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## Jurisprudential Rulings Relevant to the Use of Artificial Intelligence in the Medical Field

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# Jurisprudential Rulings Relevant to the Use of Artificial Intelligence in the Medical Field<sup>(1)</sup>

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## Abstract

**Idea of the Research is to** address the topic of using artificial intelligence in the medical field from the Islamic point of view. **Its importance** lies in focusing on the way Islamic Law keeps pace with latest issues that comply with the provisions and objectives of Islamic Law. Hence, **the problematic** deals with jurisprudential rulings relevant to the use of AI in the medical field and providing patients' confidential data to AI software. **This research aims** to explain some jurisprudential rulings on using AI. Accordingly, extrapolatory, analytical, and comparative **methods** have been used. **The main findings of the research are the following:** learning AI is a collective duty provided that it agrees with the Objectives of Islamic Law that firmly stipulates non-disclosure of patients' medical data except in a few cases to bring benefit or prevent harm. On this basis, practitioners

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can provide AI software with confidential patients' information under certain conditions such as achieving public interest, obtaining permission and a written consent from the patient, revealing true information and preventing any kind of harm. In this regard, **the researcher urges** to keep pace with the latest AI developments and encourages more jurisprudential studies to promote research on emerging medical issues.

**Keywords:** natural language, jurisprudential rulings on AI, medical robot, hacking..

# الأحكام الفقهية المتعلقة باستخدام الذكاء الاصطناعي في المجال الطبي<sup>(1)</sup>

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## ملخص البحث

فكرة البحث: تناول موضوع استخدام الذكاء الاصطناعي في المجال الطبي من الناحية الشرعية، وتكمن أهمية البحث: في تسليط الضوء على مواكبة الشريعة الإسلامية لكل ما هو جديد، مما يوافق أحكامها ومقاصدها، وتتمثل إشكالية البحث: في حكم الاستعانة بالذكاء الاصطناعي في المجال الطبي، وحكم تزويده ببيانات المرضى السرية، ويهدف هذا البحث إلى بيان بعض من الأحكام الفقهية المتعلقة باستخدام الذكاء الاصطناعي، وقد استخدمت الباحثة لبيان ذلك المنهج الاستقرائي والتحليلي، والمقارن، ومن أبرز النتائج التي توصلت إليها الباحثة: يعد تعلم الذكاء الاصطناعي من فروض الكفاية بشرط توافقه مع مقاصد الشريعة الإسلامية، وتوجب الشريعة الإسلامية كتمان بيانات المرضى الصحية إلا في مستثنيات قليلة تستدعي جلب نفع أو دفع مضر، وبالتالي يجوز للطبيب أن يزود الذكاء الاصطناعي ببيانات المرضى السرية بشرط أن تكون المصلحة العامة متحققة، وأن يأخذ إذن المريض وموافقته المستنيرة، وأن تكون المعلومات صحيحة، وألا يترتب على ذلك ضرر، ولذلك ترى الباحثة ضرورة مواكبة تطورات استخدام الذكاء الاصطناعي، مع أهمية تعزيز المكتبة الفقهية بالأبحاث الفقهية الطبية لما يستجد من النوازل المعاصرة.

الكلمات المفتاحية: اللغة الطبيعية، حكم الذكاء الاصطناعي، الروبوت الطبي، اختراق.

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### Introduction

Islamic Law (Sharia) is comprehensive. It keeps up with the requirements and needs of all times and places, approves all that is beneficial to serve humanity, eases their lives, and supports all that removes embarrassment and hardship, in accordance with the Objectives of the Islamic Law (Sharia).

In the view of the recent developments of this age, and the technological developments that led to the use of AI in various fields, especially its major role in helping practitioners diagnose diseases, prescribe medicines and perform surgeries with precision and skilfulness, it is necessary to state the Islamic point of view on the use of AI in the medical field and relevant jurisprudential rulings, and highlight the importance of AI in the service of the Objectives of the Islamic Law (Maqasid al-Sharia), mainly self protection in all ways and means, to care for it and repel harm from it. This is basic idea of this research.

### Problematic of the Research

This paper or research addresses several problematics, and answers the following questions:

1. What is the jurisprudential ruling on using AI in the medical field?
2. What is the jurisprudential ruling on disabling and hacking AI technologies and falsifying their data?

### Importance of the Research

The importance of this research is about: shedding light on the way Islamic Law (Sharia) keeps pace with developments and emerging issues and calamities that serve the Islamic nation,

achieve the interest of humanity, and ward off corruption from them, in accordance with the Objectives and Provisions of Islamic Law (Ahkam wa Maqasid al-Sharia).

### **Objectives of the Research**

The research seeks to achieve the following objectives:

1. Explaining the jurisprudential rulings on using AI in the medical field, and potential ethical violations when using AI.
2. Explaining jurisprudential rulings on those who disable or hack AI technologies used in the medical field, and on those who use them to falsify patients' data.

### **Literature Review**

There are many previous studies related to the use of AI in the medical field, but only few of them deal with the topic from an Islamic perspective, as shown below:

1. Al-Borai, Dr. Ahmed Saad Ali, Applications of Artificial Intelligence and Robotics from the Perspective of Islamic Jurisprudence, Egyptian Dar Al-Iftaa Magazine - Dar Al-Iftaa Al-Misria, No. 84, 2022, pp. 12-159.

The study dealt with the definition, objectives, types and stages of AI development. It also discussed the relevant jurisprudential rulings in terms of explaining AI impact on contracts and transactions. However, the present study deals with the topic of using AI in the medical field and shows the jurisprudential ruling on providing patients' confidential information and reports to AI software.

2. Abdel Majeed, Dina Ibrahim Amin, Modern Technological Innovations in the Medical Field, Journal of Legal and

Economic Studies, Faculty of Law - University of Sadat City, Volume 8 - Special Issue, 2022, pp. 1-53.

The study examined forms of medical technology, its importance, the latest global innovations, and positive and negative effects of technology in the medical field.

This research agrees with the present study in terms of addressing the advantages and risks of using AI in the medical field. It differs from it in terms of addressing some jurisprudential rulings related to the use of AI in the medical field.

3. Hassan, Muhammad Jibril Ibrahim, criminal liability arising from the harms of using Artificial Intelligence in the medical field: an analytical study, Journal of Legal and Economic Studies, Faculty of Law - University of Sadat City, Volume 8 - Special Issue, 2022, pp. 1-64.

The study addressed the concept, forms and risks of AI in the medical field. From a legal perspective, it explored models of criminal liability for crimes of AI, as a tool or machine, in the medical field, or based on a programming error or as a result of negligence in operating, and the resulting crime based on the direct acts of robots, and the limits of criminal liability for AI technologies in the medical field.

This research agrees with the present study in the main topics, in terms of addressing the concept, advantages and risks of AI in the medical field. This research differs from the present study in dealing with the topic from a jurisprudential perspective.

## Contribution to the Field

The research was unique in explaining the jurisprudential ruling about using artificial intelligence in the medical field, showing some jurisprudential rulings on the risks related to its use.

## Scope of the Research

Given the themes of this research, it is limited to explaining the provisions of some jurisprudential rulings related to the use of AI in the medical field, by inducting different jurisprudential rulings according to the Four Schools of Islamic Jurisprudence, and exploring the law No. 70 of 2020 AD of the State of Kuwait regarding the practice of medicine, its affiliate professions and the rights of patients and healthcare facilities. It also discussed the Islamic Code of Medical and Health Ethics.

## Methodology

The study relied on the following approaches:

1. **Extrapolatory and analytical approach:** This is done by tracking the scientific literature related to the areas of use of AI in the medical field including; meanings, analysing, collecting, and distributing it to each part of the study.
2. **Comparative approach:** This compared the opinions of the Four Schools of Islamic Jurisprudence on different jurisprudential issues related to the subject of the research.

**Paper Content:** This research consists of an introduction, two topics, a conclusion, and a list of references as follows:

- **Introduction**
- **Topic One: Definition, Types and Areas of Use of Using Artificial Intelligence in the Medical Field**
  - Theme One: Definition of Artificial Intelligence
  - Theme Two: Types and Areas of Use of Artificial Intelligence in the Medical Field
- **Topic Two: Jurisprudential Rulings on Using Artificial Intelligence in the Medical Field and Relevant Risks**
  - Theme One: Jurisprudential Rulings on Using Artificial Intelligence in the Medical Field
  - Theme Two: Jurisprudential Rulings on Providing Artificial Intelligence with Patients' Confidential Information and Reports
- **Conclusion**

## Topic One: Definition, Types and of Areas of Use of Using Artificial Intelligence in the Medical Field

This topic explains the meaning, types and areas of use of AI in healthcare, as explained in the following themes:

### Theme One: Definition of Artificial Intelligence

#### First Section: Artificial Intelligence in Language and in Terminology

##### First: Artificial Intelligence in Language

**Intelligence in language:** From the Arabic root (dhakw), from which *dhaka*, *yadhku*, *dhaka'* are derived, and he/she is *dhaki* "intelligent" means quick to understand, and keen intuitive. Intelligence can also mean the ability to analyse, synthesize, distinguish, choose, and adapt to different situations<sup>(1)</sup>.

It is clear from the above that intelligence in the linguistic sense refers to intelligence and the quick ability to understand, analyse and act in various situations.

**Artificial in language:** From the root (sana'a), which is a noun attributed to artificiality. It is said: He created something: he made it. The word *artificial* is used to refer to something that was made and not natural, so it is said: artificial rose, meaning a man-made or unnatural flower<sup>(2)</sup>.

(1) Abbad, Ismail bin Abbad, *Al-Muhit fi al-Lughah* [The Ocean in Language], (Beirut: Alam Al-Kutub, 1414 AH - 1994 AD), vol. 6, p. 311, Omar, Ahmed Mukhtar, *Dictionary of Contemporary Arabic Language*, (without R: The World of Books, 1429 AH - 2008 AD), vol. 1, p. 817.

(2) Ibn Manzur, Muhammad bin Makram, *Lisan al-Arab* [The Arab Tongue], (Beirut: Dar Sader, 1414), 3rd ed., vol. 8, p. 209, Omar, *Dictionary of the Arabic Language*, vol. 2, p. 1323.

It is clear from the above that the word (artificial) is meant linguistically to refer to something that is not real or natural, which requires work, and is involved in workmanship.

### **Second: Artificial Intelligence in Terminology:**

Artificial Intelligence (AI) is defined as: (using a computer or robot controlled by smart software to perform precise and complex tasks, using multiple categories of information, including algorithms, matching patterns and rules, deep learning, and cognitive computing to learn how to explore data. AI is also known as: (the science that aims to create machines and develop computers and software qualified as “smart” and have the ability to perform tasks that until recently were still limited to humans).

It is clear from the above that AI refers to software and machines, or both together, that imitate human capabilities to perceive, analyze and make decisions. It is characterized by the ability to self-learn by taking advantage of previous data and information, analyzing and benefiting from data in the process of decision-making by itself, without human control.

### **Theme Two: Types and Areas of Use of Artificial Intelligence in the Medical Field**

#### **First Section: Types of Artificial Intelligence**

Artificial Intelligence is divided into three types according to their strength and performance, as explained below:

**First Type: Limited or Weak Artificial Intelligence (Weak AI):** In current time, this type is the most common as it aims to design smart machines and software developed for performing a single task. Their actions are indicated as a reaction to specific

situations that have been programmed for them in advance. For example, Automated Teller Machines (ATMs) and industrial robots are programmed to perform specific tasks in factories.

**Second Type: General or Strong Artificial Intelligence (Strong AI):** This type of AI was developed to be intellectually and functionally equal to humans. It aims to design machines and software that do not need clear instructions and pre-imposed rules like in the previous type, but rather can learn and act based on insights acquired through self-learning from experiences, data, and experiments, and that is called deep machine learning. Thus, Artificial Intelligence has become able to independently collect and analyse information, and benefit from the accumulation of input experiences, which qualifies it to make autonomous decisions that are independent of humans. Examples of this type include: Medical robots used to diagnose patients, such as machines that diagnose skin tumours that recognize photographs of different skin moles. AI gives more accurate results, better than specialized practitioners. As well as robots used in surgeries, in autonomous self-driving vehicles, and other AI tools that operate in a complete autonomy to make decisions without human control.

**Third Type: Super AI:** This is the most dangerous type of AI scientists aim to achieve in the future. Their research for this purpose is still an experimental challenge. This type aims to design machines that exceed the capabilities of humans (human brain and biological capabilities) and surpass them in intelligence, accuracy, speed and performance. Nanotechnology is an example of this AI type. It aims to implant extremely small

nanochips that roam inside blood capillaries to work in a miraculous way that surpasses natural nerve cells inside the human brain.

Based on the above, it becomes clear that AI has different degrees of intelligence. It may be controlled and directed to work on one task, based on pre-inserted software and data that enable it to make a decision based on it has been programmed for. Moreover, AI may be able to make autonomous decisions through algorithms which collect information, data, and experiences, and then analyse them to contribute to decision-making process, like in the second and third types.

### **Section Two: Areas of Use of Artificial Intelligence in the Medical Field**

The use of artificial intelligence in the medical field has resulted in many advantages, including the following:

- 1. Ability to diagnose diseases:** AI can diagnose, predict and detect diseases in their early stages, and perhaps before they occur or spread and worsen, especially cancer. This is done by analysing radiographies accompanied by instructions from which AI learns the way to sort cases and discover their particularity which later enables it to understand similar images and provide an appropriate diagnosis. Also, wearable AI applications and devices can monitor disturbances in vital signs of the body to predict any health problems before they occur.
- 2. Prescribing the appropriate medication:** AI determines the appropriate medication and required doses of the medication for each disease, based on the genetic makeup

of patients, their lifestyles, and the way they respond to treatment.

3. **Performing surgeries:** This is evident through the use of robots in surgical units. The surgeon can move the robot to reach the specified location. For example, AI can be used in burn surgery to help practitioners accurately determine the area affected by burns, which enables them plan any surgery.
4. **Conducting scientific experiments and tests:** AI helps scientists analyse data, classify patients, and predict the expected results regarding their recovery. It can also be used to search medical reports for people eligible to participate in scientific experiments.
5. **Assistance with administrative work in medical facilities:** AI can be used in business management and organizing patient files to have quick access to patient information in a short period of time, enabling practitioners to review medical information related to the patient before determining the treatment mechanism to ensure accurate and high-quality healthcare services as quickly as possible.

## **Topic Two: Jurisprudential Rulings on Using Artificial Intelligence in the Medical Field and Relevant Risks**

Artificial Intelligence is one of the contemporary developments. It is one of the modern issues whose jurisprudential rulings require clarification, because its use in the medical field is considered as a double-edged sword. It also has many advantages, such as diagnosing diseases, providing treatment proposals, and contributing to surgeries. However, those who may be tempted to exploit AI for some purpose, causing crimes and harm to patients, makes AI very risky. In this topic, we will first explain different jurisprudential rulings on using AI in the medical field. Then, we will mention the jurisprudential ruling on the risks relevant to AI, as explained in the following themes:

### **Theme One: Jurisprudential Rulings on Using Artificial Intelligence in the Medical Field**

The explanation of the jurisprudential rulings on using AI is based on the rulings on learning worldly sciences in the view of Islamic Law (Sharia), which necessitates clarification in order to induct the jurisprudential ruling on using AI in the medical and other fields, as explained in the following:

#### **First Section: Islam's Position on Learning Worldly Sciences**

Knowledge has a great place in Islamic Law (Sharia), as the obligation to seek knowledge was not limited to learning the Islamic sciences only, however, it extended to include praiseworthy worldly sciences such as medicine, agriculture, industry, technology, and other sciences. Therefore, seeking knowledge is a collective duty (Fardh Kifayah) that Muslims are

rewarded for learning and teaching because it achieves the interests of humanity, meets their needs by relieving them of hardship, and helps them ward off harm and difficulties. This fact is argued by the following evidences:

Generally, evidences urge the virtue of learning and teaching knowledge, whether it is a religious or worldly knowledge<sup>(1)</sup>. Allah the Almighty said: "Allah will exalt in degree those of you who believe, and those who have been granted knowledge" (Al-Mujadila:11). In the same vein is the saying of the Prophet Muhammad (PBUH): "Whoever takes a path seeking knowledge, Allah will take him on a path to Paradise. Indeed, the angels lower their wings in approval for the seeker of knowledge, and whoever is in the heavens and who is on earth seeks forgiveness for scholars, even fish in the sea. The credit of the scholar over the worshiper is like the superiority of the moon over all the stars. Indeed, scholars are the heirs of the prophets. Indeed, the prophets did not leave behind money, but rather they left behind knowledge, so whoever takes it, will have an abundant share."<sup>(2)</sup>

(1) Al-Tabari, Muhammad bin Jarir, *Jami' Al-Bayan a'n Ta'weel Ay al-Qur'an* [The Comprehensive Interpretation of the Verses of Quran]. (Mecca, Dar al-Tarbiyah wa al-Turath), p. 23, vol. 247, al-Basti, Hamad bin Muhammad, *Ma'alim al-Sunnah*, [The Landmarks of Prophet's Tradition], (Aleppo). Scientific Press 1351 AH - 1932 AD), vol. 4, p. 183.

(2) It was narrated by Ibn Majah in Chapters on the Sunnah - Chapter on Scholars and the Encouragement to Seek Knowledge, Hadith No.: 223, p. 96, p. 220, and by Abu Dawud in the Book of Knowledge - Chapter on the Virtue of Knowledge, Hadith No.: 3641, vol. 3, p. 354. Al-Tirmidhi in Chapters on Knowledge - Chapter on the Virtue of Knowledge, vol. 5, p. 28. Al-Albani said: An authentic hadith. See: Jalal al-Din al-Suyuti, and Muhammad Nasir al-Din al-Albani, *Al-Siraj Al-Munir fi Tartib Ahadith al-Jami' al-Saghir* [The Illumination in the arrangement of the hadiths of Sahih Al-Jami' Al-Saghir], (Dar al-Siddiq, 1430 AH - 2009 AD), 3rd ed., vol. 1, p. 82.

When the pursuit of knowledge and its teaching is only for Allah's sake, beneficial to the Islamic nation, strengthening its bonds, helping meet the needs of humanity and alleviating its defects, then it will result in a great reward from Allah Almighty.

The mentioned above is supported by the religious opinions (Fatwas) of the Permanent Committee for Scholarly Research and Ifta: (Every religious knowledge, along with its means that help it to be attained, is included in what Allah exalts - those who taught it and acted upon it, being sincere to Him - it has ranks, and it is intended with the first Objective of Islamic Law (Sharia). However, the second objective is that every worldly knowledge the nation needs for life like medicine, agriculture, industry and others, is also included if the intention is good, and someone who learns and uses it to benefit and support the Islamic nation, raise its status, and enrich it from the countries of disbelief and misguidance. This subordinate objective has ranks that vary depending on its status in the religion, and its strength in benefiting and meeting the need.<sup>(1)</sup>

### **Second Section: Jurisprudential Rulings on Using Artificial Intelligence in the Medical Field**

It is permissible to learn and teach AI, whether for medical use as for other purposes. Rather, it must be considered as a collective duty (Fardh Kifayah) because of its important role in various fields of contemporary technology, and the significant impact it may have on human life in the future. The permissibility of using AI in the medical field may be inferred from following:

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(1) The Permanent Committee for Scholarly Research and Fatwa, Fatwas of the Permanent Committee - First Group, collected and arranged by: Ahmed bin Abdul Razzaq Al-Dawish, (Riyadh: Presidency of the Department of Scientific Research and Fatwa), vol. 12, p. 77.

1. Most jurisprudential arguments - such as the ones mentioned above - encourage learning and teaching science, including learning AI and how to use it in the medical field considering its important role in helping diagnose diseases, contributing to surgery with precision and professionalism, and so on.
2. Jabir bin Abdullah (may Allah be pleased with him) said: One of our men was stung by a scorpion while we were sitting with the Messenger of Allah (PBUH), and a man said: O Messenger of Allah, can I perform exorcise (Ruqyah)? The Prophet Muhammad (PBUH) replied: "Whoever of you is able to benefit his brother, let him do so." This hadith indicates that it is permissible for a person to seek treatment for his disease with something that does not harm him and does not contravene the Provisions of Islamic Law (Ahkam al-Sharia). It also urges striving to help Muslims by healing their diseases and harms with all that is permissible.<sup>(1)</sup> There is no doubt that learning AI for healthcare benefits to Islam and Muslims.
3. Things and acts are initially permissible. That is, whenever a new issue arises, the basic principle is that it is permissible, unless there is an evidence of its prohibition.<sup>(2)</sup> Whenever AI is restricted to what benefits and cares for the humans, and its software are set to be free of violations and crimes, this will, certainly, be in accordance with the Objectives of Islamic Law (Maqasid al-Sharia) which calls, among other pillars, for the preservation of life and the prohibition of assaulting it.

(1) Al-Qurtubi, Ahmad bin Omar, *Al-Mufhim Lima 'Ashkal min Talkhis Kitab Muslim* [Understanding of the difficulty in summarizing the book of Muslim], (Beirut: Dar Ibn Kathir and Dar Al-Kalim Al-Tayyib, 1417 AH - 1996 AD), vol. 5, p. 584.

(2) Al-Shirazi, Ibrahim bin Ali, *Al-Tabssirah fi 'Usul al-Fiqh* [Insight into the Fundamentals of Jurisprudence], (Damascus: Dar Al-Fikr, 1980 AH), p. 535.

Based on the above, it is permissible to use AI in the medical field as long as it is free of prohibited acts and is consistent with the Objectives and Provisions of Islamic Law (Sharia).

### **Theme Two: Jurisprudential Ruling on Providing Artificial Intelligence with Patients' Confidential Information and Reports**

**Issue statement:** AI is based on algorithms that generate results to help making decisions, by collecting patient data and information and preparing reports about them. That process helps practitioners diagnose diseases, and then take an appropriate treatment. Therefore, privacy and confidentiality of patients' data will be violated twice; first, when practitioners introduce them into electronic medical records, and second, when they link electronic records to AI systems.<sup>(1)</sup>

### **Relevant Jurisprudential Ruling**

First: Protecting patients' secrets<sup>(2)</sup> and privacy are the most important pillars of the medical profession. When a patient knows that his secrets, already disclosed to the practitioner, are

(1) Hassan, Criminal Liability Arising from the Harmful Use of Artificial Intelligence in the Medical Field, p. 19, Abdullah YI, Schuman JS, Shabsigh R, Caplan A, Al-Aswad LA. Ethics of Artificial Intelligence in Medicine and Ophthalmology. Asia Pac J Ophthalmol (Phila). 2021 May-Jun 01;10(3):289-298. doi: 10.1097/APO.0000000000000397. PMID: 34383720; PMCID: PMC9167644, from: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9167644/#R11>

(2) A secret is defined as: (It is what a person reveals to another person, keeping it before or after, and it includes what is surrounded by evidence indicating a request to keep it secret if custom requires it to be kept secret. It also includes a person's privacy and faults that he hates for people to know about). See: Islamic Jurisprudence Academy website - Resolution No. 79 (10/8) regarding secrets in medical professions, from: <https://iifa-aifi.org/ar/1972.html>

protected, mainly those revealing his pain, suffering, and defects that he fears will be known to those around him are inviolable, this will encourage the patient to trust the practitioner. As a result, the patient opens up to him about what his suffering, conveys to him everything that may have led to his medical condition, and confides in him everything that may help make the correct diagnosis of the disease. Accordingly, the practitioner is able to prescribe the appropriate treatment. Therefore, the law for the Practice of the Medical Profession in the State of Kuwait is stipulated in Article (13) that: It is prohibited for a practitioner to disclose patients' secrets that came to his knowledge, he discovered through the practice of his profession, the patient entrusted to him, or heard about from someone else. This prohibition applies to everyone whose knowledge of the secret comes into contact of the employees of the relevant healthcare facilities or other entities. However, medical secrets may be disclosed in the following cases:

1. In implementation of a written order issued by the court, the Public Prosecution, one of the competent investigation authorities, or when appearing before those authorities.
2. Disclosing marital medical issues and matters related to one spouse to the other spouse. Disclosure shall be made to one of them personally after obtaining a written consent from the spouse. This approval is not required if the disclosure is made to prevent an imminent health risk to the other.
3. Disclosure to competent official authorities for the purpose of preventing a crime or to report it.
4. Reporting a communicable disease in accordance with the

applicable laws and regulations issued in this regard. Disclosure shall be limited to the parties specified by the Ministry and in accordance with the provisions of Law No. (8) of 1969 on Health Precautions for the Prevention of Communicable Diseases.

5. Patient's written consent to disclose his secret to the person or entity, within the scope he specifies.
6. Exchange of information and data required by the requirements of practicing the profession, whether between the medical staff, with the administrative staff, with the patient's family, or his legal representative in necessary cases, provided that it is done between them and within the narrowest limits and to the extent necessary to perform their duties and tasks.
7. Cases of violence and child abuse in accordance with the provisions of law No. (21) of 2015 on children's rights.
8. Cases of elder neglect and violence in accordance with the provisions of law No. (18) of 2016 on social care for the elderly<sup>(1)</sup>.

The Minister may issue a decree specifying cases that must be reported, authorities to be reported and relevant procedures.

**Second:** When we look at Islamic Law (Sharia), we find that its provisions reinforce the idea of preserving patients' privacy and non-disclosure of their medical data except in a few cases to bring benefit or prevent harm, as shown in the following:

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(1) <https://amr.gov.kw/ar/law70-2020.php>

[https://hsclibrary.ku.edu.kw/library/resouces/Islamic\\_ethics.pdf](https://hsclibrary.ku.edu.kw/library/resouces/Islamic_ethics.pdf)

**1. Trust must be preserved by keeping secrets:** The fact that revealing secrets is forbidden in Islamic Law (Sharia), requires them to keep secrets, and forbids breaking a Muslim's cover by revealing his secrets and spreading his faults. Indeed, the Islamic religion makes preserving a person's secrets and privacy a trust that must be preserved, and part of the chivalry on which good morals are based. This is because divulging a secret causes harm and harm to the owner of the secret. Harm is excluded in Islamic Law (Sharia)<sup>(1)</sup>. This is evidenced by the following:

- Allah the Almighty said: "And fulfil (every) covenant. Verily! the covenant, will be questioned about." [Al-Isra:34]. This verse stated in general that covenants must be fulfilled, whether they are between the servant and his Lord (Allah), or between people<sup>(2)</sup> themselves. Every practitioner is obliged to take the practitioners' oath before practicing the profession, which includes his pledge to keep and preserve the medical secret. Thus, this trust must be protected, as the patient does not reveal his pain and defects only because

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(1) Al-Hanbali, Muhammad bin Ahmed, *Giza' al-'Albab fi Sharh Manzumat al-Adab* [Food of the Hearts in Explanation of the System of Morals], (Egypt: Cordoba Foundation, 1414 AH - 1993 AD), 2nd ed., vol. 1, p.115, Al-Ghazali, *Ihya'Ulum ad-Din*, vol. 3, p.132.

(2) Al-Qurtubi, Makki bin Abi Talib, *Al-Hidayah ila Bulugh al-Nihayah fi Ilm Ma'ani al-Quran wa Tafseruh wa Ahkamuh wa Jumal min Funun Ulumih* [Guidance to reaching the end in the science of the meanings of the Qur'an, its interpretation, its rulings, and some of its sciences] verified by: A collection of university theses at the College of Graduate Studies and Scientific Research - University of Sharjah, under the supervision of Dr. Al-Shahid Al-Busheikhi, (University of Sharjah: Qur'an and Sunnah Research Group - College of Sharia and Islamic Studies, 1429 AH - 2008 AD), vol. 6, p. 4198.

he trusts the oath that the practitioner had sworn to.

- The hadith of the Prophet Muhammad (PBUH) stated: “The worst position on the Day of Resurrection in the sight of Allah will be attributed to: a man who reveals to people the secrets of his relationship with his wife.” This hadith indicates the necessity of keeping secrets between a man and his wife and that their own marital actions and confidences must be kept private. And whoever reveals what the other hates to do so, he has betrayed him<sup>(1)</sup> by analogy to everyone who is entrusted with a secret, that the owner fears to reveal, and betrays the trust, like a practitioner to whom a patient reveals his illness and physical defects that he may hate for anyone to know about, so he must he must keep the trust.

- 2. Lives and honour must be preserved and cared for:** This is one of the Objectives of Islamic Law (Maqasid al-Sharia). Lives and honour must be preserved and protected, by bringing the benefits and interests on which they are based, and warding off harm from all that causes damage and aggression against them. Among the evidences for this is the saying of the Prophet Muhammad (PBUH): “Your blood (lives), your property, and your honour among you are sacred, just as the sacredness of this holy day, in this holy month, in this holy country, so that present people must inform the absent ones who may be more conscious than them.” This hadith indicates the prohibition of transgression

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(1) Ibn al-Malik, Muhammad bin Izz al-Din, *Sharh Masabeeh al-Sunnah lil Imam al-Baghawi* [Explanation of the Lights of Sunnah of Imam al-Baghawi], (Department of Islamic Culture, 1433 AH - 2012 AD), vol. 3, p.583.

on the Muslim’s life, honour, or any other form of harm<sup>(1)</sup>. Undoubtedly, if the practitioner reveals the patient’s secret and faults that he is ashamed for others, then he may be causing harm and transgressing the honour of the patient. In this regard, the Prophet (PBUH) said: “There should be neither harming nor reciprocating harm.”<sup>(2)</sup>

Based on the above, it is obligatory in Islam for practitioners to keep patients’ secrets. However, it is forbidden for them to disclose those secrets without any reason. An exception to this ruling is some cases in which the practitioner’s non-disclosure of a medical secret results in greater harm than the harm that befalls the owner of the secret. The decision of the International Islamic Fiqh Academy concerning confidentiality in medical professions includes these exceptions as explained below:

Cases in which secrets must be disclosed	Cases in which secrets may be disclosed
- To prevent a corruption. - To prevent an individual harm	- To bring a general benefit. - To prevent general corruption

Whenever corruption is prevented or benefit is brought, it is permissible to disclose medical secrets, based on the Objectives and Priorities of Islamic Law namely; preserving religion, life, mind, honour, and money. It is also based on the rule of:

- (1) Al-Aini, Badr al-Din bin Ahmed, *Umdat Al-Qari Sharh Sahih al-Bukhari* [The Ultimate Guide of the Reader to the Explanation of Sahih Al-Bukhari], (Beirut: Dar Revival of Arab Heritage and Dar al-Fikr), vol. 2, p. 146.
- (2) Narrated by Ibn Majah, Sunan Ibn Majah, Hadith No.: 2341, vol. 2, p. 784, authentic hadith. See: Al-Albani, Muhammad Nasir al-Din, *Irwa’ al-Ghaleel fi Takhrij’ ahadith Manar al-Sabil* [Quenching the Burning Thirst in Narrating the Hadiths of Guided Path], (Beirut: Al-Maktab Al-Islami, 1405 AH - 1985 AD), 2nd ed., vol. 3, p. 408.

committing the lesser harm to ward off the greater of them,<sup>(1)</sup> and the private harm shall be supported to ward off the general harm, if necessary.<sup>(2)</sup> The decision stipulates that: (Exceptions regarding circumstances of compulsory or permissible disclosure must be stipulated by the system for practicing medical professions and other systems, explained and stipulated with details of how disclosure is made, to whom it should be. Competent authorities shall raise awareness of all of this about all positions).<sup>(3)</sup>

**Accordingly:** It is permissible for a practitioner to disclose patients' privacy and medical data to help program AI if the following regulations are met:

**First regulation: Public interest must be achieved:** Basically, practitioners are obligated to diligently use their skills and know-how and experience to improve healthcare services provided to the community. Thus, they must participate effectively in enacting regulations and policies related to healthcare, and contribute to solving healthcare problems.<sup>(4)</sup> There is no doubt that technological developments, especially AI technology for medical purposes, and its advantages in improving healthcare system, whether

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(1) Affendi, Ali Haider, *Durar Al-Hukkam fi Sharh Majalat Al-Ahkam* [The Gem of the Rulers in the Explanation of the Magazine of Rulings], Translated into Arabic by: Fahmi al-Husseini, (Dar al-Jeel, 1411 AH - 1991 AD), vol. 2, p. 822.

(2) Ibn Najim, Zain al-Din bin Ibrahim, *Al-Ashbah wa al-Naza'ir* [Similarities and analogies] according to the doctrine of Abu Hanifa al-Nu'man, (Beirut: Dar al-Kutub al-Ilmiyyah, 1419 AH - 1999 AD), p. 74.

(3) Islamic Fiqh Academy website: Resolution No. 79 (10/8) regarding secrets in medical professions. <https://iifa-aifi.org/ar/1972.html>

(4) As stated in Article (46) and Article (49) of the International Islamic Charter for Medical and Health Ethics, from: [https://hsclibrary.ku.edu.kw/library/resouces/Islamic\\_ethics.pdf](https://hsclibrary.ku.edu.kw/library/resouces/Islamic_ethics.pdf)

through administrative work or diagnosing diseases and prescribing appropriate treatment, in addition to its contribution to surgeries, will achieve the public interest if programmed to avoid risks and damages, detailed later in this research. Because the basic nature is that things are permissible until there is evidence of their prohibition<sup>(1)</sup>. The basic principle is that it is permissible for a practitioner to provide Artificial Intelligence with patient data that improves its effectiveness and its role in developing and improving healthcare as long as public interest is achieved, and disclosure of patients' data is governed by legal provisions and regulations of Sharia.

Al-Izz bin Abd al-Salam (may Allah have mercy on him) said: (Medicine, like Islamic Law (Sharia), was created to bring about the interests of safety and well-being, to ward off the evils of calamities and illnesses, and whatever is possible, and to bring benefits and whatever is possible. If it is not possible to ward off all the evils or bring all the benefits, then if the ranks are equal, there is a choice. If they differ in ranks, prioritization is used when one knows, and stops when one is not aware. The one who established the Islamic Law (Sharia) is the one who established medicine: each one of them is intended to bring about interests and ward off evils. Just as it is not permissible for a legislator to proceed with prioritization in religious interests until the most correct opinion appears to him, likewise it is not permissible for a practitioner to proceed with prioritization until the most correct opinion appears to him.<sup>(2)</sup>

(1) Ibn Najim, *Al-Ashbah wa al-Naza'ir* [Similarities and analogies], p. 56.

(2) Al-Sulami, Izz al-Din bin Abd al-Salam, *Qawa'ed al-Ahkam fi Masalih al-Anam* [Rules of rulings in the interests of people], (Cairo: Al-Azhar Colleges Library), vol. 1, p. 6.

**Second regulation: Obtaining the patient's permission and informed consent:** The law issued by the State of Kuwait regarding the practice of the medical profession and its affiliate professions requires obtaining a written informed consent from the patient or his representative, before providing any information or reports about him to other parties such as researchers, pharmaceutical companies, data collection institutions, or any organizations outside the scope of healthcare institutions. The practitioner must also inform the patient that he will send his information to computer department for storage, and about those who have the right to access them, taking into account all security precautions that prevent leaks of patient data.<sup>(1)</sup> Given that AI development is based on algorithms that use provided data, it is permissible for practitioners to do so if they obtain patients' permission and consent. If the patient refuses, practitioners must respect his desire; because they are entrusted with keeping his data and secrets. Allah the Almighty said: And fulfil (every) covenant. Verily! the covenant, will be questioned about.[Al-Isra:34]. The verse is general in the obligation to fulfil covenants<sup>(2)</sup>, including practitioners' pledge to preserve patients' secrets and not reveal their privacy, whether to AI or others.

**Third regulation: Information must be true:** It is permissible for practitioners to submit reports and patients to set medical AI

(1) <https://amr.gov.kw/ar/law70-2020.php>;

[https://hsclibrary.ku.edu.kw/library/resouces/Islamic\\_ethics.pdf](https://hsclibrary.ku.edu.kw/library/resouces/Islamic_ethics.pdf)

(2) Al-Qurtubi, *Al-Hidayah ila Bulugh al-Nihayah fi Ilim Ma'ani al-Quran wa Tafseruh wa Ahkamuh wa Jumal min Funun Ulumih* [Guidance to reaching the end in the science of the meanings of the Qur'an, its interpretation, its rulings, and some of its sciences], vol. 6, p. 4198.

programs as long as they obtain the consent and permission of the patient, but they must be careful to provide true information and data. For example, they do not exploit the AI to provide false information, aiming to direct it towards dispensing a specific medicine, or treating only those who meet insurance conditions and not others, etc. As we mentioned, practitioners are entrusted with treating patients, and are obligated to strive in order to improve healthcare for society. Article (75) of the International *Islamic Code for Medical and Health Ethics* stipulates that: (It is not permissible to reveal or communicate information that aim to mislead the recipient, falsify facts, conceal the side effects of treatment, or contain any violations of public morals). Moreover, Article (103) stipulates that: (The practitioner must avoid everything that violates his honesty and integrity, and might harm the medical profession, and not lose the patient's trust by using the patient's trust using fraudulent methods...). Also, when providing false medical information and medical reports for AI programming, forgery and deception, misrepresentation, and fraud are forbidden by Islamic Law (Sharia). The Prophet Muhammad (PBUH) said: "Whoever deceives us is not one of us.". He also said: "Truthfulness leads to righteousness, and righteousness leads to Paradise, and indeed a man keeps on telling the truth until he becomes a truthful person. Falsehood leads to wickedness, and wickedness leads to Hell, and indeed a man may keep on telling lies until he is written before Allah, a liar". These hadiths urge the pursuit of honesty, and prohibit deception, lying, and deceit<sup>(1)</sup>. Entering false information is considered as a forgery, a forbidden act in Islam.

(1) Al-Sabti, Ayyad bin Musa, *'Ikmal al-Mu'alim bi Fawa'id Muslim* [Perfecting the Teacher with the Benefits of Muslim], (Egypt: Dar Al-Wafa Press, for Publishing and Distribution), vol. 1, p. 375, vol. 8, p. 82.

Fourth regulation: That does not cause harm: As mentioned in the previous regulation, providing AI software with false medical information and reports may lead to incorrect diagnosis, or inappropriate treatment, which results in harm to patients, and threatens healthcare system if it relies on AI to diagnose diseases, dispense treatment, and even in its contribution to surgeries. As long as the data provided to it are not correct, the results and decisions provided by AI will remain wrong, causing harm, which is forbidden in Islamic Law (Sharia). In this regard, Prophet Muhammad (PBUH) said: "There should be neither harming nor reciprocating harm."<sup>(1)</sup>

Based on the above, it is possible for a slave to own money, and have an autonomous financial liability, if his master gives him permission to do so. Accordingly, if a slave commits a crime, his master will not be held accountable for the crimes committed by the slave, but rather they are part of the slave's property, unless the master oppresses, transgresses, or neglects.

### Conclusion

1. Artificial intelligence can be used in the medical field to help diagnose diseases, prescribe appropriate medicines and perform surgeries. Also, it can be used to conduct scientific experiments and tests alongside providing assistance with administrative work in different medical facilities.
2. Learning and teaching AI is considered as a collective duty (Fardh Kifayah), whether it is used is in the medical field or

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(1) Narrated by Ibn Majah, Sunan Ibn Majah, Hadith No.: 2341, 2/784, authentic hadith. See: Al-Albani, *Irwa' al-Ghaleel fi Takhrij' ahadith Manar al-Sabil* [Quenching the Burning Thirst in Narrating the Hadiths of Guided Path], vol. 3, p. 408.

for other purposes, provided that it is compatible with the Objectives and Provisions of Islamic Law (Sharia).

3. Islamic Law (Sharia) firmly stipulates non-disclosure of patients' medical data except in a few cases in order to bring benefit or prevent any kind of harm.
4. Practitioners may disclose patient's confidential data and privacy to program AI, provided that the public interest is achieved. The patient's permission and informed consent must be obtained without any harm. Information should also be true.

### **Recommendations**

1. The need to keep up with the latest developments in the use of AI in the medical field, such as radiology and detecting tumours.
2. The necessity of studying the most important AI developments by researchers, and demonstrating their conformity with the Objectives of the Islamic Law.
3. Practitioners must be careful to explore AI results, and not take them for uncontroversial when treating patients in order to protect peoples' lives against false results provided by AI.

### **References**

- Abbad, I. A. (1994). *The Ocean in Language* (In Arabic). Alam al-Kutub.
- Affendi, A. H. (1991). *The Gem of the Rulers in the Explanation of the Magazine of Rulings* (Fahmi Al-Husseini, Trans.). Dar Al-Jeel.
- Al-Aini, B. A. (n.d.). *The Ultimate Guide of the Reader to the Explanation of Sahih Al-Bukhari* (In Arabic). Dar Ihya' al-Turath al-Arabi & Dar al-Fikr.
- Al-Albani, M. N. (1985). *Quenching the Burning Thirst in Narrating the Hadiths of Guided Path* (In Arabic, 2nd ed.) Al-Maktab al-Islami.
- Al-Albani, M. N. (n.d.). *The Soundest of the Concise Comprehensive and its additions* (In Arabic). Al-Maktab al-Islami.
- Al-Basti, H. M. (1932). *The Landmarks of Prophet's Tradition* (In Arabic). Al-Matba'ah al-Ilmiyyah.
- Al-Hanbali, M. A. (1993). *Food of the Hearts in Explanation of the System of Morals* (In Arabic). Egypt: Cordoba Foundation.
- Abdullah, Y.I., Schuman, J.S., Shabsigh, R., Caplan, A., & Al-Aswad, L.A. (2021). Ethics of Artificial Intelligence in Medicine and Ophthalmology. *Asia Pac J Ophthalmol (Phila)*. 10(3):289-298. doi: 10.1097/APO.0000000000000397. PMID: 34383720; PMCID: PMC9167644: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9167644/#R11>
- Al-Qurtubi, A. O. (1996). *Understanding of the difficulty in summarizing the book of Muslim* (In Arabic). Dar Ibn Kathir and Dar al-Kalim al-Tayyib.
- Al-Qurtubi, M. A. (2008). *Guidance to reaching the end in the science of the meanings of the Qur'an, its interpretation, its rulings, and some of its sciences*. University of Sharjah

-College of Sharia and Islamic Studies.

Al-Sabti, I. M. (n.d.). Perfecting the Teacher with the Benefits of Muslim (In Arabic). DarAl-Wafa, publisher and distributor

Al-Shirazi, I. A. (1980). *Insight into the Fundamentals of Jurisprudence* (In Arabic). Dar Al-Fikr.

Al-Sulami, I. A. (n.d.). Rules of rulings in the interests of people (In Arabic). Maktabat al-Kuliyat al-'Azhariyah.

Al-Suyuti, J. A., & al-Albani, M. N. (2009). The Illumination in the arrangement of the hadiths of Sahih Al-Jami' Al-Saghir (In Arabic, 3rd ed.). Dar al-Siddiq.

Al-Tabari, M. J. (n.d.). *The Comprehensive Interpretation of the Verses of Quran* (In Arabic). Dar al-Tarbiah wa al-Turath.

Ibn Najim, Z. I. (1999). *Similarities and analogues according to the doctrine of Abu Hanifa al-Numan* (In Arabic). Dar al-Kutub al-'Ilmiyah.

Ibn al-Malik, M. I. (2012). Explanation of the Lights of Sunnah of Imam al-Baghawi (In Arabic). Islamic Culture Administration.

Ibn Manzur, M. M. (1414 AH). *The Arab Tongue* (In Arabic, 3rd ed.). Dar Sader.

Omar, A. M. (2008). *Dictionary of Contemporary Arabic Language*. Alam al-Kutub.

The Permanent Committee for Scholarly Research and Fatwa. (n.d.). *Fatwas of the Permanent Committee - the First Group* (Ahmed bin Abdul-Razzaq Al-Dawish, Compiled and arranged). Deanship of the Department of Scholarly Research and Fatwa.

### **Electronic links:**

Islam Question and Answer. (n.d.). *Practitioners' departments and those among them who guarantee medical errors in their treatment*. Islam Question and Answer. Retrieved January 12, 2023, from <https://islamqa.info>

The Easy Encyclopaedia website on contemporary jurisprudence issues. (n.d.). *Medical Errors*. Retrieved April 29, 2023, from Medical Errors - The Easy Encyclopedia (erej.org).

The website of the International Islamic Fiqh Academy of the Organization of Islamic Cooperation. (n.d.). *Resolution No.: 79 (10/8) on confidentiality in medical professions*. Retrieved April 30, 2023, from: <https://iifa-aifi.org/ar/1972.html>

International Islamic Fiqh Academy. (n.d.). Resolution No.: 223 (7/23) on the practitioner's responsibility for medical errors. Retrieved April 30, 2023, from: Resolution on the practitioner's responsibility for unintentional medical errors from an Islamic perspective - International Islamic Fiqh Academy (iifa-aifi.org)

International Islamic Fiqh Academy. (n.d.). Resolution No.: 142 (8/15) on the practitioner's guarantee. Retrieved April 30, 2023, from: Resolution regarding the practitioner's guarantee - International Islamic Fiqh Academy (iifa-aifi.org)

The International Islamic Code for Medical and Health Ethics. (n.d.). Retrieved April 30, 2023, from: [https://hsclibrary.ku.edu.kw/library/resouces/Islamic\\_ethics.pdf](https://hsclibrary.ku.edu.kw/library/resouces/Islamic_ethics.pdf)

# مجلة الشريعة والدراسات الإسلامية

فصلية علمية محكمة تصدر عن مجلس النشر العلمي - جامعة الكويت

## الأحكام الفقهية المتعلقة باستخدام الذكاء الاصطناعي في المجال الطبي

د. مريم أحمد الكندري

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