

CITY UNIVERSITY OF HONG KONG
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Medico-Legal Aspects of Telemedicine Practice
with Special Reference to Cross-Border
Telemedicine Practice between
Hong Kong and Mainland China
實踐「遠端醫療」的醫療法律責任：
特別論及香港和中國內地之間的
跨境「遠端醫療」實務

Submitted to
School of Law
法學院
in Partial Fulfillment of the Requirements
for the Degree of Doctor of Juridical Science
法學博士學位

by

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December 2012
二零一二年十二月

ABSTRACT

Telemedicine has changed the methods of communications between health practitioners and patients by breaking both territorial frontiers and boundaries between different health professionals. It has also enhanced people's access to health care for previously not-easily-accessible populations and improved quality of health service, as well as strengthened discourse between patients and health practitioners. However, the development of telemedicine is impeded by legal uncertainty, *inter alia*, as not every society pays sufficient legal attention to this technological advancement. Hong Kong and China are no exception.

It is anticipated that the demand for cross-border clinical exchange and services between Hong Kong and China will grow. To facilitate a sustainable medical development, it is important to have a proper understanding on the law and regulations in the respective jurisdictions, especially the potential medico-legal liability of health practitioners and health institutes as well as the rights of patients before telemedical services rocket across the two territories.

This thesis conducts a critical review to the potential medico-legal liability of cross-border telemedicine between Hong Kong and China with reference to international treaties, national/domestic laws, rules and regulations, professional guidelines and practical experiences in different countries, aiming at offering a legal reference to health practitioners and institutes providing the state-of-the-art services and to patients who receive online health services across the two territories. A further hope of this study is to at least arouse the interests of certain stakeholders with authority in checking the need for cross-border telemedicine, not for today but for tomorrow, and examining the current readiness including the legal aspects to support the sustainable growth of telemedicine in Hong Kong, China and across the two territories.

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Code of Alabama

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Oregon, Medical Practice Act

Pennsylvania Statutes

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Reinstatement of Law (Third) of the Foreign Relations Law

Standards for Privacy of Individually Identifiable Health Information under the
Health Insurance Portability and Accountability Act 1996

List of Abbreviations

<u>Words or Expressions</u>	<u>Descriptions</u>
ADR	Alternative Dispute Resolution
Arrangement	Arrangement on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters by the Courts of the Mainland and of the Hong Kong Special Administrative Region Pursuant to Choice of Court Agreements between Parties Concerned (關於內地與香港特別行政區法院相互認可和執行當事人協議管轄的民商事案件判決的安排; <i>guān yú nèi dì yǔ xiāng gang tè bié xíng zhèng qū fǎ yuàn xiāng hù rèn kě hé zhí xíng dāng shì rén xié yì guǎn xiá de mǐn shāng shì àn jiàn pàn jué de ān pái</i>)
CEPA	Closer Economic Partnership Arrangement
Chinese HMA Regulation 2002	Regulation on the Handling of Medical Accidents of People's Republic of China (中華人民共和國醫療事故處理條例; <i>zhōng huá rén mín gòng hé guó yī liáo shì gù chǔ lǐ tiáo lì</i>) 2002
Chinese Tort Law 2010	Tort Law of the People's Republic of China (中華人民共和國侵權責任法; <i>zhōng huá rén mín gòng hé guó qīn quán zé rèn fǎ</i>) 2010
CNST	Clinical Negligence Scheme for Trusts of the National Health Service Litigation Authority,

<u>Words or Expressions</u>	<u>Descriptions</u>
	England, United Kingdom
DICOM	Digital Imaging and Communication in Medicine
EC	European Commission
EHR	Electronic Health Records
EU	European Union
GDP	Gross Domestic Product
ISP	Internet Service Provider
IT	Information Technology
MRI	Magnetic Resonance Imaging
NHS	National Health Service, England, United Kingdom
NHSLA	National Health Service Litigation Authority, England, United Kingdom
Rome I Regulation	Regulation (EC) No. 593/2008 of The European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations
SIREN	The Security in Regional Networks
SNOMED	Systematized Nomenclature of Medicine
UK	United Kingdom
UN	United Nations
US	United States of America
USB	Universal Serial Bus
WHO	World Health Organization