International Outsourcing of Quality Healthcare Through Tele-Medicine: Binding Arbitration Makes Tele-Medical Dream a Reality

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Abstract

The development of communication technologies has a dramatic influence on culture. The internet, cell phones and e-mail are different domains, and if health care professionals want to join this space, they will be careful to do so. Telemedicine has medical-legal implications for aspects of identification, licensing, insurance, protection, privacy and confidentiality, as well as other risks related to online healthcare communication. The International Advisory Group of the World Health Organization (WHO), which met in Geneva in 1997, identified telemedicine as providing healthcare services, where distance is a critical factor, to health care providers, who use the information and communications technologies to exchange relevant information for the diagnosis, treatment and prevention of diseases and injuries, and to continue to do so.

In the context of the COVID-19 Pandemic Lockdown, the Indian Government has authorized telemedicine legal status. The Governing board, established by the Government at a meeting of the Indian Medical Council with the Ministry of Health and Family Welfare's approval, published a notice dated 25 March 2020 ('Amendment') modifying Guidelines of the Indian Medical Council 2002 on telemedicine in India. The amendment introduced 'Telemedicine consultation' to the law.

A basic knowledge of how medical negligence compensation is calculated and adjudicated in the judicial courts of India. The paper concludes with an assessment of the rules. This paper will seek to determine whether binding arbitration is the best possible solution to resolving malpractice disputes, or whether traditional litigation, while costly, is the safest choice. To do this, the paper will examine both the advantages and the disadvantages associated with using arbitration as opposed to litigation.

Keywords: *Outsourcing Healthcare, Tele-Medicine, Tele Medicine Overview, Telemedicine Guidelines, Arbitration; Civil liability, Medical Negligence.*

Introduction

The development of communication technologies has a dramatic influence on culture. The internet, cell phones and e-mail are different domains, and if health care professionals want to join this space, they will be careful to do so. Telemedicine has medical-legal implications for aspects of identification, licensing, insurance, protection, privacy and confidentiality, as well as other risks related to online healthcare communication. The International Advisory Group of the World Health Organization (WHO), which met in

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Telemedicine in India was formally launched on March 30th, 2000, when Bill Clinton— the then President of the United states— commissioned the first telemedicine unit in the village of Aragonda in Southern India, about 200 km from the tertiary care centre in Chennai while he was witnessing a live cardiac teleconsultation[1]

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The demand for telemedicine is rising exponentially. With advances in technology, telemedicine devices are more usable and affordable. Telemedicine has been developed to treat people with minimal access to healthcare services in remote areas. However, it is now a comfort device in the area of healthcare[3]. The increasing use of mobile phones is a significant factor responsible for developments in this field. The availability of mobile apps lets patients monitor their health status. This proactive approach enables them to make use of creative means of accessing health services such as telemedicine.

Digital consultation is a process of receiving a medical opinion without meeting a doctor in person, which is the only distinction from a conventional medical consultation. Digital consultations often allow a physician to engage in discussion with another physician to consult various electronic medical records. The primary objective of telemedicine and remote consultation is to provide adequate healthcare services in India. It includes promoting access to care for wealthy and underprivileged populations, offering easier, cheaper and effective patient interaction, expert follow-up, and monitoring.

In most cases, telemedicine is beneficial. This provides access to healthcare services in remote areas for persons with mobility issues and people with disabilities. This may also overcome geographic barriers to the delivery of healthcare services. It can provide an incentive for the patient and caregiver to minimize health care costs and save time[4]. With telemedicine's advent, a medical practitioner or hospital can consult with a range of specialties, irrespective of where they are located. Telemedicine helps patients communicate more often with their health care providers in a relaxed manner, leading to a greater relationship between the doctor and the patient. Patient check-ups are expected to be higher and could improve outcomes. Telemedicine, in general, has the potential to deliver affordable health care to people.

Mediation and arbitration in medical negligence cases have brought to light the different forms of remedies that victims or patients can seek, in addition to compensation, as well as the limited time it takes.[5] The flexibility of alternative dispute resolution measures allows for the variety of remedies, including (a) admission of negligence on the part of the doctor, (b) institution of training programs to prevent avoidable faults, and (c) emergency training to hospital staff, which by their own admission have provided great satisfaction to the victims.

What is Arbitration?

Arbitration is a more formal and binding form of ADR. Parties are typically represented by attorneys who argue the case before an arbiter or arbitration panel. The arbiter then issues a decision. The main distinction of arbitration is that the arbiter's decision is typically binding. It is popular therefore among parties

who fear the capricious nature of jury verdicts and is seen as a means of risk management. One form of arbitration that is gaining popularity in the healthcare field is the pretreatment arbitration agreement. This is an agreement that patients sign as a condition of being seen by a healthcare provider stating that should a dispute arise, it will be handled through arbitration. Physicians may include such clauses in their initial contracts with new patients and so protect themselves from litigation. Several legal challenges have been raised to these clauses, but in every case, such clauses have been deemed legal and binding[6]. As such, pretreatment arbitration clauses are used by clearly on the rise, whether in agreements between physician and patient, physician and malpractice insurance provider, or patient and insurance company or HMO. Even entire states are starting to require arbitration[7].

The binding nature of arbitration can hurt both the plaintiff and defendant alike, however. The overwhelming majority of times that a physician is sued, there is no negligence involved, as the outcomes of trial litigation have confirmed repeatedly. Physicians may therefore find it advantageous to go to jury trial to clear their names and prove there was no negligence[7]. Binding arbitration means the physicians forego this right and must take their case to an arbiter. Although arbiters award much more modest awards than juries, they are also more likely to award some type of award to the plaintiff whether there is negligence or not[8]. The propensity of arbiters to force compromise is one criticism of arbitration. Other critiques are that it is too rigid and adversarial, only one step removed from an actual trial. Costs are higher than mediation and the process is more acrimonious because lawyers are involved[7]. Satisfaction rates among both parties are lower than mediation and, similar to jury trials, the only form of redress is monetary. Still, there are definite time and cost savings compared with litigation, and the fact that it is binding means many potential lawsuits are diverted from the courthouse.

Arbitration also has some unique strengths. Arbiters can be selected for their unique scientific background. This makes arbitration a particularly good choice for disputes over specific issues of scientific fact. Rather than leaving the matter to a jury that is unlikely to comprehend the issue—or to a negotiation when there is a great discrepancy between the understanding of the scientific issues at play—arbitration has a unique advantage of having a skilled and knowledgeable arbiter as a decider of fact. As a binding decision, arbitration effectively only goes to trial when one of the parties appeals the decision. Even this is expedited, however. The decision of an arbiter can only be overturned for procedural error, bias, or fraud.

Arbitration of Medical Malpractice Claims in a Managed Care System.

In recent years, arbitration has arisen as a proposed solution to many of the problems associated with the litigation of medical malpractice claims. Therefore, we should examine what it is about arbitration that has precipitated this change, and why many HMOs and managed care plans choose to include arbitration clauses in their provider contacts today.

The Strengths of Arbitration

One of the primary benefits of arbitration is that it benefits both providers and patients by limiting the resources that are required to resolve disputes, in terms of both time and money. In litigation, where disputes are resolved by laypersons, jurors must first be educated in the basics necessary to understand the medical issues. This alone can take weeks of expensive trial time under the most ideal conditions. However, even this understates the problem. Jurors not only have to listen and learn, they must also weigh the testimony of different experts who may, in some cases, have divergent opinions about even the most basic of matters, complicating things immensely.

Arbitration, on the other hand, bypasses this learning curve completely. An experienced and knowledgeable arbitrator will not need to be educated about the science, but rather, only about the facts. The

savings in terms of time and money are huge.

The benefits of this speed and efficiency are twofold. Not only does this savings of time mean that complex cases can be resolved more quickly, it also means that small disputes, which under a litigation regime may never have been heard, may now also be resolved providing a benefit to the public at large. Further, as stated above, a reduction in the cost of litigating disputes should, in theory, lead to reduced costs to insurers and lower rates for the insured.

A secondary benefit of arbitration is that it preserves existing relationships. As noted earlier, a significant drawback to the use of litigation in a managed care environment is that litigation tends to polarize parties and pit them against one another, a crucial concern when an entire block of employees may vote to stay or leave a provider at the same time. The collaborative forum provided by arbitration has become important for other reasons as well. As miracle cures are developed for common illnesses, expectations that doctors can treat even the most difficult medical conditions increase. Therefore, doctors may now seek arbitration not only as a cost-cutting device, but also as an appropriate forum to explain to angry patients why they, or their loved ones could not be cured.

A final benefit of arbitration is that it allows qualified fact finders to make decisions based on information given by less biased or even court-appointed independent experts. This factor is of great significance when, as has been noted, the use of jurors in litigation of technical issues often results in long and costly jury trials.

B. The Weakness of Arbitration

Despite the fact that arbitration is generally faster, cheaper and more consistent than litigation, there are also some troubling problems associated with it. One problem with arbitration is that it fails to develop legal precedent in a rapidly changing legal area. This can lead to the squandering of resources through the re-arbitration of previously decided disputes, inconsistent decisions, and other, equally troubling problems. Despite the fact that arbitration allows only for abbreviated process and limited discovery, as a general rule courts have enforced arbitration agreement in provider contracts, rejecting arguments by consumers that they are contracts of adhesion. What effect enforcement of these contracts will ultimately have on poor, disadvantaged, or disempowered groups has yet to be fully determined, but some commentators have expressed concern that the informality of alternative dispute resolution processes too risky for these groups.

Conclusion

Looking at the numbers, India's telemedicine sector's size seems very promising, and with an upward trajectory, one with enormous potential[9]. A recent study by the McKinsey Global Institute estimated that implementing telemedicine technology could save around $4-5 billion annually and replaces half of India's in-person emergency consultations. The Global Market Insight report estimates that the global telemedicine industry will cross a value of $130.5 billion by 2025, with India's market expected to rise to 2.4 per cent CAGR. Telemedicine services can prove to be an effective way to bridge the gap between urban and access to quality care facilities in rural areas. The current Government's strong focus on digitization has served as a catalyst to boost business expansion.

Even so, this industry's fate and future remain uncertain in the absence of consistent rules and regulations on telemedicine services in India. In order to eliminate any possible danger, manufacturing companies can ensure that they comply with all applicable regulations in place and are contractually covered. Additionally, the impact of the Covid-19 has led to an urgent need of availability of alternative platforms of consultation in health-sector for non-chronic and less serious medical problems, keeping in view the risk posed to both the patients as well as the

doctors by physical consultations in hospitals.

The Guidelines mention that 'in the interim period, the principles mentioned in the guidelines need to be followed'. While the term interim has not been defined, this suggests the encouragement to the doctors to use the sector during the lockdown phase. In such situations, the Telemedicine Guidelines is a much-needed initiative.

Several nations around the world have promoted alternative dispute resolution. They have been pragmatic to use administrative ADR wherein administrative bodies dedicated towards. ADR facilitates early settlement of disputes. It may also mean that an important relationship can be repaired and maintained, something which may be at risk in adversarial litigation. This legalistic approach often overlooks other avenues of settlement opportunity, which may better address a client's underlying interests and needs.[10] It must become such a well established part of it that when considering the proper management of litigation it forms as intrinsic and as instinctive a part of our lexicon and of our thought processes, as standard considerations like what, if any, expert evidence is required. Mediation and arbitration in medical negligence cases have brought to light the different forms of remedies that victims or patients can seek, in addition to compensation, as well as the limited time it takes. The flexibility of alternative dispute resolution measures allows for the variety of remedies, including (a) admission of negligence on the part of the doctor, (b) institution of training programs to prevent avoidable faults, and (c) emergency training to hospital staff, which by their own admission have provided great satisfaction to the victims.[11]

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