



MEDICAL COUNCIL OF NEW ZEALAND

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Statement on telehealth

Background

1. This statement applies to doctors registered in New Zealand and practising telehealth in New Zealand and/or overseas; as well as doctors who are overseas and provide health services through telehealth to patients in New Zealand.
2. Most doctors already use some form of information and communications technology when providing care, and this has become an integral part of medicine. Telehealth can help patients in isolated locations receive necessary care, provide patients with more convenient access to care, allow for more comprehensive delivery of services after-hours and allow for more efficient use of precious health resources. Telehealth is particularly useful when it is incorporated into an existing system for providing patient care.
3. In using telehealth, you should be aware of its limits and ensure that you do not attempt to provide a service which puts patient safety at risk.
4. In particular, you need to be aware of the inherent risks in providing treatment¹ when a physical examination of the patient is not possible.
5. As a doctor, if you provide care to New Zealand-based patients via telehealth, the Council holds the view that you are practising medicine within New Zealand and you should therefore be registered with the Council.^{2,3} When practising telehealth, you will be subject to the same requirements as doctors registered in and practising in New Zealand. These include the Medical Council's competence, conduct and health procedures and the complaints resolution processes of the office of the Health and Disability Commissioner. The Council will also notify the appropriate regulatory authorities in other countries if concerns have been raised about your practice.
6. You are also reminded that the New Zealand Code of Health and Disability Services Consumers' Rights establishes the rights of patients and places corresponding obligations on doctors with respect to telehealth, as they do with all other forms of health care. This includes but is not limited to informing patients about the provision of telehealth services, explaining clearly your speciality or scope of practice, and seeking the patient's consent before the telehealth service is provided.

¹ For the purpose of this statement, "treating" and "treatment" covers all aspects of the practice of medicine, as outlined the Council's *Definition of the practice of medicine*, including: assessing; diagnosing; reporting; giving advice; signing certificates; and prescribing medicines.

² If you are based in New Zealand and provide telehealth services to patients in New Zealand, you must be registered with the Council and have a valid practising certificate. See also clause 18 of this statement for Council's position with regard to registration where the doctor is in New Zealand but only provides services to patients in another country at the time of treatment.

³ An exception to this rule is when a doctor located overseas is asked by a responsible New Zealand registered doctor to provide an opinion in relation to a patient under the care and/or clinical responsibility of that New Zealand registered doctor. In such cases, the doctor located overseas does not have to be registered to practise in New Zealand. Where input from the overseas-based doctor is likely to be ongoing rather than one-off, it is recommended that the overseas-based doctor have a robust contractual relationship with the New Zealand body, which creates or enables an effective mechanism for dealing with performance and service provision concerns. If you are located in another country and report by telehealth on diagnostic procedures performed in New Zealand or provide treatment to New Zealand-based patients then you should contact the Council to discuss our expectations around registration, recertification and mechanisms to protect public health and safety. Doctors located in another country who provide teleradiology services to New Zealand-based patients should also refer to the Council's Special purpose (teleradiology) registration requirements on <https://www.mcnz.org.nz/get-registered/scopes-of-practice/special-purpose-scope/special-purpose-teleradiology-registration/>

Definitions

7. Council has defined the following terms as:

In-person: Where the doctor and patient are physically present in the same consultation room.⁴

Telehealth: the use of information and video conferencing technologies, to deliver health services to a patient and/or transmit health information regarding that patient between two or more locations at least one of which is within New Zealand.

Video consultation: Where the doctor and patient use information and video conferencing technologies to communicate with each other and visual and audio information are exchanged in real time but the doctor and patient are not physically present in the same consultation room. Video consultations can be conducted between a doctor and patient in the presence of their general practitioner or other health practitioner or it can be conducted with no medical support at the patient's end.

Providing care

8. Any device, software or service you use for the purposes of telehealth should be secure and fit for purpose, and must preserve the quality of the information or image being transmitted.
9. If you treat a patient, you are responsible for gathering and assessing the information used to form a diagnosis, irrespective of its source. If you receive a referral which does not contain the information required to make a fair assessment, Council expects that you will request the relevant information or return the referral to the referrer with a request for more specific information.
10. Council expects that the treatment you provide to a patient in another location meets the same required standards as care provided in an in-person consultation. This includes standards relating to patient selection, identification, cultural competence, assessment, diagnosis, consent, maintaining the patient's privacy and confidentiality,⁵ updating the patient's clinical records and communicating with the patient's relevant primary care provider in a timely manner (unless the patient expressly states that the details of the telehealth consultation are not to be shared with their primary care provider), and follow-up.⁶ If, because of the limits of technology, you are unable to provide a service to the same standard as an in-person consultation then you must advise the patient of this.
11. It is particularly important that you consider whether a physical examination would add critical information before providing treatment to a patient or before referring the patient to another health practitioner for services including diagnostic imaging and pathology testing. If a physical examination is likely to add critical information, then you should not proceed until a physical examination can be arranged. In some circumstances, it may be reasonable to ask another practitioner in the patient's locality to conduct a physical examination on your behalf. In those instances, it is important that you obtain the patient's consent for that arrangement, communicate your request clearly to the other practitioner, and are available to answer any queries that the other practitioner might have.
12. Specific distance medical services have been demonstrated to provide safe and effective care and are the subject of College approved clinical guidelines. Such guidelines may place additional requirements on your practice.⁷

⁴ While the consultation room is commonly used in many clinical settings, there are a number of specialties such as radiology where the patient and doctor may not be in the same room and the doctor may delegate the responsibility for examining or attending to the patient to another health practitioner. What is important in such a situation is that the doctor is proximate, available and can be called upon if clinically necessary in line with best practice for that particular discipline or specialty.

⁵ See also the section on 'Privacy and confidentiality' on page 11 of the Royal Australasian College of Physicians' *Telehealth: Guidelines and practical tips*.

⁶ In February 2001, a charge was laid before the British General Medical Council after a doctor prescribed Xenical and Viagra to a patient over the internet. In its judgment, the Professional Conduct Committee noted that it "did not consider that the standard of care given to patients or the prescribing practice of a doctor should be different, whether through the internet or otherwise." The doctor was suspended from practice for three months. In a separate case, heard by the GMC in 2009, a Fitness to Practise panel imposed conditions on a doctor who prescribed a range of medicines to patients over the internet. In this case, the panel dismissed several allegations and noted that the level of communication was sufficient to obtain a safe history with respect to some conditions, and also noted the need to ensure appropriate monitoring. However, several other charges were proven, and the doctor's online consultation was found to be inadequate in one case because the format did not allow him to appropriately inform patients of the risks and benefits of treatment or ensure their consent. In addition, his prescribing was described as "inappropriate, irresponsible and not in the best interests of ... patients" because the format of one consultation did not allow him to consider alternative diagnoses and because he did not advise the patient's general practitioner of the treatment prescribed.

⁷ In particular the Royal Australian and New Zealand College of Radiologists' standards of practice on teleradiology should be the first point of reference for those involved in teleradiology.

13. If you work with or receive reports from telehealth providers, you should ensure that the above standards are followed and must notify that telehealth provider, their management and /or other appropriate reporting channels if you have concerns about the quality of care being provided.

Prescribing⁸

14. There are legal restrictions on issuing prescriptions.⁹ Issuing prescriptions by electronic means only does not meet the current New Zealand legislative standards. In particular it is noted that:
 - Under regulation 39 of the Medicines Regulations 1984 no doctor is permitted to prescribe medication to an individual unless it is for the treatment of a patient under his or her care.
 - Prescriptions must be legibly and indelibly printed and personally signed by the prescriber with his or her usual signature (not a facsimile or other stamp). Therefore those issued only by email or other electronic means do not meet current New Zealand legislative standards under regulations 40-41 of the Medicines Regulations.
15. You may issue a prescription, including repeat prescriptions, only when you:
 - have adequate knowledge of the patient's health obtained by gathering and considering the patient's relevant medical history and all other relevant clinical information (preferably including the patient's full clinical record)¹⁰
 - are satisfied that the medicines or treatment are in the patient's best interests
 - update the patient's clinical records. If you are not the patient's usual doctor, you must ensure that information about any prescriptions you issue are provided to the patient's regular doctor.
16. Before prescribing any medicine for the first time to a patient, Council expects you to have an in-person consultation with that patient. If this is not possible because of exceptional circumstances,¹¹ consider a video consultation with the patient¹² or discuss the patient's treatment with another New Zealand registered health practitioner who can verify the patient's physical data and identity. When these options are not possible or practical, it may be reasonable practice to:
 - complete a prescription for a patient if you are providing cover for an absent colleague or are discharging a patient from hospital and have reviewed the patient's notes.

⁸ See also Council's statement on *Good prescribing practice*.

⁹ In 2001, the Auckland District Court convicted a doctor who had been involved in the internet sale of prescription medications and sentenced him to a term of imprisonment for the following offences under the Medicines Act 1981 (Police v Roy Christopher Simpson, Auckland District Court, 17 October 2001):

- Selling by retail a prescription medicine other than under a prescription given by a medical practitioner or designated prescriber.
- Selling by retail a prescription medicine without being a pharmacist or other authorised person.
- Publishing or causing to be published a medical advertisement that was likely to mislead any person with regard to the use and/or effect of that medicine and which failed to give sufficient information on precautions, contraindications and side effects required by regulation 8 of the Medicines Regulations 1984.
- Publishing or causing to be published a medical advertisement that failed to make statements required by regulation 8 of the Medical Regulations 1984 to be made in an advertisement relating to medicines of that description, kind or class.

A finding of the Hamilton District Court and affirmed in the High Court (Ministry of Health v Ink Electronic Media Ltd and others, Hamilton District Court 12 December 2003) and Ministry of Health v Ink Electronic Media Ltd and others (High Court, 18 August 2004) looked at another case of internet prescribing and considered the meaning of "under his or her care" in section 39 of the Medicines Regulations. The Court held that as a minimum there must be:

- Some information given about the patient to the doctor.
- An acknowledgement by the patient that the doctor is his or her medical adviser for this purpose.
- The doctor accepts responsibility for treating the patient for the condition referred to.

¹⁰ In an emergency, responding to the acuity of the patient will be a matter of priority and this may result in prescribing without adequate information about the patient's medical history. It is important that all medicines prescribed in an emergency are documented in the patient's clinical records.

¹¹ Examples of exceptional circumstances include the urgency of the clinical situation or the unavailability of a doctor. It is good practice to document in the patient's clinical notes, the mode of the consultation and the reasons for not conducting an in-person consultation before prescribing any medication for the first time to a patient.

¹² If you conduct a video consultation, you must take extra care to ensure that a physical examination of the patient is not necessary. If in the course of a video consultation it becomes clear that a physical examination is required, you must inform the patient and arrange for a physical examination. In instances where the physical examination is to be conducted by another health practitioner, you must ensure that you outline clearly what follow-up is required.

- renew a prescription of a patient you, or a colleague in the same practice, have seen previously, following a review of its appropriateness for the patient. When the prescription has potentially serious adverse effects, you should regularly assess the patient.
- complete a prescription when you have a relevant history and there is an urgent clinical need to prescribe, provided that you inform the patient's regular doctor as soon as possible.¹³

You must give careful consideration before prescribing any medication with a risk of addiction or misuse or psychotropic medication, and ensure that there are robust systems in place to manage the care of these patients. It is never appropriate to prescribe medicines with a risk of addiction or misuse, or psychotropic medication, for the first time to a patient who has not been appropriately assessed in person.

17. Where an electronic system is used for any aspect of prescribing, it must comply with relevant standards pertaining to electronic prescribing in the location where the prescription will be filled.¹⁴

Providing care to a patient located outside New Zealand

18. If you are in New Zealand and only provide telehealth services to patients who are located in another country, then you are not required to be registered with the Council. However, you may be subject to the jurisdiction where your patient is located, and it would be sensible to familiarise yourself with the requirements of that country.
19. When providing care from New Zealand to patients in another country, then you remain subject to New Zealand law in areas such as prescribing and you may be subject to other legal obligations, requirements or liabilities in the location where your patient is. You may also be subject to the jurisdiction of authorities in your patient's home country, and may be liable if you assist patients to contravene that country's laws or regulations, for example, any importation and possession requirements. You should seek legal advice in that country if necessary.
20. If you are registered with the Council and provide telehealth services to patients overseas, Council will apply its standards (rather than the standards applicable in the location where your patient is) in relation to your conduct and fitness to practise medicine.

¹³ For example, when a public health physician prescribes prophylactic medicines for family members of a patient, after that patient has been diagnosed with a serious communicable disease.

¹⁴ See also regulations 41(a) and (b) of the Medicines Regulations 1984, and clause 37 of *Good prescribing practice* which states that a prescription written in New Zealand has no validity overseas.

Related resources

- *Doctors and health related commercial organisations*
- *Use of the internet and electronic communication*
- *Good prescribing practice*
- *You and your doctor*
- *The New Zealand Code of Health and Disability Services Consumers' Rights*
- *College of Intensive Care Medicine of Australia and New Zealand's Guidelines on the use of telemedicine in the intensive care unit*
- *Royal Australasian College of Physicians' Telehealth: Guidelines and practical tips*
- *Royal Australian College of General Practitioners and Australasian College for Emergency Medicine's Guidelines for interprofessional collaboration between general practitioners and other medical specialists providing video consultations*
- *Royal Australasian College of Surgeons' position paper on Telemonitoring and teleassessment of live surgery*
- *Royal Australian & New Zealand College of Psychiatrists' Professional practice standards and guides for telepsychiatry*
- *Royal Australian and New Zealand College of Radiologists' Teleradiology standards*

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This statement is scheduled for review by June 2021. Legislative changes may make this statement obsolete before this review date. The contents of this statement supersede any inconsistencies in earlier versions of the statement.