

The ethics of photo licensing



Dear Dr Dermatoethicist: Artificial intelligence (AI) is increasingly applied to the field of dermatology.¹ Companies developing AI tools for dermatology require access to large collections of skin photos to build an accurate algorithm. Because photos of skin conditions are routinely taken during clinical care, AI companies now approach clinicians asking to license these photos. In this context, licensing is defined as granting rights to the AI company to use the photos to train an algorithm. Is it ethical for dermatologists to license photos to AI companies for the development of a commercial product?

—Concerned Photographer

Dear Concerned Photographer: Determining if dermatologists can license clinical photos for AI development depends on 2 key considerations: (1) the legality of data sharing and (2) the ethics of data sharing.

Is it legal to license clinical photos? Identifiable patient photos—photos containing features such as a full face, unique jewelry, or tattoos—are protected under HIPAA and cannot be licensed without patient informed consent.² If identifiable features are redacted, then commercial licensing is legal regardless of consent.

Is it ethical to license clinical photos? The ethical gold standard for the licensing of clinical data is always informed consent. Consent can be applied to prospective photo collection, but consent is often not feasible for pre-existing photo collections. The question becomes: is it ethical to license retrospective photo collections without informed consent?

In clinical research, data originally collected for clinical care are de-identified and used in research without informed consent. This method is considered ethical because the potential benefits for patients outweigh the potential risks. We believe this standard can also be applied to clinical photos and AI development. The performance of an AI algorithm depends on the breadth of data on which it is trained. When an AI algorithm is integrated into clinical care, any group of patients whose data were excluded from development may also be excluded from the gold standard of care. Again, the potential

benefits of including de-identified patient data outweigh many of the potential risks to patient privacy and autonomy.

To license existing photo collections both legally and ethically, physicians must ensure that:

1. Patient photos are de-identified—this protects patient privacy and confidentiality. Understanding when and how the photo collection is de-identified is an essential part of all licensing agreements.
2. The data are used to benefit patients—it is important that the physician understands the impact the AI algorithm will have on patient care.
3. There is transparency around compensation—like all commercial partnerships, financial benefits should be disclosed.

To promote transparency, dermatologists can make a disclosure statement that includes a description of the agreement, a summary of the measures taken to protect patient privacy, and a summary of the potential risks and benefits including compensation on a public forum such as a clinic website. This approach protects patient privacy, promotes transparency, and supports the advancement of clinical care, allowing dermatologists with an existing photo collection to ethically license photos.

—Dr Dermatoethicist

Lauren E. Tracy, MS,^a Susan Conover, MS,^a and Reid A. Waldman, MD^b

From LuminDx, Boston MA^a and University of Connecticut Health Center Department of Dermatology, Farmington, CT.^b

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Correspondence and reprint requests to: Lauren E. Tracy, MS, 55 Court Street, Floor 2, Boston, MA 02108

E-mail: lauren@lumindx.com

Conflict of Interest

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