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When the e-doctor calls

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Amongst recent reports on problems with the growth of e-commerce, a particularly interesting development to note is the use of the Internet in medicine. How will the Internet affect the practice of medicine? Will the government need to regulate ‘telemedicine’? In August (Issue 23) we reported on the formation of the Australian New Zealand Telehealth Committee. This article discusses some of the issues the Committee will need to consider.

Some recent developments

Recent developments in Australia include the following:

- The medical profession’s General Practice Computing Group was reported as saying that 73.2% of GPs participating in the federal government’s incentive program were prescribing medicines electronically. Together with the Department of Health, the Group is hoping to establish projects investigating shared clinical records, patient booking and referral schemes, national standards for hospital discharge summaries, and the use of the Internet as a delivery vehicle.  

- On 24 October 2000, Channel 9’s “A Current Affair” screened a report entitled “Buying contraceptives online: it’s not on”. The Australian Consumer and Competition Commission was reported to have shut down a website which was supplying contraceptive pills, including the morning-after pill, without a prescription.

- A Perth company, BinCom Satellite Systems, plans to deliver medical and general distance-education services to rural areas. The managing director was reported as saying that tele-health and tele-education were key growth areas for them, and they had signed deals with Global Doctor Services and One Touch Systems. It is unclear from the report exactly what types of services BinCom has agreed to provide. For example, trying www.globaldoctor.com takes you to the Global Online website, a large collection of links, mainly to other Internet resources, and includes categories with information on Global Health and Global Pharmacy. On the other hand, www.doctorglobal.com takes you to Doctor Global, a fully interactive service allowing “one-to-one Internet medical consultations” for a fee.

Medical services on the Internet

Telemedicine over the Internet might encompass five broad types of activity. The Internet might be used:

1. to provide general or technical health information,
2. to supply medicinal drugs,
3. as an interactive communication device for diagnosis and treatment,
4. to share electronic health records, and
5. to perform remote procedures using a type of virtual reality.

We can ignore the fourth and fifth categories for the time being. The fourth category is not a new development – debate about the pros and cons of sharing medical records has raged for years. The Privacy Bill before the Federal Parliament at present has specific provisions dealing with medical records. The fifth category is not a real problem yet, although it might become one in the future. The first three categories warrant further comment.

Providing health information

Health information is already freely available in textbooks, encyclopaedias, etc. The Internet merely makes the
information more readily accessible. However, the ease of access has interesting consequences. In the paper world, highly technical medical information would generally only be read by those qualified to understand and use it. Users who wouldn’t otherwise know how to find answers or wouldn’t be inclined to look something up, will now find it more feasible to do so on the Internet.

Non-technical medical information will also proliferate. For example, typical medical conditions and methods of treatment are often described for the lay person, drug manufacturers publicise their products more directly to the ultimate users, etc. In this environment, what quality control methods will be necessary? Will the existing laws of negligence and trade practices (eg misleading and deceptive conduct) be sufficient? Unless the problem manifests itself in a particularly newsworthy incident which entices politicians to intervene, I would venture to suggest the law in this area won’t be changed in the near future.

**Supplying medicinal drugs**

Practising medicine and prescribing drugs are heavily regulated activities in Australian society, as they are in most other countries in the world. But this doesn’t put a halt to the problem of supplying drugs over the Internet. Prosecutions within a state under its own national laws are always possible. As well as the Australian action against contraceptive suppliers, in the USA, for example, authorities took action in August against the Norfolk Men’s Clinic for creating phony prescriptions to sell Viagra and other similar drugs over the Internet.

The problem is more difficult when a state wishes to restrict the activities on foreign sites. In late 1999, a New Zealand pharmacist successfully argued in a New Zealand court that a prescription was not required in the case of exports. This loophole enables online pharmacies in New Zealand to supply drugs to foreigners without a prescription. The NZ government is planning to remedy the situation, but an Internet research analyst suggests “You may plug one leak, but 50 more will spring up.”

The US Department of Justice sees unregulated online pharmacies as a serious problem. US regulations make it illegal to order unapproved drugs from another country, and for overseas pharmacies to sell prescription drugs to Americans without a prescription. US Food and Drug Administration officials have even taken the unusual step of writing to online pharmacies in New Zealand telling them their activities were illegal in the US. But the Administration acknowledges that, under present law, the only method of enforcement involves checking packages at the border. The US Congress is considering steps to alleviate the problem. In May, a proposed Bill (the Internet Prescription Drug Sales Act), which would have allowed the Justice Department to block related financial or credit card transactions, received limited support at a Congressional hearing. In October a new Bill, with support from both parties, was introduced (the Internet Prescription Drug Consumer Protection Act). Its main provisions require online prescription drug sellers to disclose certain information on their website, such as their physical address and details of their license to sell or prescribe. It also requires the seller to notify its relevant licensing authority that it is doing business on the Internet. State Attorney-Generals are allowed to bring action on behalf of consumers in their state who have been adversely affected by violations of the statute. The Bill also charges the Secretary of Health and Human Services with educating the public about the dangers, and submitting a report to Congress with recommendations for coordinating activities against sellers in foreign countries.

**Diagnosing and treating patients**

Let us assume for the moment that a registered medical practitioner is consulted over the Internet, and diagnoses and treats a patient by offering advice. The only real problems one can envisage here are those of authenticating the doctor and patient and obtaining informed consent.

As with the online pharmacy, the patient has an interest in being sure the online doctor is genuine. Apart from consumer protection provisions similar to those discussed above (which might force doctors to disclose certain information about themselves), another option might be to require online doctors to have digital certificates that certify their identity.

The doctor also needs to be sure the patient is not someone who is totally different from the person being described to them, and that the symptoms are genuine. This is difficult to do without a physical examination. It is a little like the medical "agony aunt" column in a magazine advising a patient without seeing them or really knowing what their symptoms are, other than what has been described to them in a letter. Is an email consultation without any method of checking the genuineness of the patient acceptable? Would it be sufficient if a doctor required the patient to certify the truth of the information given, and

disclaimed liability for any loss caused by non-disclosure? If not, would it be sufficient if a communication were supported by a digital certificate that certified the identity of the patient? Would streaming video technology provide a good enough check that the patient and complaint are genuine? These issues may require legislative intervention in the near future.

If such a consultation is to be allowed, the patient might also need to be warned of the inherent risks. This might be part of the doctor’s duty to obtain informed consent, but, in case Internet practitioners don’t recognise the dangers, should they be explicitly required to warn patients of the risks? In Malaysia, the Telemedicine Act 1997 requires them to obtain written consent, and, before doing so, to inform patients:

- of the potential risks, consequences and benefits of telemedicine,
- that they are free to withdraw consent at any time, and
- that information obtained about or from the patient will remain confidential.

The more problematic scenario is where Internet consultations are carried out by unregistered practitioners. A particular difficulty is where the practitioner is in a foreign jurisdiction. They might even be registered in the foreign jurisdiction, but the standards for registration might be different. The Malaysian Act allows foreign medical practitioners to apply for a certificate as a Malaysian telemedicine practitioner, and makes it clear that practicing telemedicine in Malaysia from outside Malaysia without such a certificate is an offence. Foreign telemedicine practitioners also have to practice through a fully registered Malaysian practitioner.

Of course provisions that have extra-territorial effect are usually impossible to enforce unless the culprit enters the local jurisdiction. This brings home once again the global nature of the Internet, and the need for international co-operation in solving these issues.