

Telemedicine practices in prison populations: an ethical revision

Vanina Gilda Ruiz Camerucci

Doctor, received at the FCM of the National University of Cuyo, specialist in Public Health and Health Administration.

Address: Avda. Peltier 351 (5th floor Central Body), Capital, Mendoza, Argentina

Email: dravaninaruiz@gmail.com

Hernando Julian Varela Patterer

Health Promotor, undergraduate : Faculty of Medicine of the National University of Rosario.

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Abstract

Introduction: technological advances are changing the way that health services are provided, migrating in the traditional way face-to-face to the supply of remote services, which requires changes in the standardization of acts and ethical issues. This article provides an ethical review of telemedicine practices, especially in relation to dermatological care in prison populations. **Method:** A bibliographic search on ethics in telehealth was performed using recognized databases, references on the Current Legal Framework of Argentina and the National Telemedicine Plans of Chile and Argentina. Finally, publications on the human rights of persons deprived of liberty. **Results and conclusions:** The main conclusions are: detainees retain all their rights regarding health aspects, with the right to complete assistance, access to clear and appropriate information for a correct understanding of the disease / treatment and with the same rights with regard consent and confidentiality. Your health is the responsibility of the state and must be in charge of the Ministry of Health of each jurisdiction. Finally, telemedicine as one of the greatest innovations in health services should be used as long as all the responsibilities and ethical standards necessary to use telemedicine are met.

Keywords: Telemedicine; Teledematology; Health Technology; Ethic.

Resumen

Prácticas de telemedicina en poblaciones carcelarias : una revisión de aspectos éticos.

Introducción: los avances tecnológicos están cambiando la forma en que se brindan los servicios de salud, migrando de la forma tradicional cara a cara a la oferta de servicios a distancia, lo que requiere cambios en la estandarización de los actos y cuestiones éticas. Este artículo proporciona una revisión ética de las prácticas de telemedicina, especialmente en relación con la atención dermatológica en las poblaciones penitenciarias. **Método:** Se realizó una búsqueda bibliográfica sobre ética en telesalud utilizando bases de datos reconocidas, referencias sobre el Marco Legal Actual de Argentina y los Planes Nacionales de Telemedicina de Chile y Argentina. Finalmente, publicaciones sobre los derechos humanos de las personas privadas de libertad. **Resultados y conclusiones:** Las principales conclusiones son: los detenidos conservan todos sus derechos con respecto a los aspectos de salud, con derecho a asistencia completa, acceso a información clara y apropiada para una comprensión correcta de la enfermedad / tratamiento y con los mismos derechos con respecto a sobre consentimiento y confidencialidad. Su salud es responsabilidad del estado y debe estar a cargo del Ministerio de Salud de cada jurisdicción. Finalmente, la telemedicina como una de las mayores innovaciones en los servicios de salud debe usarse siempre que se cumplan todas las responsabilidades y estándares éticos necesarios para usar la telemedicina.

Palabras-clave: Telemedicina; Teledermatología; Tecnología en Salud; Ética.

Resumo

Práticas de telemedicina em populações carcerárias: uma revisão de aspectos éticos.

Introdução: os avanços tecnológicos estão alterando a forma de prestação de serviços em saúde migrando da forma tradicional presencial para a oferta de serviços a distância demandando assim alterações na normatização dos atos e nas questões éticas. Este artigo faz uma revisão ética sobre as práticas de telemedicina em especial sobre o atendimento de dermatologia em populações carcerárias. **Método:** Se realizou uma busca bibliográfica sobre ética em telessaúde usando bases de dados reconhecidas, referências sobre o Marco Legal Vigente da Argentina e os Planos Nacionais de telessaúde do Chile e da Argentina. Por fim publicações sobre direitos humanos das pessoas privadas de liberdade. **Resultados e Conclusão:** As principais conclusões são: os detentos conservam todos os seus direitos no que diz respeito aos aspectos sanitários, com direito a assistência integral, acesso as informações claras e apropriadas para correto entendimento da doença/tratamento e com os mesmos direitos no que tange ao consentimento e a confidencialidade. A saúde dos mesmos é de responsabilidade do estado e deve estar a cargo do Ministério da Saúde de cada jurisdição. Por fim a telemedicina como uma das maiores inovações dos serviços sanitários deve ser usada desde que cumpridas todas as responsabilidades e normas éticas necessárias a sua utilização.

Palavras-chave: Teledermatologia; Tecnologia em Saúde; Ética.

INTRODUCTION

Medicine, as a science and as a discipline, has always revolved around ethical principles. Its primary purpose, to serve others, has been made by the prototype of the humanitarian profession.^{1,2}

Technological advances are shaping new paradigms in relationships between people. These changes have a direct influence on the provision of health services, replacing in many cases the traditional way in which medicine has been practiced with the offer of medical services at a distance, in real time. Therefore, distance health care involves heterogeneous services and technologies, including communications, databases, Internet and Intranet resources, transmission and archiving of images, encompassing disciplines that go beyond the traditional concept of medicine, impacting on the individuals and communities that receive this type of care.

The importance of medical ethics in this new field of medicine lies in the need to normalize medical acts, in a world in which scientific discoveries and technological advances happen rapidly, opening new possibilities for action.

Telemedicine services have a favorable impact on sector modernization processes, generating opportunities for access to first class medical care in traditionally marginalized communities. Many of the “users” are prison populations, members of geographically isolated communities, people who cannot rely on their own means and/or do not have someone to help them reach a health effect, this practice would contribute to greater equity by offering better use of available resources to a greater number of inhabitants.

Currently in Mendoza, there is a high geographic dispersion and accessibility to second level specialties is very critical and expensive, so technology is an excellent resource to reduce access gaps.

Teledermatology is the practice of dermatology at a distance. Since the diagnosis is mainly based on images, it makes consultation by storing and sending them a very effective way to provide a diagnostic and therapeutic suggestion at a distance. The teledermatology network in Mendoza is made up of public health establishments (health centers, departmental and regional hospitals) and prisons that consult a single provincial reference health establishment, the Luis Lagomaggiore Hospital.¹

Currently, patients who are imprisoned do not want to give consent for remote consultations through the telehealth platform, since for them the transfer to a hospital is a way out of the monotony of their lives. The doctors of the penitentiary services have to deal with the pressure of the imprisoned patients, who prefer to leave the prison by refusing to have the affected area photographed (especially if this implies exposure of intimate parts), to transmit it together with the data from the Clinical History in order to make a consultation with the specialist.

Teledermatology has numerous advantages in avoiding transfers of prisoners, with all that this implies (mobility costs, security personnel, coordination with the hospital), and diagnoses and treatment in a timely manner.

The aim of this report is to be able to analyze whether people in prison can refuse to use the tools that technology offers us today for the care of their health problem. The use of telemedicine contributes to greater equity by offering a better use of available resources, improving people’s health conditions, with the aim of achieving timely diagnosis and treatment, since the existing difficulties in making specialist consultations, added to the difficulty of making them in the reference hospital, leads to a progressive deterioration in people’s health. The objective of the paper is: (i) to recognize the health rights of prisoners of conscience, (ii) to analyze the current regulations regarding informed consent in telehealth practices, (iii) to identify legal or bioethical barriers to the implementation of Telemedicine in the prison population.

METHOD

1. Bibliographic search

A bibliographic search was carried out to retrieve trials, reports on ethics in telehealth. The search included: Cochrane Database of Systematic Reviews (via Wiley Online Library), Medline (Pubmed), SCielo and internationally published journals.

1.1 Current legal framework

An analysis was made of the existing legal framework in Argentina on the rights of persons deprived of liberty, current regulations on telemedicine, and informed consent.

1.2 Background Search

An analysis was made of Chile’s National Telehealth Plan and its current regulations.

1.3 Human Rights Declarations

International publications on the human rights of persons deprived of their liberty were analyzed.

RESULTS

Law 24.660 “Rights of persons deprived of liberty”

Art. 143: “The inmate has the right to health. Comprehensive medical care shall be provided in a timely manner, and access to consultation and prescribed treatment may

not be interfered with. The diagnostic studies, treatments and medicines indicated shall be provided free of charge.

Art. 14: “The inmate may be transferred to a specialized penitentiary establishment of a medical or psychiatric nature or to an appropriate free environment center, when the nature of the case so advises”.

Comments:

Detainees retain all their rights from those who do not deprive them of their condition, therefore, like the rest of the population, persons deprived of their liberty have the right to the widest and most timely access through sanitary levels. The principles of equivalence and integration must be respected.

Law 26.742 “Patient Rights, Medical History and Informed Consent”.

“Article 5: Definition. Informed consent is understood to be the declaration of sufficient will made by the patient, or by his or her legal representatives, as the case may be, issued after receiving clear, precise and adequate information from the professional involved with respect to:

- a) Your state of health;
- b) The proposed procedure, specifying the objectives pursued;
- c) The expected benefits of the procedure;
- d) The foreseeable risks, inconveniences and adverse effects;
- e) The specification of the alternative procedures and their risks, benefits and detriments in relation to the proposed procedure...”

“Article 6: Obligatory nature. Any professional action in the medical-sanitary field, whether public or private, requires, in general and within the limits established by regulation, the prior informed consent of the patient”.

Comments:

The patient must receive clear, precise and appropriate information to ensure the correct understanding of the procedures offered.

Human Rights.

United Nations (UN)

The regulations protecting human rights in force are profuse in terms of the State’s obligation to guarantee adequate

health care. Art. 24: “1... The provision of medical services to prisoners is the responsibility of the State”...

In the “Basic Principles for the Treatment of Prisoners”³ it states in point 1 that “...All prisoners shall be treated with the respect due to their inherent dignity and worth as human beings” and in point 2 “...Prisoners shall have access to the health services available in the country, without discrimination on the basis of their legal status”.

Comments:

The health of the prison population is a matter of public policy, so it should be the responsibility of the Ministry of Health of each jurisdiction in coordination with other State Agencies.

Organization of American States (OAS)

The “Principles of Medical Ethics” agreed by the OAS in 1.982⁴, impose in their principle 1 that “Health personnel, especially physicians, **responsible** for the medical care of prisoners or detainees have the duty to provide protection to the physical and mental health of such persons and to treat their illnesses at the same level of quality as they provide to persons who are not prisoners or detainees...”.

Comments:

This Principle clearly speaks of equity in the health care needs of prisoners and detainees.

Inter-American Commission

The Inter-American Commission on Human Rights, in its “Report on the Human Rights of Persons Deprived of Liberty,”⁵ as well as the surveys and investigations of local bodies, such as the National Prison Service, the Committee against Torture of the Provincial Commission for Memory and the Centre for Legal and Social Studies, outline the impact of detention conditions on the health of persons deprived of liberty. All agree that the structural deficiencies of confinement institutions determine delays, inconveniences and impediments in access to prevention for health, timely, acceptable, affordable and quality medical care.

The repeated difficulty of consulting in health facilities that are more complex than the medical care sectors of penal units deprives detainees of equal access to community health resources. A high percentage of shifts obtained in hospitals well in advance end up being lost for various reasons, requiring a new shift and a new wait, with the consequent progressive deterioration of health.

At present, there are constant non-compliance, unrelated to patients, which results in the need for frequent rescheduling of shifts with different specialists or services,

with the result of wasted resources from health institutions, the denial of access to health care during the months of renewed waiting for prescribed care and the worsening of illnesses.

Monitoring of the right to health and medical care carried out by members of the system in different prison units and prison complexes shows that the response to care is deficient, thereby violating the right to health of persons deprived of their liberty.

Legal regulations in Telemedicine

Telemedicine is considered one of the greatest innovations in health services, not only from a technological point of view, but also from a cultural and social point of view, by favoring access to health care services. However, the regulatory framework is crucial in the field of telemedicine, so it is key to analyze the situation of legal regulations at the time of implementation and development of this service that grows day by day.

However, there is a Code of Ethics of the Confederación Médica de la República Argentina (COMRA) within which there is Article 115, which states: "Practices inspired by charlatanism, practices lacking a scientific basis and promising cures to patients; illusory or insufficiently proven procedures proposed as effective; the simulation of medical treatments or surgical interventions; the use of products of unknown composition, and the practice of Medicine through consultations carried out exclusively by letter, telephone, radio, press or Internet" are not ethical.

Telemedicine is presented as an alternative to avoid overpopulation of health systems and to improve their accessibility. This will require new informed consent models for remote medical practice, a new licensing system and standardization of telemedicine practice, including safeguards on the confidentiality of transmitted information.

Privacy refers to autonomy, freedom of choice and decision on medical treatment, and its expression in electronic informed consent for each use of personal information contained in databases or electronic medical records.⁶

From the ethical point of view, we must bear in mind a fundamental aspect: both the general practitioner and the specialist who performs a medical act on a patient through Telemedicine are integrally responsible for the patient.

As far as Medical Ethics and Telemedicine Legislation are concerned (medicine in general), both issues intersect inescapably, and in no case is one foreign to the other, since the practice of the medical profession is only one, with equal objectives for patients.

Argentina's National Telehealth Plan

The National Plan for Telehealth of Argentina proposes as a cardinal objective the development of a Digital Health

Framework Law, which incorporates a chapter alluding to Telehealth, considering as a priority the protection, privacy and confidentiality of data, regulatory aspects related to data responsibility, regulations of data responsibilities, inter-jurisdictional and transjurisdictional aspects, all in pursuit of guaranteeing people's rights.

Chile's National Telehealth Plan

In Chile, telehealth strategies will be implemented within the framework of current national regulations.

Law No. 20,584, which regulates the rights and duties of individuals in relation to actions related to their health care, provides in article 14 that informed consent is required for all health care and will generally be given verbally.

Telemedicine care in specialty consultations, whether outpatient, hospice or emergency, does not constitute an invasive procedure or a risk relevant to health. Nor do reports of procedures or examinations performed by Telemedicine. In this context, it is not necessary to have a signed record of such consent, it being understood that, in the Medical Care Act, the professional explains to the patient the process of care to be developed through Telemedicine and the continuity of care associated with it.

The Information and Communication Technologies to be used as support for Telemedicine services must comply with the Information Security Law issued by the Ministry of Health and with the provisions of Law No. 20,584 and Law No. 19,628 on the protection of privacy. At this point, it should be mentioned that, if the provisions are complied with, a written record of informed consent is not required to take photographs in the context of medical care or to record telemedicine care carried out by the Videoconference Network.

Responsibilities and ethical standards in the use of telemedicine.

The international literature defines the following ethical principles to be considered for telemedicine care⁷.

Patient - physician relationship

Without neglecting the benefits in terms of better communication and patient care, we must point out possible factors that can change this relationship. These factors are associated with depersonalization or indirect interaction with patients, differences in the consultation process, and the inability of the consulted physician to perform a complete medical consultation, for example, due to lack of physical examination.

This aspect is corrected if in the interaction, the patient is presented to the specialist by a treating physician who performs the physical examination and continuity of care.

Physician's Responsibility

The physician is free and completely independent to decide whether to use or recommend Telemedicine for his or her patient. The decision must be based on the individual's benefit. When telemedicine is used directly with the person, the physician assumes responsibility for the case in question. This includes diagnosis, opinion, treatment and direct medical interventions.

The physician who asks another colleague for an opinion is responsible for the treatment and other decisions and recommendations given to the patient. It is essential that the physician who does not have direct contact with the patient (the physician performing the Teleconsultation) be able to participate in follow-up procedures, if necessary.

When non-physicians participate in telemedicine, the physician must ensure that the training and competence of these other health professionals are adequate to ensure appropriate use of telemedicine.

Role of the patient

It is the physician's obligation to ensure that the patient has received appropriate, clear information and is assured of an understanding of the necessary procedures and indications, as well as to ensure that he or she is physically capable and realizes the importance of his or her role in the process. The same principle should apply to a family member or other person helping the patient to use telemedicine.

Patient Consent and Confidentiality

The rules of user consent and confidentiality also apply to Telemedicine situations. A person's information may be transferred to a physician or other health care professional and must be relevant to the problem at hand. Because of the risks of information leakage inherent in certain types of electronic communication, the physician has an obligation to ensure that all established security protocols for the transfer of information have been implemented.

Quality of care and safety

The physician using Telemedicine is responsible for the quality of care received by the patient and should not opt for telemedicine consultation unless he or she considers it to be the best option available. In making this decision, the physician must consider quality, access and cost.

Quality assessment measures should be used regularly to ensure the best possible diagnosis and treatment through telemedicine. Physicians should not use telemedicine without ensuring that the equipment necessary for the procedure is of a sufficiently high standard, that it functions properly and that it meets recognized standards. Emergen-

cy support systems should be available. Quality controls and calibration procedures should be used to monitor the accuracy and quality of the information collected and transmitted. For all Telemedicine or Telecare communications, an established protocol should be in place that includes issues related to appropriate action to be taken in the event of equipment failure or if a patient has problems while using this tool.

Quality of Information

The doctor who practices medicine at a distance without seeing the patient should carefully evaluate the information he or she receives. The physician may only give medical opinions and recommendations or make medical decisions if the quality and quantity of information received is enough and relevant to the case in question.

Patient's medical history

All physicians using Telemedicine should maintain adequate patient records, and all aspects of each case should be properly documented. The method of patient identification should be recorded, as well as the quantity and quality of information received. Findings, recommendations and telemedicine services used should be properly recorded and every effort should be made to ensure the durability and accuracy of the information stored. The expert who is consulted through telemedicine should maintain a detailed clinical history of the opinions he or she gives and the information on which they are based.

Electronic methods of storing and transmitting patient information may only be used when enough measures have been taken to protect the confidentiality and security of the information recorded or exchanged. There should be an electronic clinical record that ideally interoperates with other health information systems.

Training in Telemedicine

Telemedicine is a promising field for the practice of medicine. Training in this field should be part of basic and continuing medical education. Opportunities should be offered to all physicians and other health professionals interested in medical tele-consultation.

International Association of Medical Informatics

According to the Code of Ethics for Health Professionals of the International Association of Medical Informatics, there are specific principles of computer ethics, which are summarized as follows:

- Privacy and disposition of information,
- Transparency,

- Security, access,
- Legitimate receipt,
- a less invasive alternative,
- Principle of liability

As we can see, all the specific principles of computer ethics focus -basically- on the protection of the privacy of information but from a merely technical point of view. This technical approach is insufficient, for example, if we want to ensure the feasibility of using electronic medical records for the expression of the patient's electronic informed consent.

In the field of health informatics, there are a variety of privacy problems, ranging from the classic problems of confidentiality and individual decisions to the complex problems arising from the creation of databases, storage and multiple access to information. The conditions must be provided for the citizen to exercise control over this information; control that will finally be expressed through informed consent in each use of their information -individual or community-. The aim is to respect and promote the critical autonomy of citizens so that they can exercise control over their own individual information and the well-being of the community. Here is the need to provide a new justification of privacy based on informative self-determination as a basic human right; a right that demands, for its realization, conditions of justice/equity.

DISCUSSION AND CONCLUSION

The main conclusions are as follows:

1. Detainees retain all their rights from those who do not deprive them of their status, therefore like the rest of the population, persons deprived of their liberty has the right to the widest and most timely access through sanitary standards. The principles of equivalence and integration must be respected.
2. The health of the prison population is a matter of public policy, so it should be the responsibility of the Ministry of Health of each jurisdiction in coordinated action with other State Agencies.
3. Telemedicine is considered to be one of the greatest innovations in health services, not only from a technological point of view, but also from a cultural and social point of view, since it favors access to health care services for the entire population.
4. The rules of user consent and confidentiality also apply to telemedicine situations. It is the physician's obligation to ensure that the patient has received appropriate, clear information and is assured of the understanding of the procedures.
5. Electronic methods of storing and transmitting patient information may only be used when sufficient measures have been taken to protect the confidentiality and security of the information recorded or exchanged.
6. The Ministry of Health of Mendoza has implemented the Provincial Telehealth Network, where the Nodes (health centers, public hospitals and penitentiaries) are interconnected through an inter-consultation platform. Telehealth provides a secure platform for handling sensitive information, since it has security mechanisms to safeguard patient information. Therefore, remote consultations through the Telehealth platform have been an excellent way of reducing access gaps for the entire population, including those in prison.
7. Health establishments may provide specialist services by means of telemedicine, which include the diagnosis and treatment of individuals, provided that such assistance is provided in collaboration with a medical team that receives, evaluates and treats patients subject to this modality in person at their place of origin, in this case in penitentiaries, fulfilling all the responsibilities and ethical standards necessary for the use of telemedicine:
 - 7.1 Principle of Non-Maleficence and Beneficence: the physician is free and completely independent to decide whether to use or recommend telemedicine for his or her patient. The decision should be based on the benefit to the patient; and he should not opt for telemedicine consultation unless he considers it to be the best option available. In making this decision, the physician must take into account quality, access and cost.
 - 7.2 Principle of Autonomy: ensure that the patient has received appropriate and clear information. Decision-making is joint, and does not mean that the patient makes an absolute decision, but that the final decision is the result of a dialogue between doctor and patient, in which the former acts as a guide and facilitator, and the latter contributes his or her wishes, values and expectations. It must be discerned whether the denial of the use of telemedicine is linked to the process itself (denial of the transfer of information, use of technology as a diagnostic means) or related to the need to "leave the prison environment", since in the latter option it should not be considered as a reason for the denial of care because of this methodology.
 - 7.3 Principle of Justice: The use of telemedicine would contribute to greater equity, by offering better use of available resources in accordance with their health needs, with immediate accessibility to specialized consultations, improving the health conditions of the person by achieving a diagnosis and treatment in a timely manner; since the structural deficiencies of confinement institutions lead to delays, inconveniences and impediments in access, with a deficient care response, thereby violating the right to health of persons deprived of liberty.

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