SUBJECT: H250-A/08 ONLINE MEDICINE

SUBMITTED BY: Bureau of State Government Affairs

REFERRED TO: Ad Hoc Committee

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1 RESOLVED, that the American Osteopathic Association adopts the following draft policy
2 white paper regarding Online Medicine**; AND, BE IT FURTHER**

3 RESOLVED, THAT THE BUREAU OF STATE GOVERNMENT AFFAIRS
4 MONITOR DEVELOPMENTS IN ONLINE MEDICINE ON AN
5 ONGOING BASIS AND UPDATE THIS WHITE PAPER AS NEEDED.

EXPLANATORY STATEMENT: THIS RESOLUTION WAS SENT TO THE HOUSE OF DELEGATES FOR REAFFIRMATION IN 2008 AND REFERRED TO THE BUREAU OF STATE GOVERNMENT AFFAIRS FOR UPDATING.

ACTION TAKEN **APPROVED AS AMENDED**

DATE **7/17/09**

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AOA Draft Policy Statement
Online Medicine

The identification and treatment of medical problems is no longer restricted to the doctor's office. The development of websites that allow consumers to receive medical information over the Internet is growing rapidly. Over 100 million Americans have utilized the Internet to answer medical questions; this information has had a profound effect on how patients view their health.[1] There are a number of methods by which doctors are reaching their patients through this technology. Some doctors have utilized e-mail as a way to conduct online consultation; others are opting for medical software that is designed to help patients identify symptoms and narrow down diagnoses. However, each method poses its own difficulties for patients and doctors. The AOA recognizes the benefits of online technology to the medical field, and its ability to assist many patients who would not normally have access to medical care, but the AOA also acknowledges the special challenge for osteopathic physicians whose philosophy of a hands-on approach is hindered by the use of Internet technology. The AOA strives to put in place a policy that promotes wellness and safety for patients, and remains concerned over some practices that raise legal and ethical problems arising out of the use and misuse of online technology **as a substitute for face-to-face care**. The capabilities of the Internet offer many great opportunities to help doctors and patients, but it should always enhance an established doctor-patient relationship, not replace it.

Liability for Treatment and Diagnosis

In a case where direct treatment and consultation through online technology might result in the appearance of a medical error, questions of liability are likely. The hospital, the doctor, or both could be subject to a medical malpractice suit.[2] Medical malpractice can be generally defined as a health care provider's professional negligence by act or omission in which care provided deviates from accepted standards of practice in the medical community and causes injury to the patient.

There is some concern that online consultation opens physicians up to liability by allowing them to make decisions about a patient's health without actually examining the patient. Doctors who are promoting online medical information or consultation are quick to distinguish their program from one that provides diagnoses over the web; however, it is not always clear where to draw the line. For example, one program, EasyDiagnosis.com, utilizes online software that allows consumers to select one major complaint or symptom, and then answer 20-25 questions related to that complaint.[3] The system supplies patients with a number of possible diagnoses ranked in order of probability.[4] The site does **not** recommend a course of treatment, and there is no e-mail access to doctors.

Doctors who support these programs seem to suggest that by not recommending a course of treatment, they are not practicing medicine online. This does not appear to be a safe assumption, especially when injured patients are contemplating a lawsuit. Doctors argue that the disclaimers on sites clearly state they are not giving out medical advice. However, given the current crisis surrounding liability insurance, taking such risks is not necessarily a prudent move for doctors already straining to hold on to their practices. Additionally, while disclaimers are a necessary policy, they do not protect patients from taking online

information as gospel, and misapplying it to themselves. One solution is that online consultations should only occur after a previously established doctor-patient relationship.[5] However, it would be extremely difficult – if not impossible – to keep consumers who are not current patients from accessing a physician's web page without instituting extreme security measures.

Liability of Individuals

Proponents argue that e-mail is a viable option for scheduling appointments, requesting prescription refills, and follow-up questions after an initial visit. However, it also raises the possibility of doctors extending the use of consultation through email or software to patients with whom they have no prior relationship. E-mail consultation has become a high-tech addition for computer-savvy doctors looking to address the overwhelming number of questions received regarding consumers' health concerns. Doctors can clarify treatment plans and provide guidance to consumers who are confused by the medical information that is already available online. Supporters see this technological advance as giving power to consumers through easily accessible information. The hope is that the resource will create better dialogue between doctors and patients.

Liability for Companies

Both individual physicians and groups using these high tech methods of bringing health information to patients have cause for concern. The creators of the software for EasyDiagnosis.com developed and market their web-based software as an interactive medical decision-making software for consumers and health care providers.[12] The company warns that the "reliability of the program obviously depends on the information supplied by the physician and/or patient," and provides a disclaimer that it is not making diagnoses, however, many patients could be easily misguided by such a program. The company even goes as far as to disclaim any liability for "misdiagnosis, damages, injury, or death occurring to any patient whose findings are entered herein."[13] Disclaimers such as these are commonplace and necessary, but rarely shield a company from liability. Patients consistently look for the deep pockets, and EasyDiagnosis.com is an appealing target.

Some doctors started utilizing online technology believing it would be more time efficient; unfortunately, they are finding just the opposite.[14] While online technology has certainly emerged as a useful tool in health care; several studies have suggested deficiencies in the quality and usefulness of Internet-based health information for some purposes. One study, by the University of Michigan at Ann Arbor, found that e-mails did not help decrease the number of phone calls from patients, and missed appointments occurred just as frequently in the non-email group compared to the e-mail group.[15] Given the risks involved with treating, diagnosing, and prescribing medications without an established relationship, and the fact that studies undermine the quality of Internet-based health information, it is clear that the benefit of saving time does not outweigh the risks involved. This policy, currently in affect, supports patient safety over efficiency, and addresses the issues surrounding liability:

RESOLVED, on-line consultation done without establishing a doctor patient relationship, or without a licensed independent practitioner to receive the consultative opinion (who has established an appropriate relationship with the patient), is the practice of medicine, and does not meet an acceptable standard of medical practice. The absence of an appropriate established doctor-patient relationship may place physicians and the companies providing these services at risk for liability. A doctor-patient relationship can only be established through at least one face-to-face meeting. A consultation may occur when a licensed physician who has not met the patient in a face-to-face

meeting is called upon to give his or her treatment advice to another licensed practitioner who is treating the patient within their scope of practice.

Online Prescribing

One of the emerging issues within medical practice via the Internet is online prescribing, encompassing both the prescriptive power of doctors and the distributive power of pharmacists. Part of the difficulty in regulating the sale of pharmaceuticals on the Internet is the wide variety of federal agencies that have partial authority over online prescribing. One action the federal government has taken is to establish task forces to prosecute licensed physicians, who distribute drugs without prescriptions across state lines.[16] Still, most of the regulation of online prescribing is left to states.

Under existing law in the majority of states, prescribing drugs to patients living or residing outside the state where physicians are licensed is considered the unlicensed practice of medicine.[17] Because prescription drugs can have potentially harmful side effects and dangerous contraindications when taken with other prescriptions or over-the-counter medications without proper instruction or follow-up, most states' laws require establishing a physician-patient relationship before prescribing drugs to patients. Unfortunately, state medicine boards cannot regulate or prevent all forms of online prescribing.

RESOLVED that prescription drugs should only be prescribed over the Internet by a physician who has been directly involved in the patient's physical evaluation, has knowledge of the patient's medical history, and has knowledge of the other medications that the patient is currently taking. Allowing a physician to diagnose, prescribe, and dispense medications to a patient via the Internet without having taken a history and completing a physical examination is unethical and places the patient in a position of unnecessary risk, and the physician in the position of unnecessary liability.

The AOA therefore supports legislative and regulatory efforts that require establishing an appropriate doctor-patient relationship, as defined by the individual state boards of medicine and osteopathic medicine, before diagnosing and prescribing medicines online.

Several states have taken various approaches to regulating online prescribing.[18] **Colorado's** medical board disciplines doctors who prescribe medications without seeing patients, **Illinois** has passed a law requiring an Illinois pharmacy license for any Internet site that ships to patients in Illinois, and **Nevada's** Board of Medical Examiners prevents physicians from prescribing over the Internet unless they have seen the patient.[19] Also, some state attorneys general have taken action to prevent the sale of pharmaceuticals in their states.[20] However, before 1999, very few doctors or pharmacists have been punished for Internet prescribing.[21] Since 1999, **Arizona, California, Connecticut, Michigan, Missouri, Kansas, New Jersey, Pennsylvania, and Texas** have taken legal action against individuals and companies that conduct online dispensing of prescription drugs.[22]

Historical Action Against Illegal Prescribing

Cases are starting to emerge demonstrating the states' strong reaction towards prescribing drugs without first examining the patients.

The states are not the only ones concerned about these cases; the private sector has also attempted to regulate prescribing over the Internet. Since 1999, the National Association of Boards of Pharmacy (NABP) Verified Internet Pharmacy Practice Sites has certified Internet pharmacies. Certification is available to

pharmacies that follow the licensing requirements for their states and for each state to which they ship drugs.[25]

On May 28, 2002, California Governor Gray Davis announced that the California State Board of Pharmacy had fined pharmacists $88 million for alleged violations of a California Internet prescription law passed 18 months previously. The law requires that Internet pharmacies fill prescriptions only after a patient receives a medical examination from a licensed California physician. The State of California alleged that over 3,500 prescriptions were written based on online patient questionnaires.[23]

On May 29, 2002, an Oklahoma doctor involved with the now-closed Nationpharmacy.com was sentenced by a U.S. District Court to 51 months in a federal prison, ordered to forfeit $660,000 in illegal gains, and will likely have his medical license revoked in June after being convicted of the federal crime of conspiracy to distribute controlled drugs. The Department of Justice alleged that the doctor had been giving prescriptions for controlled drugs over the Internet to patients who had not undergone physical examinations.[24]

Another Internet-aided program that is particularly troublesome for individual doctors is called MyDoc.com. MyDoc.com is advertised as the "first fully-integrated, 24 hour online healthcare service providing everything from physician-directed assessment and treatment recommendations to prescriptions and follow-up care."[6] This web-based service is targeted to individuals who are sick, or those responsible for caring for sick people; this means that the program is actually marketing itself to consumers without any contact with physicians who have actually seen the patient. MyDoc.com provides "symptom-based *diagnosis* (emphasis added) with the option of immediate on-line treatment by a board certified physician including prescription services."[7]

This program may save consumers time, but clearly places their health at risk. Physicians who support this technology say that they are not giving diagnoses and therefore, they are not practicing medicine. However, advertising by MyDoc.com tells a different story. Licensed physicians monitor patients, and may request further information before diagnosing, but there is no requirement that the physicians actually see the patients.[8] Physicians may be risking a sanction in their respective states because of unsafe practice. On October 15, 2002, the Illinois Department of Professional Regulation (DPR) took action to stop the company from treating patients.[9] The DPR alleged that MyDoc.com violated Illinois law because the site was providing diagnosis and treatment without a prior physician-patient relationship and without physically examining the patient.[10] Furthermore, the DPR said MyDoc's program violates the Illinois Medical Practice Act because persons not licensed as physicians were providing these services.[11]

Licensure Concerns

While the majority of doctors who favor the use of online technology insist they are not practicing medicine by engaging in Internet-based consultations, others have argued to the contrary. If the pro-Internet doctors who use this technology are found to be practicing medicine, then they may face serious licensing issues. Since internet technology has allowed the practice of medicine across state and sometimes, international

lines, several licensure problems can arise. A doctor who maintains a site in Illinois could easily reach patients who are accessing the system from another part of the country. In this case, there are questions as to where the doctor who maintains the site should be licensed; should a doctor be licensed in the state where he is located, or the state where the patient is accessing the information?

Licensure of medical professionals and facilities was intended to accomplish several goals, but most importantly, establish an acceptable standard of care in the medical community that will ensure the welfare of the state's residents. The FSMB has remained true to this goal throughout the growth of telemedicine. Since 1994, at least 24 states have passed laws addressing licensure for physicians utilizing telemedicine technology; these are: **Alabama, Arizona, California, Colorado, Connecticut, Florida, Georgia, Hawaii, Idaho, Indiana, Illinois, Kansas, Mississippi, Montana, Nevada, New Mexico, North Carolina, Oklahoma, Oregon, South Dakota, Tennessee, Texas, Utah,** and **West Virginia**.[26] In 1996, the FSMB adopted model legislation to require doctors who want to practice medicine across state lines by means of internet technology to obtain a special license with reduced price, examination, and credentialing requirements.[27] So far, only six states from the above list enacted legislation consistent with the FSMB, these are: **Alabama, California, Montana, Oregon, Tennessee,** and **Texas**.[28]

In 2000, the FSMB adopted model guidelines stating they expect "physicians who provide medical care, electronically or otherwise to maintain acceptable standards of practice."[29] Therefore, in a case where direct treatment and consultation through online technology results in poor outcomes, the hospital, the doctor, or both could be professionally liable, and possibly risk losing their licenses.[30]

Licensing groups have looked at several options such as the use of a consulting exception to the licensing law, endorsement of physicians in other states with equivalent standards, and limited licensure to name a few.[31] In effect, a particular state would recognize the out-of-state license if equivalent standards for licensing existed between the states.[32] Many states are skeptical about allowing a special license for the practice of medicine across state lines via the Internet. Opponents argue that doctors should have a full and unrestricted license in every state in which they practice. They fear that limited licenses will lead many out-of-state doctors to be less qualified to practice in a state than their in-state counterparts.[33] Alternatively, disallowing special or consultant licensure could be construed as interfering with the power of states to regulate health care workers and a barrier to interstate commerce. The U.S. Constitution permits states the authority to regulate activities that affect the health, safety, and welfare of their citizens, including the regulation of physicians' activity.[34] However, opponents to this type of regulation could argue that limiting or controlling physician licensure when physicians are practicing interstate is a *violation* of the Constitution because it places a restraint on interstate trade. While the argument presents an interesting defense, courts have not yet addressed the issue of whether a state's decision to limit the practice of medicine in their state to physicians licensed in that state is in fact a restraint on trade.

The question of what constitutes a legal practice of medicine is in many ways left up to each state's interpretation. Still, most states still require full licensure in the practicing state.[35] **Indiana** and **Texas** specifically include electronic consultations in their definition of what constitutes the "practice of medicine". In Indiana, consultations with a doctor through "electronic communications" on a "regular, routine, and non-episodic basis" are considered to be the practice of medicine.[36] Consequently, in order for a doctor located outside the state of Indiana to consult with a patient within the state, the doctor must be

licensed to practice medicine in Indiana. The definition in Texas works somewhat differently. In Texas, any type of patient care, including interpreting an x-ray through the use of internet-technology devices, is the practice of medicine. However, doctors located in a state other than Texas may provide episodic consultation along side another doctor who practices in the same medical specialty as long as the doctor licensed in Texas supervises the patient.[37]

California has taken another approach by allowing physicians to practice consultation through online technology as long as they are licensed in one of the fifty states; however, there are some restrictions. The physician must obtain verbal and written consent from the patient who must be informed of all the risks involved in online consultation.[38] Unlike **Indiana** and **Texas**, **California's** laws seem to promote the use of online technology. The statute requiring informed patient consent does not apply to phone or e-mail consultations.[39] Instead, the law seems to protect only those patients who communicate through other computerized means. A second statute in **California** specifically allows consultation from a doctor licensed and located in another state as long as the consultation does not suggest a place to meet patients, and as long as there is a primary care physician who is ultimately responsible, licensed in the state of California.[40]

Often, state laws vary greatly in regards to the use of online technology, and the requirement that physicians obtain a full-unlimited license from each state to practice medicine via the Internet is perceived as overly restrictive. This is particularly relevant to physicians practicing in rural markets and medically underserved areas that are aided through the advancements in online technology. The AOA believes a physician should be licensed in all states in which they practice, and therefore, recommends a policy that decreases licensure barriers that limit access to care, while maintaining necessary health and safety protections.

RESOLVED that the practice of medicine via the Internet and that State Medical Boards grant reciprocity for licensure between fellow State Medical Boards whose license regulating the practice of medicine via the Internet, meets equivalent licensing standards.

Reimbursement

The added cost of online consultations and Internet-based software has sparked an interest in reimbursement for online services. In the past, many doctors provided online consultation free of charge during its start-up phase, but they have realized that the cost, which is not covered by many insurance carriers, must be passed on to patients.[41]

However, survey data suggests that patients are willing to foot the bill for the service; 90% of those polled want online communication with their doctors, and 37% said that they were willing to pay for it. The price can be high; e-mail consultation can range from $20-$25 per consultation.[42] Additionally, consumers could pay $25 for an annual subscription to medical software that would give patients a list of possible diagnoses for a set of symptoms.[43]

Still, states are realizing that as costs for these services increase, fewer people can afford the option. As a result, legislative interest in policies that address reimbursement for online services has been growing. Some states, such as **California** and **Texas**, have begun reimbursement programs of their own. One statute in **California** recognizes an intent to support the practice of medicine via the Internet as a legitimate avenue for a patient to access medical care without in person contact.[44] The law authorizes the Medi-Cal program to reimburse consultations utilizing online methods as long as those consultations are done other than by fax or

phone.[45] On a federal level, the Balanced Budget Act of 1997 allowed Medicare payments for medical consultation via an online system for those in rural areas. However, the amount of coverage was subject to Medicare co-payments and deductibles.[46] In 2000, President Clinton signed a law that expanded reimbursement in this area. The law will cover rural areas *and* existing Medicare demonstration sites. In addition, the law creates more eligible online services that can be billed to Medicare. E-mail consultation between a doctor and patient is not covered. The bill became effective on October 1, 2001.

Advocates of online consultation expect that more insurers will expand coverage for these services when they recognize that demand is steadily increasing. Currently, very few insurers are agreeing to this arrangement. Blue Shield of California and First Health Group pay their physicians a small amount for consultations, but Medem, a web service started by the American Medical Association, expects patients to pay the full cost for its consultations.[47]

RESOLVED that the AOA encourages more state action and legislation supporting the reimbursement by insurance and other third-party reimbursement for appropriate services utilizing online technology, online consultations, and Internet-based health programs.

Privacy Issues

Privacy is a huge concern when looking at programs utilizing on-line medical technology. Since large amounts of data are being transmitted both within and out-of-state, medical professionals need to be particularly vigilant and attentive to patients' privacy rights. In 1996, Congress passed the Health Insurance Portability and Accountability Act (HIPAA).[48] It includes a provision that is meant to protect the privacy of patients whose identifiable health information is transmitted by electronic means. The Act also allows for the preemption of any less stringent state laws regarding privacy. This means that if a state passes any law that effects patient's privacy and it does not meet a higher federal standard, that law will not be controlling.[49] As a result, hospitals and medical professionals need to be very careful when implementing such programs.

RESOLVED that the AOA acknowledges the importance of maintaining patients' privacy and encourages states to adopt strict standards and procedures to protect any medical information that is transmitted through electronic means.

New Horizons for On-Line Medicine:

As related to on-line medicine, the AOA supports advancements in telemedicine when it is supplementing an existing physician-patient relationship. Recent advancements in telemedicine allow for improved patient care and successful chronic disease management. Telemedicine is generally defined as the use of communications and information technologies in the delivery of care and can be as simple as using the telephone to call and check in on a patient, or can be the use of advanced equipment, such as computers, etc., in monitoring symptoms.

For example, telemedicine can supplement regular physician visits for patients with a myriad of medical diagnoses by using technology to provide the physician's nurse team member with the patient's objective findings on a daily basis. This information will help the physician to identify when his or her patient's

condition may be worsening and may require a clinical assessment. By using technology to more closely monitor a patient's condition, the physician may be able to prevent hospitalizations or adverse outcomes.

RESOLVED that the AOA supports the concept of telemedicine to improve patient care, provided it is used as a supplement to an existing physician-patient relationship.

RESOLVED that the AOA supports the concept of telemedicine and advocates that payers adopt reimbursement systems that are inclusive of telemedicine services.

As physicians provide care in a variety of new ways, including telemedicine, that lends itself to improved patient care utilizing advanced technology. The AOA feels that the on-line medicine policies directly tie into the Patient-Centered Medical Home (PCMH) model for care. As the AOA advocates for PCMH, we recognize that we must simultaneously implement advancements in on-line medicine in order to be successful in the new model.

Conclusion

While the American Osteopathic Association recognizes the ever-expanding nature of medicine and the growth in the practice of online technology in the health care field, it equally recognizes the need to protect patients from dangerous practices that may compromise their health and safety.

RESOLVED supports limits on treatment, diagnosis, and prescribing over the Internet allowing such practice only when a clear doctor-patient relationship has been established.

RESOLVED and the AOA recommends that State Medical Boards issue a license for the practice of medicine via the Internet, and that State Medical Boards grant reciprocity for such licensure between fellow State Medical Boards whose license regulating the practice of medicine via the Internet meets equivalent licensing standards.

RESOLVED the AOA encourages more state action and legislation supporting the reimbursement by insurance and other third-party providers for appropriate services utilizing online technology, online consultations, and Internet-based health programs.

RESOLVED that the AOA acknowledges the importance of maintaining patients' privacy and encourages states to adopt strict standards and procedures to protect any medical information that is transmitted through electronic means.

RESOLVED that the AOA supports the concept of telemedicine to improve patient care, provided it is used as a supplement to an existing physician-patient relationship.

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RESOLVED, THAT THE BUREAU OF STATE GOVERNMENT AFFAIRS MONITOR DEVELOPMENTS IN ONLINE MEDICINE ON AN ONGOING BASIS AND UPDATE THIS WHITE PAPER AS NEEDED. 2009

[1] P. Greg Gulick, *E-Health And The Future Of Medicine: The Economic, Legal, Regulatory, Cultural, And Organizational Obstacles Facing Telemedicine And Cybermedicine Programs.* 12 Alb. L.J. Sci & Tech. 351, 351 (2002).
[2] *Id.*
[3] Tyler Chin, *Web Site Lets Patients Narrow Diagnosis on Their Own,* American Medical News, June 10, 2002. (http://www.ama-assn.org/sci-pubs/amnews/pick_02/bisb0610.htm).
[4] *Id.*
[5] Chin, *supra* note 3 at 5.
[6] *See* http://www.mydoc.com
[7] *Id.*
[8] *Id.*
[9] Tyler Chin . *Firm Treating Strangers by Web Shut Out by Illinois Directive, State regulators move to ice online Consultation Company MyDoc.com*, American Medical News, November 4, 2002., Found at (http://www.ama-assn.org/sci-pubs/amnews/pick_02/bise1104.htm).
[10] *Id.*
[11] *Id.* see also 225 ILCS 60/1 et seq. (2002).
[12] *See* http://www.easydiagnosis.com/about.html.
[13] *Id.*
[14] Tyler Chin, *Patients E-mail-But They Still Keep Calling,* American Medical News, June 10, 2002. (http://www.ama-assn.org/sci-pubs/amnews/pick_02/bil20610.htm.
[15] *Id.*
[16] Gulick, *supra* note 1 at 368.
[17] American Medical Association, *Internet Prescribing* (1999) (http://www.ama-assn.org/meetings/ public/annual99/reports/onsite/bot/rtf/bot35.rtf)
[18] Regulation through laws: **Arkansas, California, Illinois, Indiana, Nevada, New Hampshire, New York, Texas, and Virginia**. Teresa Floridi, *Online Pharmacies*, Issue Brief, Health Policy Tracking Service, July 1, 2002. Regulation through state boards: **Arizona, Colorado, Connecticut, Illinois, Nevada, New Jersey, Ohio, Texas, Washington, and Wyoming**. American Medical Association, *Internet Prescribing* (1999) <http://www.ama-assn.org/meetings/ public/annual99/reports/onsite/bot/rtf/bot35.rtf>
[19] American Medical Association, *supra* note 30.
[20] P. Greg Gulick, *supra* note 1 at 369.
[21] Naftali Bendavid, *Prescriptions via Internet Pose Dangers*, Chicago Tribune, June 16, 1999, at A1.
[22] Teresa Floridi, *Online Pharmacies*, Issue Brief, Health Policy Tracking Service, July 1, 2002.
[23] Arent Fox Kintner Plotkin & Kahn, PLLC, *Penalties Handed Down in Internet Prescription Cases*, June 16, 2002. (*See* http://www.arentfox.com).
[24] *Id.*
[25] *Id.*

[26] Stephanie Norris,. *Telehealth*. Issue Brief: Health Policy Tracking Service, December 31, 2001. (http:www.hpts.org).
[27] *Id.*
[28] *Id.*
[29] Federation of State Medical Boards, Special Committee on Professional Conduct and Ethics. *Model Guidelines for The Appropriate Use of the Internet in Medical Practice* Found at *(*http://www.fsmb.org/Policy%20Documents%20and%20White%20Papers/internet_use_guidelines.htm).
[30] *Id.*
[31] Ross Silverman, *The Changing Face of Law and Medicine in the New Millennium: Regulating Medical Practice in the Cyber Age,* 26 Am. J.L. and Med. 255 (2000).
[32] *Id.*
[33] Norris, *supra* note 11.
[34] Arizona v. Maricopa County Medical Society, 457 U.S. 332 (1982).
[35] Norris, *supra* note 11.
[36] *Id.* See Ind. Code Ann. 25-22.5-1-1.1(a)(4)(A) & (B) (Michie 1999).
[37] Gulick, *supra* note 1 at 366. See Tex. Occ. Code Ann. 151.056(b)(1)
[38] Cal. Bus. & Prof. Code 2290..5(a)(1)& (b)(c) (West 1990 & Supp. 2002).
[39] *Id.* at 2290.5(a)(1).
[40] Cal. Bus. & Prof. Code 2060 (West 1999 & Supp. 2002)
[41] Tyler Chin. *Online Consultation: What is it Worth?* American Medical News, June 10, 2002. (http://www.ama-assn.org/sci-pubs/amnews/pick_02/bisa0610.htm.
[42] *Id.*
[43] Chin, *supra* note 3.
[44] Cal. Wel. & Inst. 14132.72 (a) (West 2001).
[45] *Id.* at 14132.72(d)
[46] Rubin, *supra* note 7.
[47] Rita Rubin. *The Virtual Doctor Will See You Now, But Have Your Credit Card Ready,* USA Today, June 10, 2002 (http://www.usatoday.com/usatonline).
[48] 42 U.S.C. 1320d-2.
[49] Silverman, *supra* note 26.