

Medical Awareness in Telemedicine: A Legal Perspective

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ABSTRACT

Telemedicine is the technology to provide remote delivery of the healthcare services such as consultation, diagnosis, treatment, etc., to the individuals. It is done through telecommunication technology such as video call, audio calls, messaging. It will help in providing the services, especially in rural or underserved areas, while maintaining patient-provider communication and continuity of care. Medical negligence in telemedicine is an emerging area of concern as healthcare increasingly shifts toward virtual platforms. In order to attract the liability under medical negligence, various essentials such as duty of care, breach of duty, causation and damages must be fulfilled. This paper aims to analyse various legal and ethical challenges that could be faced by the individuals in the process of telemedicine. This research paper was created using the doctrinal approach of research. In order to comprehend, analyze, and organize the law, this research style focuses on analyzing legal doctrines, legislation, case laws, and legal principles. The medical negligence in telemedicine could be in several ways such as misdiagnosis or delayed diagnosis, lack of informed consent, failure to refer the patient for in-person treatment, improper prescription or data breaches. These factors complicate diagnosis, treatment, and legal accountability in virtual healthcare settings, increasing risks for both patients and providers.

KEYWORDS

Telemedicine; Telecommunication; Medical Negligence; Law; Patient

INTRODUCTION

The rapid advancement of digital technologies has revolutionized the healthcare sector, with telemedicine emerging as a crucial tool for delivering medical services remotely. Telemedicine offers patients timely access to healthcare, particularly in underserved or remote areas, and has gained widespread acceptance, especially in the wake of global health crises like the COVID-19 pandemic. WHO has adopted the following description of telemedicine: The delivery of health care services, where distance is a critical factor, by all healthcare professionals using information and communication technologies for the exchange of

valid information for diagnosis, treatment, and prevention of disease and injuries, research and evaluation, and for the continuing education of healthcare providers, all in the interests of advancing the health of individuals and their communities.

The Hon'ble Supreme Court in a landmark judgment held that the breach of any of these duties gives the right to the patient to bring the action for negligence.^(1,2) The Hon'ble SC in the case of *Kusum Sharma v Batra Hospital and Medical Research*⁽³⁾ held that a medical professional cannot be held liable for negligence merely because a treatment has failed or an adverse outcome has occurred. This research explores the complexities of

medical negligence in telemedicine, examining how traditional legal frameworks apply in a digital context, identifying gaps in regulation, and evaluating the adequacy of current safeguards in protecting patient rights.

REVIEW LITERATURE

In India, the Telemedicine Practice Guidelines (2020) issued by the Ministry of Health provide a regulatory foundation but lack clarity on liability in complex cases of remote misdiagnosis or system failure. As Mehta and Bhardwaj (2021) argue, these guidelines are a step forward, but there is a pressing need for legislative backing to define the scope of professional liability in teleconsultations.

Case law is still sparse but evolving. Terry and Wiley (2021) note that courts in several countries are increasingly examining informed consent, data privacy, and the doctor-patient relationship in digital contexts, all of which are crucial in negligence claims.

RESEARCH METHODOLOGY

Analysing legal norms, principles, and case law is the main goal of the doctrinal technique of research, which is sometimes referred to as library-based or black-letter law study. It is frequently used in legal studies to analyze scholarly commentary, court rulings, statutes, and legal codes. The doctrinal approach of research was used to create this work by analysing a variety of available materials.

LEGAL FRAMEWORK

The legal framework governing medical negligence in telemedicine is an evolving area that seeks to balance innovation in healthcare delivery with the fundamental principles of patient safety, informed consent, and professional accountability. Traditional legal concepts of medical negligence—such as duty of care, breach of that duty, causation, and resulting harm—remain applicable in telemedicine. However, their application becomes more complex when care is delivered remotely, often across jurisdictional boundaries.

At the international level, there is no unified legal instrument specifically governing telemedicine. Instead, countries rely on a mix of healthcare regulations, data protection laws, and professional standards. Key legal components often include:

Licensing and Jurisdiction: Health practitioners must typically be licensed in the jurisdiction where the patient is located. Cross-border consultations can raise questions about legal authority, liability, and enforcement of medical standards.

Standard of Care: Telemedicine providers are generally held to the same standard of care as in-person providers. However, courts may consider limitations inherent to virtual consultations (e.g., lack of physical examination) when assessing negligence. The Hon'ble Supreme Court in *Kusum Sharma v Batra Hospital and Medical Research Centre and Ors*(3) held that where the medical practitioner fails to maintain the standards of reasonable care then he will be liable for medical negligence which gives rise to the deficiency in medical services in terms of Section 2(1)(g) of Consumer Protection Act.

Informed Consent: Obtaining informed consent is essential in telemedicine. Patients must be made aware of the limitations of remote care, risks involved, and alternatives available. One of the main obligations of the Data Protection Rules is informed consent. A doctor or an organization must legally get the recipient's written consent before doing anything with a patient's data. Along with the contact information for the organization gathering the data, the patient must be notified that the data is being collected, how it will be used, and whether it will be shared with any third parties.

Data Privacy and Confidentiality: Telemedicine platforms must comply with data protection laws such as HIPAA (U.S.), GDPR (EU), or India's Digital Personal Data Protection Act, ensuring patient information is securely transmitted and stored.

Medical Malpractice Liability: Many jurisdictions extend existing malpractice laws to cover telemedicine, but issues such as insurance coverage, cross-border liability, and virtual documentation can complicate legal claims.

Guidelines and Standards: National medical boards and professional organizations often issue guidelines for telemedicine practice. For example, the World Health Organization (WHO) and the American Telemedicine Association (ATA) provide frameworks for ethical and safe telehealth practices.

As telemedicine continues to grow, legal systems worldwide are under increasing pressure to update legislation, address ambiguities, and create harmonized standards that ensure both innovation and patient safety.

Types Of Medical Negligence In Telemedicine:

Medical negligence in telemedicine refers to the failure of a healthcare provider to meet the accepted standard of care in a remote consultation, leading to harm or injury to a patient. While the nature of telemedicine introduces new dynamics, the core principles of negligence remain similar to traditional healthcare. Below are the key types of medical negligence that may arise in a telemedicine setting:

Misdiagnosis or Delayed Diagnosis- Due to the limitations of not conducting a physical examination or having incomplete diagnostic tools, healthcare providers may misinterpret symptoms or fail to identify serious medical conditions. A misdiagnosis or delay in diagnosis caused by inadequate assessment can result in worsened patient outcomes. If a patient does not receive the right diagnosis for their condition, and there is ample evidence that the doctor should have diagnosed the patient with the condition or sought additional information, that could warrant medical malpractice.(4)

Failure to Obtain Informed Consent- In telemedicine, patients must be fully informed about the nature of remote treatment, including its limitations and risks. Failure to obtain explicit informed consent before proceeding with treatment or consultation may constitute negligence. It is important for the clinician to implement and follow procedures for obtaining informed consent and equally as important that this information is recorded accurately.(5)

Inadequate Follow-up Care- A physician's failure to provide timely follow-up instructions, monitor patient progress, or schedule necessary in-person care after a telemedicine consultation can lead to deterioration in a patient's condition and is considered negligent.(6)

Improper Prescription Practices- Prescribing medication without a thorough understanding of the patient's medical history or without conducting an appropriate virtual evaluation can result in adverse drug reactions, incorrect dosages, or harmful drug interactions.(7)

Technical Errors or Platform Failures- If a healthcare provider continues a consultation despite clear technical issues such as poor audio/video quality, disconnections, or incorrect patient data input may lead to errors in diagnosis or treatment and constitute negligence. Lack of access to technology hinders telemedicine, particularly in low-income or rural locations. Telemedicine visits may not be possible for patients without a computer, smartphone, or high-speed internet, which restricts their access to medical care. Additionally, using telemedicine platforms may be difficult for elderly folks who are not as tech-savvy.(8)

Violation of Patient Confidentiality- Sharing patient information on unsecured platforms or failing to use encrypted communication tools can breach privacy laws. Unauthorized disclosure of medical information is both an ethical and legal violation.(9)

Lack of Licensing or Jurisdiction Compliance- Providing medical services to patients in jurisdictions where the provider is not licensed is a legal breach that can be categorized as negligence,

particularly if the patient is harmed during the process.(10)

Failure to Refer for In-Person Evaluation When Necessary- Some medical conditions require physical examinations or tests that cannot be performed virtually. Failing to refer a patient for in-person care when clinically indicated may result in harm and is considered negligent.(11)

Case Studies

1. Delayed Diagnosis in Ophthalmology: A study analysing 510 malpractice lawsuits found that 3.5% (18 cases) involved telephone-based triage in ophthalmology. Of these, 94.5% alleged delays in evaluation or treatment, with 61.1% citing incorrect diagnoses. Conditions like retinal detachment and endophthalmitis were among the precipitating issues. The study emphasized the risks of irreversible vision loss due to delayed in-person evaluations.(12)

2. Failure to Diagnose Pulmonary Embolism: A 62-year-old man with obesity and a recent ankle injury died of a pulmonary embolism after a telemedicine consultation. The physician advised elevation and a Doppler ultrasound without recognizing the signs of deep vein thrombosis. The patient's family sued for failure to diagnose and treat the condition, leading to a settlement.(13)

3. Tech Glitch Leading to Missed Diagnosis: A paediatrician conducted a telemedicine consultation with a mother whose daughter had a high fever. Technical issues caused video dropouts, and the physician advised over-the-counter medication. The child was later hospitalized with severe pneumonia. The case highlighted the importance of backup plans and thorough follow-up in telehealth consultations.(14)

4. Misdiagnosis of Chest Pain as Pleurisy: A patient experiencing chest pain was diagnosed via telemedicine with pleurisy and advised to take ibuprofen. The pain worsened, leading to a hospital visit where a heart attack was diagnosed. The patient suffered complications that could have been avoided with an accurate diagnosis.(15)

5. Fraudulent Telemedicine Orders: A telemedicine fraud scheme involved creating unnecessary orders for durable medical equipment and genetic testing, exploiting telehealth services. The scheme resulted in \$44 million in fraudulent charges, highlighting the risks of unethical practices in telemedicine.(16)

Ethical Consideration

The shift from traditional in-person consultations to virtual healthcare has raised a host of ethical concerns. While telemedicine expands access and convenience, it also introduces risks that must be ethically managed to ensure patient safety,

autonomy, and dignity. Key ethical considerations in telemedicine include:

1. Patient Autonomy and Informed Consent-

Patients must be fully informed about the nature, limitations, risks, and benefits of telemedicine. Consent should be voluntary, explicit, and documented, especially when physical examination is not possible. Patients should have the option to refuse telehealth and request in-person care if feasible. All electronic correspondence pertaining to the patient, including informed consent, prescription drugs, test results, clinical assessments, and telemedicine technology instructions, should be documented in the health record.

2. Privacy and Confidentiality- Protecting personal health information is critical, especially during video consultations and data transmission. Healthcare providers must use secure, encrypted platforms and comply with data protection laws (e.g., HIPAA, GDPR). Ethical breaches occur when providers use unsecured networks or devices for consultations.

3. Quality of Care- Ethical duty requires that the standard of care in telemedicine must match that of in-person consultations. Practitioners must not let technology compromise diagnostic accuracy or patient follow-up. It is unethical to treat cases remotely when a proper diagnosis or treatment requires physical evaluation. The appropriate application of policy guidelines for constituent state boards is outlined in the FSMB Model Policy. These recommendations address crucial issues like defining and ensuring correct patient identity, restricting the prescription of specific drugs, and figuring out when a doctor-patient relationship is established.(17)

4. Professional Competence and Licensing-

Practicing telemedicine across jurisdictions without appropriate licensing is both illegal and unethical. Providers must stay up to date with telehealth-specific training, technology use, and regional regulations.

5. Accountability and Transparency- In the event of error or negligence, patients must be clearly informed and supported in pursuing complaints or legal action. Providers have an ethical obligation to document consultations thoroughly and disclose limitations of remote diagnosis.

6. Beneficence and Non-maleficence- The core principles of doing good and avoiding harm must guide all telemedicine practices. Practitioners should avoid making decisions when clinical uncertainty exists due to lack of physical examination or inadequate data.(18)

7. Commercialization and Exploitation Risks-

Ethical concerns arise when profit motives drive

excessive use of telemedicine (e.g., unnecessary testing, overprescribing). Patient welfare—not business interests—should always be the guiding priority.

These ethical considerations are crucial for maintaining trust in telemedicine and preventing harm that could lead to claims of medical negligence. As telehealth becomes a staple in global healthcare, ethics must evolve alongside technology to protect both patients and practitioners.

Challenges And Gaps: Telemedicine has become a critical component of modern healthcare, yet its rapid growth has outpaced the development of comprehensive legal, ethical, and regulatory frameworks. As a result, addressing medical negligence in telemedicine presents several complex challenges and systemic gaps:

1. **Lack of Uniform Legal Standards-** There is no globally consistent legal framework for telemedicine. Different jurisdictions have varying definitions of standard of care, making it difficult to assess negligence across borders. Legal ambiguity around cross-border consultations raises questions about licensing, jurisdiction, and accountability.

2. **Difficulty in Establishing Negligence-** In telemedicine, it is often harder to prove that a deviation from standard care occurred, especially when documentation is limited or virtual records are incomplete. The absence of physical examinations makes diagnosis more reliant on patient-provided information, increasing the margin for error.

3. **Limited Technological Infrastructure-** In rural or low-income areas, poor internet connectivity, outdated equipment, and lack of digital literacy hinder effective teleconsultations. These limitations may compromise the quality of care and increase the risk of negligence, especially in emergency or complex cases. Risk Management needs to be accurately access, mitigate and finance these risks.(19)

4. **Data Privacy and Cybersecurity Risks-** Since Hippocrates' time, the right to privacy has been a fundamental component of medical ethics and is upheld by a number of codes, notably the International Code of Medical Ethics. Breaches in data protection due to insecure telemedicine platforms can violate patient confidentiality and trust. Current laws may not adequately address cybersecurity threats or define provider responsibility in case of data leaks.

5. **Inadequate Patient Awareness-** Many patients are unaware of their rights, consent requirements, or recourse options in the event of a negative telemedicine experience. This knowledge gap can

lead to underreporting of negligent care and a lack of accountability.

6. Absence of Telemedicine-Specific Insurance Coverage- Medical malpractice insurance policies often do not clearly cover telemedicine-related incidents. This leaves both patients and practitioners vulnerable in the event of a dispute or litigation.(20)

7. Insufficient Training and Guidelines for Practitioners- Many healthcare professionals lack formal training in telemedicine protocols, ethical practices, and technology use. There is also a lack of standard clinical guidelines tailored specifically for remote diagnosis and treatment.

8. Ethical Oversight and Commercial Pressures- The growing commercialization of telemedicine, especially through private apps and platforms, may prioritize speed and volume over quality, leading to rushed or improper care. Ethical oversight mechanisms for such platforms are still underdeveloped.

Liability Of Medical Practitioners In Negligence During Telemedicine

Telemedicine has emerged as a revolutionary tool in the modern healthcare system, enabling doctors to consult, diagnose, and treat patients remotely through digital platforms. While it offers convenience, accessibility, and cost-effectiveness, it also raises significant legal and ethical concerns, especially concerning the liability of medical practitioners in cases of negligence. With the growing dependence on virtual healthcare, understanding the legal responsibilities of doctors during telemedicine is crucial for both practitioners and patients.

When a healthcare provider violates the standard of care that a reasonably competent practitioner would deliver in the same situation and causes injury to the patient, this is known as medical negligence.

In telemedicine, the potential for negligence can arise from misdiagnosis due to poor video quality, lack of physical examination, incomplete patient history, or prescribing medication without adequate evaluation. Since the interaction is virtual, the margin for error may increase, making liability more complex to establish and prove.

In India, the legal framework governing telemedicine includes the Telemedicine Practice Guidelines, 2020, issued by the Ministry of Health and Family Welfare. These guidelines are part of the Indian Medical Council (Professional Conduct, Etiquette, and Ethics) Regulations, 2002. According to these rules, doctors are expected to exercise the same level of professional conduct and care during teleconsultation as they would in in-person visits. The guidelines also mandate obtaining patient

consent (implied or explicit), maintaining records of the consultation, and prescribing medication responsibly.(21)

Under the Consumer Protection Act, 2019(22), patients are considered consumers, and healthcare providers, including telemedicine practitioners, are service providers. Therefore, any deficiency in the service rendered, such as wrong diagnosis or delayed treatment through telemedicine, can attract liability, allowing patients to claim compensation. The Information Technology Act, 2000(23) also have a major role, especially concerning the protection of patients' data and privacy. A breach of confidentiality or unauthorized sharing of personal medical records can lead to legal consequences under this Act.

Important case laws further clarify the extent of liability. In *Deepa Sanjeev Pawaskar v. State of Maharashtra*(24), a doctor was held liable for prescribing medicine without proper patient examination, which led to the patient's death. The Bombay High Court emphasized that prescribing medication over a call, without verifying symptoms adequately, could amount to gross negligence. Similarly, in *Jacob Mathew v. State of Punjab*(25), the Hon'bleSC held that a medical professional is liable only when there is gross negligence or recklessness, setting a high threshold for criminal liability.

Internationally, countries like the US and the UK have established similar standards. In the U.S., malpractice laws apply equally to telemedicine, while in the U.K., the General Medical Council requires doctors to ensure that remote consultations meet the same standard of care as face-to-face interactions.(26)

CONCLUSION AND DISCUSSION

Telemedicine has transformed the healthcare landscape by enhancing access, convenience, and continuity of care particularly in remote and underserved regions. However, this shift toward virtual healthcare delivery also brings significant legal, ethical, and clinical challenges, with medical negligence being a critical concern. The absence of physical examinations, dependence on technology, and jurisdictional complexities can compromise the standard of care and patient safety if not properly managed.

As this mode of care continues to grow, it is imperative to establish clear legal frameworks, enforce ethical guidelines, invest in robust digital infrastructure, and educate both patients and providers. Addressing the gaps in regulation, data privacy, professional accountability, and clinical standards is essential to mitigate the risk of negligence. Only through a proactive, multi-

stakeholder approach can telemedicine fulfil its promise while safeguarding the rights and well-being of patients. By explicitly defining roles and duties among physicians, platforms, and regulators and guaranteeing adherence to clinical, ethical, and legal norms, a multi-stakeholder strategy helps prevent negligence in telemedicine. Errors in diagnosis, consent, follow-up, and data processing are decreased by ongoing supervision, appropriate training, safe technology, and efficient grievance-redressal procedures.

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