

By Dr Teoh Ming Keng

## E-Consultations

**A** query was received about the medico-legal issues of setting up an e-consultations project to provide remote consultation to existing patients and new patients through a local doctor. **DR TEOH MING KENG, International Medico-legal Adviser from the Medical Protection Society, replies.**

The Medical Protection Society (MPS) does not currently have a special subscriptions grade for doctors offering the occasional internet advice – which we recognise as part of everyday practice – as many doctors already offer what is effectively a ‘telemedicine’ service in discussing problems with patients and referrals from colleagues by phone or the internet as part of their professional practice. Setting up a dedicated service offering e-consultations, however, may carry additional professional risk and therefore a different subscription rate for professional indemnity.

To enable MPS to assess the risk, you will have to inform MPS of the details such as:

- the countries you will be offering this service to,
- what information and terms of service you will be providing to your patients,
- the likely volume of this service,
- the details of the professionals in your company offering this service,
- the details of professional accountability and liability in terms of referrals, follow-up treatment, and
- the procedures when things go wrong.

Teleconsultations are fraught with potential for medico-legal problems. Although MPS cannot advise you whether or not you should undertake a particular form of practice, MPS can give you some guidance of the issues that you need to be aware of.

The most important issues are those of the doctor’s accountability, duty of care, liability, quality of care, misdiagnosis, the doctor’s responsibility, data security and patient confidentiality.

### RECOGNISED QUALIFICATIONS AND QUALITY OF PATIENT MANAGEMENT

You have the responsibility to ensure that your medical advice is channelled through appropriately trained local healthcare professionals, so that any treatment based on your advice is carried out safely. It may be difficult to know if the expertise of the local doctor is appropriate to carry out your recommended treatment to the standard you are accustomed to in Singapore.

The definition of a “qualified doctor” is normally based on the country where the patients are treated, but qualifications alone are nowadays only the start of a longer journey towards being allowed to practise. More important for professional clinical practice is certification or accreditation. This usually requires the physician to be not only suitably qualified, with a diploma which is recognised or accepted in that country, but also having completed training in approved posts, having the requisite experience and satisfying other set criteria. Therefore you would be well advised to seek the advice of the local professional bodies in that country to help you decide whether that doctor’s experience and qualification is of an acceptable standard.

You should also consult the Ministry of Health and be familiar with their broad guidelines on these issues to see if the service you intend to set up is acceptable in Singapore, and will have the support of your peers.

### DATA QUALITY, SECURITY AND CONFIDENTIALITY

The teleconsultation system in place has to be reliable with respect to the three issues relating to data security: privacy, authenticity and integrity.

Safeguards aimed at limiting access to only those authorised to have access, and to prevent breach of patient confidentiality need to be in place. Privacy and authenticity can be resolved by using audit trails, electronic signatures and levels of passwords. Adequate backup systems are needed to prevent accidental loss of data. Encryption is one method to protect data and

encryption software is available to prevent the original data from being altered, sometimes fraudulently. The integrity and quality of the transmitted data is the responsibility of both the sender and receiver. Therefore agreed protocols and clear lines of accountability are essential in the setting up of this service.

### ACCOUNTABILITY FOR MANAGEMENT DECISIONS

The primary physician in charge locally would normally be accountable for the patient management decisions they make. He has a duty to consider all the available information, weigh the evidence, consider the different options and make an informed decision. He is therefore unlikely to escape liability even if a bad specialist advice or radiology report had contributed to the decision made which resulted in an adverse outcome.

Clinical management decisions are normally based on a combination of facts, not just advice from a single specialist advice or report – and this should be emphasised to the local doctors whenever advice is offered in teleconsultation.

### PROFESSIONAL LIABILITY

In telemedicine, it is arguable whether there is a doctor patient-patient relationship between the remote specialist, who acts more like a consultant, and the patient. However, it may be argued for apportionment purposes that a duty of care exists once the specialist accepts a request to provide medical advice, and if the specialist's advice becomes part of the patient's medical records. The specialist responsible for the advice may be in breach if it can be shown that he has not taken sufficient care when interpreting the information provided in producing his report.

Another factor to consider is that the specialist relies almost entirely on the quality of clinical data provided by the referring doctor and does not have access to the patient for clinical examination, or patient records, when verification is needed.

### GOOD CLINICAL PRACTICE

It is generally accepted that good clinical care must include an adequate assessment of the patient's conditions, based on the history and symptoms and, if necessary, an appropriate examination. The Singapore Medical Council in their booklet *Ethical Code and Ethical Guidelines* (section 4.1.1) states this quite clearly, and also "... Only in exceptional or emergency circumstances should a diagnosis or treatment be offered without personal contact and without the intermediation of the referring doctor." Section 4.1.1.2 (Remote initial consultations) and 4.1.1.3 (Remote consultations in continuing care)

suggest that patient-initiated teleconsultation is "inappropriate" and that only general advice may be given and "No doctor-patient relationship can be established through electronic means and consequently no consultation fee may be received." However it may be acceptable if "... a patient has timely or concurrent access to another doctor who manages him in person. A doctor who provides remote management is responsible for any outcome related to his management."

Providing effective continuing care to patients is another area of concern when consulting with a patient over the internet. There will be difficulties in facilitating the provision of ongoing care and, to a much greater extent than would normally be the case. In a teleconsultation, you will be dependent upon the patient reverting to you before you can provide ongoing care. The mere fact of giving advice in the first instance is often enough to give rise to the duty to provide ongoing care.

Further difficulties arise through internet consultations in that one can never be absolutely confident that the individual that one is consulting with is genuinely the patient or is genuinely suffering from the condition described. You could not, for example, be absolutely confident that the individual concerned was an adult, simply by virtue of the fact that they claimed to be one. It is also, technologically, very difficult to be sure where the individual that you are consulting with is based.

It is important to remember that a Singapore doctor's MPS membership category, (with the exception of good Samaritan acts) is limited to practice based within Singapore. In any event, MPS does not provide indemnity for professional activities undertaken within the United States of America or Canada. When consulting with patients over the internet, the mere fact that you are based in Singapore may not protect you from legal action instigated within other foreign jurisdictions, which may very well be outside the scope of the benefits of MPS membership that you currently hold.

Some may feel that the use of disclaimers on their website may protect them. To my mind, such disclaimers are virtually worthless. In England, for example, a disclaimer that limits or excludes liability for claims in clinical negligence is without effect. The same may well apply in Singapore. Case law and legislation has yet to catch up with this rapidly developing area of telemedicine. It is not yet clear how the legal process is going to be tested, and how liability will be apportioned between the remote specialists and the clinician in charge of the patient. ■

**Editor's note: This article is not meant to be a comprehensive or a definitive guide. For further assistance, Dr Teoh can be contacted at direct line +44 207 3991419 or email [Ming.Teoh@mps.org.uk](mailto:Ming.Teoh@mps.org.uk).**