

March 8, 2024

Mark B. Woodland, MS, MD
Chair
Ethics and Professionalism Committee
Federation of State Medical Boards
1775 Eye Street NW, Suite 410
Washington, DC 20006

Re: AMA comments on the Ethics and Professionalism Committee Report AI in Medical Regulation

Dear Dr. Woodland:

On behalf of the physician and medical student members of the American Medical Association (AMA), thank you for the opportunity to provide comments on the Federation of State Medical Board's (FSMB) Ethics and Professionalism Committee Draft Report: *Guidelines & Recommendations to Aid State Medical Boards and Physicians in Navigating the Responsible and Ethical Incorporation of AI into Clinical Practice* (Draft Report). The AMA commends the Ethics and Professionalism Committee (Committee) for its consideration of this critically important issue. Ensuring the responsible, equitable, ethical, and transparent design, development, and deployment of high-performing augmented intelligence (AI)-enabled tools within our health care system is a key priority for AMA members and our patients.¹ Other key priorities for the our members and patients include ensuring that physicians have a voice in the design and development of AI-enabled technologies; ensuring that they meet the goals of the quadruple aim, advance health equity, prioritize patient safety; and limiting risks to both physicians and patients.

The AMA's ongoing work on this issue includes new Principles for Augmented Intelligence (AI) Development, Deployment, and Use (AI Principles). These recently adopted AI Principles build on the AMA's 2018 foundational principles on AI and seek to provide the physician perspective on important AI policy topics, including many that are addressed in the Draft Report.

Overall, the Draft Report closely aligns with AMA's policies and AI Principles by prioritizing the importance of transparency and the need for physicians and patients to know (1) when they are engaging with AI and (2) when medical decision-making includes consultation with AI-enabled technologies. Along those same lines, we are encouraged that the ethical principles outlined in the Draft Report recognize the role of AI developers in ensuring transparency, including their key role in providing sufficient information to physicians about their products, thereby allowing physicians to fully evaluate the AI tool's quality, appropriateness, performance, and risk of bias. The AMA appreciates that these ethical principles consider the rapid evolution of AI, including identifying opportunities for future policy development or educational guidance and emphasizing the critically important role of FSMB in educating state medical boards on AI and the potential role of state medical boards in regulating the use of AI systems and tools in clinical practice. We encourage FSMB to review and utilize AMA's policies and AI Principles in your ongoing work and welcome the opportunity for future collaboration on this issue between our organizations, particularly as you develop materials and guidance for wide-spread distribution to state medical boards.

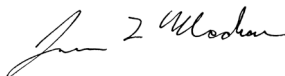
¹ The AMA refers to AI as "augmented intelligence"—a crucial concept in health care that emphasizes the enhancement of human decision-making through AI technologies, rather than replacing human expertise, ensuring a synergistic partnership where AI tools assist health care professionals in delivering more accurate, efficient, and personalized patient care.

Finally, as the Committee works to finalize the Draft Report, the AMA respectfully encourages members of the Committee to consider the following for inclusion to the Draft Report:

- *Transparency:* The AMA strongly supports transparency around the use of AI-enabled technology for both patients and physicians, however, required disclosures should not add to the massive administrative burdens currently experienced by many physicians. Therefore, we encourage the Committee to consider adding language to the transparency and disclosure section and ethical principles emphasizing that disclosure of AI should contribute to physician and patient knowledge and not create unnecessary administrative burden.
- *Accountability and oversight:* Accountability and liability for the use of AI creates both novel and complex legal questions, many of which are still to be answered, but which potentially pose risks to the successful clinical integration of AI-enabled technologies. When considering the application of AI tools and systems in clinical decision-making, we encourage the Committee to consider adding language that states that liability and incentives should be aligned so that the individual(s) or entity(ies) best positioned to know the AI system risks and best positioned to avert or mitigate harm do so through design, development, validation, and implementation. This includes AI developers, including developers of autonomous AI systems with clinical applications who are in the best position to manage issues of liability arising directly from system failure or misdiagnosis. It is our strong belief that such developers must accept this liability with measures such as maintaining appropriate medical liability insurance and reflecting as such in their agreements with users. Moreover, when physicians do not know or have reason to know that there are concerns about the quality and safety of an AI-enabled technology, they should not be held liable for the performance of the technology in question. Finally, where a mandated use of AI systems prevents mitigation of risk and harm, the individual or entity issuing the mandate must be assigned all applicable liability. We encourage the Committee to add language reflecting these critical concerns.
- *Education:* As noted above, the AMA appreciates the Draft Report and ethical principles outlining various areas for future education, guidance, and policy development. We encourage the Committee to consider adding a reference specifically on the need for additional education on generative AI, including the risks and limitations of its use, such as bias, misinformation, and incorrect and false responses. Given the rapid growth of generative AI, regulators, physicians, and patients must all be well versed in these potential risks, particularly if using generative AI in clinical settings. AMA's AI Principles include a section on generative AI, which we encourage the Committee to review.

Thank you again for the opportunity to provide these comments. Please find attached the AMA's AI Principles, which we hope you will consider not only as you finalize the Draft Report, but also in your ongoing work. Again, the AMA welcomes the opportunity for future collaboration on this issue. If you have any questions or would like additional information, please contact Kimberly Horvath, JD, Senior Attorney, AMA Advocacy Resource Center, at kimberly.horvath@ama-assn.org.

Sincerely,



James L. Madara, MD

Attachment