

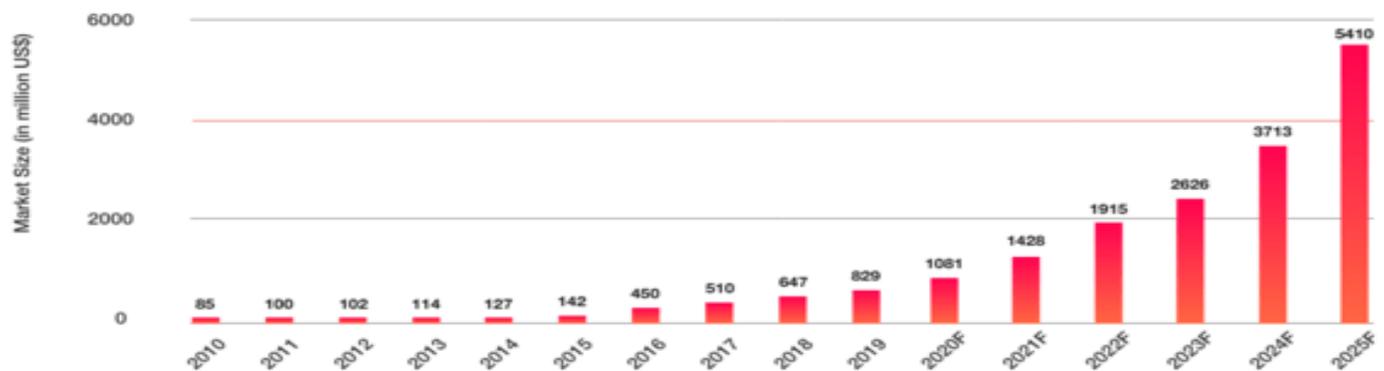
SPECIAL EDITION: TELEMEDICINE

Telemedicine can be best defined as utilization of technology by healthcare professionals to remotely evaluate, diagnose and provide treatment to their patients.

A significant growth is expected in the telemedicine market in the coming years. Factors such as COVID-19 and many patients resorting to digital health platforms keeping the current situation in mind have contributed vastly to it. From approximately \$45 billion value of global telemedicine market in 2019, it is expected to almost triple the figures by 2026.

Telemedicine Market Is Expected To Cross US\$5.5 Billion by 2025 In India

Telemedicine attributes highest market share in India health tech market



Source: DataLabs
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The Health Ministry has shared the Telemedicine Guidelines 2020, defining norms for doctors to consult patients via phone, video, and chat applications including telemedicine platforms and WhatsApp. The guidelines, formulated by NITI

Aayog, were notified under the Indian Medical Council (Professional Conduct, Etiquette, and Ethics Regulation, 2002).

The guidelines, lets the doctor decide whether a face to face meeting with the patient is required

or not depending upon the patient's condition etc. The guidelines also talk about telemedicine consultations between a caregiver and doctor; doctor to doctor; and health worker to doctor.

The doctor's responsibilities: ensuring data privacy, ethics, and maintaining records

1. Ethics, data privacy, and confidentiality: Doctors have to follow existing regulations around ethics, confidentiality, in the Indian Medical Council Regulations, the Information Technology Act, and any future data protection and privacy laws. The Personal Data Protection Bill treats health data as sensitive personal data, and places restrictions on its movement and use.

- The doctor "needs to be cognizant" of existing data privacy laws. For instance, doctors cannot add patients to virtual support groups without the patient's consent. Doctors have to be wary of the patient's willingness.

- The doctor will not be held responsible for any privacy or confidentiality breach, if it was a technology breach or if somebody else was responsible for it.

- Doctors consulting via telemedicine cannot misuse patient images and data, especially private and sensitive in nature, insist on a teleconsultation when the patient is willing to travel to a facility, and cannot solicit patients via any advertisements.

2. Maintain documentation of consultation: It is the doctor's responsibility to maintain the records of the telemedicine interaction and other documents "for the period as prescribed from time to time". This includes patient records, diagnostics, data used in the consultation, and prescriptions

Do checkout the India's Telemedicine Guidelines 2020 issued by the Ministry of Health and Family Welfare, Government of India-
<https://www.mohfw.gov.in/pdf/Telemedicine.pdf>

Medico-Legal issues that can arise out of Telemedicine and How to Avoid
<http://medind.nic.in/jbc/t05/i1/jbct05i1p3.pdf>
<http://www.nmji.in/article.asp?issn=0970-258X;year=2018;volume=31;issue=4;spage=215;epage=218;aulast=Ateriya>
<https://pubmed.ncbi.nlm.nih.gov/16774696/>
<https://www.researchgate.net/publication/286590969> *The practice of telemedicine Medico-legal and ethical issues*
<https://www.intelehealth.org/blog/2020/4/24/indias-new-telemedicine-guidelines-everything-you-need-to-know>



6 Important Guidelines for Doctors:

1. While the doctor needs to collect the patient's details, the patient must also be able to verify the doctor's credentials and most importantly the doctor's registration number.

2. Doctors can ask for proof of age of the patients. An adult family member has to be present for teleconsultation for minors.

3. The patient's consent is implied if they initiate a consultation. If consultation is initiated by the doctor, an explicit consent from the patient (Email/text/video/audio) needs to be kept as a record along with patient history.

4. Doctors can issue prescriptions after confirming the patient's age, and will have to provide the patient a copy of the prescription. To send the

prescription directly to a pharmacy, the patient's explicit consent is required. Doctors can prescribe over-the-counter medicines (List O) such as paracetamol and medicines required during a public health emergency.

a) List A medicines, such as for hypertension and skin problems, can be prescribed during the first consultation & can be prescribed for re-fill.

b) List B medicines, can be prescribed after follow-up consultation, after an initial in-person consultation took place.

5. The same fees will be charged for a telemedicine consultation as for an in-person consultation.

6. Both the patient and the have the right to discontinue the teleconsultation at any stage



MEDICO-LEGAL ISSUES THAT CAN ARISE OUT OF TELE-MEDICINE AND HOW TO AVOID:

In 2013, the Ministry of Communications & Information Technology, Government of India clarified that corporate bodies that collect, store, process or transfer information out of a contractual obligation were not required to obtain consent from the owner of the SPDI for collecting or disclosing the SPDI.^[23] Some electronic services merely facilitate interaction between the patient and the service provider and are not directly involved in the provision of the services. In such cases, the service provider would be considered an intermediary (intermediary under the IT Act is defined) under the Intermediary Guidelines and the IT Act.

LIABILITY IN CIVIL NEGLIGENCE

Civil suits could arise out of a breach of contractual obligations between the telemedicine service provider and the patient/user. The Supreme Court of India has explained negligence as 'breach of a duty caused by the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs,

would do, or doing something, which a prudent and reasonable man would not do'.^[24] The integral components to prove negligence are establishment of duty and dereliction of duty, which are directly related to the damage caused.

LIABILITY IN CRIMINAL NEGLIGENCE

Criminal prosecution takes place before the criminal courts for grounds such as the commission of offences under any criminal statute, most notably the Indian Penal Code, 1860 (IPC) where the negligence is 'gross' in nature and proven beyond doubt. The common charges faced by doctors and other providers of such services are causing death

VICARIOUS LIABILITY

In the provision of eHealth services such as telemedicine where there is an employer-employee relationship, the employer could be proceeded against due to the principle of vicarious liability if deemed liable for acts and omissions of the employee arising in course of his/her employment. The

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principle of vicarious liability does not apply to criminal prosecutions.^[26]

LIABILITY UNDER THE CONSUMER PROTECTION ACT, 1986

The Consumer Protection Act (CPA) allows consumers to claim compensation from service providers in case there is a deficiency in the service provided. Consumers can file claims for defective products and unfair trade practices. Consumer forums have been set up at the district, state and national levels to hear such matters. The Supreme Court in the case of Indian Medical Association versus V.P. Shantha and others held that medical services would fall within the ambit of the CPA, provided the patient is being charged for the service. One of the essential elements of a claim is the payment for the services, as the CPA excludes services that are rendered free of charge.^[27]

Disciplinary control by the Medical Council of India

A patient is entitled to raise a complaint with the relevant state medical council against a doctor for professional misconduct. If a complaint against a doctor has not been decided by the state medical council within 6 months from the date of receipt of the complaint, the Medical Council of India (MCI) may, on its own or on the request of the



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patient, ask the state medical council to decide on the complaint or refer the same to the Ethical Committee of the MCI.^[16] Consumers who are aggrieved by the decision of the state medical council also have the right to appeal to the MCI within a period of 60 days from the date of the order that was passed by the state medical council.^[16]

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5 Steps to Secure Your Medical Practice

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