

Legal Consideration on the Permitted Limits of Telemedicine and Its Responsibility: Focused on the Article 34 in Medical Act

Ki-Min Song, Ho-Young Choi, and Seung-Il Moon

Hanyang University Institute of Aging Society, Seoul, Korea
haieung@hanyang.ac.kr
Health Insurance Review & Assessment Service, Seoul, Korea
moolgatti@hiramail.net
Hanyang University Hospitality Academy, Seoul, Korea
moonsi921@hanyang.ac.kr(Corresponding author)

Abstract. This study aims to understand and analysis the legal criteria and category of remote medical services, to bring up problems, and to propose corrective measures.

Keywords: U-Health Policy, Remote Medical Services, Remote Medical Consultations, Remote Medical Services within the Bounds of the Law and Its Responsibilities, Medical Act

1. Introduction

In Korea, laws which cover remote medical services or U-Health include Medical Act, Health Care Service Act, and Personal Health Information Protection Act. Obstacles to successful remote medical service development are 1) perception that remote medical programs cost too much to run, 2) undeveloped infrastructure, 3) legal issues concerning patient confidentiality in many developed countries[1]. Remote medical service control in the European countries concentrates on information protection, patient confidentiality and agreement[2]. As the need for comprehensive medical services, which concern quality of life by prevention and health promotion as well as the usual medical treatment increases, the laws on remote medical services or U-Health are complementary. Enactment and application, however, is not consistent that it hinders the proliferation of U-Health system[3]. Improvement in the juridical bounds of remote medical services and responsibility rule of medical accident at the remote medical services are required.

This study aims to understand and analysis the legal criteria and category of remote medical services, to bring up problems, and to propose corrective measures so as to promote medical tourism industry. It is also significant to survey the scope of the responsibilities of the remote medical services by considering the plain meaning of “support” in the Article 34 in Medical Act.

Classification of remote medical practices including remote doctor and local doctor, proposal for the responsibility criteria, and necessity for the compensation of responsibility rule in the present Medical Act are also suggested.

2. Understanding of Remote Medical Services and U-Health

2.1 Definition of the Remote Medical Services

Remote medical services provide medical services such as diagnosis, consultation, treatment, and education to the patient at remote place using information technology including reciprocal video, audio, and data communication[8]. The first clause of Article 40 in Medical Act defines the remote medical services as follows: remote medical services are “medical practice by medical personnel such as licensed medical doctor, dentist, doctor of oriental medicine support medical knowledge and technology to licensed local medical personnel in distant space, using information communication technology as computer and Tele-communication.” This kind of concept covers the remote medical services in the narrow sense using information communication technology to support clinical examination, not that in the broad sense comprehending health education, health policy or Tele-health[9].

2.2 Definition of U-Health

U-Health, an abbreviation for ubiquitous health, is a medical service which provides the patients with disease prevention, diagnosis, treatment, follow-up service anytime and anywhere without visiting to the doctor. With the advancement of modern medical science, the concept of U-Health is extending the range of subjects from traditional medical care and treatment towards pre-diagnosis and prevention, and improvement of medical service quality for sustainable healthy life.

International Bar Association endeavors to give a definition to various mixed terms such as health information, remote public health, remote public health information, or remote medical services[10]. National Pension Act defines U-Healthcare as the every activity for evaluation of state of health, diagnosis, and treatment for individuals anytime and anywhere, using ubiquitous network environment[11]; and it covers from remote care services of the patients to general health care services.

3. Current Legal Limits of Remote Medical Services

Medical treatment is a medical management of a patient by the medical personnel for the purpose of recovery; the medical personnel and the patients are the primary agency

Article 34 of the Medical Act defines remote medical treatment and its requirements and responsibilities; the first clause expounds that medical personnel(practicing

Legal Consideration on the Permitted Limits of Telemedicine and Its Responsibility:
Focused on the Article 34 in Medical Act

medical doctor, dentist and doctor of oriental medicine) may conduct remote medical services, which support medical personnel in distant place with medical knowledge or techniques using information communication technology including computer and Tele-communication, regardless of the first clause of the Article 33. Therefore, the plain meaning of the remote medical services is “to provide medical knowledge or techniques from the medical personnel to local counterpart using information communication technology.”

According to the first clause of Article 34 in Medical Act, ‘support of the medical knowledge or techniques’ between the medical personnel in distant place and local counterpart should be interpreted in a restricted and limited sense.

4. Responsibilities of the Remote Medical Accidents

Current Medical Act does not have extra rule for the medical malpractice, but the Civil Code covers each cases according to the principle of default and responsibility for the matter of tort. But the third and fourth clause of Article 34 in Medical Act defines the responsibility of the remote medical treatment.

First of all, the third clause of Article 34 stipulates the responsibility of the medical personnel in distant place, saying that “the remote medical service provider takes the same responsibility with the ordinary medical consultation.” But the fourth clause provides escape clause that if the local medical personnel who conducted medical treatment according to the remote medical service provider is a medical doctor, dentist or doctor of oriental medicine, he or she takes the responsibility on the patient, unless he or she has clear evidence of malpractice of the remote doctor, regardless of the third clause.

Article 34, which uniformly stipulates the responsibility of the current medical services, should be reconsidered in the context of actualities. The responsibility of the remote medical service provider on the third clause should be limited to the case of emergency or to the case when contract between patient and remote doctor was agreed.

5. Conclusion

Current remote medical services stipulate their scope to exchange medical information between medical personnel(medical doctor, dentist, doctor of oriental medicine) using information communication technology, and direct remote medical treatments between patient and doctor are not allowed. But as the various remote medical services are test-operated on the spot, legal system support is required.

Principal agents of the remote medical services are judicially interpreted as the medical doctor, dentists, doctor of oriental medicine in distant place and local medical doctor, dentists, doctor of oriental medicine, midwife and nurse. In the current Medical Act, it is not clear whether clauses permitting ‘remote medical services’ take into account the case when the remote doctor supports local nurse and midwife with

medical knowledge or techniques, but if so, responsibility rules should be classified in case of such situation.

Taking the plain meaning of 'support' and Additional Punishment Law on the local doctor in the fourth clause into the consideration, the scope of the remote medical services permitted by Article 34 would be interpreted as a 'supplementary medical activity such as consultation' not as an 'every active medical activity.' In other words, responsibility rule of the remote doctor on the third clause and the permissible range contradict each other.

Therefore, the responsibility of the remote doctor in the third clause of Article 34 should be limited to the case, which is placed in the same case with the ordinary medical consultation between patient and remote doctor, such as 'the case of emergency or the case when contract between patient and remote doctor was agreed.'

References

1. WHO Library Cataloguing-in-Publication Data, Telemedicine: opportunities and developments in Member States: report on the second global survey on eHealth 2009(Global Observatory for eHealth Series, 2), World Health Organization, 2010.
2. European Commission's Information Society and Media Directorate General, Legally eHealth: putting eHealth in its European legal context, March, 2008. <http://www.epractice.eu/files/media/media1971.pdf>(accessed July 4, 2012).
3. T. M. Song et al., u-Health: Current Status and Tasks Ahead, The Korea Institute for Health and Social Affairs, 2011.
4. G. S. Besses, "Telemedicine: legal issue", S. S. Sanbar, A. Gibofsky, M. H. Firestone, Theodore R. LeBlang, In Legal Medicine, edited by St. Louis: American College of Legal Medicine Textbook Committee, 2007.
5. W. Jang, S. H. Kim, C. Kim, K. Kim, "A Comparative Study on the telehealth regulations between U.S.A, Australia and Japan for developing the Korean telehealth system", Korean Journal of Medicine and Law, 18(1), pp.79-104 2010.
6. L. H. Schwamm, H. J. Audebert, P. Amarenco, N. R. Chumbler, M. R. Frankel, M. G. George, P. B. Gorelick, K. B. Horton, M. Kaste, D. T. Lackland, S. R. Levine, B. C. Meyer, P. M. Meyers, V. Patterson, S. K. Stranne and C. J. White, "Recommendations for the Implementation of Telemedicine Within Stroke Systems of Care: A Policy Statement From the American Heart Association", Stroke, 40(7), pp. 2635-2660, 2009.
7. M., Jeff L. "Digital diagnosis: liability concerns and state licensing issues are inhibiting the progress of telemedicine", Communications and the Law, 19, pp.25-43, 1997.
8. J. Lee and K. Y. Kim, "The Legal Problems about the Medical Liability of the Telemedicine", Korean Journal of Medicine and Law, 9(2), pp.129-151, 2001.
9. Y. Jeong, "A Study on the Civil Liability of Telemedicine and Some Legislative Proposals", The Korean Society of Law and Medicine Semiannual, 7(1), pp.323-386, 2007.
10. Y. T. Lee et al., Mid-to Long-term Plan Establishment for u-Healthcare Activating, Korea Health Industry Development Institute, 2008.