The Royal Australian & New Zealand College of Psychiatrists

Your Health in Mind

Medical Council of New Zealand

Using Artificial Intelligence (AI) in Patient Care

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Excellence and equity in the provision of mental health care

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About the Royal Australian and New Zealand College of Psychiatrists

The Royal Australian and New Zealand College of Psychiatrists (RANZCP) is responsible for training, educating and representing psychiatrists in Australia and New Zealand. The RANZCP has more than 8900 members, including more than 6300 qualified psychiatrists.

Introduction

The RANZCP welcomes the opportunity to contribute to the Te Kaunihera Rata o Aotearoa/Medical Council of New Zealand (MCNZ) consultation on Using Artificial Intelligence (AI) in Patient Care (the consultation). The RANZCP acknowledges the difficulty balancing AI adoption and legislation, as the pace of AI development is significantly greater than the development of regulatory and legislative frameworks. The RANZCP recommends a pragmatic approach that considers the perspective of psychiatrists, GPs, other clinical specialists, consumers and the healthcare system. Whilst the impact of AI is felt across the entire healthcare spectrum, this submission is focused on the use of AI in delivery of high-quality mental health care.

Key recommendations

There is an opportunity to support psychiatrists to deliver high quality mental health services with the implementation of AI tools. To ensure that the implementation of AI remains safe and supports the mental health sector, the RANZCP recommends:

- The creation of an AI healthcare oversight body, including representation from psychiatrists and people with lived experience of mental health, as well as rangatīra Māori and whānau whai ora.
- AI guardrails are used to uphold security and privacy for consumer data, including when used to train AI models.
    - Legislation that outlines the requirements for storage, usage and training of AI tools on consumer health information is required.
    - Offshore storage of consumer health information adds risks due to the differences in data protection and privacy laws.
- AI usage in mental health care should support psychiatrists to deliver mental health care, as opposed to removing their autonomy and agency.
- Psychiatrists and other clinicians must be protected by legislation if they refuse to implement AI tools in their practice.
- Enhanced consent from both the psychiatrist and tāngata whai ora must be gathered prior to any usage of AI in mental health care. This includes informing consumers about the difficulty of removing data once it exists within the AI tool.
- The creation of a robust regulatory framework that includes evaluation mechanisms and error reporting for AI tools in health care.
- AI usage in mental health should be used to improve equitable access to mental health services. Failing to do so will only further isolate priority populations, including Māori and culturally and linguistically diverse communities.

Consultation Questions

1. **Does the 'Introduction' adequately explain the scope and relevance of this statement? Is there anything that should be added or clarified?**

The Introduction section is clear, simple and easy to read.

2. **'The scope of this statement should focus solely on the use of AI in patient care and exclude AI use in business administration'.**

AGREE

3. **Is the 'Accountability and duty of care' section clear and practical? Are there any changes we should make?**

N/A

4.
   a. **Is the section on 'Informed consent' clear and practical?**

Questions remain as to whether consent can be truly informed for the majority of the population given the immense complexities of AI data processing. There is duplication between section 8 and 9, and these could be easily combined into one statement.

   b. **Should all use of AI in patient care require explicit patient consent?**

As with all aspects of patient care, informed consent needs to be given when using AI in patient care. Informed consent does not need to be sought for each instance of AI use, however, and once given can be assumed to be ongoing unless withdrawn. The RANZCP has concerns about those patients who lack the capacity to give informed consent and suggests that a statement be included in this section to the effect that particular care should be taken with AI when the patient lacks capacity or is unable to give consent.

   c. **Are there any changes we should make?**

For consent to be truly informed, a balanced perspective of the risks and benefits should be given. Cultural differences and language barriers are important considerations when explaining the risks and benefits of AI to tāngata whai ora and whānau. Care should be taken to ensure that the limits and risks of AI are clearly articulated from a te ao Māori perspective — including potential impacts on whānau and obligations under te tiriti o Waitangi.

5.
   a. **Is the section on 'Patient data privacy, data security and patient safety' clear and practical?**

Yes

   b. **Does it adequately address the key risks and safeguards?**

Data sovereignty and privacy are extremely important factors to consider when choosing to use AI or other software. Upholding Māori data sovereignty is of particular importance, and the RANZCP welcomes MCNZ's explicit focus on this area. We recommend the MCNZ work together with iwi, hapū, and Māori experts on any use of Māori content.

c. What level of knowledge, understanding and accountability regarding the privacy and data security of the AI tool is appropriate to expect of the doctor?

Doctors cannot be expected to independently assess the privacy and data security of their AI tools, and as such must rely on the developer's statements regarding the security of their products. Clinicians have a duty of care to consider the data security and privacy policies of AI tools when choosing a product but cannot and should not be held accountable for any misleading or false statements made by developers regarding their products.

d. Are there any additional aspects that should be considered?

The vast majority of AI tools have not been trained on culturally diverse datasets, and numerically small populations such as Māori are often under-represented or missing. Language, accent and dialect differences are also challenging, and extra care must be taken when using AI tools to take clinical notes in culturally diverse settings.

One area of data security which is often overlooked is the requirement for EU citizens data handling to comply with GDPR rules irrespective of which country they are in. There are many New Zealand citizens who also hold EU citizenship, and it may be of value to highlight the requirement for GDPR-compliant software to be used when dealing with these consumers. Given the challenges with predicting which consumers have, or do not have dual nationality a more pragmatic approach is to ensure that all data is stored and handled according to GDPR requirements.

6. Is the section on 'Continuing professional development' clear and practical? Are there any changes we should make?

The wording in this section places the responsibility for upskilling with the clinician, without providing any clear guidance on how and where to find this information. It may be of benefit to depersonalise the first part of this section and instead highlight the importance of ensuring that clinician's skills are kept up to date and direct them to seek guidance from their peak body to ensure that they are familiar with the relevant considerations for their speciality.

7. Please provide any other comments about Using artificial intelligence (AI) in patient care that you would like us to consider.

The RANZCP does not have additional feedback to provide at this time.

References

1. Onnela J-P, Rauch SL: Harnessing smartphone-based digital phenotyping to enhance behavioral and mental health. Neuropsychopharmacology 2016, 41:1691-1696.Fulmer R, Joerin A, Gentile B, Lakerink L, Rauws M. Using Psychological Artificial Intelligence (Tess) to Relieve Symptoms of Depression and Anxiety: Randomized Controlled Trial. JMIR Mental Health. 2018 Dec 13;5(4):e64.
2. Office of the Australian Information Commissioner (OAIC). (2020). Australian Privacy Principles.
3. Villaronga EF, Kieseberg P, Li T. Humans forget, machines remember: Artificial intelligence and the right to be forgotten. Computer Law & Security Review. 2018 Apr 1;34(2):304-13.