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Making legal matters easy and economical for your business

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## Newsletter, February 2018 Telemedicine Contracts in California

What is telemedicine? Telemedicine = physicians + technology. Telemedicine has two parts: physicians who provide medical care remotely, plus technology to connect the physicians with patients.

Telemedicine contracts likewise break down into the two parts: the provision of medical services, and the provision of technology. Some telemedicine transactions have a provider of physicians and a separate provider of technology, in which case there are 2 contracts -- one for the physician provider, and a second for the technology provider. Other ventures combine the entire telemedicine package into one contract. The concepts are the same either way.

I'll explain the physician side of the contracts first, and the technology side second. Remember, I address the topic under California law, but other states might be different.

### Physician Side of Telemedicine

In most telemedicine deals, for the provision of physician services, you'll see some variant on a Physician Contractor Agreement or Hospital Professional Services Agreement. This makes sense because the requirements for providing physician services are mostly the same whether the physician provides services in person or via telemedicine.

In general, California does not apply any legal prohibitions to using technology in the practice of medicine, but the medical services must be performed by a California licensed physician (which physician need not reside in CA). The standard of care is the same as if the patient is seen in-person, and all the same legal requirements apply. Hence, when talking about the physician services (as opposed to the technology), the contract for provision of telemedicine physicians should be similar to an ordinary contract to provide physician services.

Make sure that you cover these additional points in the telemedicine contract (as it relates to the physician side of the equation):

1. *Corporate Practice of Medicine*. As always, a party must be licensed to employ the telemedicine physicians and hire out their services for the telemedicine venture. In most cases, this means a California medical corporation will supply the physicians.

2. *Patient Consent.* Written patient consent is required for medical services to be provided via telemedicine. The contract should make one party responsible for getting the patient consents.
3. *Supervision.* Physicians are responsible for supervising all healthcare that runs through them or at their direction, whether the healthcare is done by telemedicine or otherwise, and including services performed by physician assistants and nurses. Hence where a telemedicine physician supervises staff, the physician must meet the applicable level of supervision, irrespective of telemedicine. If the applicable level of supervision requires some form of physical presence, then the physician must meet that standard of physical presence – telemedicine won't work in that case.
4. *Initial Exam & Prescriptions.* In CA, an in-person physical examination is not required before the use of telemedicine; the first contact can be via telemedicine, and the physician may prescribe non-controlled substances. Providers, however, may not prescribe or dispense dangerous drugs or dangerous devices without an appropriate prior examination and medical indication.

## Technology Side of Telemedicine

You need technology to practice telemedicine. Telemedicine doesn't work if the technology doesn't work. The technology is required at two locations: (1) the hospital, and (2) the remote physician. The technology must include, at a minimum, audio and video equipment permitting real-time two-way communication.

In the contract for technology, the hospital likely will require some level of service for the technology, for example, the quality of the connections, the periods and durations during which the technology must be functioning, the level of confidentiality and data security, and more.

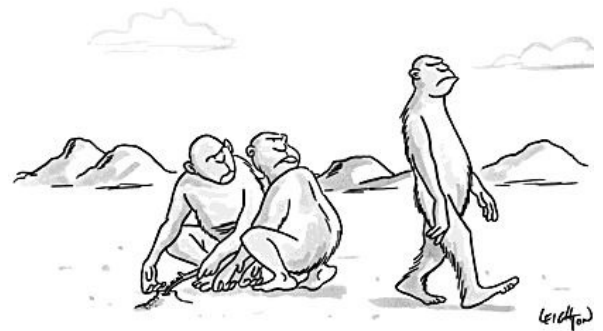
At the hospital's end of the technology (where the patient is located), make sure that you clearly state who is responsible for the technology, including setup of the equipment and software, 24/7/365 availability, maintenance, downtime for upgrades and more. The party that is responsible for the technology should have IT specialists available at all times to fix problems.

At the remote physician's end of the technology, you want the technology to be as simple as possible, even as simple as Skype. The remote physician will not have an IT specialist on-hand to fix problems, so keep it dummy-proof.

Speaking of dummies, this dummy is done with this article. I hope it's been helpful to you.

## Misc.

- To me, being an intellectual doesn't mean knowing about intellectual issues, it means taking pleasure in them. — Jacob Bronowski
- Most misunderstandings in the world could be avoided if people would simply take the time to ask, 'What else could this mean?' — Shannon L. Alder



*"Well, if it isn't the dawn of civilization."*