Telemedicine Regulation – How Not To Do It: A South African Experience

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Challenges Across the Globe to eHealth Adoption
Telemedicine Issues

Medicolegal Licensure
Responsibility
Continuum of care
Ethical Informed consent
Confidentiality
Data security
Phone doctors under fire

The service is unethical, says health council

According to its website, Hello Doctor offers:

- Medical advice, information and diagnosis via the internet, telephone and television from qualified medical practitioners.
- A one-on-one consultation for R200.
- An invoice to claim directly from medical aid.
- Online payment by credit card or a monthly subscription for unlimited access.

Ronala Shek Umar and Lee Roodt

The service provider, Hello Doctor, is withholding its “phone-a-doctor service” after coming under fire from the Health Professions Council of South Africa (HPCSA).

The HPCSA labelled organisations which offer a consultation with a doctor over the telephone as unethical. The Hello Doctor website offers phone diagnosis and prescriptions for lower estimates for R180.

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Telemedicine 'unethical', says HPCSA

The Health Professions Council of SA (HPCSA) telemedicine as unethical.

Organisations offering the services of a doctor just a call away were in breach of patients' rights, including the practitioner-patient relationship, patient confidentiality and informed consent, said HPCSA spokeswoman Bertha Peters-Scheepers.

HPCSA condemns telemedicine

The Health Professions Council of SA (HPCSA) condemned telemedicine as unethical.

Organisations offering the services of a doctor just a call away were in breach of patients' rights, including the practitioner-patient relationship, patient confidentiality and informed consent, said HPCSA spokeswoman Bertha Peters-Scheepers.
Telephone Based Telemedicine
HPCSA acting CEO ... said that any organisation "offering a doctor - just a call away" breached doctor-patient confidentiality and informed consent, to cite but a few examples.

...she said that 'as a general rule' healthcare practitioners were required to do a physical examination in order to make a correct and proper diagnosis.

Chairperson of the South African Medical Association (SAMA), Dr Norman Mabasa echoed O’Reilly about face-to-face examination being necessary for ethical management adding, "if there is a loophole in ethics or law being exploited here it must be closed."

O’Reilly conceded that her Council was still developing telemedicine guidelines (in addition to those already developed by the national department of health for underdeveloped communities.)

Issues
Face to face consultation
Physical examination
Separate guidelines - public and private
Doctor patient relationship protocols
Patient confidentiality
Informed consent
Medical Protection Society

“It is highly unlikely that MPS will assist a member who is registered with the HPCSA with any problems that arise from their participation in telemedicine in South Africa”
UNPROFESSIONAL CONDUCT: TELEMEDICINE

Telemedicine is the exchange of information on health care at a distance by whatever means, whether privately or publicly, for the purpose of diagnosis and treatment of any person(s).
The Constitution
of the Republic of South Africa, 1996

Act 108 of 1996
Constitution and the Bill of Rights

27(1)(a) “everyone has the right to have access to ... healthcare services”

27(2) states that the Government must “take reasonable legislative and other measures ... to achieve progressive realisation of” that right
Constitution and the Bill of Rights

Equality in healthcare implies that the level of healthcare and services should not be dependent on:

- Geographic location
- Socio-economic status

Telemedicine is a National Priority
Health Professions Council of South Africa (HPCSA)

Statutory body

Mandate to Regulate

Service providers - qualified and skilled

Protect patients from abuse

Provide guidance for good practice
Mandate to Regulate “take reasonable legislative and other measures … to achieve progressive realisation of” that right to healthcare
The practice of telemedicine and challenges to the regulatory authorities

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Chief Executive Officer, National Nuclear Regulator of South Africa (NNR) (previously at Health Professions Council of South Africa)

The practice of telemedicine is viewed as a possible solution to the human resources crisis in health care in South Africa and internationally. Reports on its successful implementation and combating of health-related problems are readily available from both developed and developing countries. Even though these reports indicate that telemedicine seems to have addressed the problem related to the shortage of health care personnel, it is still posing a challenge to regulatory authorities such as the Health Professions Council of South Africa. The regulatory authorities are there to ensure that quality health care service is delivered and that the patient will be protected from possible mismanagement by the health care practitioners involved. Misconduct can occur through improper clinical care or excessive billing.

Policies and guidelines from both developing and developed countries were reviewed to highlight how telemedicine is regulated elsewhere. The focus was on the ethical implications of telemedicine practice. Telemedicine has proved itself to be a possible solution to the human resources crisis, especially in developing countries or where there are vast rural communities. Success of telemedicine has been reported in a number of developed and developing countries as a way of alleviating the human resources crisis and providing quality health care to needy communities.
General Ethical Guidelines for Good Practice in Telemedicine
(Discussion document)

Booklet No:

HEALTH PROFESSIONS COUNCIL OF SOUTH AFRICA
HPCSA - Telemedicine

“The exchange of information amongst healthcare professionals at a distance for the purpose of facilitating, improving and enhancing clinical, educational and scientific healthcare and research, particularly to the under serviced areas in the Republic of South Africa.”
HPCSA Telemedicine

Weaknesses:

- Failure to include ICT in definition
- Written prescription
- Sending notes from OPD to ward
- Telephone use in health
- Not previously regulated
- Inclusion of education
- Written, signed informed consent?
HPCSA Telemedicine

“Telemedicine consultations should be restricted to situations in which a healthcare professional is unable, due to geographical constraints or resources to participate in an actual face to face consultation,”
HPCSA Telemedicine

“… second opinion telemedicines (sic) should be restricted to situations in which a previously existing healthcare-patient relationship enabled the healthcare practitioner to gather sufficient knowledge of the patient’s clinical condition …”
HPCSA Telemedicine

Patient initiated telemedicine,
“is restricted to situations in which a
previous healthcare professional-patient
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Issues

Face to face consultation
Physical examination
Separate guidelines - public and private
Doctor patient relationship protocols
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Informed consent
HPCSA Telemedicine

“All other telemedicines (sic) should involve a healthcare professional where there is an actual face-to-face consultation and physical examination of the patient in a primary healthcare centre.”
HPCSA Telemedicine

“... second opinion telemedicines (sic) should be restricted to situations in which a previously existing healthcare-patient relationship enabled the healthcare practitioner to gather sufficient knowledge of the patient’s clinical condition ...”
Health Professions Act

Section 23(5) requires a practitioner to have, “... ascertained the diagnosis of the patient through a personal examination or by virtue of a report by another practitioner under whose treatment the patient is or has been...”
HPCSA

Mandate to Regulate “take reasonable legislative and other measures … to achieve progressive realisation of” that right
Private Practice and Remuneration

Radiology
Pathology
Telephone consultation
Face to Face?
Physical examination?
HPCSA Telemedicine

The consent form should be provided in writing ... a copy of the consent form should be kept with the patient’s records and a duplicate given to the patient.”
Conclusion

• Telemedicine requires an enabling legislative and regulatory environment

• Legislators and regulators may have difficulty in understanding telemedicine and national associations telemedicine advocates must engage with them
Conclusion

“everyone has the right to have access to
... healthcare services”