

Digital Healthcare: Who is Liable When Things Go Wrong?

As an innovator in the medical sector, you are solving some of healthcare's most pressing challenges. You are not just streamlining task management to boost efficiency or providing an ecommerce solution to increase sales - your technology has the potential to save lives and improve patient care.

But with this comes unique responsibilities and risks that could fall outside the scope of traditional insurance policies. In digital healthcare, when something goes wrong, the impact isn't just financial - it can affect lives. This is why you need specialist advisors that understand your sector and can build tailored insurance programmes that reflect your risk exposures

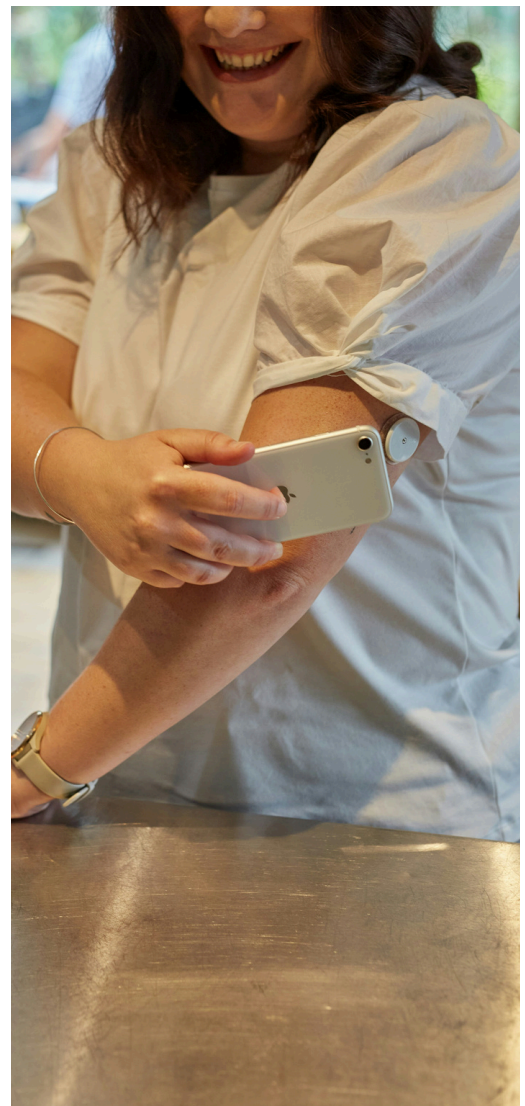
How technology errors can harm patients

Thanks to the rise of digital healthcare, from wearable devices and at-home services, to new surgical innovations and artificial intelligence, patients can now access a wide range of services at their fingertips. Clinicians, too, are becoming more empowered and better equipped to provide more effective and personalised care.

But with every emerging market comes a set of new challenges and uncertainty. In May 2025, it was reported that one in four patients in England found errors in their medical records. Such inaccuracies have led to delayed treatment and incorrect prescriptions, subsequently resulting in a failure to provide the necessary patient care.

In the future, reliance on erroneous records could lead to even more serious consequences. As we increasingly look to medical AI to solve our greatest healthcare issues, if the UK's primary source of patient data remains flawed, so will the results. Indeed, it has recently been reported that diagnostic AI systems achieving 95% accuracy on controlled lab datasets may struggle to maintain 70% accuracy when applied to real patient data.

This could lead to a rise in patient claims. But who is actually liable? Is it the software provider, the company, or the medical practitioner?



Digital healthcare and the liability question

In healthcare, when things go wrong, costs can be substantial. In a case from 2018, 209 women with cervical cancer in the Republic of Ireland were mistakenly given the all-clear following their smear test appointments and 18 of these women sadly passed away. A number of the affected patients sued the Health Service Executive as well as the US laboratory, with one woman reportedly settling for €7.5 million although the total costs remain unknown. Had AI or other technologies (like patient reporting tools) been involved, what level of liability would the technology provider face?

To further highlight the costs involved, it has recently been reported that the NHS paid out £2.8 billion in clinical negligence damages in 2023-2024 alone, with legal costs accounting for almost 20% and a further £58.2 billion set aside for claims before April 2024. With the rise in digital healthcare companies providing ancillary services to the NHS, the question remains on how responsibility will be allocated and managed as clinical negligence claims continue to rise and put pressure on the NHS.

For example, if there is a glitch in an AI tool used by medical professionals to check patient symptoms resulting in misdiagnosis, is it the professional or the software provider that should be held accountable? Or is it the corporate entity that gave them the green light to use the software?

“Due to the existing legal framework, the nature of medical malpractice claims, and the interplay between human behaviour and reliance on technology, the liability landscape remains uncertain as we await a landmark case to clarify and apportion accountability,” says Capsule’s MedTech Broker, Pippa Manley. “This is why we work closely with our clients and insurance markets to create tailored solutions that are designed to address the unique risks faced by the digital healthcare sector.”



Does your cover provide you with protection?

As an innovator in the healthcare space, your insurance should reflect your position in the market. But if you are relying on traditional policies to cover you against non-traditional risks, you could be left exposed to serious liability claims and/or legal costs.

For example, would your cover respond to injury suffered due to a cyber-attack? A patient's death was linked to an NHS cyber incident that delayed potentially life-saving blood test results in 2024. Similarly, a woman died due to a cyber -attack in Düsseldorf University Hospital which prompted German police to launch a homicide investigation. The digital healthcare industry remains an attractive target thanks to the heightened risks surrounding healthcare providers and the data stored on company systems.



Let Capsule run a health check

You're already managing complex risks to deliver life-changing solutions. Our role is to make sure you have the right insurance foundation so you can focus on what you do best.

We keep you aware of the latest insurance trends and emerging risks in the digital healthcare sector, so you can make informed decisions and keep your insurance programme aligned with an evolving landscape.

If you would like us to review your current insurance programme and discuss your potential exposures, book a call with our MedTech team to discuss your specialist medical malpractice and digital healthcare needs today.

Act now to safeguard your business

Want to make sure your insurance has kept pace with your growth?

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