

**Comment: Provision of Legal and Medical Services on the  
Internet: Licensure and Ethical Considerations**

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**Introduction**

Not many years ago, a person needing medical or legal advice picked up the telephone and called a local professional, and often she made an appointment to see that professional in person. Today, telephone calls and in-person appointments are viewed by some as inefficient uses of time and energy, especially since with just a click of a computer mouse, the person can be surfing the Internet. The Internet is brimming with legal and medical websites, offering advice, and, often, much more intense consultation. While people use the Internet to find and obtain advice from professionals because it is often quicker and more efficient than telephone calls and in-person appointments, users as well as providers of such services should be concerned with the quality of information given and with the competency of the providers of the website.

In 1997, one in five Americans at least three years of age, or 57 million people, accessed the Internet.<sup>2</sup> By 1999, this number increased to 83.3 million, with a projected increase to 165 million

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<sup>2</sup> Press Release, Bureau of the Census, Computer Use Up Sharply: One in Five Americans Uses Internet Census Bureau Says (Oct. 14, 1999), available at <http://www.census.gov/Press-Release/www/1999/cb99-194.html> (on file with the North Carolina Journal of Law & Technology).

by 2002.<sup>3</sup> This readily accessible technology is very attractive to professionals seeking to expand their client bases by using a medium less expensive than traditional hard copy advertising, such as the Yellow Pages or the newspaper. Internet technology is also an attractive method for communicating with both known and unknown clients, in order to offer advice and products. Lawyers and physicians recognizing the potential reach of the Internet are also increasing the scope of their practices through cyberlaw and cybermedicine.<sup>4</sup>

Despite the attractiveness of the Internet, professionals who use the Internet to advertise and provide their services should be aware of the presence of emerging legal and ethical issues, some of which are unresolved. There have been media accounts of unscrupulous professionals such as the lawyer on the Internet who accepted money from an Internet user for her child custody battle, and then failed to appear in court for her case; later, the user discovered he was suspended from practicing law in that state.<sup>5</sup> There are also concerns about physicians prescribing potentially dangerous medications without the benefit of performing a physical examination or obtaining a thorough medical history.<sup>6</sup> These unscrupulous professionals and others like them find the

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<sup>3</sup> CommerceNet, Research: Industry Statistics—Worldwide Internet Population, available at <http://www.commerce.net/research/stats/wwstats.html> (on file with the North Carolina Journal of Law & Technology).

<sup>4</sup> See Ross D. Silverman, *The Changing Face of Law and Medicine in the New Millenium*, 26 AM. J. L. & MED. 255 (2000).

<sup>5</sup> See, e.g., Richard Schmitt, *Lowering the Bar: Lawyers Flood the Web, But Many Ads Fail to Tell the Whole Truth*, WALL ST. J., Jan. 15, 2001, at A1.

<sup>6</sup> See, e.g., Kenneth C. Curley, *I'm Not a Doctor, but I Play One on My Website*, THE CYBERMED CATALYST (Journal of the Alliance of Medical Internet Professionals) (July 8, 2000), at [http://www.amip.org/catalyst/webdoc\\_html](http://www.amip.org/catalyst/webdoc_html) (on file with the North Carolina Journal of Law & Technology).

Internet to be an attractive medium for their schemes because it is "cheap, pervasive and lacking serious regulation."<sup>7</sup> These examples are illustrative of the tremendous challenges facing the legal and medical professions and their respective regulatory agencies in their efforts to police their members in a faceless medium without boundaries.<sup>8</sup>

### The Problem

The tremendous temptations and challenges facing professionals on the Internet arise from the ability of users and professionals to engage in faceless, impersonal, and virtually anonymous communications. The user seeking information on a legal or medical topic has a multitude of websites to peruse. Current estimates indicate there are approximately 15,000 websites with medical content<sup>9</sup> and 14,000 law-related websites<sup>10</sup> on the Internet. Health-related issues are the sixth most common reason for users to access the Internet.<sup>11</sup> The user may be unable to ascertain the professional's licensure or competency level based on the website itself. Additionally, the user has no other means available to assess the quality and accuracy of the information being received. Concerns about the information quality, as well as

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<sup>7</sup> Schmitt, *supra* note 5.

<sup>8</sup> See Mark Hankins, *Ambulance Chasers on the Internet: Regulation of Attorney Web Pages*, 1 J. TECH. L. & POL'Y 3 (1996), at <http://journal.law.ufl.edu/~techtlaw/1/hankins.html> (on file with the North Carolina Journal of Law & Technology).

<sup>9</sup> Curley, *supra* note 6.

<sup>10</sup> Schmitt, *supra* note 5.

<sup>11</sup> Thomas Scarlett, *Medical Advice on the Web: What are the Issues?*, TRIAL, Dec. 2000, available at <http://www.atlanet.org/homepage/triaD00.htm> (on file with the North Carolina Journal of Law & Technology).

regulations specific to the Internet professional, need to be addressed to avert the widespread and potentially dangerous presence of unscrupulous and incompetent professionals on the Internet.

The two most important regulatory mechanisms presently available to both the legal and medical professions are profession-established licensure requirements and ethical standards. While both mechanisms have worked well in the past for traditional practice, they are now being scrutinized and revised to address the problems posed by practice over the Internet. The enormous popularity and impact of the Internet was not anticipated, and as such, legislatures and regulatory bodies are now reacting to new issues raised by the presence of medical and legal professionals on the Internet.

### **Licensure**

Licensure by a state's medical or legal regulatory agency serves three major functions: assurance of professional quality, delineation of the scope of acceptable practice, and enforcement of professional conduct and competency standards through a well-defined disciplinary process.<sup>12</sup> Additionally, state licensure controls access by the professional to the particular state's people, or its market.<sup>13</sup> Control of access protects consumer-clients in that particular state and gives a state's medical and legal practitioners priority and protection over out-of-state practitioners.

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<sup>12</sup> See Alison M. Sulentic, *Crossing Borders: The Licensure of Interstate Telemedicine Practitioners*, 25 J. LEGIS. 1 (1999).

<sup>13</sup> *Id.*

Licensure of medical and legal professionals has long been delegated to each individual state.<sup>14</sup> Courts have recognized and upheld the states' law-making power to regulate the medical and legal professions by establishing minimum competency requirements, generally through the use of examinations and certifications.<sup>15</sup> The licensure requirement represents an exercise of a state's police power to protect the public from both those posing as professionals and incompetent professionals.<sup>16</sup>

The basic standards of licensure are generally uniform, but states can individualize their standards by expanding or narrowing the basic standard.<sup>17</sup> For example, each state generally requires graduation from an accredited professional school, as well as a minimum passing rate on the state's qualifying exam (e.g. oral and written boards for medical professionals and the bar exam for legal professionals). After obtaining initial licensure in his or her own state, a professional may obtain licensure in other states through various processes, depending on the new state's requirements. These processes may be expensive and time-consuming, and they may include the requirement of additional examinations.<sup>18</sup>

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<sup>14</sup> *Id.*

<sup>15</sup> *See, e.g.,* State v. Call, 28 S.E. 517 (N.C. 1897) (citing Eastman v. State, 10 N.E. 97 (Ind. 1887); State v. Dent, 25 W. Va. 1 (1884), *aff'd*, Dent v. West Virginia, 129 U.S. 114 (1889)).

<sup>16</sup> *See id.*

<sup>17</sup> *See, e.g.,* Center for Telemedicine Law, *Telemedicine and Interstate Licensure: Findings and Recommendations of the CTL Licensure Task Force*, 73 N. D. L. REV. 109 (1997).

<sup>18</sup> *See id.* Some states have a "consultation" exception to the requirement of licensure in the state. Consultation means a local physician licensed in the state confers or seeks advice from a specialist or other physician in a different state. While the physician being consulted may offer suggested treatment or alternate

A practicing attorney or physician who fails to obtain licensure in a state is engaged in the unauthorized practice of law or medicine, respectively. Such unauthorized practice results in the imposition of disciplinary actions and penalties by a state's regulatory board.<sup>19</sup> A medical or legal professional on the Internet is exposed to potential clients from states in which he or she may not be licensed. Many states have recognized the potential for unlicensed professionals reaching clients in their state through the Internet and, as such, have passed legislation defining what constitutes the practice of medicine or law over the Internet.<sup>20</sup> The penalties for unauthorized practice vary from state to state, and

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diagnoses, most states do not require the consulting physician to be licensed in that state.

<sup>19</sup> See Sulentic, *supra* note 12, at 9-10. Unauthorized practice may occur in one of three ways: 1) the unlicensed person engages in activities constituting practice; 2) a person engages in activities that exceed the scope of practice; and 3) persons holding themselves out as professionals with a license may be subject to penalties.

<sup>20</sup> See, e.g., N.C. GEN. STAT. § 90-18 (2000). The North Carolina statute states "a person who resides in any state and who, by use of any electronic or other mediums, performs any of the acts described in this subsection . . . shall be regarded as practicing medicine . . . and shall be subject to . . . appropriate regulation by the North Carolina Medical Board." The penalty for the unauthorized practice of medicine is a misdemeanor offense, and the professional may not collect any fee for services rendered. *But see* N.C. GEN. STAT. § 84-4 (2001) in which persons other than members of the State Bar are prohibited from practicing law. While the Internet is not specifically mentioned, the statute does address the unauthorized practice of law as "any person or association of persons" who "by word, sign, letter, or advertisement" holds himself out as "competent or qualified to give legal advice or counsel." Furthermore, the Case Notes to the statute state the purpose of the section is for "better security of the people against incompetency and dishonesty in an area of activity affecting general welfare." Presence over the Internet could be construed as such an activity.

from profession to profession. They can range from a disciplinary reprimand to criminal prosecution.<sup>21</sup>

A professional engaging in unauthorized practice can face not only disciplinary action, but also unexpected penalties, such as those having a negative economic impact. For example, the California case of *Birbrower v. Superior Court of Santa Clara County*<sup>22</sup> provides a vivid example in which the lawyers involved were barred from recovering fees for their services.<sup>23</sup> Using a California statute, the court determined that New York lawyers had practiced law in California without a license. The court noted that physical presence in the state was only one factor to consider under their statute, and an attorney could be practicing law without being physically present by communications through “telephone, fax, computer, or other modern technological means.”<sup>24</sup> The court also noted the notion of an automatic practice of law through “virtual” entry into the state via email.<sup>25</sup> The court rejected the lawyers’ argument that their competency as established by their New York law licenses was the equivalent of the competency required to practice law in California.<sup>26</sup>

Although *Birbrower* did not involve legal practice over the Internet, the implications of practice over the Internet are apparent and worrisome, especially to lawyers in other states dealing extensively with California clients. However, the court in *Birbrower* did narrow its holding to exclude communications

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<sup>21</sup> Sulentic, *supra* note 10, at 10.

<sup>22</sup> *Birbrower, Montalbano, Condon & Frank v. Superior Court of Santa Clara County*, 949 P.2d 1 (Cal. 1998).

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 3.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at 5b.

involving a single attenuated or fortuitous contact with a client or potential client as constituting the practice of law in California.<sup>27</sup>

In medicine, there are similar statutes in other states that have the potential to impact the professional's use of the Internet and interstate clients contact. For example, a Tennessee statute states that the transfer of medical information through any "electronic, telephone, or fiber optic means or by any other means" by a person licensed in a state other than Tennessee constitutes the practice of medicine in Tennessee.<sup>28</sup> Without actual knowledge of a state's specific statutory definition of authorized practice, a professional using the Internet risks practicing as an unlicensed professional in another state, and faces potential disciplinary action by that state.

### **Proposed Solutions to the Licensure Dilemma**

The interstate licensure problems that emerge from practice over the Internet has led to proposed solutions for the problems of unauthorized practice. These include the creation of a national (uniform) standard licensure process, the issuance of special limited licenses, the creation of certifications or licenses specific to the Internet, and an understanding of the client as being located in the professional's state (virtual license). While all of these have been proposed for medical professionals, the proposed solutions could also be modified for legal professionals.

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<sup>27</sup> *Id.* at 3.

<sup>28</sup> See TENN. CODE ANN. § 63-6-231 (1999).



## Uniform/National Licensure

The first solution involves the creation of a uniform licensure system or a national standard licensure process.<sup>29</sup> A national licensure system could cure both the inconsistencies in state-to-state requirements and the lack of coordination between state regulatory boards.<sup>30</sup> In order to preserve each state's right to license professionals, the uniform standard would have to be adopted by each state legislature and then coordinated within the existing state regulatory boards. The medical and legal professional certification examinations currently contain some components showing the possibility of uniformity. For example, the score required for passing the multistate bar exam could be the same in every state. While varying state legal principles may make uniformity more difficult for legal regulatory bodies, uniform licensure could be viable through the establishment of minimum national standards that would assure each state of the competence of legal and medical professionals.

The National Council of State Boards of Nursing Nurse Licensure Compact is a variation of the proposed national licensure system.<sup>31</sup> The Compact consists of a multistate agreement whereby a nurse initially licensed in one state is allowed

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<sup>29</sup> See, e.g., Barry B. Cepelewicz, *Telemedicine: A Virtual Reality, But Many Issues Need Resolving*, 13(9) MED. MALPRACTICE L. 1, 2-3 (1996). See also Executive Summary, Secretary of Commerce, *Telemedicine Report to Congress* (Jan 31, 1997), available at <http://www.ntia.doc.gov/reports/telemed/execsum.htm> (on file with the North Carolina Journal of Law & Technology).

<sup>30</sup> See Center for Telemedicine Law, *supra* note 17, at 128.

<sup>31</sup> National Council of State Boards of Nursing, *Nurse Licensure Compact* (Nov. 6, 1998), available at <http://www.ncsbn.org/files/mutual/compact.asp> (on file with the North Carolina Journal of Law & Technology).

to practice in other states within the Compact that recognize the home state license. As of January 18, 2002, sixteen states had enacted the Compact, although three states will not implement until mid-2002 or later.<sup>32</sup> The nurse practicing in these remote states agrees to abide by and be subject to the laws of the state in which the client resides.<sup>33</sup> The remote state nursing board is given the authority to enforce any violations by the visiting nurse. The agreement also includes the coordination and compilation of a database of all licensed nursing professionals in the Compact area, including violations and disciplinary actions by each state.

The Compact model is an attractive option because it permits interstate practice without all the expense and time commitment required to obtain licensure in another state, and it includes a self-regulatory component that makes information on practitioners with violations accessible to all participating states.<sup>34</sup> Also known as mutual recognition, the interstate compact model involves cross-state harmonization of standards.<sup>35</sup> A state may be willing to harmonize its standards rather than submit to a national standard. Harmonization of standards may be a more achievable and acceptable means of preserving each state's right to regulate

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<sup>32</sup> National Council of State Boards of Nursing, *State Compact Bill Status*, available at [http://www.ncsbn.org/public/nurselicensurecompact/mutal\\_recognition\\_state.htm](http://www.ncsbn.org/public/nurselicensurecompact/mutal_recognition_state.htm) (on file with the North Carolina Journal of Law & Technology). The states enacting the compact are Arizona, Arkansas, Delaware, Idaho, Iowa, Maine, Maryland, Mississippi, Nebraska, New Jersey, North Carolina, North Dakota, South Dakota, Texas, Utah, and Wisconsin. Arizona's implementation will not occur until July 1, 2002, and North Dakota's implementation is anticipated to occur in 2003-2004. New Jersey's date of implementation is yet to be determined.

<sup>33</sup> *Id.*

<sup>34</sup> *See id.*

<sup>35</sup> *See Secretary of Commerce, supra note 29.*

professionals. Finally, the Compact model has been adopted in Europe and Australia to permit cross-border nursing practice.<sup>36</sup>

### Special Limited Licenses

On the national level, the Federation of State Medical Boards has proposed a model act to regulate the interstate practice of medicine.<sup>37</sup> The Federation's proposal requires the issuance of special licenses for practitioners seeking to engage in the practice of medicine across state lines.<sup>38</sup> The license would be limited to traditional telemedicine activities, such as video conferencing with other physicians, as well as nontraditional Internet medical activities, such as counseling Internet users and prescribing medication.<sup>39</sup> The practitioner would agree to be subject to the regulations established in the issuing state.<sup>40</sup> Furthermore, the license would prohibit the physician from entering the state to practice medicine.<sup>41</sup> The objective of this special limited practice license is to protect the public by establishing minimum competency requirements for physicians practicing through the Internet.<sup>42</sup> Additionally, the Federation believes that special

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<sup>36</sup> See *id.*

<sup>37</sup> Federation of State Medical Boards, *A Model Act to Regulate the Practice of Medicine Across State Lines: An Introduction and Rationale* (Apr. 1996), available at <http://www.fsmb.org/telemmed.htm> (on file with the North Carolina Journal of Law & Technology).

<sup>38</sup> *Id.*

<sup>39</sup> See Kerry Kearney and Celia Santander, *Telemedicine: Evolving into Cyberspace*, 13 HEALTH LAW. 28 (2001).

<sup>40</sup> Federation of State Medical Boards, *supra* note 37.

<sup>41</sup> *Id.*

<sup>42</sup> Scarlett, *supra* note 11.

limited licenses preserve the client's right to access the resources and protections of his or her own state.<sup>43</sup>

The Federation's initiative has been criticized as an infringement on a state's traditional right to define and enforce practice standards for professionals.<sup>44</sup> The American Medical Association opposes any type of national licensure for telemedicine activities, as well as any legislation that could obstruct traditional telemedicine practices, such as physician-to-physician consultation.<sup>45</sup>

### *Internet License*

Another proposed solution is closely related to the Federation's concept of the special limited license and involves the establishment of certification processes that would apply exclusively to Internet activities.<sup>46</sup> The certification would take into account the "special features of net-based professional activities," such as the risks associated with giving online advice.<sup>47</sup> This proposal has not been designated as a national or state approach, but could be amenable to either level of regulation. However, the designation of a license as a national certification or

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<sup>43</sup> Federation of State Medical Boards, *supra* note 37.

<sup>44</sup> Sulentic, *supra* note 10. See also Scarlett, *supra* note 11. An additional problem with this special limited license, beyond the scope of this article, may be the denial of malpractice insurance by those carriers who require a practitioner to be fully licensed in a state.

<sup>45</sup> American Medical Association, *Physician Licensure: An Update of Trends*, at <http://www.ama-assn.org/ama/pub/category/2378.html> (last updated Oct. 24, 2001) (on file with the North Carolina Journal of Law & Technology).

<sup>46</sup> See David R. Johnson & David Post, *Law and Borders--The Rise of Law in Cyberspace*, 48 STAN. L. REV. 1367, 1382 (1996).

<sup>47</sup> *Id.* at n.39.

license would meet criticism similar to that leveled against the Federation's Act: it would defeat the purpose and function of a state's right to regulate professionals and, as such, would probably be rejected.

### *Virtual License*

A final proposal is a consideration of the client as "being electronically transported to the [practitioner] who is already licensed in his or her state."<sup>48</sup> For example, if a client in North Carolina visits a website of a professional licensed in Florida, then the client would be deemed to be in the state of Florida, where Florida law prevails. While this simplistic solution would solve the interstate licensure and unauthorized practice issues, many professionals have rejected it. The rationale for this rejection is that a client would no longer have the protection of the laws of the state in which she resided: she would be subjected to another state's laws, which may or may not be favorable to the client. The very purpose of authorized practice statutes is the protection of the people against incompetency and dishonesty by professionals.<sup>49</sup> However, while a client has the right to be protected by the laws of her state, she may not know this right exists. To provide notice to the client, websites could contain a prominently displayed warning, stating that, by accessing and using the site, the user agrees to abide by the laws of the state in which the professional is licensed, and which laws may differ from the client's own state.

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<sup>48</sup> Cepelewicz, *supra* note 29, at 2-3.

<sup>49</sup> See N.C. GEN. STAT. § 84-4 (2000) (case notes). See also Federation of State Medical Boards, *supra* note 37.

The choice-of-law warning could be incorporated into a concept created by the American Medical Association, the physician Internet identification (ID) symbol.<sup>50</sup> The Internet ID identifies the physician and allows for physician authentication. The ID would also protect client privacy and confidentiality when sensitive information is sent or received.<sup>51</sup> It would also serve as a means to identify unlicensed professionals; the ID only allows a physician to perform services over the Internet that she could perform in the real world.<sup>52</sup> For example, a physician not licensed to write prescriptions to out-of-state pharmacies would also be unable to do so with her Internet ID.<sup>53</sup> The American Medical Association hopes to use the ID for other purposes, such as to allow physicians access to various health-related websites.<sup>54</sup> The ID could also allow the agency issuing the ID to maintain data on the physician to ensure the observance of professional and ethical standards. The Internet ID could be easily adapted to attorneys and be issued by either the American Bar Association or the state bar association, and used for the same purposes of authentication, privacy and confidentiality protection, law-related network accessibility, maintenance of professional and ethical standards, and identification of unlicensed professionals.

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<sup>50</sup> See American Medical Association, *AMA Internet ID*, at <http://www.ama-assn.org/ama/pub/category/3133.html> (last updated Aug. 27, 2001) (on file with the North Carolina Journal of Law & Technology).

<sup>51</sup> *Id.*

<sup>52</sup> See American Medical Association, *AMA Frequently Asked Questions*, at <http://www.ama-assn.org/ama/pub/category/3136.html> (last updated Nov. 29, 2001) (on file with the North Carolina Journal of Law & Technology).

<sup>53</sup> *Id.*

<sup>54</sup> See American Medical Association, *supra* note 50.

All of these innovative solutions to the problems of interstate practice and licensure highlight the uniqueness of Internet usage by medical and legal professionals. Each solution has advantages and disadvantages, which provide a matrix on which to build a better solution. The best solution should encourage interstate credential acceptance by preserving each state's regulatory interest, minimizing cost and inconvenience to the professional, and maximizing assurances to the state agency and the client of competency and professionalism. The ideal licensure solution would allow the issuing agencies to compile a database on professionals, including complaints from website users and violations and disciplinary actions in other states.

The licensing problem that the Internet poses for medical and legal professionals requires a thoughtful, workable solution. There exists an additional concern for these professionals, however. The state licensing and professional agencies establish standards and regulations for minimum competence. Additionally, the agencies also establish and regulate ethical standards for the conduct of their professionals. Maintenance of these ethical standards is the second major concern when discussing medical and legal professionals on the Internet.

### **Ethical Standards**

The medical and legal professions are committed to upholding the highest level of ethical standards in their respective practices.<sup>55</sup> Both professions have established codes of conduct for

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<sup>55</sup> See American Bar Association, *Annotated Model Rules of Professional Conduct*, (4th ed. 1999). See also American Medical Association Council on Ethical and Judiciary Affairs, *available at* <http://www.ama.assn.org/ama/pub/category/4238.html>.

ethical and professional behavior. Violations of the codes demonstrate unprofessional behavior that the profession and the regulatory agency do not want to condone, and thereby punishment for violations range from reprimands to suspension from the profession. The legal profession's ethical standards are embodied in a professional code for each state, and are often patterned after the Model Rules of Professional Conduct promulgated by the American Bar Association (ABA).<sup>56</sup> Violations of these standards are tantamount to a licensure violation and can result in disciplinary action, disbarment, other sanctions, or a combination of these.<sup>57</sup> The medical profession has promulgated its own ethical standards, but these are not as specific as those promulgated by the legal profession. Nonetheless, ethical violations can amount to unprofessional conduct and can lead to disciplinary action by the medical board.<sup>58</sup>

While ethical standards for both professions have been in place for many years, the Internet has led to consideration of the application of existing standards to Internet use. While some of the existing standards can be molded to "fit" Internet technology, most need revision to specifically address practice and advertising on the Internet. Enforcement of the standards must also be considered as well as specificity to the Internet.

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<sup>56</sup> American Bar Association, *supra* note 55.

<sup>57</sup> *Id.*

<sup>58</sup> See, e.g., N.C. Prof. Cond. Rule 8.4, Disciplinary Hearing Notes (2001). See also N.C. GEN. STAT. § 90-14 (2000)(a) ("[t]he Board [of Medicine] shall have the power to deny, annul, suspend, or revoke a license . . . for any of the following acts or conduct: . . . (6) unprofessional conduct, including, but not limited to, departure from, or the failure to conform to, the standards of acceptable and prevailing medical practice, or the ethics of the medical profession").



## Advertising on the Internet

Advertising on the Internet is an area where ethical violations could occur, especially when the advertisement contains less than truthful information. The ABA's Rules of Professional Conduct address lawyer advertising in Rules 7.1, 7.2, and 7.3.<sup>59</sup> While not specifically referenced, advertising on the Internet seems to be covered by these provisions.<sup>60</sup> These Rules pertain to public media and written communications and prohibit the use of false or misleading communications, including material misrepresentations or omissions, the creation of an unjustified expectation of achievable results, or comparisons with other lawyers' services.<sup>61</sup>

Some states have addressed issues concerning advertising on the Internet. North Carolina, for example, states in Rule of Professional Conduct 239 (entitled "Advertising on the Internet") that Internet advertising is the functional equivalent of public media advertisement.<sup>62</sup> As such, any communication over the Internet is subject to the prohibition against false or misleading

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<sup>59</sup> See STEPHEN GILLERS & ROY SIMON, REGULATION OF LAWYERS: STATUTES AND STANDARDS (2000).

<sup>60</sup> ABA Commission on Advertising, *A Re-Examination of the ABA Model Rules of Professional Conduct Pertaining to Client Development in Light of Emerging Technologies*, (July 1998), available at <http://www.abanet.org/legalservices/whitepaper.html> (on file with the North Carolina Journal of Law & Technology).

<sup>61</sup> See *id.*

<sup>62</sup> North Carolina Bar Association, *RPC 239: Advertising on the Internet*, (Oct. 18, 1996), available at [http://www.ncbar.com/eth\\_op/ethics\\_sel.asp?ID=239&LIST=number&back='ethics\\_o.asp](http://www.ncbar.com/eth_op/ethics_sel.asp?ID=239&LIST=number&back='ethics_o.asp). (on file with the North Carolina Journal of Law & Technology).

information concerning a lawyer or a lawyer's services.<sup>63</sup> Some states have promulgated specific guidelines for websites. These include requiring lawyers to submit copies of the website advertisement to the state's bar association.<sup>64</sup>

One author has proposed a specific Model Code for Advertising and Solicitation in Cyberspace. The code would define areas within the electronic media where lawyers may advertise and provides requirements and limitations on Internet advertising.<sup>65</sup> Although this proposal has not met general acceptance, it does seem to provide a good framework for attorneys to follow while on the Internet and for states to use when revising ethics standards.<sup>66</sup>

The medical profession may have gone several steps further in the development of codes of Internet ethics. The American Medical Association's (AMA) "Guidelines for Medical and Health Information Sites on the Internet: Principles Governing AMA Web Sites" provide guidelines regarding permissible content on medical websites.<sup>67</sup> The guidelines are meant to ensure the quality, reliability, and validity of medical content. To meet these objectives, they include specific principles for providing information about authorship and content quality, source

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<sup>63</sup> *Id.*

<sup>64</sup> See J. T. Westermeier & Leonard T. Nuara, *Ethical Issues for Lawyers on the Internet and World Wide Web*, 14 *COMPUTER LAW*, 8, 11 (1997).

<sup>65</sup> See Brian G. Gilpin, Note, *Attorney Advertising and Solicitation on the Internet: Complying with Ethics Regulations and Netiquette*, 13 *J. MARSHALL J. COMPUTER & INFO. L.* 697, 727-28, n.234 (1995).

<sup>66</sup> See *id.*

<sup>67</sup> American Medical Association, *Guidelines for Medical and Health Information Sites on the Internet: Principles Governing AMA Web Sites* (Mar. 17, 2000), at <http://www.ama-assn.org/about/guidelines.htm> (on file with the North Carolina Journal of Law & Technology).

attribution, disclosure of potential conflicts of interest, and website advertising.<sup>68</sup>

Other organizations have promulgated their own codes of ethical conduct, for example, Health on the Net Foundation<sup>69</sup> and the eHealth Ethics Initiative.<sup>70</sup> Both codes establish guidelines to ensure that clients receive valuable, accurate, high quality, reliable information provided by qualified, licensed professionals.

Standards for ethical advertising on the Internet vary from profession to profession, as well as from state to state. To avoid potential ethical violations, professionals may use various safeguards, including disclosures and disclaimers. Professionals should disclose the states in which the professional is currently licensed, as well as the qualifications of each professional named on the website.<sup>71</sup> To maintain the integrity and quality of professional websites, one proposal encourages the establishment of a cyberprofessional data bank that the public could access to confirm information disclosed on the website.<sup>72</sup> As discussed previously, a data bank could contain information to authenticate

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<sup>68</sup> See *id.*

<sup>69</sup> Health on the Net Foundation, *HON Code of Conduct (HONcode) for Medical and Health Websites* (Apr. 1997) (version 1.6), available at <http://www.hon.ch/HONcode/Conduct.html> (on file with the North Carolina Journal of Law & Technology).

<sup>70</sup> Health Ethics Initiative, *eHealth Code of Ethics*, available at <http://www.ihealthcoalition.org/ethics/ehcode.html> (last visited Dec. 31, 2001) (on file with the North Carolina Journal of Law & Technology).

<sup>71</sup> Barry Brickner, *Scary Things (or How to Avoid Breaching Ethics on the Internet)* (June 1999), available at <http://www.michbar.org/opinions/ethics/Articles/june99.html> (on file with the North Carolina Journal of Law & Technology).

<sup>72</sup> See Ranney V. Wiesemann, Note, *On-line or On-Call? Legal and Ethical Challenges Emerging in Cybermedicine*, 43 ST. LOUIS U. L. J. 1119 (1999).

the disclosed credentials.<sup>73</sup> Additionally, a data bank could contain information indicating disciplinary actions taken by the professional association. However, it is likely that public dissemination of such information would meet with great resistance from professionals.

The use of disclaimers can be a useful safeguard against unethical behaviors. The most useful type of disclaimer would include, at a minimum, a statement that the advice given is not intended to be a substitute for actual medical or legal advice, that the advice is not confidential, and that no type of professional relationship has been created by giving the advice.<sup>74</sup> The effectiveness of disclaimers is questionable, though, because the user may not read the statements. An ethics survey sponsored by the California HealthCare Foundation and Healthcare Coalition found that 78% of survey participants stated that privacy statements were important in their decision to use a website, but two-thirds of these respondents stated that they “‘sometimes, rarely, or never’ read those privacy statements nor did they check to see who sponsors the sites they’re using”.<sup>75</sup> Moreover, the use of blanket disclaimers might not shield the professional from legal liability from malpractice or ethical violations.<sup>76</sup> Additional

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<sup>73</sup> American Medical Association, *supra* note 50.

<sup>74</sup> See, e.g. Lorelie S. Masters, *Professionals Online: Advice for Travels on the Information Superhighway*, 16 COMPUTER LAW. 1 (1999).

<sup>75</sup> California HealthCare Foundation & Internet Healthcare Coalition, *Ethics Survey of Consumer Attitudes about Health Web Sites* (2000), available at <http://ehealth.chcf.org/view.cfm?section=Consumer&itemID=1740> (on file with the North Carolina Journal of Law & Technology).

<sup>76</sup> Joan Rogers, *Cyberlawyers Must Chart Uncertain Course in World of Online Advice* (Mar. 22, 2000), ABA/BNA Manual on Professional Conduct, available at <http://www.bna.com/prodhome/bus/mopc-and.htm> (on file with the North Carolina Journal of Law & Technology).

questions arise concerning multiple disclaimers for different areas of a website, as well as disclaimers in foreign languages to ensure all users can read them.<sup>77</sup> Multiple disclaimers in each website area and in foreign languages, however, could become endless and unmanageable.

### **Enforcement**

A final problem relating to licensure and ethical issues is the enforcement of standards. To ensure that each professional on the Internet holds the appropriate license and adheres to ethical standards would require a concentrated effort by state regulatory agencies. Regulatory agencies would need to identify methods for monitoring professional websites in an efficient and cost-effective manner. Client-user input such as positive comments and complaints would be a source of invaluable information. Peer review and reporting will also become important components. Unfortunately, while state regulatory agencies would carry the burden of enforcement, those agencies would likely not have the resources to effectively monitor the websites. Without appropriate monitoring and enforcement, the potential for unscrupulous and unprofessional conduct over the Internet could become a larger problem.

### **Conclusion**

Internet technology provides a potentially limitless arena for medical and legal professionals. Many types of information are given to an enormous new audience. However, the faceless

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<sup>77</sup> See Westermeier & Nuara, *supra* note 64.

interaction between physician or attorney and Internet user is fraught with many potentially damaging problems. The professional wants to guard against practicing without a license or violating ethical standards. Professional regulatory agencies and client-users want to be assured of competent and high-quality professional services and conduct that is both professional and ethical. All professionals who want to become part of the Internet explosion should encourage and actively participate in the development of methods to monitor professionals on the Internet. This would assure competency of professionals and maintenance of high ethical standards. Until both professions and their respective regulatory bodies address and provide workable solutions to the problems of professional practice on the Internet, the practitioner and the website user should proceed cautiously in an uncharted virtual territory.