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The Arrival of Telemedicine: Internet Savior or Electronic Predator?

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Telemedicine has the potential to make a difference in the lives of many Americans. In remote rural areas, where a patient and the closest health professional can be hundreds of miles apart, telemedicine can mean access to health care where little had been available before. In emergency cases, this access can mean the difference between life and death. In

particular, in those cases where fast medical response time and specialty care are needed, telemedicine availability can be critical. For example, a specialist at a North Carolina University Hospital was able to diagnose a rural patient's hairline spinal fracture at a distance, using telemedicine video imaging. The patient's life was saved because treatment was done on-site without physically transporting the patient to the specialist who was located a great distance away.

Similarly, stunning technological advances have given birth to telerobotic laparoscopy, which enables local surgeons who wish to offer a wider array of laparoscopic procedures to gain experience and expertise with the assistance of an expert surgeon. As the theory goes, the local surgeon involved in these cases had been partially trained in advanced laparoscopic techniques through short training courses, mentoring, and telementoring, but not through a formal fellowship in laparoscopic surgery. The expert assistance of the telerobotic surgeon, usually at an advanced urban tertiary care center, allows the local surgeon to perform these surgeries, proponents say, with a greater degree of confidence and better clinical results. Without such technology, the patient would have to be transported to a tertiary center or the expert surgeon would need to find his or way to remote local hospitals to perform these surgeries. Others believe that the technology will only minimally enhance the quality of care in remote or

underserved areas and that the notion of telesurgery raises legal issues and remains both prohibitively expensive, medically unsound and technologically risky.

The advent of new technologies raises the risk of abuse and is further hampered by parochial state licensing limitations. As such, there are substantial obstacles to the expansion of telemedicine. For example, while most agree that there is no evil inherent in a board certified radiologist in one state reading a digital image of an MRI for a patient in an underserved area in a different state, such well-intentioned practices may nonetheless constitute the unauthorized and illegal practice of medicine under the laws of most states. However, the propriety of outsourcing teleradiology service – particularly overseas – and telerobotic surgery has not been accepted in medical (or legal) arenas and remains the subject of vigorous debate.

Most states, including New York, require that a physician be licensed in the state in which he or she practices. Accordingly, a New York physician prescribing over the internet to a patient in California, for example, may be engaging in the unauthorized practice of medicine and thus subject himself or herself to the imposition of professional discipline. When the physician has neither examined nor taken a history from the patient, such conduct may constitute misconduct. Moreover, if it results in harm to the patient, it may also subject the physician to malpractice liability (in the event of an allergic reaction or injury in the face of some unknown contraindication) and possibly, loss of licensure.

Physicians should be aware that AMA guidelines regarding the use of the internet to facilitate patient care nonetheless require that before prescribing any medications physicians should obtain a complete medical history *and perform a physical examination of the patient*. Citing similar standards promulgated by

American College of Obstetricians and Gynecologists, the New York State Board for Professional Medical Conduct (“the Board”) weighed in on the issue several years ago – and did so in no uncertain terms. While recognizing that telemedicine offers great promise for the future, the Board warned that “[a]ll the current standards of care regarding the practice of medicine apply. According to the Board, the fact that an electronic medium is utilized for contact between parties or as a substitute for face-to-face consultation does not change the standards of care.” In its opinion, the Board further warned that “the practice of medicine through telemedicine, by an out-of-state practitioner may constitute the unlawful practice of medicine and subject that clinician to criminal prosecution.”

Furthermore, the widespread availability of e-mail and the internet have changed the manner in which physicians and patients communicate. As a result of

such advances, patients expect a quick response to complaints and requests communicated electronically and as a result, physicians may soon be tempted to prescribe over the internet more regularly. While such practices may usually not pose an issue for re-fills of routine non-narcotic medications for established patients, e-prescribing is fraught with danger. In some instances, it has been deemed to be criminal. For example, in a recent Texas case, two physicians were convicted of health care fraud, sent to prison and lost their professional licenses for prescribing erectile dysfunction medications over the internet through the auspices of an on-line pharmacy and without examining the patients or taking an appropriate history.

Thus, despite its great promise, telemedicine remains in its infancy and, until modern standards are promulgated, physicians choosing to practice in such fashion may face serious scrutiny.

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