

# When medicine moves to the Internet, its legal issues tag along

Eleanor LeBourdais

## In brief

THE INTERNET IS OPENING UP POSSIBILITIES FOR PHYSICIANS to provide many health care services without actually meeting patients face to face. What is not clear is who will regulate the quality of these services and who is responsible when something goes wrong.

## En bref

L'INTERNET PERMET AUX MÉDECINS de dispenser de nombreux services de soins de santé sans rencontrer leurs patients face à face. La question de savoir qui réglera la qualité de tels services, et qui doit assumer la responsabilité en cas de problèmes, demeure cependant obscure.

**D**epressed about the future? Got the blues? Whether you need general guidance or are on the verge of a crisis, the people operating Concerned Counseling Inc. say they can help.

Concerned Counseling is a network of Texas-based therapists who use Internet "chatrooms," email or the telephone to provide counselling to individuals, couples or families on topics such as marital conflict, eating disorders or drug and alcohol abuse. Counsellors are available for chatroom consultation 12 hours a day, 7 days a week, while the phone service is available around the clock. Response to email messages is provided within 12 hours. The cost? Access to a counsellor via the chatroom or telephone costs (US)\$45 for up to 30 minutes and \$80 for 30 to 50 minutes, with additional 15-minute increments costing \$25 each. Email carries a fee of \$30 per response.

Prospective clients must agree to basic rules concerning online conduct, copyright restrictions, limitations on liability and warranty and indemnification provisions. Counsellors are described as licensed, although no details concerning academic credentials are provided ([www.concernedcounseling.com](http://www.concernedcounseling.com)).

Another US service, which is now defunct, used to charge (US)\$20 per 200-word question; respondents received a reply and credit-card debit within 72 hours. "Shrink-Link" warned that it was not a substitute for face-to-face counselling and might not have been appropriate for everyone. However, lest that deter prospective customers, it added: "It does focus the attention of a group of highly trained mental-health professionals on YOU! Each panelist has 15 to 40 years of clinical experience. These are the same people who charge \$100 to \$200 per session!"

Toronto psychiatrist Henry Rosenblat says psychotherapy or counselling over the Internet appears to be increasing in popularity, and he finds the absence of disclaimers disquieting. "There are currently at least 4 web sites offering advice on psychological and psychiatric issues for a fee. These sites do not have a disclaimer regarding responsibility and I have also seen physicians offering advice in newsgroups without any disclaimers."

While he has not given advice to patients via the Internet, Rosenblat has provided advice to other physicians through Internet mailing lists. If physicians do advise patients via the Net, he recommends that copies of emails be filed with the patient's chart and that some form of disclaimer regarding the value of the advice be provided.



## Features

## Chroniques

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Although face-to-face counselling is still very much the norm, Rosenblat recognizes the potential capabilities of the Internet. "There are already reports of psychiatrists doing psychotherapy via email [see *Can Med Assoc J* 1997;155:1606-7]. It's also been predicted that once videoconferencing becomes widely available on the Net, face-to-face therapy may occur through that."

For ethical and legal reasons, physicians have historically refused to prescribe for or treat patients they have not seen or examined personally. However, with no constraints in place to govern Internet behaviour, the potential for international consultation in cyberspace raises new jurisdictional and ethical issues.

Dr. Morris Van Andel, deputy registrar at the College of Physicians and Surgeons of British Columbia, says there may be a place for physicians to provide cyberinformation but it should be generic and not specific to a single patient. "A few physicians have asked about it and we've said they can do what they want but should remember that when they give specific advice to specific patients, it raises liability and jurisdictional issues."

Although the college has sway over the conduct of physicians engaged in conventional medical practice in BC, Van Andel feels the Internet is a grey area. "If you talk as a BC resident to a physician licensed in Ontario, who is responsible? If you're unhappy with the advice you get who do you complain to, the Ontario college or the BC college? Is a physician in Ontario allowed to treat patients in BC without a [BC] license? This is the kind of thing we discuss endlessly at national meetings."

With such jurisdictional issues undecided physicians may feel they are free to do as they like, but Van Andel warns that even though they may be in cyberspace doctors are still obliged to uphold "the honour of the profession."

"People sort of smirk at that, but in the past the college has taken action against members who have acted in the public domain in an inappropriate and unprofessional manner. The Medical Practitioners Act does allow the college to take action in the public interest to ensure the profession is as squeaky clean as can be."

Ethicist Eike-Henner Kluge, who chairs the Department of Philosophy at the University of Victoria, says responsibility for Internet activity should lie with the province of licensure. "Physicians licensed in a particular jurisdiction should practise only in that jurisdiction and be subject to the powers of that jurisdiction. I find it passing strange that a physician would practise medicine in a locality for which he or she is not licensed, regardless of whether or not it is over the Internet, and I would expect the relevant colleges on both sides to take appropriate steps to prevent such actions."

Ontario's Regulated Health Professions Act defines

various actions that could be used to restrict Internet behaviour. Although the College of Physicians and Surgeons of Ontario has no jurisdiction over anyone who simply offers advice, communications director Jim Maclean says offering a diagnosis is 1 of 13 "controlled acts" under the legislation that are subject to college regulation.

Although the college council has not yet addressed this question, it is theoretically possible that an investigation of a complaint about a physician's behaviour on the Internet could result in a referral to the disciplinary committee. For physicians providing medical advice outside their jurisdiction, says Maclean, one theoretical option would be to prosecute a physician not registered in Ontario for "practising medicine without a license" via the Internet.

The Canadian Medical Protective Association (CMPA) is also keeping a wary eye on the issue. Dr. Robert Robson, an associate secretary-treasurer, says that if a physician offered a medical opinion over the Internet, a court would likely conclude that there was a duty of care and that a form of doctor-patient relationship existed.

The CMPA is also following the use of the Internet to provide medical information and direct patients to treatment services. "The executive committee has not yet had a chance to examine this in detail, in part because this is such a new subject."

Although he is a computer enthusiast and Internet user himself, Dr Kendall Ho, director of continuing medical education in the emergency department at the Vancouver Hospital and Health Sciences Centre, thinks physicians who use the Internet for therapeutic purposes are in a precarious legal position. "I believe that physicians should refrain from giving specific advice or attempting to make a specific diagnosis of a patient's medical problem online," he says.

Kluge has similar doubts about the acceptability of Internet medicine. "I have great problems with physicians doing this except on an emergency basis, just as I have great problems with telemedicine in general, unless all otherwise applicable standards of medical practice are adhered to."

Although he is aware of these sentiments, a Toronto Internet expert says the Internet will inevitably play a more major role in medicine. Rick Broadhead, coauthor of the *Canadian Internet Guide*, suggests that consultation over the Internet will likely become commonplace because of its flexibility and advantages. "It's not always convenient for me to get in to the doctor's office and with the Internet becoming pervasive, it's going to become another medium that can be used for the same function."

Email, in particular, could be used to manage the care of patients who have simple questions or problems that do not require an office visit. "I could email my doctor and say I have this problem, what do you think? If he's very fa-



miliar with my case, he can send back a brief note. This could even be interactive, for it's now possible to have live conversations, it is becoming possible to have voice conversations and the next step is going to be video."

Broadhead currently pays his physician a flat fee for services not covered by medicare, and he thinks this could be expanded to include Internet consultation. "I pay an annual administrative fee for such things as access to my doctor if I need him on the phone. I see no reason why he couldn't bill for an Internet consultation the same way he would for a phone consultation. If I provided my health card number over the Internet into a system set up by my physician, there would be a record that the service had been provided to me."

As the companies providing Internet access extend their geographic reach, increasing numbers of patients and practitioners will be able to use anything the Internet has to offer. Physicians may find the idea of cybermedicine particularly appealing if payment mechanisms can be worked into the equation. The Internet also has the potential to bring new relief to chronic physician resource problems in remote areas. Underserved communities or those without a physician or in need of specialist consultation could be assisted through Internet discussions or email communication with practitioners based in larger centres.

Psychiatrist Rosenblat thinks fee-for-service arrangements could be applied to Internet consultation and would be an attractive means for physicians to augment their incomes. However, governments would probably be less enthused. "I find it difficult to see how the government or medicare can provide fees for Internet medical services. Budgetary restraints are unlikely to allow for new billing avenues at this time."

If governments do decide to make use of the Internet in underserved areas and want to employ physicians for this purpose, says Kendall Ho, medicare should pay them for this service.


Depending on the circumstances, a number of other options are possible. If a physician is hired by a company to put medical information online, Ho suggests that the company pay the physician, with the company and doctor being liable for any legal claims. Physicians should be aware that any solicitation to provide online services for a fee constitutes a private agreement between physician and patient, which obliges the doctor to bear full responsibility for the information offered.

"This [type of payment] requires a great deal of discussion because it involves the whole issue of private versus public funding," warns Kluge. "Canadian physicians . . . should not venture into private arrangements that undermine the health care system."

Security remains a primary concern for physicians interested in Internet medicine. Ho acknowledges that a minimum standard of encryption has to be established, and also proposes creation of a regulatory body or screening mechanism to ensure that the medical information presented online is accurate: it could recommend useful sites and warn of dangerous ones.

Some physicians consider the wealth of patient information available online a boon. Toronto anesthetist John Doyle says patients are more likely to have time to conduct an Internet literature review than most physicians. "If I've got a consultation," says Doyle, "I have an hour to complete it, period. But if it's their disease, they're willing to put in a couple of months of solid research and can even report back to the physician what they've found."


He predicts that a large amount of free electronic information sponsored by advertisers will eventually be certified as quality information following a peer-review process. Doyle and some colleagues have already formulated a peer-review council for anesthesia resources. Doyle calls peer review the "Good Housekeeping Seal of Approval" for medical information. ?



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