



PERILS OF RECORDING TELEHEALTH CONSULTATIONS

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THE COVID-19 pandemic has necessitated rapid uptake and use of telehealth, unmasking a “number of concerns potentially not previously contemplated by clinicians, patients and legislators”, according to the authors of an Ethics and Law article published today by the *Medical Journal of Australia*.

“Recording of clinical conversations or processes may enhance patient and clinician participation, self-reference, research, education and funding,” wrote the authors, led by Dr Caitlin Farmer, a radiology registrar at Monash Health, and Dr Patrick Mahar, a dermatologist at the Skin Health Institute and the Royal Children’s Hospital Melbourne.

“In certain jurisdictions, however, clinical consultations or meetings may be lawfully recorded with or without participants’ knowledge, and may later be accessible to the patient, including for use in future legal or disciplinary proceedings, potentially stifling candid discussion,” Farmer and colleagues wrote.

“This and the challenging obligations relating to data management technicalities represent real risks for clinicians and health services.

“It is incumbent upon health care providers and lawmakers alike to consider these issues in a practical context, ensuring that telehealth is not only a useful tool but a safe and effective one.”

Farmer and colleagues wrote that before recording a consultation, clinicians needed to:

- obtain informed consent for clinician-led recordings;
- be aware of potential patient-generated recordings (both declared and undeclared); and,
- meet legal, privacy and storage requirements pertaining to health information arising from a virtual consultation.

While the benefits of virtual consultations include participation of family members, the opportunity to observe the patient in their home environment, increased access, decreased risk of infection, and benefits to research, billing and coding, there are dangers for both the patient and the clinician, Farmer and colleagues wrote.

“The home setting allows for involvement of parties (seen and unseen) potentially contrary to the patient’s best interests,” they wrote.

“Pertinent examples include family violence or elder abuse contexts, where presence of offenders may jeopardise the clinical encounter and may pose direct risks to the patient in the periconsultation period and subsequently via covert audio or video footage.

“In the telehealth context, a wide audience can potentially review video footage of the consultation, as if they were there, for an indefinite period.

“This may have implications for the practicalities and duration of storage required of such material, its latent role as discoverable documentary evidence in future litigation ... and in substantiation of episodic care funding.

“Clinical interactions may incorporate questions or discussions that, while appropriate sequentially, may appear inappropriate, deficient, discourteous or misleading if taken out of context or distilled to a single statement or query,” Farmer and colleagues wrote.

“Recordings, and their potential edits, could be used by patients in a maladaptive manner, engender abnormal illness behaviour, or make a participant consciously or unconsciously feel the need to perform or otherwise change clinical interactions.”



When patients record consultations without the knowledge of the clinician, consequences depend on locality.

"The legality of recording a private conversation without consent depends on the state or territory where the person undertaking the recording resides, as surveillance legislation is largely a matter for these jurisdictions," wrote Farmer and colleagues.

"In New South Wales, South Australia, Tasmania, Western Australia and the Australian Capital Territory, it is an offence to record a private conversation. However, in Victoria, Queensland and the Northern Territory, it is lawful to record a private conversation without consent if you are a party to the conversation.

"In certain jurisdictions, patients can secretly record a consultation without the consent of the clinician and this recording may be used in legal or disciplinary proceedings.

"Practical measures to prevent patients from secretly recording screens include disabling the in-built recording functions in telehealth platforms, using platforms lacking this recording option, and employing programs preventing screen recording or superimposing watermarks including publication preclusion.

"However, such measures will not prevent another party from recording a consultation with an additional device."

Recording clinical conversations may enhance patient and clinician participation, but its potential use in future legal or disciplinary proceedings poses risks for clinicians and health services.

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