

Legal Issues in Technology and Health Information in the New Economy

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Legal Issues in Technology and Health Information in the New Economy

The increased use of information technology in health care settings requires legal analysis. Liability, jurisdictional issues, privacy and confidentiality concerns, intellectual property rights, employment issues, and the allocation of resources spring to mind as potential legal trouble spots that require fuller analysis.

For the purposes of this workshop, we plan to address the issue of how work practices change with the introduction of IT and legal issues that emerge as a consequence. We understand work practices to include considerations of obligations to patients and licensing issues. Specifically, we will be addressing liability and jurisdictional issues with respect to telemedicine.

Liability issues may emerge during a consultation at a distance when, for example, a general practitioner consults with a cardiac specialist. Health care professionals have legal duties towards their patients, but the legal duties of a professional consulted via computer technology are less clear. Physicians are ascribed legal duties to use their skill and judgment to the best of their abilities on behalf of their patients, and these duties are ascribed as a matter of law. It is understood that physicians have a duty to carefully examine patients before recommending a course of treatment. Consulting with a practitioner at a distance means that it is impossible for the consultant to examine the patient in order to render a fully informed opinion. Should a general practitioner rely on the opinion of a distant consultant who has not personally examined the patient, and misadventure results, how is liability to be determined? Generally, specialists are held to higher standards of care than general practitioners. If out-of-

province specialists are deemed to provide only recommendations, with the general practitioner retaining full responsibility, it may be more difficult for an injured patient to establish a breach of the standard of care. This is because general practitioners would be held to a lower standard of care than specialists.

With respect to jurisdictional issues related to telemedicine, health care professionals are only licensed to practice within certain jurisdictions. If negligence results in harm to a patient, has a tort occurred in the patient's jurisdiction or the physician's? The United States Health Care Financing Administration stated in 1998 that "the use of telecommunication to furnish a medical service effectively transports the patient to the consultant...Therefore, we believe that the site of service for teleconsultation is the location of the practitioner providing the consultation." This view does not appear to have been embraced by provincial regulatory bodies in Canada. However, if the site of the tort should be found to be the patient's jurisdiction, has a telehealth consultant from another jurisdiction practiced medicine unlawfully in the patient's province?

Clearly these topics go beyond altering work practices. Issues of liability and jurisdiction will ultimately have to cohere with a sensible and workable regulatory framework in Canada. They will also need to be consistent with the division of powers between federal and provincial responsibilities. Our intention is to identify a number of concerns in this area with the aim of contributing towards the development of responsive policy options.