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**Licensure, Reimbursement and Liability in Telemedicine:
An Academic Perspective**

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Telemedicine is gaining ground throughout the United States healthcare system.¹ Its application and uses are so broad and far-reaching that, as a consequence, experts have had a difficult time restricting the concept to a narrow definition. For example, according to the American Telemedicine Association (ATA), telemedicine is defined as “the use of medical information exchanged from one site to another via electronic communications to improve patients' health status.”² Alternatively, telemedicine.com defines telemedicine as “the ability to provide interactive healthcare utilizing modern technology and telecommunications.”³ While both definitions are accurate and both underscore the general idea, Professor John D. Blum, of Loyola University Chicago School of Law’s Beazley Institute for Health Law and Policy, believes that the definition of telemedicine emanates from the subject of licensure. Professor Blum is a leading authority on the practice of telemedicine and serves on the board of the Center for Telehealth and E-Health Law (CTeL). Professor Blum believes that the state licensing authorities are the best initial source for the definition of

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¹ Alan Joch, *Telemedicine’s Growing Pains: The Risks to Patients and Providers are Growing as Telemedicine Scales to Larger and Larger Populations*, GOVERNMENT HEALTH IT, Aug. 27, 2008, http://www.govhealthit.com/print/4_20/features/350521-1.html.

² American Telemedicine Association, *ATA Defining Telemedicine*, <http://www.atmeda.org/news/definition.html> (last visited November 2, 2008).

³ Telemedicine.com, *What is Telemedicine?*, <http://www.telemedicine.com/whatis.html> (last visited Nov. 2, 2008).

telemedicine. He states, “the most appropriate definition for telemedicine starts with the licensing authorities in the respective jurisdiction in which the provider is based. It involves a patient who is receiving services from some type of electronic medium other than the telephone, primarily through a web-based system.”⁴ Professor Blum emphasizes that as with traditional medicine, telemedicine involves a one-on-one, doctor and patient relationship.⁵

One of the biggest topics of discussion surrounding telemedicine is the issue of liability. As Professor Blum reiterates, “[w]ith any delivery of service, liability is always going to be a big problem.”⁶ He believes the reason telemedicine is particularly fraught with liability stems from “the nature of the interface” and the technological applications involved.⁷ Just like the conventional practice of medicine, telemedicine is confronted with the same variety of liabilities ranging from malpractice to privacy concerns. More accurately stated, exposure to liability is significantly enhanced in a telemedicine practice due to the technological modalities employed. Professor Blum underlines this point saying, “[w]hen you take the traditional environment of medicine and extend it and apply it to a new medium, you open yourself up to new liabilities.”⁸ While he acknowledges that consumers and providers alike are justified in worrying about the legal issues involved, Professor Blum does not see liability as a tremendous or insurmountable barrier.⁹

Nonetheless, the Center for Telehealth and E-Health Law asserts that there are several obstacles that telemedicine must confront and effectively address. Chief of these public policy concerns is that of licensure and reimbursement.¹⁰ In addressing the importance of licensure, the Federation of State Licensing Boards

⁴ Interview with John D. Blum, J.D., John J. Waldron Research Professor, Loyola Univ. Chicago School of Law, in Chicago, Ill. (Oct. 9, 2008).

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ Center for Telehealth and E-Health Law (CTeL), Telehealth and Emerging Technologies, <http://www.ctel.org/Barriers.html> (last visited Nov. 2, 2008).

contends: “Increasing public demand for protection, coupled with the growth in the number and sophistication of fraudulent practitioners over the past two decades, has resulted in stronger and more complex licensing boards and licensing statutes throughout the country.”¹¹ Providers of telemedicine are no less subject to the restrictions of licensure as those who practice medicine in the traditional setting. When asked whether a physician who practices telemedicine in one state can provide services to a patient in a different state, Professor Blum responds, “the simple answer is probably not.”¹² However, he explains further that it is not uncommon for a treating physician to consult with another out-of-state physician regarding a particular patient’s health. Professor Blum comments, “the way the state licensing laws are constructed does allow for occasional consultations to occur.”¹³ He warns, however, that this should not be an on-going or frequent occurrence.¹⁴ The agency with the greatest amount of influence in the licensing arena is the Federation of State Medical Boards (FSMB).¹⁵ The FSMB is a national organization responsible for representing the seventy different medical boards in the United States.¹⁶ Currently, the FSMB is in the process of revising its position on medical licensure and discipline, according to Professor Blum.¹⁷

Along with licensure, the issue of reimbursement is another hurdle that must be cleared in order for telemedicine to gain more ground. Professor Blum states, “[y]ou can do all kinds of things to provide coverage using telemedicine technology as the vehicle, but the problem is how you get the services paid for and whether it will be reimbursed.”¹⁸ Professor Blum sees this issue as “the biggest practical challenge” facing the industry.¹⁹ In addition to licensure and

¹¹ Federation of State Medical Boards, Getting a License: The Basics, <http://www.ama-assn.org/ama/pub/category/2644.html> (last visited Nov. 2, 2008).

¹² Interview with John D. Blum, *supra* note 4.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Federation of State Medical Boards, <http://www.fsmb.org/> (last visited Nov. 2, 2008).

¹⁷ Interview with John D. Blum, *supra* note 4.

¹⁸ *Id.*

¹⁹ *Id.*

reimbursement, it is important to note that telemedicine raises several other liability concerns including privacy, security and confidentiality.²⁰

Despite all the issues and challenges facing telemedicine, “[t]he addition of telemedicine technology to healthcare delivery has had positive effects on the practice of medicine...”²¹ Perhaps most significantly, telemedicine has increased access to health care to geographically or otherwise isolated patients.²² Professor Blum underscores this intrinsic function of telemedicine as he believes telemedicine’s biggest area for growth is in the urban neighborhoods where there is a shortage of physicians treating poor and indigent communities. He stresses that there is great opportunity to reach these underserved populations through telemedicine, and pushes for a concerted development in this area.²³ Notwithstanding the enormous potential for growth in communities like the one mentioned by Blum, it is telemedicine’s effect on liability which requires greater examination if its eventual assimilation into healthcare is to be ubiquitous.²⁴

²⁰ TELEMEDICINE REPORT TO CONGRESS, PRIVACY, SECURITY AND CONFIDENTIALITY IN TELEMEDICINE (1997), <http://www.ntia.doc.gov/reports/telemed/privacy.htm>.

²¹ Glenn W. Wachter, *Malpractice and Telemedicine Liability: The Uncharted Waters of Medical Risk*, TELEMEDICINE INFORMATION EXCHANGE July 2002, available at http://tie.telemed.org/articles/article.asp?path=articles&article=malpracticeLiability_gw_tie02.xml.

²² *Id.*

²³ Interview with John D. Blum, *supra* note 4.

²⁴ Wachter, *supra* note 21.