11-1-2006

New frontiers in healthcare mediation

Marie Bismark

Tom McLean

Recommended Citation
Available at: http://epublications.bond.edu.au/adr/vol9/iss3/1

This Article is brought to you by ePublications@bond. It has been accepted for inclusion in ADR Bulletin by an authorized administrator of ePublications@bond. For more information, please contact Bond University's Repository Coordinator.
New frontiers in healthcare mediation

Marie Bismark and Tom McLean

Introduction

In today's world, patients and hospitals are increasingly looking across the ocean to find the 'right' doctors for their needs. Already it is possible to recognize two modes of commerce for practicing transoceanic medicine. First there is medical tourism, which involves patients travelling to foreign countries to purchase healthcare services at a discount compared with their home country. Second there is international telemedicine, which involves doctors making virtual house calls to patients in remote country via internet-derived technology. Common to both of these practices is a fair degree of uncertainty as to the extent of the healthcare provider's liability for medical malpractice due to undecided jurisdictional law in cyberspace. This article outlines the growth of transoceanic medicine — and the potential for disputes — and suggests that ADR may play a vital role in this brave new world of healthcare.

Medical tourism and the world of extreme safari

Faced with rising healthcare costs, an increasing number of people from developed countries are choosing to undergo elective surgery and dental treatment abroad. The medical tourism industry is predicted to become a multi-billion dollar industry within a matter of years, and it's not hard to see why. Some of the most advanced hospitals in the world are being built in India to cater to Westerners requiring heart surgery. These hospitals offer the luxuries of a 5-star hotel, employ world-class surgeons and nurses, and can provide a coronary artery for a fraction of the price of the equivalent surgery in the United States, with a tour of the Taj Mahal thrown in for good measure. Plastic surgeons in South Africa offer 'surgery, recuperation, and rejuvenation away from public scrutiny' with the option to undergo a face-lift, tummy tuck, or liposuction, recover in luxurious surroundings, and then enjoy an African safari before flying home. One satisfied client explained the advantages of medical tourism in these words: 'The opportunity to see the animals in their natural habitat. To go where man originated, and at the same time, get the plastic surgery I need at a bargain rate is just fantastic.'

While medical tourism is only in its infancy, travelling abroad for elective medical care is expected to increase for several reasons. First, the Joint Commission for Accreditation of Hospital Organizations (JCAHO) has begun to accredit hospitals in several countries outside the United States, including China and India. JCAHO accreditation goes some way towards assuring patients that they will receive the same quality of care abroad as they would receive at home. Second, healthcare insurers are beginning to steer patients to these providers to save money, and some are even willing to cover the cost of a patient's holiday in order to get a substantial discount for medical services.

Telemedicine: from video-conferencing to robotic surgery

Of course, once you get over the idea that patients and their doctors need to live in the same city, the next logical step is take advantage of overseas medical expertise,
and competitive pricing, without the patient ever having to leave home. And that’s exactly what the telemedicine industry offers.

To understand the attraction of telemedicine, just imagine that you’re a radiologist whose job requires you to interpret x-rays overnight for a hospital in Kansas. You have two choices: you can stay in Kansas, where you work all night, and sleep all day; or, you can have the x-rays sent to you electronically to Sydney, where you can live in a beautiful, vibrant city, take advantage of the favourable exchange rate, and work a normal work-day during daylight hours. More and more radiologists are coming to the conclusion that the second option is far more attractive than the first, and Australia is leading the world in the provision of teleradiology services.²

At present, most telemedical services are provided in the areas of radiology and psychiatry. However, there are really no limits on the kinds of services that can be provided in this way. The first cybersurgical operation took place nearly five years ago — when a surgeon in New York removed the diseased gallbladder of a patient in France using robotic tools and a high-speed network connection. While such procedures remain experimental, we can expect that they will become increasingly commonplace.

Like medical tourism, international telemedicine is going to grow for several reasons. Healthcare is one of the biggest markets in the world with most governments spending between 5 and 12 per cent of their GDP on healthcare. While the growth of telemedicine is currently restricted by licensing and registration requirements, such trade barriers cannot be sustained for much longer. Eighty-eight countries have already committed some aspect of healthcare sector to free trade, and trade agreements like GATS push countries to ensure that license requirements are no more onerous than necessary. Like medical tourism, discount healthcare providers will be welcomed in some countries to stimulate price competition; and in other countries because of a paucity of providers. As the cost of the technology comes down there will be virtually nothing to stop telemedicine providers from selling their services anywhere in the world. In essence, just like automotive engineering in the 1980s, and call centres in the 1990s, many health professionals may one day soon find their jobs being out-sourced overseas.³

Great challenges, great opportunities

We already know that hospitals are unsafe places — around one in every 10 patients admitted to hospital is harmed by his or her medical care.⁴ Medical errors kill more people than road traffic accidents, breast cancer or AIDS. There’s no reason to think that these new technologies will be any safer, and many would be associated with new risks of harm. To date, teleradiology in Australia has an excellent track record. But what happens if the power goes off or the software has a glitch, just as a surgeon requires an urgent radiology report on a critically injured patient?

Most countries have well-developed

Contributions to the ADR Bulletin for 2007 are welcome

Please submit articles or notes (between 500 and 4000 words) for publication to:

PUBLISHING EDITOR
Carolyn Schmidt
Richmond Ventures
8 Ridge Street North Sydney NSW 2060

carolyn@richmondventures.com.au

Submissions should be presented as a Word file, attached to an email.
... unlike medical malpractice litigation, in which money is often the only available remedy, ADR can satisfy patients’ needs for monetary and non-monetary forms of accountability (apology, explanation, assurance of safer care).

Many ADR practitioners already work in the areas of healthcare or international disputes. For those with an interest in transoceanic medicine, the time is right to start acquiring the additional training or experience required in order to be able to work comfortably at the interface of these two disciplines. And there is no better place to start than Australia — a country that leads the world in both ADR and the provision of telemedical services.

Conclusions

Healthcare is changing at a dizzying pace and many of the boundaries of what doctors once thought possible are slipping away. Medical tourism and telemedicine are on the rise, and this growth can be expected to continue. Grievances and disputes are inevitable in this increasingly complex healthcare environment, and as the volume of trade in transoceanic medical services grows, so will the number of patients who are harmed by a foreign physician. Yet, the regulatory environment and legal system seem unable to keep pace with the rate of change, and considerable uncertainty exists over the courts’ jurisdiction and the liability of healthcare providers.

Those who enter into contracts for the provision of transoceanic healthcare would be well advised to include ADR clauses in their contracts. In the coming years, ADR practitioners with an interest in healthcare or international dispute resolution can expect an increased volume of work from transoceanic medical providers. Exploring these new frontiers will require courage and a willingness to grapple with uncertainty, complexity, and rapid change. However, the potential rewards are great — for ADR practitioners, healthcare providers, patients and communities.

Marie Bismark is a senior solicitor with Buddle Findlay, Wellington and can be contacted at <marie.bismark@buddlefindlay.com>. Tom McLean is a surgeon and attorney in Kansas and can be contacted at <tmclean@dnmail.com>.

Endnotes

2. <www.nighthawkradiologyservices.net>.