TelaDoc Offers Telephone Consultations with Physicians

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Historically, physicians have occasionally and appropriately prescribed medications to their new and existing patients based on telephone “consultations.”1 A Texas company called TelaDoc2 now offers a subscription service that allows patients telephone access to physicians. TelaDoc physicians charge a fee of $35 per consultation conducted via telephone.3 In order to obtain a consultation, patients must first register for the service, pay a registration fee of $18, complete an on-line medical history, and pay a monthly subscription fee of $4.25 per month.4 Where appropriate, physicians will prescribe medications based on the telephone consultations for routine, non-urgent conditions and ailments.5 Consultations are available 24 hours a day, seven days a week. Subscribers are advised that a physician will usually return a call within 30-40 minutes; if a physician does not return a subscriber’s call within three hours, the consultation is free.6

The TelaDoc website suggests that telephone consultations may be appropriate in a variety of circumstances, including: (1) patients who are away from home, at school, or experiencing symptoms for which they would like immediate medical advice outside of their physician’s office hours; (2) patients who live in a rural geographic area that does not allow close access to a physician’s office or clinic; (3) uninsured or under-insured patients in need of affordable, basic medical attention; (4) companies wishing to save on health care expenses; (5) busy executives who can’t afford time from their schedules to visit their local physicians; and (6) elderly or handicapped patients who find it difficult to drive to a physician’s office.7 TelaDoc appears to respect state licensing laws, claiming their physicians are all licensed to practice medicine in their respective states.8 TelaDoc’s privacy policy provides that any information that is submitted through the web site will be used “exclusively by TelaDoc physicians and only for the specific reason for which you submitted it.”9 The statement further provides that “[a]ll data is stored in encrypted format that exceeds standards defined by HIPAA” and that “[a]ll data transfer is executed using similar standards that meet or exceed HIPAA….10

After a consultation, if the physician believes drug therapy is warranted, the physician will call the prescription in to a pharmacy near the patient. TelaDoc offers prescriptions for drug classes such as antibiotics and antihistamines, and for maintenance medicines

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3 Id.
4 Id.
5 Id.
6 Id.
7 Id.
8 Id.
10 Id.
where a subscriber “is in transition to a new insurance plan or doctor.” However, TelaDoc will not prescribe controlled substances or drugs that offer a heightened potential for abuse or addiction, such as narcotics, stimulants, depressants, hallucinogens or anabolic steroids, among others.

Although TelaDoc’s structure appears intended to respect state licensing laws, several state medical boards and some state legislatures have essentially decreed that prescribing drugs without a face-to-face consultation violates state medical practice acts and constitutes inappropriate conduct subject to disciplinary sanctions, including loss of licensure. For example, TelaDoc’s services may fall within the scope of the Texas Medical Board’s guidelines for Internet prescribing even though TelaDoc offers telephone rather than Internet consultations. The Texas Medical Board in December 1999 established a policy regarding Internet prescribing. The Texas Medical Practice Act authorizes the Board to discipline a Texas physician for unprofessional conduct, including conduct that is likely to deceive, defraud, or injure the public. The statute defines unprofessional or dishonorable conduct to include “prescrib[ing] or administer[ing] a drug or treatment that is nontherapeutic in nature or nontherapeutic in the manner the drug or treatment is administered or prescribed.” It is also unprofessional conduct to prescribe or dispense a drug in a manner inconsistent with public health and welfare. Based on its interpretation of the above sections, the Board has determined that it is “unprofessional conduct for a physician to initially prescribe any dangerous drugs or controlled substances without first establishing a proper physician-patient relationship.” The Board has established four minimum criteria to determine whether a proper relationship has been established. A physician must: (1) verify that the person requesting the medication is in fact who he or she claims to be; (2) establish a diagnosis using accepted medical practices such as a patient history, physical examination, and diagnostic and laboratory testing; (3) discuss the diagnosis and the risks and benefits of various treatment options with the patient; and (4) insure availability of the physician or coverage for the patient for appropriate follow-up care. Based on the above criteria, the Board has determined that “an online or telephonic evaluation by questionnaire is inadequate.” “Dangerous drug” is defined as a drug that is unsafe for self-medication and includes a drug that federal law prohibits dispensing without a prescription. Based on these criteria, the Board could find that TelaDoc’s prescribing practices constitute unprofessional conduct.

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12 See generally Scott, supra note 1.
14 TEX. OCC. CODE § 164.053.
15 Id at § 164.053 (a)(5).
16 Id at § 164.053 (a)(6).
17 See INTERNET PRESCRIBING POLICY, supra note 13.
18 Id.
19 Id.
20 TEX. HEALTH & SAFETY CODE § 483.001.
Medical practice solely by telephone also raises issues of when and to what extent a physician should be liable under existing principles of medical malpractice.21 In *Cogswell v. Chapman*, the court held that a physician-patient relationship can be established by a telephone call “when such a call ‘affirmatively advise[s] a prospective patient as to a course of treatment’ and it is foreseeable that the patient would rely on the advice.”22

Some physicians are concerned that diagnosing and treating patients solely by telephone could result in misdiagnosis and give rise to increased risk of malpractice liability claims.23 Dr. Stephen Lawless noted that “[TelaDoc’s program] is not without risk and huge liability claims have been seen around this.”24 Lawless referenced a study reporting that there were 781 telephone treatment malpractice claims settled with an average payout of $269,000 between 1985 and 2004.25

Although TelaDoc faces licensing and malpractice challenges, the service does offer the possibility of providing increased access to uninsured and underinsured patients. As TelaDoc notes on its web site, TelaDoc consultations cost considerably less than treatment in an emergency room or 24-hour clinic. TelaDoc estimates the average cost of treatment at $200 in a 24-hour clinic and at $800 for treatment in an emergency room.26 The affordability of telephone consultation together with the convenience of the service may result in a viable model for the delivery of non-urgent care. As state lawmakers develop rules on the use of telephone and Internet technologies in practicing medicine, they should consider this potential and not react solely to those bad actors prescribing medications based only on questionnaires.

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24 Id.
25 Id.