Teleradiology Legal Issues

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MEDICAL practice has been regulated largely on a state-by-state basis. A state-based legal system cannot readily accommodate the medical services provided through advanced technology and without geographic constraints.

LICENSURE

The states have taken a variety of positions on the question of whether an out-of-state physician must be licensed in the state to provide a report or opinion to a physician in that state. As of March 1997, eight states had passed licensing statutes specifically addressing telemedicine. Most of the states had taken a restrictive approach. Texas serves as an example. The new Texas statute requires health professionals located in other states to obtain a Texas license to perform "an act that is part of a patient care service initiated in this state, including the taking of an x-ray examination or the preparation of pathological material for examination, and that would affect the diagnosis or treatment of the patient."¹ Exceptions are provided for "episodic consultation services" to a Texas specialist practicing in the same medical specialty as the consulting physician, informal consultations performed without compensation, and emergency assistance performed without compensation. At the other end of the spectrum, California has adopted legislation establishing that physicians licensed in other states do not need a California license to provide consultations to California physicians so long as the out-of-state physician does not (a) open an office in California, (b) receive calls from California patients, (c) give orders regarding the care of California patients, or (d) "have ultimate authority over the care or primary diagnosis" of the California patient.²

The American College of Radiology (ACR) has adopted standards for teleradiology that require radiologists providing the authenticated, official interpretation to maintain licensure appropriate to the delivery of radiologic service at both the transmitting and receiving sites.³ Under this standard the physician must be licensed in his/her state and perhaps in the "transmitting" state if the laws of that state so require. As a matter of policy, the ACR has endorsed state efforts to require out-of-state physicians providing official interpretations be licensed in that state.⁴

It appears that it will be years before there is a consistent licensing policy across the 50 states. In the meantime, there will be great legal uncertainty regarding the scope of permissible practice. The issues include: To what extent should a physician's choice of consultant be subject to licensure requirements? Should the physician be able to choose the consultant he/she feels is best even if that consultant is not subject to the jurisdiction of the state's medical board? What is the best alternative to the current licensing process which is expensive, time-consuming, and largely redundant? How is a "consultation" defined? Is a specialist consulting when he/she makes a report or opinion on which the local physician is likely to rely? To what extent are the restrictions motivated by quality and to what extent are they motivated by a desire to protect against competition?

These issues have an impact beyond telemedicine. Multistate group practices depend on collaboration between physicians at their sites. To the extent those collaborations are "regular," they are likely to come within the scope of the laws requiring licensure for "telemedicine" activities. Likewise, primary care physicians who consult and refer patients to a surgeon in another state will typically need to ask questions regarding followup. Those and other traditional physician-to-physician communications may be similarly restricted.

It is unclear, moreover, what law applies when a physician from one state becomes licensed in other states and participates in the diagnosis or treatment of a patient located in one of the other states. Each state regulates its physicians extensively and very differently from its neighbors. State requirements imposed on medical licenses range from confidentiality and medical record authorization requirements to prohibitions on balanced billing, from public health reporting requirements to taxes on physician revenue to fund state health plans. Physicians licensed in multiple states can find themselves subject to conflicting legal obligations.

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0897-1889/97/1003-1009\$3.00/0*

CREDENTIALING

The American College of Radiology Rules of Ethics state that "A diagnostic radiologist should regularly interpret radiographs and other images only when the radiologist reasonably participates in the quality of medical image, utilization review, and matters of policy which affect the quality of patient care."⁵ From a risk management as well as an ethical standpoint, it is advisable that the radiologist comply with that requirement. Hospitals generally must comply with JCAHO accreditation standards which require the credentialing of physicians who regularly perform patient care services at the hospital. JCAHO standards allow the credentialing process to be tailored to the level of services provided and permit reliance on credentialing by other accredited organizations.

RISK MANAGEMENT

The key issues for risk management are storage of films and interpretations and jurisdiction. To evaluate malpractice claims, early access to the interpreted image is essential. Storage of the digitized films is the only way to assure ready access to the image that is the subject of a claim.

Arrangements to regularly provide services to physicians or patients located in another venue (county or state) may subject the radiologist to jurisdiction in that venue. This can complicate the physician's ability to defend the case and will certainly make it more expensive. The "distant" state will have substantive or procedural requirements that are different from the home state. Physicians should verify that their current insurance coverage will extend to activities in another state before initiating services there.

REFERENCES

1. Tex Rev Civ Stat, art 4495b.
2. Calif Bus & Prof Code § 2060.
3. American College of Radiology, Standard for Teleradiology, Section V.
4. American College of Radiology, 1994 Annual Meeting, ACR Council Resolution No. 26.
5. Quoted at American College of Radiology, Standard for Teleradiology, footnote 1.