

Telemedicine: Modern marvel or indemnity headache?

By [Dr Elizabeth Meyer](#)

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Telemedicine allowed medical professionals to interact during lockdown with patients regardless of the physical limitations caused by the Covid-19 pandemic. But is this a future solution for medical care or rather a massive new indemnity headache for health professionals?



Image source: Tira Miroshnichenko from [Pexels](#)

The Covid-19 pandemic changed the world irrevocably and it had a significant effect on the medical industry. It accelerated a worldwide shift to telemedicine and this will certainly lead to insurance and regulatory change. The emergency caused the Health Professions Council of South Africa (HPCSA) to relax the previous strict regulations regarding telemedicine and allow virtual consultations. It also changed the name “telemedicine” to that of “telehealth” to allow other health specialists, such as psychologists, to practise virtually.

The HPCSA has subsequently been urged by many medical aids to bring about permanent regulatory acceptance and has confirmed that the regulations will be reconsidered after the pandemic ends. Be as it may, telemedicine is here to stay and is increasingly gaining traction. Patients have got used to the ease of a virtual consultation in the comfort of their own homes and doctors can consult more patients.

Although doctors are now allowed to consult with patients outside South Africa, insurers are generally not indemnifying Healthcare Professionals (HCPs) consulting outside the borders of South Africa.

Will telemedicine increase insurance premium rates? It remains to be seen exactly what the situation is after the pandemic, but a gut response is that if more patients are seen, there may be more potential liability. Experienced doctors have expressed concerns that the chances of a misdiagnosis or failure to identify important signs are much higher as there is no face-to-face contact and physical examination.



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Most patients are notoriously incorrect in their descriptions of symptoms and signs and often have pre-conceived diagnoses which may influence their description of the complaint. Many doctors have expressed concern that telehealth will weaken the doctor-patient relationship and lead to more long-term dissatisfaction. This may ultimately lead to more complaints and claims.

Medical practitioners, especially those doing elective surgery, took a massive knock during the pandemic. Patient numbers were down between 60% and 90%. Generally, there were fewer complaints and claims. Most insurers decreased their premiums or gave premium holidays to policyholders. However, now with the patient numbers rising and elective surgery fully scheduled, it is expected that complaints and claims will increase significantly.

Insurance premium rate increases have slowed but are expected to return to more normal increase patterns as the pandemic becomes part of our lives. It is expected that most practices will be busier than ever post-pandemic. Unfortunately, there is no immediate end in sight for opportunistic claims, the increase in pay-outs and rising legal costs.

However, change may, in the long term, be on its way to help the medical profession and indemnity providers out of the existing chaos. The South African Law Reform Commission (SALRC) was requested by Dr Aaron Motsoaledi – at that stage Minister of Health – to investigate medical-legal claims in South Africa.



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At the end of 2021, the commission published an in-depth discussion paper. Data was cited indicating that approximately 50% of medical negligence claims are of the cerebral palsy type (of which a small fraction result truly from a birth injury and obstetrician negligence). The report also indicates that in South Africa, no legislation exists to specifically address medical-legal claims.

The issues identified and the interventions proposed by the SALRC are praiseworthy, sensible and the body should be highly commended. However, as stated in the paper:

“ *The best legislation in the world will not make any difference unless it is applied, implemented, complied with and monitored.* ”

Economic factors are increasing the risk of litigation. The cost of appropriate care continues to rise and is more technical, specialised and depersonalised.

With the advent of managed healthcare more than 20 years ago, healthcare funders have increasingly vetoed clinicians' decisions, making it impossible to provide the appropriate care. In these situations, a number of adverse results may occur and may lead to complaints or claims. This situation is unlikely to improve. HCPs must consider very carefully before entering into contracts with funders.

The healthcare and professional indemnity systems are both undergoing rapid change. Unfortunately, although there are opportunities for better care, economic factors may increase risks. The possibility of legislative change exists but finally, the importance of the patient-doctor relationship and the duty of care, can never be over-emphasised.

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