



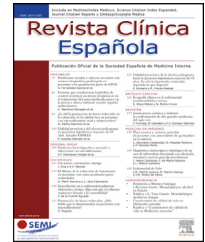
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Revista Clínica Española

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SPECIAL ARTICLE

Telemedicine, ethics, and law in times of COVID-19. A look towards the future[☆]



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Received 7 July 2020; accepted 23 March 2021

Available online 19 May 2021

KEYWORDS

COVID-19;
Telemedicine;
Spain;
Legislation;
Ethics

Abstract The health emergency in Spain caused by COVID-19 was of such a magnitude that on March 14, 2020, a state of alarm was declared that lasted for more than three months. This ongoing pandemic has affected a vast number of people. Among the measures taken to reduce the risk of contagion, visits to health centers have been reduced and virtual consultations have increased. Once the pandemic ends, it will be necessary to consider whether telemedicine should be limited to periods of health crises or whether it could become a new way of practicing medicine. Telemedicine lacks specific regulations and has loopholes that leave physicians with a considerable degree of insecurity. This article analyzes the limits, precautions, and legal standards of the use of telemedicine.

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PALABRAS CLAVE

COVID-19;
Telemedicina;
España;
Legislación;
Ética

Telemedicina, ética y derecho en tiempos de COVID-19. Una mirada hacia el futuro

Resumen La emergencia sanitaria por COVID-19 en España fue de tal magnitud que el 14 de marzo de 2020 se declaró un estado de alarma que se mantuvo durante más de tres meses. Esta pandemia está afectando a un número muy elevado de personas. Para reducir su riesgo de contagio, entre las medidas tomadas se han minimizado las visitas a los centros sanitarios y se han incrementado las consultas telemáticas. Una vez se supere la situación de pandemia, cabrá

[☆] Please cite this article as: Gil Membrado C, Barrios V, Cosín-Sales J, Gámez JM. Telemedicina, ética y derecho en tiempos de COVID-19. Una mirada hacia el futuro. Rev Clin Esp. 2021;221:408–410.

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plantearse si la práctica de la telemedicina queda limitada a situaciones de crisis sanitaria o puede convertirse en una nueva forma de practicar la medicina. La telemedicina carece de regulación específica y presenta lagunas que abocan al médico a considerables dosis de inseguridad. El presente artículo analiza los límites, las precauciones y los estándares legales del uso de la telemedicina.

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Only months ago, we were incapable of imagining the current circumstances. The health emergency in Spain caused by COVID-19 was of such magnitude that on 14 March, 2020, a state of alarm was declared, representing unprecedented circumstances were maintained until 21 June, 2020. Today, the pandemic continues to cause exceptional mortality, particularly in older patients and patients with obesity, diabetes, and hypertension, as well as those suffering from cardiovascular and respiratory diseases.¹

To reduce the risk of disease transmission, hospital visits have been limited to a minimum and telematic consultations have increased, which have become alternatives to conventional appointments.^{2,3} Once the emergency situation ends, the time will come to determine whether practising telemedicine is solely acceptable during healthcare crises or whether it should be incorporated as an alternative or supplementary model to traditional consultations.

Telemedicine offers advantages in terms of sustainability of the healthcare services and improving distributive justice. It could be useful in such situations where there is an insurmountable physical distance between the patient and physician. It could also improve access to physicians for patients with mobility problems, such as patients with disabilities, fragile patients, or older patients. Nevertheless, from a legal perspective, telemedicine lacks specific regulations and has loopholes that leave physicians with a considerable degree of insecurity. This article analyses the limits, precautions, and legal standards of the use of telemedicine.

Regarding possible limitations for its use, the World Medical Association Statement on the Ethics of Telemedicine states that “Face-to-face consultation between physician and patient remains the gold standard of clinical care”.⁴ With good reason, the patient-physician relationship “should be based on a personal examination and sufficient knowledge of the patient’s medical history”. Both the World Medical Association and the Standing Committee of European Doctors advocate for prioritising face-to-face care, earmarking telemedicine for emergency cases, remote monitoring, and inter-professional consultations.⁵

In this same vein, the Ethical Code states that telemedicine on its own “is contrary to ethical norms”; nevertheless, it is appropriate for second opinions and medical check-ups, with clear identification between the patient and physician, which is complex when using these techniques, and while guaranteeing that the rules on confidentiality, safety, and professional secrecy are respected.

And in terms of the unprecedented circumstances presented by the pandemic? The limitations hold fast in the established measures, in regard to patient autonomy, data protection, and compliance with ethical principles. Therefore, to not incur any liability, in their practice physicians must comply with the regular rules and adapt them to these practices. Any relaxation brought on by the pandemic must be safeguarded by measures adopted by authorities in terms of public health, taking into account the urgency or need in accordance with the principle of proportionality.

In terms of precautions to be adopted, it is essential that physicians use platforms that guarantee the protection of patient health data. Therefore, the use of mobile phones or unsecured messaging systems is to be avoided. The Data Protection Agency states that even during emergency health situations, only data required to prevent propagation of the disease may be processed.⁶ Therefore, unlawful, indiscriminate geolocation would not be justifiable, even in the midst of a pandemic. Nor would it be acceptable to use telemedicine and patient data without applying principles such as the principle of proportionality and that of processing the least personal information required to fulfil the purposes: healthcare.

Regarding informed consent, in addition to the regular information provided for in the Patient Autonomy Law,⁷ information related to the virtual consultation process must also be provided. This information includes the rights resulting from the data protection regulation, the possibility of system errors, contact protocols during telematic consultations, prescribing policies, and coordinating care with other professionals.⁸ Apart from strictly necessary and legally established cases, the healthcare crisis does not eliminate patient rights. In addition, professionals must ensure that patients understand the instructions, give consent, and have the necessary means and competence to use the specific electronic communications system.

Professionals who use telemedicine and, therefore, within their right to autonomy decide to use electronic means and, where necessary, determine which means are to be used, must be aware of the reach of their actions and the potential harm they could cause. Therefore, they must be aware of the implications in terms of liability in a setting which involves, in addition to the patient, information and communications technology services providers, as well as other agents.

The lack of clear regulations and the fact that the Ethics Code considers some forms of telemedicine to be ethically

lacking means that physicians must know if their professional liability insurance does or does not cover telematic consultations. In many cases it does not given that, while they may be disruptive techniques with exponential potential, to date they simply are not widely used. The void in the policy could be interpreted as inclusion, as it is indeed a medical action, albeit remote, or as an exclusion, as there are no clear regulations, and it is not ethically acceptable in many cases. Therefore, given the legal uncertainty surrounding this scenario, it is necessary to ensure that practising telemedicine is explicitly included in insurance policies.

Within the legal framework, telemedicine has reached the courts, questioning the praxis used. In general, it is accepted for getting second opinions through various telecommunication channels and as a decision-making aid.⁹ The conclusion being that aspects that do not comply with the *lex artis* include making diagnoses, prescribing treatment, or ordering complementary tests without direct and personal care. Inter-professional consultations to determine a shared diagnosis are considered more appropriate, as is monitoring or follow-up, patient management, provision of healthcare information to the population, and remote training and information for professionals.

In conclusion, telemedicine constitutes a healthcare modality that, in all likelihood, is here to stay, and therefore urgently requires clear regulations that grant the legal security that both professionals and patients need to be able to use it safely and securely. This is the message from the Central Ethics Committee, ratifying the importance of the patient-physician relationship and clarifying that, in pandemic times or not, telematic consultation modalities must be agreed on by both parties and in accordance with the criteria of the physician, who must have sufficient time in the healthcare schedule to ensure the requirements of quality and kindness.

In line with the foregoing, the Committee reinforces the requirement to grant legal security to the implementation of telemedicine given that “These days, multiple legal and ethical questions arise in relation to medical actions carried out via telemedicine and the professional liability of the physician in the event of an erroneous non-face-to-face diagnosis, which will have to be addressed”.¹⁰ There is still much to be done in order to both assess the impact of telemedicine and for it to become regulated, something which we must demand.

Telemedicine could be an effective and safe strategy for improving care for complex and chronic conditions as a complementary service to face-to-face consultations. It could create a collaborative environment in which patient self-care is more prominent, but never to the detriment of the patient-physician relationship. If we are going to implement telemedicine, we must do so under clear, precise, and unambiguous legal coverage. The COVID-19 pandemic has transformed our lives, and it is also transforming medicine.

Funding

This paper was funded by the R&D Medicine and Rights Project: Scientific and Technological Challenges (DEMETYC) PID2019104868RA-I00/AEI/10.13039/501100011033.

Conflicts of interest

The authors declare that they do not have any conflicts of interest.

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