

A New Way of Regulating Healthcare AI

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64 ATENEO L.J. 1127 (2020)

TAG(S): CIVIL LAW, TORT LAW, ARTIFICIAL INTELLIGENCE

Across the globe, various hospitals and healthcare providers are slowly integrating Artificial Intelligence (AI) in healthcare delivery. However, there has been no concerted effort among the members of the international community to establish an international document to standardize the imposition of liability and regulation of AI. Thus, the question of responsibility and liability for the acts and omissions committed by healthcare AI inevitably arises.

This Note provides a brief overview of the historical development of AI, the existing AI liability regimes in the United States, the European Union, Japan, and in the Philippines. The Note homes in on Philippine laws related to quasi-delicts as well as Supreme Court decisions on medical malpractice to illustrate the inadequacy of the existing liability regime in the Philippines affecting Healthcare AI. In conclusion, the Note adopts its own recommendations for the Philippine legal system. The Author analyzes the United States' FUTURE of AI Act, the European Committee's Ethics Guidelines for Trustworthy AI, and Japan's Social Principles of Human-Centric Artificial Intelligence.

The Author further examines Healthcare AI Regulation proposals in related literature, such as Robert van den Hoven van Genderen's suggestion to grant legal personhood to AI, Yavar Bathaee's Sliding Scale Approach proposal, and David Vladek's Common Enterprise Liability proposal, among others. The drawbacks of each proposal in relation to the heuristic nature of AI are explained accordingly.

Finally, the Author submits a two-pronged approach in dealing with injuries sustained from healthcare AI. First, the sliding scale approach shall be used in order to determine the negligence of the physician or any other tortfeasor who causes the injury. Second, in case the injury was caused by reasons not attributable to the negligence of a physician or a healthcare institution, or in case a healthcare AI is readily available in the market without professional intervention, Vladek's common enterprise liability framework should be employed in order to make all persons who work to a common end (i.e., those who design, program and manufacture an autonomous system and its various parts) jointly responsible.