

# Ask An Attorney

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My medical partners and I are exploring whether to use telemedicine to handle “call ins” and after hours calls with our patients. What are some of the issues we need to be sure to address?

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A new law, which became effective on January 1, 2015, requires that telehealth visits be reimbursed at the same rate as in-person visits. Deductibles and co-insurance for telemedicine must not be different than in-person visits. This has cleared the path for a more robust use of telemedicine throughout New York State.

As today's consumers continue to want “faster, better, more” service in their lives, telemedicine is coming as an avalanche. Beth Israel Medical Center in New York City offers “Teladoc” – its website boasts: “If you live, work or are traveling in New York, now you can take advantage of a unique health solution offered by Beth Israel. Teladoc offers 24/7 on-demand telehealth consultations via phone or on-line video with board certified physicians...”.

The Office of Professional Medical Conduct's Special Committee on Telemedicine (SCT) previously issued an ethical statement that presents the major areas to be addressed before you incorporate telemedicine into your practice.<sup>1</sup>

The SCT ethical statement clearly provides that all “the current standards of care” of a medical practice apply. If the patient receives “professional advice or treatment,” then the physician-patient relationship is created. Once a physician-patient relationship is established, the physician has a duty of care to the patient, which includes providing quality care or seeing that there is a reliable provision for care. Arranging for the follow-up care is included. It is the patient's location that determines where the care is delivered. If the patient is anywhere in New York, the professional must hold a New York license.<sup>2</sup>

The physician must somehow identify himself and his license/certification to the patient, as is required in an office setting. Also, the physician must document the visit in a medical record (electronic or paper) with the usual requirements: symptoms, evaluation and analysis, plan of care, etc. Failure to maintain an adequate and confidential record of patient visits is considered professional misconduct and is an almost routine misconduct charge brought by the OPMC against individual physicians.

Physicians must understand some of the inherent risks in treating patients without their physical presence. Knowing when to require the patient to be seen, whether in the office or another setting, will be of utmost importance. Once the patient is advised of the risks of not being seen, documenting the patient's refusal will be critical from a liability standpoint.

Treating patients through the use of telemedicine is the wave of the future. Proper planning of coverage issues, confidentiality of design and content, and medical record documentation is a must.

<sup>1</sup>For a complete copy of the statement, go to: [www.health.ny.gov/professionals/doctors/conduct/telemedicine.htm](http://www.health.ny.gov/professionals/doctors/conduct/telemedicine.htm)

<sup>2</sup>There are minor exceptions to this rule contained in N.Y. Education Law §6526.

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