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ITEM FOR DISCUSSION (Information, General)

TO: The Honorable the Members of the Board of Regents
Committee on Professional Practice

SUBJECT: Telepractice

At the November meeting, we presented you with a proposed six-month schedule of discussion topics on important regulatory and policy issues regarding professional regulation. These issues are essential to the future of quality professional practice and public protection. Because of the current widespread use of telepractice and its expected growth throughout many of the professions, this discussion is important and timely as the first topic in this series.

This report provides an overview of the key issues that involve telepractice. The report describes examples of its use nationally and within New York State, and describes New York State's interpretation of how the relevant laws affect telepractice. The benefits of technology in the practice of the professions as well as the legal and social concerns associated with its expanded use are also addressed in this report.

I. WHAT IS TELEPRACTICE?

Background and Definition

Telepractice is defined as the provision of professional service over geographical distances by means of modern telecommunications technology. This generic term includes, for example, teledentistry, telemedicine, telenursing, etc. Telepractice is used by health providers in a growing number of areas, including radiology, dermatology, dentistry, home health care, emergency medical services and the provision of mental health services by psychologists and social workers. The use of technology in professional practice is also growing in the design and business professions. Architectural and engineering designs and plans have been shared

across state and national borders for some time. For example, the real-time[1] transfer of designs and design changes has grown steadily since electronic computer assisted design (CAD) programs were developed in the 1970s. In the accounting field, the proliferation of national and international firms, coupled with the computerization of accounting reports, both require and enable the type of instantaneous interaction that advanced technology is able to provide.

Telepractice is not a new phenomenon, despite the surge of attention it has received in recent years. Telepractice has occurred in various forms for more than 30 years, including its use by the National Aeronautics and Space Administration (NASA) to monitor the physical status of astronauts during missions beginning in the 1960s. Using technology as a tool in the practice of the professions, however, has grown dramatically in the last five years.

Often, technology is used when the need for professional services is geographically mismatched with the supply or when there are only a few sites nationally or internationally where "cutting edge" expertise can be accessed. Architectural, engineering, accounting and health care specialists often practice in large metropolitan areas, in close proximity to major research facilities, design firm headquarters and health centers. Consumers living in rural or underserved urban areas frequently have little access to the specialized cutting edge services available at these sites.

Many professionals have also incorporated certain technologies as tools they regularly use in the course of providing services to patients or clients who are not physically in their office. For many years, physicians, nurses and dentists provided advice over the phone and/or used fax machines to transmit information (prescriptions, medical data, etc.) The increased use of technology in day-to-day practice, highlighted by the explosion of Internet access and use, has thrust the issue of telepractice squarely onto the professional regulatory agenda.

Telepractice Applications

Telepractice can take on many forms, including its use for intra- and inter-disciplinary professional research and training. Given the jurisdiction of the Board of Regents, our primary focus is on the use of telecommunications technology to deliver professional services to a patient or client who is located at a distance from the provider. In this context, telepractice has four basic components: data, expertise, distance, and the electronic transmission of one or both of the first two. It includes the delivery of images, sound, text, and graphical data via telephone, facsimile, Internet and/or video conferencing. The technology is primarily applied in two ways:

[1] The video image is transmitted at the same time as it occurs and within the same timeframe.

- One application is through the expanded use of electronic mail, where text information and individual, static images are transmitted to the professional located at a distance for use in consultation, review or diagnosis. For example, radiological images may be transmitted from an associate in a remote location for assessment at a major medical center, or construction details may be e-mailed for faster feedback and reaction from a field project in the Middle East to the headquarters of an architectural firm in Manhattan.

- The other application is more interactive. This approach may include teleconferencing along with a video image that is instantaneously displayed to the professional for consultation, review, and diagnostic purposes. During the transmission, the professional may converse with the client or patient so that multiple tasks can be performed and recorded during the session. These tasks might include taking a medical history and/or reading an X-ray of an injury, much like in a face-to-face session, but without direct physical contact. As a result of the technology, a consultation can involve broad input, be participatory, and can connect those in remote regions with medical, financial or design professional services in centralized urban centers.

II. WHAT IS THE IMPACT OF NEW YORK STATE LAW ON TELEPRACTICE?

In accordance with New York State statute, full licensure and current registration are required of any professional who practices in New York State. All New York State licensed professionals are responsible for adhering to the same laws, rules and regulations and for upholding the same standards and competencies when engaging in telepractice as they are when practicing without the use of technology over a distance. This understanding is essential to ensure public protection and the integrity of the professions.

In the practice of medicine and dentistry, Education Law includes specific provisions permitting occasional consultations by physicians and dentists licensed in their home state (Education Law Section 6526(3) for medicine, and Section 6610(5) for dentistry). This consultation exemption statutorily establishes the extent to which these professionals licensed in other jurisdictions may practice in New York State when engaged in consulting arrangements.

This regulatory approach is premised on the prohibition in law against professional practice in New York by anyone who is not licensed in this State. This premise is based on the need to adhere to the requirements for admission to the professions and to the standards for professional practice developed by the Legislature and the Board of Regents to insure maximum public protection. As the use of technology in professional practice evolves and expands, the Regents and the Department will continue to provide guidance on how to apply current laws and regulations and suggestions for additional or

alternate legislation and regulation to maintain the safe and accessible practice of the professions.

Other states that regulate telepractice in medicine include Texas, Oregon, Florida, California and Colorado. The levels of regulation vary greatly by state. For example, Texas, California and Florida, similar to New York, require full licensure to perform any function relating to patient care, with some exceptions for consultation in some instances. Oregon has created a special type of license for telepractitioners. Other states are exploring the issue of telepractice and in general, how to regulate it.

III. POTENTIAL PUBLIC BENEFITS

Technology may increase a professional's ability to deliver a broad range of services in a wide variety of locations. The following are just a few examples of how technology is being used by professionals in our State and nationally:

- Linking physicians doing clinical research together, despite geographical separation, allowing them to share patient records and diagnostic images;

- Enabling a group of teenage epileptic boys in a rural area to meet as a group by teleconferencing. Since the teleconferencing equipment remains in each home, the psychologist can also work with the individual families, who would otherwise not be available;

- Fine-tuning management and allocation of rural health care emergency services via the transmission of images to key medical centers for long distance evaluation and/or triage by appropriate medical specialists;

- Using the Internet to electronically transmit financial statements;

- Improving professional opportunities for rurally-based professionals, made possible by linking several offices or institutions together with the sponsoring professional school;

- Psychologists administering standardized tests by computer, which are transmitted to out-of-state testing companies, incorporating the findings into the evaluation and treatment decisions;

- Allowing homebound patients to receive home health care;

- Engineering and architectural sites using "robot" cameras for inspection purposes and mini-cameras for recording site inspections;

- Linking health care professionals in correctional facilities to medical providers at major medical centers;

- Providing patient advisement via technology in the practice of nursing.

Telepractice may improve the delivery, cost and accessibility of health care and other professional services. The following are examples of potential advantages in health care:

- Care can be delivered more quickly

  While it may take, in some instances, a day or so for an X-ray or report to be delivered via the postal service, the same delivery can be done via the Internet or by facsimile in a matter of minutes or seconds. The implications for this are significant, especially when an emergency diagnosis is needed. Using the Internet to send an X-ray of a child's compound fractured wrist from the site of an accident in rural Monroe County to the radiologist in Rochester General Hospital could potentially save that child from losing wrist mobility.

- Professional services may be delivered less expensively

  Using telepractice may reduce patient travel expense when treatment is needed from a provider at a distant location. Similarly, a provider's cost for treating a patient through technology usually involves less overhead expense than an actual face-to-face visit. For example, even though there may not be any pediatric dermatologists within miles, a child living in rural Essex County, suffering from bromhidrosis (a rare, severe condition affecting the skin) could be examined by a pediatric dermatologist practicing at Mt. Sinai Hospital in New York City without having to travel to Manhattan. Similarly, in the engineering profession, a multitude of design configurations that previously could only be transmitted via the postal service can now be transmitted instantly, and real-time changes can now be made in consultation with professionals located throughout the country.

- Telepractice will allow for the delivery of care to previously underserved areas

  Rural and inner-city areas that are currently underserved by general practitioners, medical specialists and other health care providers will benefit from the technology that will allow their residents greater access to services. A radiologist at Memorial Sloan Kettering Hospital, for example, would be able to assist a member of the Iroquois nation in a rural area, remote from health care centers.

- The quality of care may be improved with the use of telepractice

  Both consumers and professionals now have access to resources beyond those available in their immediate area. A patient living in Elmira could have her lab tests immediately analyzed by a specialist in New York City.

Many of these advantages were discussed and demonstrated during the 1997 Regents Conference on the Professions when participants viewed an ultrasound demonstration teleconferenced from Samaritan Medical Center in Watertown to the Bar Association in New York City. Telepractice applications have expanded and are used more frequently since that demonstration. The following examples of health care telepractice projects in the State conform to existing New York State licensure requirements and are indicative of the kinds of services being electronically delivered. Although these examples are drawn only from the health care field, examples in other professions abound.

- *Mary Imogene Bassett Hospital, Cooperstown, New York* – provides community-based care for disabled people in rural areas.

- *CareNet State University of New York (SUNY) Health Science Center at Syracuse* – administers many projects aimed at improving patient care, medical education and research.

- *Department of Correctional Services Telemedicine Program* – operated in conjunction with Albany Medical Center, is used to treat dermatological problems and infectious diseases in inmates, in an effort to reduce the expense and security risk of prisoner transport.

- *Metropolitan Jewish Health System Telemedicine Project* – provides home care services via telemedicine to Kings County in New York City.

- *Telecare at ViaHealth* – based at Rochester General Hospital, focuses on developing emergency room telehealth, including trauma, surgery, stroke, rural to urban triage/transport issues, and ambulance telehealth. The emergency rooms of two city hospitals, including a trauma center and two rural hospitals, are linked, although they are 45 miles apart.

- *Total Dental Access* – a United States military program increases patient access to dental specialty care and treatment. It also promotes the development and application of distance learning for dental continuing education and training.

IV. WHAT ARE THE CONCERNS ASSOCIATED WITH TELEPRACTICE?

While there are many benefits for consumers and practitioners that drive the use of telepractice, there are also concerns and potential dangers associated with its use. Examples include:

- Unauthorized/Negligent practice

  The first concern associated with this complex issue is the danger that may occur when an unlicensed person impersonates as a licensed professional over the Internet or during telepractice with another practitioner. The second issue concerns New York State's ability to hold a professional licensed in another jurisdiction, who is not licensed in New York State, accountable for serving a client in New York State through telepractice when those services are provided negligently or incompetently.

- Substandard or "cut-rate" professional services

  A related issue is the potential for "cut-rate" care or substandard services to be provided over the Internet to New York citizens. Telepractice should supplement, not replace face-to-face provision of professional services when they are appropriate or desired by consumers. There is a risk that, to reduce costs, unethical or ill-prepared practitioners may cut corners in the delivery of care to New York State consumers through technology. We must ensure that the use of telepractice is not substituted for one-on-one direct service delivery when that is the more appropriate mode of care. We must also ensure that the standards used in telepractice are consistent with those employed in face-to-face professional practice.

- Confidentiality

  Medical records and data available on items such as radiology reports, patient histories, or prescription records may contain information that could create the potential for discrimination against the patient. There is a risk that confidentiality might be breached if the electronic transmission of records is not secure. E-mail, like cellular phones and faxes, is susceptible to electronic interception. The potential for compromised privacy often exists because of the presence of technicians and others who may participate in the consultation. There is also the risk of undetected alterations or deletions on electronic records. This is particularly critical with financial and medical records. This concern may be obviated by the adoption of federal standards for the encryption and security of data and by the use of encryption programs, now used voluntarily by many practitioners.

V. CURRENT ACTIVITIES AND NEXT STEPS

Notice to Licensees

A memorandum on the interpretation of the law as it relates to telemedicine was mailed to all physicians, physician assistants and specialist assistants in April 1997 (copy attached). Given the expansion of technology and an increasing number of questions arising concerning practice of the other professions via technology, the Department will provide further information and guidance to **all** currently registered licensees in a direct mailing early in 2000. This advisory will provide the Department's comprehensive analysis of the law as it relates to telepractice in the professions. Following that advisory, with the continuing advice and input of our State Boards and other stakeholders, SED will identify additional practice issues, policy options and relevant information regarding telepractice for this Committee's review.

Consultation with State Boards and Key Stakeholders

In addition to working with our State Boards to more fully assess the role of telepractice in the professions, we are also actively working with other states, jurisdictions, enforcement agencies and professional associations to exchange information about and study approaches to these concerns. At the recent Council on Licensure Enforcement and Regulation (CLEAR) Conference, I met with representatives from throughout the United States and Canada and solicited their cooperation and support in working together to address telepractice issues to ensure consistent implementation and enforcement. Since the possibilities with technology are limitless, it is essential that telepractice is approached in a coordinated way, not by any one state alone.

Consumer Education

Since the use of technology can never be totally monitored, it is absolutely critical for the general public to understand the limitations of the information received via the Internet, its impact on the services they receive, including confidentiality issues, consent rights and potential dangers. A major part of our planned consumer outreach project will be to ensure that consumers understand their rights regarding the use of technology in the delivery of professional services and, know how to access **legitimate** professional services in New York State.

VI. Conclusion

It is not expected that telepractice will ever completely replace the one-on-one relationship between the professional and patient or client. History demonstrates that we must proactively address the advance of technology as it is applied to the practice of the professions. This approach is critical to ensure public protection while encouraging the provision of the best possible professional services. We must work with our State Boards

and key stakeholders within and beyond the borders of New York State, to make sure that we do not unnecessarily restrict the use of technology while ensuring that responsible, safe professional services continue to be provided. Maintaining a system that holds professionals accountable for the care they provide to the residents of our State must be paramount.

Staff will be available to discuss this information and respond to any questions.

Respectfully submitted,

Johanna Duncan-Poitier

Attachment

Approved:

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Date