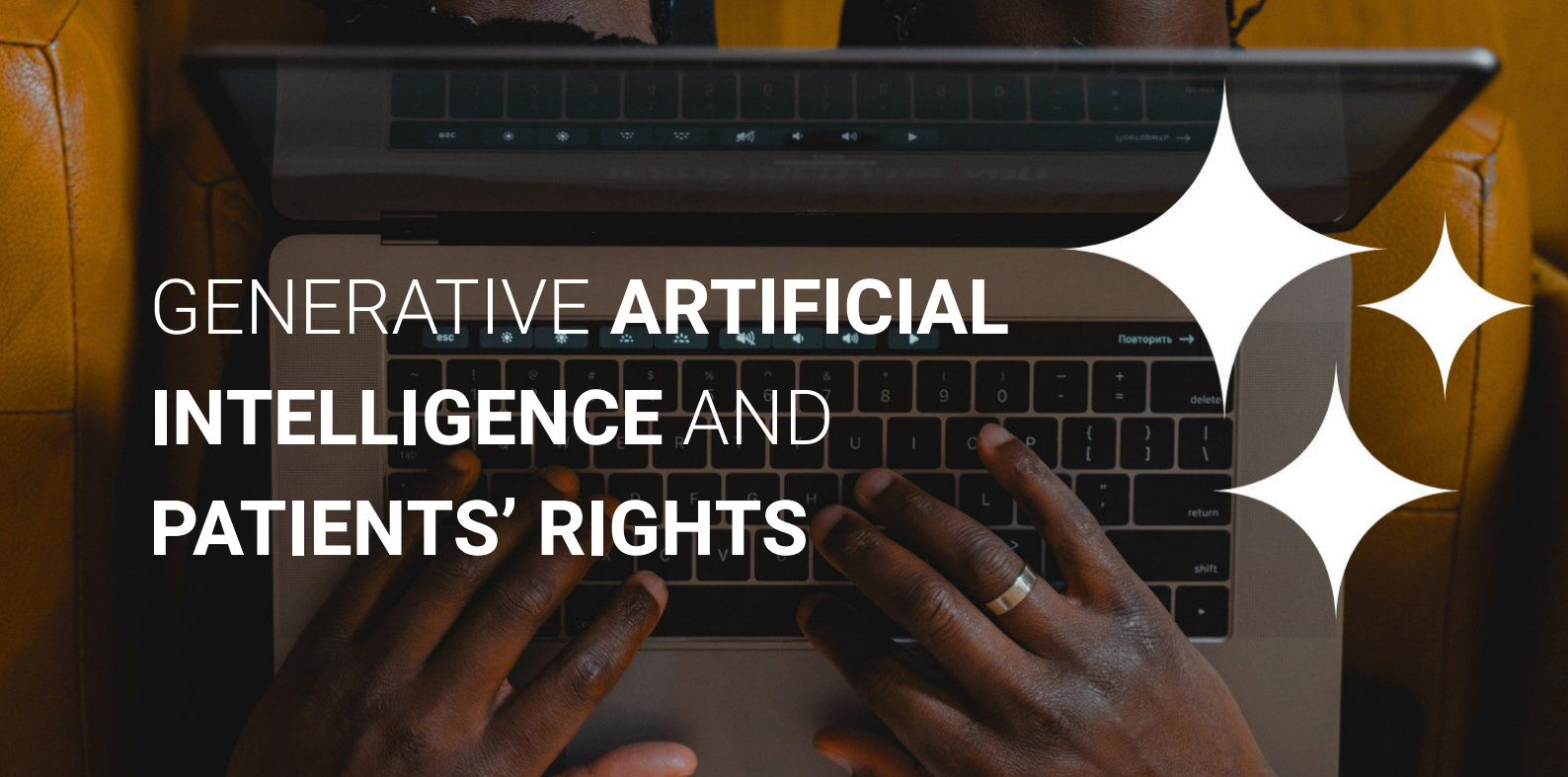




GENERATIVE ARTIFICIAL INTELLIGENCE AND PATIENTS' RIGHTS

INTRODUCTION

The increasing digitalisation of healthcare is reshaping how healthcare professionals approach clinical tasks and patient interaction. This is occurring against the backdrop of systemic pressures that the healthcare sector is facing due to workforce shortages and an aging population, among other factors. In this context, generative artificial intelligence (GenAI) has the capacity to help healthcare providers with clinical documentation, decision-making, and patient communication through automated processes. However, despite the potential, GenAI also carries fundamental risks to patients' rights, which we will explore further below.

What is GenAI?

GenAI is a broad category of AI that can generate new content based on input and training data, which includes text, images, and video.¹ Whereas classical AI would mainly make predictions or classifications based on its training data, GenAI is perceived as a breakthrough, whereby models can create new content themselves.

HOW AND WHERE IS GENERATIVE AI USED IN HEALTHCARE?

The use of GenAI in healthcare settings is increasing. Recent research found that it was used in more than 57% of Dutch hospitals, while in other surveys, around 78% of physicians reported using large language models (LLMs, a type of GenAI).^{2,3}

GenAI can be used in patient communication, for example through translation. It can be used in clinical documentation, like writing discharge letters or referrals.⁴ A third possible application is supporting clinical decision-making, e.g., in diagnosis and treatment recommendations.⁵

The use of GenAI can clearly provide benefits to the healthcare settings, particularly in contexts of increasing costs and personnel shortages. Benefits can include improving personalised medicine, expediting surgical decision-making, as well as reducing administrative burdens.^{6,7}

RISKS TO PATIENTS

As with AI more widely, the increasing use of GenAI poses certain threats to patients' rights. One of these risks relates to data privacy, whereby GenAI models may leak private health data, or other forms of data breaches.

Secondly, patients' equitable access to healthcare may be impacted in several ways. GenAI may 'hallucinate' and produce inaccurate outputs. If used in treatment recommendations, this may delay access to appropriate care. In parallel, biases contained in healthcare datasets may be perpetuated through the use of GenAI, leading to further health disparities. Automation bias is another risk, whereby healthcare professionals become overly reliant on outputs produced by GenAI models and do not always adequately check their accuracy.

Another concern to highlight surrounds the right to informed consent. Some argue that GenAI may be beneficial in order to simplify obtaining informed consent, however there are increasing concerns that consent is not sufficiently sought, even for administrative-type medical tasks involving the use of GenAI.⁸ Unresolved questions include the timing of obtaining consent, what details to include, etc.⁹

REMINDERS FOR HEALTHCARE PROVIDERS AND PATIENTS

Patients are entitled to know where their health data is stored and for what purposes.

Patients have the right to object to their health data being shared and used for secondary purposes (e.g., research and commercial use).

Healthcare institutions should be encouraged to develop internal policies and guidelines regulating the use of GenAI. These should align with existing frameworks and should ensure patients' rights.

There is a need for transparency procedures so that patients can easily obtain information on how and where GenAI is being used in care.

Healthcare institutions must always state where clinical documentation was generated through the use of GenAI, and alert patients to the possibility of mistakes. Systems may misinterpret information, relay false information, be inconsistent, or even hallucinate and produce information that had not been previously discussed.

Healthcare institutions must ensure that consent procedures disclose the use of GenAI and provide clear opportunities for patients to object.

Sensitive health data must not be shared with commercial GenAI parties.

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AUTHORS

- Sofia Capella, Health Action International
- Alice Beck, Health Action International

To learn more about AI, health and digital rights, visit www.healthai.haiweb.org

FOR MORE INFORMATION
alice@haiweb.org