

New guidelines give clarity on telemedicine use in Germany

Telemedicine presents countless opportunities for the provision of effective healthcare. Dr Marian Arning, a Lawyer at Osborne Clarke, describes the current prohibition in Germany in regards to remote treatment and the recent guidelines published by the German Medical Association that provide valuable clarity on navigating this prohibition for the adoption of telemedicine in practice.

In Germany, lobbyists, experts and physicians often claim that telemedicine is impeded by German laws, particularly the prohibition on remote treatment. However, the German Medical Association recently published new guidelines that cast valuable light on this principle¹ and how remote medical treatment can be adopted in accordance with this prohibition.

Model Professional Code for Physicians in Germany

The German Medical Association is the association of physicians in Germany. One of its tasks is to draft and adopt professional codes for German physicians. However, the German Medical Association only adopts a Model Professional Code, which means that a binding professional code must be adopted by the Medical Association of the respective federal state. Usually, these Associations implement the Model Professional Code as adopted by the German Medical Association or do not substantially change the Model Code. As there are many different Medical Associations in Germany, this article refers to the Model Professional Code adopted by the German Medical Association.

The prohibition of remote

treatment is established in Article 7 (4) of this Code:

“Physicians may not perform individual medical treatment, in particular medical counselling, exclusively via print and communications media. It must also be ensured that physicians treat patients directly in the case of telemedicine procedures.”²

The purpose of the prohibition on remote treatment

Remote treatment is prohibited in Germany in order to protect the mutual trust between the physician and the patient as well as to ensure the quality of treatment, as the treating physician does not rely solely on information provided by the patient or by third parties. Rather, the physician gets his/her own impression from his/her own perception of the patient³.

New guidelines from the German Medical Association

Against this background, the German Medical Association published a document in December 2015 that contains information about and explanations of Article 7 (4) of the Model Professional Code⁴. These guidelines are described below. The first part contains legal explanations and interpretations of the said provision:

Treatment vs. information

According to Article 7 (4) of this Code, it is only forbidden to perform individual medical treatment exclusively via print and communications methods. In other words: This provision only prohibits a physician from providing a patient with a concrete treatment (e.g. with a concrete diagnosis or therapy recommendation) without having met the patient in person before. However, according to this provision providing a patient with

general information about a disease by (solely) remote means is not prohibited.

Whether individual medical treatment is performed or whether only general information is provided would need to be assessed in each case according to the guidelines⁵.

Exclusivity

It is important to note that remote treatment is only forbidden by Article 7 (4) of the Model Professional Code if the treatment is exclusively performed via print and communications media. In other words: It is not forbidden to provide remote treatment in addition to the ‘traditional’ treatment of the patient. According to the guidelines it would therefore generally be sufficient if the patient physically meets a physician at the beginning of the treatment, which would then mean that generally treatment could be provided by means of telemedicine afterwards. However, personal contact between the physician and the patient is a requirement throughout the treatment according to the German Medical Association. Against this background the use of remote treatment may differ according to the case at hand - for example in some cases the use of telemedicine procedures may only be allowed for a limited period of time, whereas in other cases the use of such means for an unlimited period of time may comply with Article 7 (4) of the Model Professional Code⁶.

Physicians must treat patients directly also in the case of telemedicine procedures

Also in regards to the use of telemedicine procedures it must be ensured as per Article 7 (4) sentence 2 of the Model Professional Code that a physician treats a patient directly. According

to the guidelines, such direct treatment would occur if the physician recognises or treats the disease or complaints of a patient on the basis of his/her own perception, usually by means of/following the physical examination of the patient. In order for this requirement to be fulfilled, it is necessary for the treating physician to meet the patient in person⁷. It would however also be sufficient for at least one physician to meet the patient and another to provide part of the treatment via remote means. Therefore, if several physicians treat a patient, it would not be necessary for all of the physicians to meet the patient⁸.

Examples

In the second part, the German Medical Association applies these guidelines to typical telemedicine procedures:

Teleconsultation: According to the guidelines teleconsultation procedures can comply with Article 7 (4) of the Model Professional Code. In such cases one physician would provide another physician with findings, so that the receiving physician may render consultative support services on the basis of these findings without having met the patient concerned. Then, he/she would send back his/her results to the first physician (the principal). Teleconsultation services may help to improve medical care as it furthers the means by which experts can support the treatment of patients⁹.

Telediagnosis: Telediagnostic procedures can also comply with Article 7 (4) of the Model Professional Code as per the guidelines. In these cases a physician examines the patient and a physician that is located in a different place makes the diagnosis and informs the patient about it.

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The physician that meets the patient supports the other physician in making this diagnosis¹⁰.

Teleconsultation by a physician vis-à-vis a health professional: Furthermore, it may also be in line with Article 7 (4) of the Model Professional Code as per the guidelines, that a health professional asks a physician for teleconsultation services, for example if a paramedic asks an emergency physician for help¹¹.

Teleconsultation by a physician vis-à-vis another physician and the patient: It may also be compliant with Article 7 (4) of the Model Professional Code according to the German Medical Association if the physician rendering the primary care asks another physician that is not present for consultation services and this physician examines the patient by means of telemedicine¹².

Telemonitoring: Also telemonitoring can comply with Article 7 (4) of the Model Professional Code; in such cases patient data or vital signs are regularly transferred by a patient/device to a treating physician that can monitor this data and adapt the treatment¹³.

Telemonitoring by several physicians in a telemedicine centre: Sometimes telemonitoring is carried out by several physicians that for example work in a telemedicine centre that - in cooperation with the treating physician - may adapt the patient treatment. According to the German Medical Association such systems may also comply with Article 7 (4) of the Model Professional Code¹⁴.

Teleconsultation vis-à-vis a patient without a treating physician being involved: If there is no treating physician involved that has met the patient, a physician may only - without

meeting/having met the patient - provide the patient with general information about a disease as per Article 7 (4) of the Model Professional Code¹⁵.

Results

Although Article 7 (4) of the Model Professional Code constitutes a prohibition of remote treatment in Germany, it is nevertheless possible to introduce telemedicine services in practice. The said provision does not prohibit remote treatment *per se*, but only under certain conditions. Especially if the treating physician has met the patient (at the beginning of the treatment), it is generally allowed under certain conditions to treat the patient using telemedicine. The guidelines published by the German Medical Association provide valuable information on how to implement and use telemedicine procedures in practice.

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1. The guidelines are available in German at: http://www.bundesaerztekammer.de/fileadmin/user_upload/downloads/pdf-Ordner/Recht/2015-12-11_Hinweise_und_Erlaeuterungen_zur_Fernbehandlung.pdf

2. An English version of the Model Professional Code is available here:

http://www.bundesaerztekammer.de/fileadmin/user_upload/downloads/pdf-Ordner/MBO/MBO_EN_Novellierung_2015.pdf

3. See for example Scholz, in Spickhoff (ed.), *Medizinrecht*, 2nd edition 2014, § 7 MBO marginal number 7.

4. http://www.bundesaerztekammer.de/fileadmin/user_upload/downloads/pdf-Ordner/Recht/2015-12-11_Hinweise_und_Erlaeuterungen_zur_Fernbehandlung.pdf

5. *Ibid*, page 2.

6. *Ibid*, page 2 et. seq.

7. *Ibid*, page 3.

8. *Ibid*, page 3.

9. *Ibid*, page 5.

10. *Ibid*, page 6.

11. *Ibid*, page 7.

12. *Ibid*, page 8.

13. *Ibid*, page 9.

14. *Ibid*, page 10.

15. *Ibid*, page 12.