Appeals Board panel in this case issued a Notice of Intention to impose $2,500.00 sanctions jointly and severally to the Applicant's attorney and the law firm that employs him.

Applicant's Petition for Reconsideration was clearly written using artificial intelligence because there were three specific instances of incorrect legal citations to case law. The Appeals Board pointed out that "each of the citations highlighted [above] is flawed in significant ways, and in two cases, the citations appear to be entirely fabricated" and "quotations attributed to a case in the Petition for Reconsideration does not appear to correspond to any real case." The Appeals Board panel goes on to state: "All of these flawed citations are concerning, but we are particularly perturbed by the apparent conjuration from thin air of *Maislan* and *Rios* – two cases which, as far as we can tell, simply do not exist. It is difficult to comprehend how such apparently fake citations could make their way into a pleading filed under penalty of perjury, without having been caught and corrected prior to filing with the normal exercise of due diligence." Do you, the reader of this article, really want to take the risks this attorney took?

The Appeals Board cited Labor Code Section 5813 which permits a judge or the Appeals Board to issue sanctions of up to $2,500.00 for acts which result from bad-faith actions or tactics that are frivolous or solely intended to cause unnecessary delay. The Appeals Board also applied and cited Title 8 Cal. Code of Regulations Section 10421(b) that states in relevant part: "Bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay include actions or tactics that result from a willful failure to comply with a statutory or regulatory obligation, that result from a willful intent to disrupt or delay the proceedings of the WCAB, or that are done for an improper motive or are indisputably without merit." The Appeals Board then cited that WCAB Rule 10421(b) provides a list of actions that could be subject to sanctions including sub-section (8): Asserting a position that misstates or substantially misstates the law."

Finally, the Appeals Board cited Business and Professions Code Section 6068 and Rule 3.3 of the California Rules of Professional Conduct that require attorneys to respect the courts of justice and judicial officers:

> **"Business and Professions Code section 6068 provides in part that an attorney must respect the courts of justice and judicial officers (subdivision (b)); maintain only actions that are legal or just (subdivision (c)); be truthful at all times, including never to mislead a judge or judicial officer by false statement of fact or law (subdivision (d)); and, refrain from beginning or continuing a proceeding from 'any corrupt motive' (subdivision (g)). Rule 3.3 of the California Rules of Professional Conduct provides in part that a lawyer shall not: "(1) knowingly make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer; or (2) . . . knowingly misquote to a tribunal the language of a book, statute, decision or other authority."**

Applicant's counsel admitted in a written response to the Notice of Intention Re Sanctions that he did in fact use artificial intelligence software to write his Petition for Reconsideration and he did not proofread the Petition, nor did he verify the citations. He expressed his sincere apologies for his misconduct. It is not out of one's realm to ask how many times did this attorney do this prior to getting caught?

Sylvia Noland v. Land of the Free 114 Cal. App. 5th 426; 336 Cal. Rptr. 3d 897; 2025 Cal. App. LEXIS 584; 2025 LX 359013 [Second District Court of Appeal]

This case is a published decision of the California Court of Appeal, Second District (which is in Los Angeles County) – the Justices discuss in their decision why they voted unanimously to publish this case. The justices indicate that they want to put a stop to attorney's use of artificial intelligence without counsel verifying the content that is written by generative AI programs. In *Noland*, Plaintiff's attorney, Amir Mostafavi, used AI for an appeal from a Superior Court judge's decision granting Defendant's Motion for Summary Judgment on an employment wrongful termination case. The case citations in counsel's Petition for Writ of Mandate included many false citations to statutes and cases – all as a result of an AI program's hallucinations. The Plaintiff's attorney was sanctioned $10,000.00 by the Court of Appeal.

The Plaintiff's attorney admitted to the DCA that he did in fact use AI "to support citation of legal issues" and he also admitted that he had not been aware that generative AI frequently fabricates or hallucinates legal sources. He also admitted he did not manually verify the quotations against more reliable legal sources. The Court then states why they chose this case for publication:

> **"What sets this appeal apart – and the reason we have elected to publish this opinion – is that nearly all of the legal quotations in plaintiff's opening brief, and many of the quotations in plaintiff's reply brief, are fabricated. That is, the quotes plaintiff attributes to published cases do not appear in those cases or anywhere else. Further, many of the cases plaintiff cites do not discuss the topics for which they are cited and a few of the cases do not exist at all. These fabricated legal authorities were created by generative artificial intelligence (AI) tools that plaintiff's counsel used to draft his appellate briefs. The AI tools created fake legal authority – sometimes referred to as "hallucinations" – that were undetected by plaintiff's counsel because he did not read the cases the AI tools cited.**
>
> **Although the generation of fake legal authority by AI sources has been widely commented on by federal and out-of-state courts and reported by many media sources, no California court has addressed this issue. We therefore publish this opinion as a warning. Simply stated, no brief, pleading, motion, of any other paper filed in any court should contain any citations – whether provided by generative AI or any other source – that the attorney responsible for submitted the pleading has not personally read and verified."**

The Court of Appeal made a specific finding: "[t]hat because the plaintiff attorney's conduct violated a basic duty counsel owed to his client and the court, we impose a monetary sanction on counsel, direct him to serve a copy of this opinion on his client, and direct the clerk of the court to serve a copy of this opinion on the State Bar."

You notice that the Court of Appeal states that an attorney who is responsible for submitting a pleading has to personally read and verify the contents applies "in any court." This author reads this warning by the District Court of Appeal to apply in any court including the Workers' Compensation Appeals Board.

Stephanie Tovar v. United Pacific, Everest Premier Insurance Company, adjusted by Broadspire (2025) 2025 Cal. Wrk. Comp. P.D. LEXIS 338

This case is interesting for two reasons. First, again a defense attorney, her law firm, the employer, and the claims administrator are jointly and severally sanctioned $2,500.00 by the Appeals Board for defense counsel's use and misuse of artificial intelligence software to write her Petition for Removal. Secondly, in this case, a judge issued an order taking this matter off calendar over the objection of defense counsel who contended that this case should proceed to trial on the bifurcated defense under Labor Code Section 3208.3(d) [no psychiatric liability if employment is less than six months unless psyche injury is caused by sudden and extraordinary event of employment] ahead of a QME in psychiatry or psychology.

The Appeals Board panel agreed with the judge that the decision denying bifurcation of the issue was discretionary and should not be disturbed on a Petition for Removal. The Appeals Board in the *Tovar* case cited the same authority in the *Jennifer Chase* decision discussed above – specifically Labor Code Section 5813, Title 8 Cal. Code of Regulations Section 10421, Business and Professions Code Section 6068 and Rule 3.3 of the California Rules of Professional Conduct.

The Appeals Board panel in *Tovar* also addressed the requirements and standards for a Petition for Removal:

> **Petitions for removal are verified under penalty of perjury and they must fairly state all of the material evidence relative to the point or points at issue. (Cal. Code Regs., tit. 8, § 10945(a).) Each contention contained in a petition for removal must be stated separately and clearly set forth. (*Ibid*.) The petition shall support its evidentiary statements with specific references to the record. (Cal. Code Regs., tit. 8, § 10945(b).) "A petition for reconsideration, removal or disqualification may be denied or dismissed if it is unsupported by specific references to the record and to the principles of law involved." (Cal. Code Regs., tit. 8, § 10972, (emphasis added).) In short, failure to cite the record and failure to fully and accurately set forth the facts and evidence is grounds to deny a petition for removal. (§ 5902; Cal. Code. Regs., tit. 8, § 10972.)**

The Appeals Board panel then listed the citations made by defense counsel in support of her Petition for Removal, some of which were completely the opposite of her argument that

the six-month employment issue should be litigated before a QME in psyche is obtained. In fact, the case law actually supports the proposition that a QME in psyche is preferred before the six-month employment restriction issue is determined.

The Appeals Board then states: "Defendant's quotations do not appear to exist. We could not find these quotes in any published decision of the Appeals Board. It appears that the above citations are fabricated. The *Mangan* panel [decision] stands in complete opposite of defendant's representations as if affirmed the WCJ's order issuing a psychiatric panel and deferring the issue of section 3208.3(d). It is unclear how an attorney licensed by the California State Bar, who signed the Petition for Removal under penalty of perjury, could have read the panel decisions above and cited them in the manner they were presented. It appears that the Petition was not reviewed before filing. This it appears that defendant's filing was frivolous and not in good faith."

The Appeals Board then "invited defense counsel to discuss in detail, how these citations were generated."

CONCLUSION – FOR LAWYERS AND JUDGES

There must be a movement to build public trust in the use of AI in medicine and in the courtroom. A lawyer, like a doctor, has a fiduciary duty to their client. There should be a requirement that if an attorney or a judge writes anything using AI, the attorney or judge has to disclose its use. For goodness sakes, check your work! Double check the citations that are generated by the software and read the actual cases to verify the authority you are citing. No one can cross-examine a computer or its programming. Better yet, write it yourself!!!! When you conduct legal research online, make sure you are looking at a reliable source that is backed up by the producer of the content. In California, you have Business and Professions Code Section 6068 and Rules of Professional Conduct Rule 3.3 that obligates you to ethically provide accurate information to a court, your client, and your opponent.

CONCLUSION – FOR MEDICAL-LEGAL PHYSICIANS

Is Labor Code Section 4628 a full stop for medical-legal physicians to use generative AI in their report writing process? Can a medical-legal physician use AI to summarize medical records? Could a judge disallow payment and deem a medical-legal report inadmissible because the evaluating physician was assisted by AI in the generation of the report? Regulations and case

law may be necessary to answer these questions. In the meantime, we can look forward to some ethical considerations within the medical, medical-legal, and legal communities in the use of predictive analytics and generative AI since artificial intelligence in general is rapidly becoming part of our daily lives as human beings. The *Martinez* case discussed in this article is the first example of a potential "QME Gone Bad" and should serve as an example and warning of possible consequences of misusing AI in the medical-legal process.

If a QME, AME, or primary treating physician plans on using a generative AI program to summarize medical records, the physician should only use AI programs that meet the standard of having the same inter-rater reliability as if ten physicians personally reviewed the same records who came within 95% of accuracy in their separate conclusions of what was actually in the records. A single physician could manually review and summarize a set of records and compare their own result with one of the proprietary AI programs to check the accuracy of the program. But let the buyer beware: past performance is not a guarantee of future performance.

One physician asked this author during the seminar in Salt Lake City: "Would you as a judge accept an impairment rating from an AI-assisted review as admissible evidence?" The answer is: Not if the physician failed to explain how the WPI ratings were determined and what the ratings were based on. There was a similar issue when this author was in his law practice – a QME used a commercial software program to calculate WPI ratings based on loss of motion of the shoulders (flexion, extension, abduction, adduction, external and internal rotations). At his deposition the QME was unable to explain how the WPI ratings were actually calculated and he could not attest to the accuracy of the ratings. On the way out of the doctor's office after the QME'a deposition, the parties agreed to use an orthopedic surgeon agreed medical examiner in the case. As a judge, this author would have to be convinced that the AI assisted WPI ratings were reviewed by the medical-legal physician and the QME or AME is able to explain how the ratings were determined and established by the doctor based on reasonable medical probability. It seems unnecessary to point out that only a human being can perform the actual measurements on a patient which ultimately generates WPI ratings or none. An AI assisted impairment rating cannot be cross-examined by counsel.

CONCLUSION – THE ULTIMATE GUARDRAILS FOR INJURED WORKERS

Is there potential civil liability of the owners and developers of proprietary artificial intelligence software that generates a deep fake image of an injured worker, their attorney, or a proprietary generative AI program that has an inaccurate medical record summary or claim analysis that a QME, AME, employer, or claims examiner relies on? The ultimate guardrail against harm by a software company who sells artificial intelligence programs to participants in a workers' compensation claim is a civil lawsuit against the AI developers in Superior Court for damages in addition to costs, sanctions and attorney's fees in the workers' compensation case at the WCAB against a participant in a claim who misuses AI.

The ultimate responsibility of anyone who utilizes any form of artificial intelligence in the course of a workers' compensation case is full disclosure by the person or persons who

utilize AI during any step along the claims process. There needs to be regulations, industry standards, or other required ethical considerations that any use of AI by any person involved in a workers compensation case be fully disclosed to any affected participant in that case. Generative and predictive analytics by artificial intelligence does not have a human touch. No one knows what software was written by a human and what was written by a machine.

In addition, there should be required written disclosure that AI was utilized and how it was utilized with some form of assurance that a human being reviewed information that was generated by an AI program before any substantive decision making was made by a human being concerning all aspects of a claim. There is absolutely no room for deception in the course of a workers' compensation claim since every judge has a duty to decide the rights and obligations of parties based on the evidence admitted at trial. That evidence has to be valid, reliable, accurate, credible, and persuasive. A computer software system that uses artificial intelligence cannot make those determinations for us. We have seen in this updated article specific examples of attorney and physician misconduct in using AI to cut corners and avoid doing the work. In the absence of formal rule making, statutory or regulatory mandates, let's raise the bar: verify accuracy and disclose!

There must be a human being's touch from claim form to claim resolution. It is an open question still lingering: "Can AI help resolve disputes faster, or will it just create new ones?" By the way, the AI-generated "woman holding a parasol" picture at the beginning of this article has the pole attached to the parasol going through her neck.

Postscript: The author of this article wants to acknowledge the essay "*The Ethics of Relational AI – Expanding and Implementing The Belmont Principles*" by Ida Sim M.D. Ph.D. and Christine Cassel MD., New England Journal of Medicine, 391:3, July 18, 2024, pp. 193-196.

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