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### "Take two aspirins and e-mail me in the morning": A daylong Conference Tackles Issues in Telemedicine

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# Law School Report:

## “Take two aspirins and e-mail me in the morning”

**A daylong conference tackles issues in telemedicine**



Mail

**Telemedicine — the delivery of health care at a distance from the medical provider — covers a broad range of services, everything from remote diagnosis, counseling ...**



Alan S. Goldberg

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n interdisciplinary approach to an interdisciplinary subject — that was the context for “Telemedicine: Evolving Legal and Regulatory Issues for the Health Professions,” a daylong conference held April 28, 2000, in the University at Buffalo’s Center for Tomorrow.

Telemedicine — the delivery of health care at a distance from the medical provider — covers a broad range of services, everything from remote diagnosis, counseling and monitoring of patients, to patient education and e-mail, all the way up to telesurgery and computer-assisted diagnostics.

It is a rapidly evolving field that involves special legal issues. The conference was organized by the Health Law Concentration at the UB Law School with co-sponsorship from the UB Schools of Medicine and Pharmacy. The attendees included representatives from a broad professional group — health care lawyers, doctors and nurses, pharmacists and medical librarians.

Speakers tackled a range of topics including the specific legal issues that may be raised by telemedicine for physicians and pharmacists; questions of confidentiality and privacy; the jurisdiction of federal agencies such as the FDA and the FTC; and fraud and abuse matters. The meeting was chaired by UB Law School Clinical Associate Professor Sheila Shulman. UB Law Professor Anthony Szczygiel and Associate Professor James Wooten chaired sessions. Julie Bargnesi, a registered nurse and partner in the Buffalo firm of Damon & Morey LLP, and Cindy Kaplan

Bennes, a pharmacist and partner in the Buffalo firm of Phillips, Lytle, Hitchcock, Blaine & Huber LLP, made presentations. Both Bargnesi and Bennes are UB Law alumnae. Other speakers included representatives of the US Food and Drug Administration, the Department of Justice and the Department of Health and Human Services.

The morning keynote address gave some idea of the complexity and scope of the issues involved in telemedicine. The speaker was Alan S. Goldberg, a health care lawyer with the Boston firm of Goulston & Storrs, former president of the American Health Lawyers Association and co-author of the book *Telemedicine: Emerging Legal Issues*. In a rapid-fire delivery that was evidence of his Brooklyn upbringing, Goldberg ranged through a number of themes that set the agenda for the day.

“Technology is but a tool,” he be-

Back





gan. "Information is power. Remember back in history, how information was something sought-after and difficult to obtain. Today, imagine the world as millions and millions of filing cabinets, and they are all open."

Telemedicine, he said, is not as brand-new as it might seem. Physicians as far back as the 1930s experimented with delivering care by telephone. The difference today, of course, is the reach and quality of the technology involved.

But "PCs are only part of what telemedicine is," Goldberg said. He cited the Navy, whose stateside surgeons are equipped to perform surgery robotically on patients aboard aircraft carriers at sea.

With e-mail and the World Wide Web at the disposal of a majority of Americans, a world of interactive medicine is being opened up — and with it, a world of legal challenges. He cited the example of New York Mayor Rudolph W. Giuliani, who is battling prostate cancer. "What if he wanted to consult with a physician in another state who was the best in the world on this disease?" Goldberg asked. "If he thought he could just call him up or send him an e-mail, in a

**... and monitoring of patients, to patient education and e-mail, all the way up to telesurgery and computer-assisted diagnostics.**



substantial number of states, that would be a violation of Board of Registration rules and state statutes. There are lots of licensure challenges."

Surprisingly, though, he said, Medicaid and Medicare have "dozens and dozens of reimbursements for telemedicine, especially in areas where there are shortages of physicians." They even provide a telemedicine exemption to anti-kickback and fee splitting rules — the consulting physician and the referring physician can split a fee without penalty.

Still, though, Goldberg said, "Medicine is the last bastion of DTM — dead tree media. Go into any medical office and you will see stacks of paper. For now, the biggest challenge of medicine is that we are still in a paper-centered world, not a patient-centered world.

"There are also issues of encryption and security that have to be dealt with. Privacy is an emerging concern under telemedicine. But there is one device that is far more challenging than any new technology: the hospital elevator. Loose lips sink ships, as we used to say in the Navy."

Telemedicine has relevance not only for health care professionals, Goldberg said. "The Internet is a form of telemedicine. You can find on the Internet today an extraordinary amount of medical information. This is all about the patient being empowered. It is not about the physicians being empowered."

He added a cautionary note: "On the Internet, you have to be very careful, because you never know what the source is of the information. You always have to use some analysis."

But again, Goldberg said, the telemedicine revolution is changing the way people experience their health care, largely for the better. "The forecast I will make," he said, "is that in several years the notion of the patient having to say, 'May I please see my medical information?' will be about as silly as the patient having to say any number of things like 'What are you doing to me?' before something is done to you. You do not have to say that anymore, because you get 37 different consent forms. Now people have gotten the message that we have to tell patients what we are doing to them."

**For more information, see any of Goldberg's Web sites:**

[www.healthlawyer.com](http://www.healthlawyer.com)

[www.telemedicinelawyer.com](http://www.telemedicinelawyer.com)

[www.healthfraud.com](http://www.healthfraud.com)



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