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Ανασκόπηση

The ethical and legal dilemmas of Telepsychiatry

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Abstract

This paper was written in the framework of my internship at the National Commission for Bioethics and Technoethics of the Hellenic Republic. It constitutes an attempt at exploring the ethical and legal dilemmas of the medical practice of telepsychiatry. Telepsychiatry, as well as other forms of telemedicine, has become a prevalent way through which patients gain access to healthcare and with many research papers reporting on its effectiveness and advantages, telepsychiatry has gained a lot of proponents in the scientific and healthcare community. However, several questions regarding the ethical and legal nature of the practice remain unanswered and this can put patients and other users of telemental health services under risk for basic rights violations. In this paper, at first the scientific data supporting the use of telepsychiatry will be cited. In addition to that, there will be discussion of several ethical dilemmas that have been reported concerning the use of telemedicine in psychiatry during the past few years and there will be reference to the medical code of ethics. Following that, there will be reference to the existing legislation for telepsychiatry in Greece and the legal issues that can arise will be analyzed. In spite of the fact that the advantages and ethical pitfalls of telepsychiatry are common in many countries, the focus of this paper will be on Greece's code of medical ethics and legislation due to the lack of relevant bibliography on the matter, even though telepsychiatry is widely used by Greek patients. Finally some suggestions will be made on what ought to be ameliorated in regards to the current conditions, so as to make sure telepsychiatry is in line with the basic principles of bioethics.

Keywords: bioethics, telepsychiatry, telemedicine, psychiatry, mental health.

Τα ηθικά και νομικά ζητήματα της τηλεψυχιατρικής

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Περίληψη

Η παρούσα εργασία γράφτηκε στο πλαίσιο της πρακτικής μου άσκησης στην Εθνική Επιτροπή Βιοηθικής και Τεχνοηθικής. Αποτελεί μια προσπάθεια διερεύνησης των ηθικών και νομικών διλημμάτων της ιατρικής πρακτικής της τηλεψυχιατρικής. Η τηλεψυχιατρική, όπως και άλλες μορφές τηλεϊατρικής, έχει γίνει ένας διαδεδομένος τρόπος μέσω του οποίου οι ασθενείς αποκτούν πρόσβαση στην υγειονομική περίθαλψη και με πολλές ερευνητικές εργασίες που αναφέρονται στην αποτελεσματικότητα και τα πλεονεκτήματά της, η τηλεψυχιατρική έχει αποκτήσει πολλούς υποστηρικτές στην επιστημονική και υγειονομική κοινότητα. Ωστόσο, πολλά ερωτήματα σχετικά με τη δεοντολογική και νομική φύση της πρακτικής παραμένουν αναπάντητα και αυτό μπορεί να θέσει τους ασθενείς και άλλους χρήστες υπηρεσιών τηλεψυχιατρικής υγείας σε κίνδυνο παραβίασης βασικών δικαιωμάτων. Στην παρούσα εργασία, αρχικά θα παρατεθούν τα επιστημονικά δεδομένα που υποστηρίζουν τη χρήση της τηλεψυχιατρικής. Επιπλέον, θα συζητηθούν διάφορα ηθικά διλήμματα που έχουν αναφερθεί σχετικά με τη χρήση της τηλεϊατρικής στην ψυχιατρική τα τελευταία χρόνια και θα γίνει αναφορά στον ιατρικό κώδικα δεοντολογίας. Στη συνέχεια, θα γίνει αναφορά στην υπάρχουσα νομοθεσία για την τηλεψυχιατρική στην Ελλάδα και θα αναλυθούν τα νομικά ζητήματα που μπορεί να προκύψουν. Παρά το γεγονός ότι τα πλεονεκτήματα και οι ηθικοί κίνδυνοι της τηλεψυχιατρικής είναι κοινά σε πολλές χώρες, η παρούσα εργασία θα επικεντρωθεί στον κώδικα ιατρικής δεοντολογίας και τη νομοθεσία της Ελλάδας λόγω της έλλειψης σχετικής βιβλιογραφίας για το θέμα, παρόλο που η τηλεψυχιατρική χρησιμοποιείται ευρέως από τους Έλληνες ασθενείς. Τέλος, θα γίνουν κάποιες προτάσεις για το τι θα έπρεπε να βελτιωθεί σε σχέση με τις σημερινές συνθήκες, ώστε η τηλεψυχιατρική να είναι σύμφωνη με τις βασικές αρχές της βιοηθικής.

Λέξεις κλειδιά: βιοηθική, τηλεψυχιατρική, τηλεϊατρική, ψυχιατρική, ψυχική υγεία.

Introduction

During the past two centuries, there have been significant innovations in technology, informatics and electronic modes of communication all of which greatly contributed to the development of telemedicine. From the use of the telegraph and the radio in the latter half of the 1800s to the use of the computer and smartphones during the last decades, telemedicine has become a standard way of practicing medicine.[1]

For the purposes of this paper, it is necessary to provide a definition of telemedicine; it is defined as the "the use of electronic information and communications technologies to provide and support health care when distance separates the participants."[2]The term was first coined in 1920 with the application of telecommunications in the field of medicine by the National Aeronautics and Space Administration (NASA), with astronauts being in space and managing to get medical assistance by physicians on earth.[3]

Telemedicine is often used by doctors to educate and provide consultations to other healthcare professionals(doctor- doctor delivery), as well as by doctors to provide care, diagnose and treat patients(doctor-patient delivery). [4]

Three types can be distinguished, which are synchronous, asynchronous and remote monitoring. As far as the first two are concerned, in synchronous telemedicine medical care is provided in real-time and face to face, for example through a video conferencing session, while asynchronous telemedicine includes the collection and forwarding of medical data as well as the provision of medical care that is nor face to face nor real-time, such as with the exchange of messages or emails.[4,5]

Telemedicine has been successfully applied to various medical fields and specialties, with psychiatry being one of the primary ones, currently estimated as being the second most utilized form of telemedicine after teleradiology and followed by telecardiology.[6,7] Telepsychiatry can be defined as "the use of information and communication technologies to provide psychiatric services from a distance", commonly through the use of the telephone or videoconferencing.[6,8] The first documented utilization of telepsychiatry was in 1956 with scientists from the University of Nebraska using a closed circuit television system, while the first videoconferencing session for group psychotherapy took place in 1961.[6] Since then telepsychiatry has become an integral part of mental health services, its marked popularity rising further since the start of the covid-19 pandemic which greatly limited the ability of most people to access in person care, in a collective effort to stunt the spread of the disease by adhering to social distancing measures.[8]

Telepsychiatry, which as described above in reference to telemedicine as a whole, can be practiced both synchronously and asynchronously, has been credited with a plethora of advantages as supported by a multitude of scientific data. Multiple groups of people that were previously unable to get psychiatric and psychotherapeutic support due to their place of residence or other socioeconomic factors, have managed to gain access to mental health services and the level of patient satisfaction noted is high, proving telepsychiatry to be an invaluable tool in the hands of mental healthcare professionals. [6] Thereby in this paper, in section A, ample justification of the beneficial nature of telepsychiatry is provided so as to underline the importance of its existence.

Nonetheless, it is then crucial to properly examine the limitations and the ethical and legal dilemmas of telepsychiatry, such as security and privacy concerns and worries about patient safety and procurement of consent, among others, that could place under question the effectiveness and safety of this tool. These are discussed in section B. In sections C and D, the Greek medical code of ethics and relative legislation are studied. Finally after examining the gaps in the current National legislation in Greece, some potential changes are proposed, in the Summary and

Discussion section of this paper, that will allow telepsychiatry to remain an invaluable way of providing care to those in need.

Materials and Methodology

A review of the current literature on the benefits, as well as ethical and legal ramifications of telepsychiatry was conducted, using mainly the database of PubMed, articles from scientific magazines as well as results generated by google searches. The medical code of ethics, along with the current legislation for telepsychiatry in Greece were also researched and referenced.

Some key words and phrases that facilitated the search in the existing bibliography are:

Telepsychiatry and benefits, telepsychiatry and ethics, medical code of ethics, Greek legislation for telepsychiatry, telepsychiatry and legal issues

Scientific Data supporting the use of Telepsychiatry

Mental health is nowadays recognized as an important aspect of public health, considering the increased prevalence of psychiatric disorders, with more than 1 in 5 adults living with one.[9] This fact, along with the technological innovations that have facilitated the use of telemedicine, have rendered telepsychiatry an increasingly used and beneficial form of mental health care, with scientific data substantiating that.

A1. General advantages: accessibility and quality of care

Since before the pandemic, synchronous telepsychiatry was already implemented in the treatment of patients with psychiatric disorders, such as depression, anxiety and psychosis, as well as in the treatment of neurodivergent patients and people with neurocognitive issues. Video consultations were also considered effective for people belonging in special populations, like inmates.[10]

One of the most important points to mention is that telepsychiatry has given access to mental healthcare to people in rural, remote and inaccessible areas. In these areas, there may be a shortage of healthcare professionals, lack of knowledge and also increased stigma around mental health difficulties. Telepsychiatry has proved to be an efficient way to counter those aforementioned challenges, expanding the outreach and delivery of mental health practice and offering much needed care to patients that otherwise may not have been able to get it. [11,12,13]

Additionally, telepsychiatry has been proven to be a time and money efficient practice. Patients can "get" to an appointment without needing to leave their home, thus reducing transportation time and costs.[13]Expenses are also reduced because telepsychiatry, especially when practiced synchronously, can facilitate early detection of relapses allowing for preventative measures that both offer the patient the necessary timely care they need and diminish the number of emergency room visits, which are costly for patients and the healthcare system especially in the U.S, even though in Greece emergency care is free.[13,14]

Apart from the above, the ability to get help from home without the need for transportation, makes mental health care more accessible to people with physical limitations.[12,15] Patients with diagnosis- specific obstacles to treatment, such as those battling social anxiety or agoraphobia, can also benefit from virtual treatment, as they may exhibit less hesitancy in reaching for help. [12]

Asynchronous telepsychiatry, using the store and forward method, offers the supplemental advantage of getting treatment when traveling or while being in a different time zone and can surpass potential language and cultural barriers. [13]

The flexibility in scheduling, the high reliability of telepsychiatric assessment and the therapeutic connection that patients have supported can be built especially through synchronous telepsychiatry where the concept of doctor- patient relationship is better conserved, have all contributed to high patient satisfaction. [12,13,15,16] This is crucial in establishing good quality of care, which in turn

can promote medication adherence, better quality of life scoring and can decrease the rate of non-attendance.[15] Generally, patient satisfaction can be considered an important theme to the effectiveness of treatment. [17]

A2. Benefits to Specific populations

Telepsychiatry can offer additional benefits to people belonging in specific groups.

First of all, it has been found that virtual treatment can be effective for children and adolescents, both because of the increased familiarity of this group with technology and because of the fact that children and teenagers have reported finding distance treatment less threatening than face-to-face communication. [15,16]

On the other end of the spectrum, telecommunication has been implemented in the care of the elderly, with virtual assessments for neurocognitive impairment, like the MoCA test, being run with effectiveness similar to a traditional, in person setting.[18,19,20]

Virtual care has also been found to be of similar effectiveness to in person care in the department of postpartum obstetrics. Women and in general people with female anatomy who have recently given birth, are more susceptible to mental health struggles, notably postpartum depression and psychosis. They are also recovering physically and may find having to leave the house draining in order to access care provided from perinatal experts for mental health, which can also be a geographically challenging task. These factors, combined with the increased stigma related to experiencing mental health struggles as a new parent, may deter people in this group from seeking the care they need in person and that highlights the significancy of telepsychiatry. [21,22]

A combination of in person and virtual assessments and treatments, has been reported to be more effective in the management of addiction patients than monotherapy with either in person or virtual care. The prognosis of patients with addiction treated using telepsychiatry has also been found similar to that of patients getting in person help by other studies. Addiction treatment is usually a long-term process and patients require continuous support, which they can get through telepsychiatry. [23]

Telepsychiatry has also been applied in the field of forensic psychiatry, with virtual assessments and care being provided to inmates in correctional facilities. It has been found to be a cost-effective way for incarcerated people to have improved access to mental health services, especially considering potential staff shortages. Telepsychiatry in forensic services has been associated with a reduction in the number of violent incidents. [24,25]

A3. Additional benefits

A recognized benefit of telepsychiatry is improvement of access to mental health support in the event of a natural or man-made disaster and other local or global emergency events, like the recent covid-19 pandemic. With the use of telemental health services in such settings, overcrowding of emergency departments can also be avoided.[26]

Telepsychiatry can be beneficial to healthcare professionals apart from patients. With greater flexibility in scheduling, improved clinical workflow and reduced practice overhead cost, telepsychiatry can be associated with lower rates of physician burnout. [13] Some professionals report high satisfaction after trialing telepsychiatry, because of the ability to care for their patients through easier access.[15]

Ethical dilemmas of Telepsychiatry

Despite the many aforementioned research-backed advantages of telepsychiatry, it is of outmost importance to examine the several ethical and legal ramifications that may arise from its use.

The basic principles of bioethics will be used as a reference point for the exploration of the ethics of telepsychiatry. According to Beauchamp and Childress there are four prima facie principles. These are beneficence, nonmaleficence, autonomy and justice. The first two date back to Hippocrates and refer to

the moral obligation of the physician to help and act to the benefit of the patients, as well as to not cause harm to the patient, while the latter two evolved later. Autonomy refers to the right of each person to determine what happens to their body and justice is concerned with the fair and equitable treatment of all people. Apart from these primary principles, Beauchamp and Childress in their book "Principles of Biomedical Ethics", highlight additional secondary rules for bioethics; the obligation to tell the truth to the patient, to protect their privacy, to uphold confidentiality and to get informed consent before any medical procedure. [27,28]

In reference to the above, there are quite a few ethical challenges to the delivery of telepsychiatry that ought to be discussed.

B1. Protection of personal data, privacy and confidentiality

In any medical practice, it is imperative to ensure the careful and confidential management of personal and sensitive data and the privacy of the patient. In a non-traditional setting such as that of a virtual assessment and treatment, it can become harder to make sure that the above obligations are being upheld as well as they should. [29,30]

First of all, in either synchronous and asynchronous telepsychiatry, the platforms utilized may not be secure and the software may be non-encrypted, thus endangering the sensitive information that the patient shares with the psychiatrist.[12] In asynchronous telepsychiatry, there is the added risk of personal data being managed by someone other than the attending healthcare professional, without the knowledge and consent of the patient, thus breaching confidentiality.[31] There, also, may exist instances when technology fails and personal data are compromised, that are completely outside the control of the professional.[12]

Furthermore, data like clinical notes may be accessed without authorization, due to improper management by the physician during its storage, transfer or even deletion. [16]

Finally the conduction of the virtual session in an inappropriate environment may pose a threat to the privacy of the patient. This concerns both parties of the therapeutic team, as both patient and physician should select a location for the session away from "prying" eyes and ears, like those of family members. Ideally, the doctor should be at their office and the patient in their private space, so that the exchange of information is undoubtedly private.[32]

B2. Competency of physicians

Physicians may be competent to help the patient to the best of their ability in in person psychiatry, but may lack the preparedness to do so in a virtual setting, resulting in decreased value of care and potentially breaking two of the prima facie principles, those of beneficence and nonmaleficence.[12]

A review of literature has shown that there is a lack of education and training of healthcare professionals on the use of technological innovations to provide adequate psychiatric help from a distance to patients.[33] Ideally, physicians should be trained and be given the knowledge on how to best utilize the communications platforms used, as well as be tested and accredited on their competency to do so.[30] They should also be informed about the specific legal requirements and ethical approaches that ought to be followed.[12] Professionals recognize this gap in their competency and familiarity with this way of practicing care and that is correlated with the distrust of telepsychiatry some express and the decreased levels of professional satisfaction that have been noted. [10,15,39]

B3. Therapeutic alliance

Another ethical issue is concerned with the quality of the therapeutic relationship between psychiatrist and patient that can be established in telepsychiatry. For the patient to benefit from treatment in any medical specialty, a therapeutic alliance needs to be created, in which the patient feels understood and trusts the healthcare professional.[32,34] This is even more pertinent in psychiatry, where people need care for mental health struggles which are usually an extremely sensitive topic, often due to but not limited to internalized stigma. [35]

In a virtual setting, loss of physical presence and of the ability to best observe body language and non-verbal cues of communication, could undermine the connection between patient and physician and even interfere with the psychiatric assessment taking place, because some critical piece of information could be missed.[12,] There is also loss of therapeutic intimacy and closeness, as there may be lack of eye contact, consequently in some cases obstructing the formation of a safe feeling connection for the patient. [29] This is especially relevant to the asynchronous form of telepsychiatry, but can also constitute a challenge in videoconferencing and telephone sessions.[12]

Moreover, potential network failures and other technical issues that may come up, can hinder the continuity of the session, leading to its premature cessation. In other cases, this can incite feelings of agitation on both sides, thus compromising the value of care being provided.[29] In treatment via videoconferencing, connection problems can cause latency. These time delays can impede the ability of the psychiatrist to express their understanding empathetically, making the patient feel inadequately supported when being vulnerable.[10] They can also cause other misunderstandings in communication too, as information is not being conveyed appropriately. [10,29]

Besides the above, the therapeutic relationship may also be compromised by easier crossing of professional boundaries. Interactions in online treatment can be less formal and the use of social media platforms can give rise to unprecedented ethical challenges, with patients sending friend requests to physicians, forming inappropriate parasocial connections.[12]

Because of the possible pitfalls described above resulting in a compromised therapeutic relationship between patient and physician, the professional may unintentionally go against the prima facie of beneficence.

B4. Safety of patients

The clinical safety of the patient should consist a priority for all healthcare professionals. Telepsychiatry poses the question whether the safety of patients can be ensured as effectively as in an office visit and consequently if the prima facie principles of beneficence and nonmaleficence can be upheld.

Virtual therapy may not be suitable for all patients seeking help at a distance. With limited guidelines on how to handle crisis situations in telepsychiatry, such as active suicidal ideation, acts of self-harm and threats to hurt others, the clinical safety of the patients and even of other people, can be put at risk.[12,29] Telepsychiatry may also be contraindicated in some severe mental disorders.[12] In these cases, the physician should possess the ability to assess the need for in person care or even hospitalization so as to ensure the safety of the patient. [10]

The safety of the patient may also be compromised due to the fact that unethical and abusive behaviors can be less easily detectable online. Patients in a vulnerable position could be placed under the care of underqualified or even unlicensed individuals, resulting in their safety being at stake.[12,29]

B5. Informed consent

All patients ought to be provided with comprehensible information concerning their health and the ways of treatment and be given the right to provide their informed consent for any medical procedure, otherwise the practice would be unethical and the autonomy of the patient, a prima facie principle, would be violated. Informed consent should be obtained and is considered a medical and legal prerequisite for the initiation of treatment. For consent to be legal, the patient should have the capacity to understand the benefits and the risks of the proposed treatment and they should also be capable of decision-making. Their voluntariness also needs to be expressed, after they have accumulated sufficient knowledge of the nature and dangers of treatment. [36]

In psychiatry, because of the nature of some psychiatric illnesses and conditions that can severely impact the cognitive abilities of the patient, such as understanding, logical

reasoning and effective communication, the capacity of the patient to understand the information provided and proceed with rational decision-making can be impaired. The physician should be able to assess how competent the patient is, so as to decide if they are in the position to give consent. A tool that has been widely used for this purpose is the MacArthur competence assessment tool.[36] If the patient is judged unable to consent, consent has to be obtained from the legal guardian of the patient or in their absence from people close to the patient, like a close family member. [37]

In telepsychiatry, it can be more challenging to obtain informed consent than in office care. Technical issues may render the sharing of knowledge to the patient more difficult and the ability of the physician to assess the capacity of the patient to understand and make decisions can also be affected. [12] Difficulty in verifying the identity of a patient, can also result in the treatment of a patient who cannot legally consent, such as a minor that has not obtained parental consent or consent from the individual that holds the custody of the child.[12,37] In telepsychiatry, consent for the electronic transmission and storage of data should also be obtained, after informing the patients about the risk of interception of their personal data. Also, consent should be obtained specifically for the use of technology for the provision of care.[38]

B6. Justice

In telepsychiatry ensuring that the prima facie principle of justice is respected can be sometimes more challenging than in an office visit. All patients should have fair and equitable access to mental healthcare services and even though, as it was underlined in section A, telepsychiatry has contributed to increased accessibility to healthcare for a plethora of people, there are certain social groups that may face obstacles in getting virtual therapy and benefiting in the same way as other patients from the implementation of telepsychiatry.

In virtual psychiatry this can be more difficult or even impossible for people in low or medium income communities, that cannot afford to buy the necessary technological equipment or to have broadband cellular connectivity and access to the internet.[12,29] This fact along with the possibility that the psychiatric treatment some of these patients need is not covered by their national or private healthcare insurance, can incapacitate individuals from having fair access to treatment.[29]

Another potential issue in telemental health services is the exclusion of people that are not technologically literate and familiarized enough with the use of technological innovations.[12]

Some groups of people may be excluded from treatment because they do not have a safe and private environment to engage with the psychiatrist. For example, people from low income families may not have a private space for their session to take place as they may share a house with many other family members and patients living with abusive or controlling family members may not be able to openly confide in the psychiatrist about what is truly happening in their lives.[40] Finally homeless people do not possess their own space or technological equipment so as to be able to safely participate in treatment, which renders access to in person visits crucial for this group of people.[40]

Code of Medical Ethics

All physicians ought to adhere to the medical code of ethics that has been established in the country that they provide their medical services in. More specifically, in this paper some relevant articles from the Greek code of medical ethics will be outlined.

C1. Code of medical ethics for psychiatrists[37]

First of all, psychiatrists that provide either in person care or use technological innovations and virtual platforms to provide mental healthcare or both, need to follow the code of medical ethics that has been enforced by the Law 3418/2005 to preserve and protect the rights of patients. In article 28, the obligations

of a psychiatrist are stated. In short, these include the following points.

The physician has the ethical and legal responsibility to provide the best possible treatment with respect to the human decency, the rights and the basic freedoms of people with psychiatric illnesses. The freedom of the individual should be affected at the minimum possible level by the treatments provided. The professional has to recognize, respect and facilitate, by cultivating trust and maintaining confidentiality, the rightful participation of the patient in the therapeutic relationship based on their personal values and preferences. For that, the psychiatrist also has to inform the individual about the nature of their illness, the recommended treatments and their potential consequences and about the available alternative solutions.

Moreover the psychiatrist has the responsibility to remain informed about the latest scientific breakthroughs, as well as the newest developments regarding the protection of human decency and of the fundamental rights and freedoms of psychiatric patients.

Additionally, the spiritual, emotional and ethical autonomy of the patient needs to be preserved and the physician is prohibited from trying to change the political or social beliefs and behaviors of the patient that are irrelevant to the promotion of their health or of societal health. In the instance of a patient being unable to participate in decision making due to their illness, the legal guardian set or a person close to the patient has to provide consent in their place. To add to that, treatment without expressed consent and voluntariness is prohibited, except for when the patient's or others' life is at stake or there is risk of significant deterioration of the patient's illness. If mandatory hospitalization is thought to be necessary, the process followed should be concordant with the terms and prerequisites as outlined by the current legislation. Confidentiality can be breached only when its preservation could result in severe physical or mental damage to the patient or a third party.

Furthermore, in a consultation for non-therapeutic purposes, the physician ought to disclose the purpose of the consultation and what the subsequent use of its results will be. In a research setting the autonomy and physical and mental safety of the participating patient have to be ensured. The patient should give their informed consent after ample information on the nature of the research and the possible consequences that participation in it can procure, has been provided.

Finally in this article of the code of medical ethics, it is underlined that the physician should not be permitted to benefit for personal gain from the therapeutic relationship. When speaking to the media, psychiatrists should opt to fight against the stigmatization and discrimination of people with psychiatric illnesses.

C2. Code of medical ethics: Other relevant articles[37]

Other articles in the code of medical ethics that may concern the regulation of telepsychiatry and other telemedicine services, are the articles 5 and 7.

In article 5, it is stated that the publication of medical certificates and expert evaluations needs to be preceded by the written or verbal demand of the patient or of a third party that is legally permitted to do so. A prerequisite for the publication of certificates describing the current health status of the patient is the physical examination of said patient. To publish an invalid medical certificate is considered a criminal offence and is punishable by law.

In article 7, it is stated that the physician can practice in the areas that are included in the local medical association of which they are a member of. The itinerant practice of medicine is prohibited and doctors are able to practice frequently in areas not included in their medical association only after permission from the local medical associations to which these areas belong to.

Legislation

For the protection of patients and the safe practice of telepsychiatry, it is obligatory that physicians follow the published legislation concerning telemedicine and telepsychiatry in

the country or state in which they practice the medical profession. In this paper the focus will be on the legislation that has been published in Greece.

D1. Legislation for Telemedicine

Telepsychiatry is a form of telemedicine, which in Greece is regulated by the Law 3984/2011. More particularly in article 66 and paragraph 16, it is stated that telemedicine services are provided given that there is the ability to do so and with the responsibility falling on the attending physician for each case. The attending physician, for the protection of personal data, is required to ask from the patient or if that is not possible, from a first degree relative to give explicit consent for the use of telemedicine. Explicit consent here refers to a signed form of consent. If explicit consent cannot be procured, the physician offers telemedicine services based on their own judgement. In the end, it is stated that the guidelines from hospitals and health centers that provide telemedicine services have an advisory but not a compulsory role. [41]

In the midst of the covid-19 pandemic in the spring of 2020, when use of telemedicine and telepsychiatry had increased in frequency, the Panhellenic Medical Association sent some recommendations regarding the provision of medical services from a distance to all medical associations of the country. It was underlined that according to their document with the protocol number 5266, the provision of telemedicine services is not adequately regulated by the legislation mentioned above and thus the responsibility for telemedicine services falls exclusively on the attending doctor. It was recommended that the practice of medicine at a distance via telephone use or other media that renders the physical examination of the patient impossible should be a last resort option for treatment. Instructions for the intake of medicines prescribed and other complex instructions for the care of the patient, should be forwarded via SMS or email, following the virtual appointment. The physician should be able to perform a medical procedure, provide counseling services and proceed with writing prescriptions, as long as they are in possession of the data containing the patient's medical history, the virtual assessment is considered enough to form an opinion on the patient's current health status and the possibility of risks outweighing the benefits is assessed to be low. [42]

D2. Legislation for the virtual provision of mental health services to children and adolescents[43]

In article 36 of the Law 4865/2021 are written the following statements regarding the regulation of mental health services that are provided to underage individuals with the use of telepsychiatry and telepsychology.

Firstly, the provision of medical and psychiatric care and of counseling services for children and teenagers up to the age of eighteen via the use of virtual platforms is permitted. These services can be administered by child psychiatrists and medical professionals that are subscribed to the National Healthcare System of Greece(ESY), by professionals that are members of university hospitals, of community mental health centers for children and adolescents, as well as by doctors in private practice that are contracted with EOPYY. EOPYY is translated to National Organization for the Provision of Healthcare services.

To add to those statements, it is also underlined that the virtual treatment is conducted with the attending child psychiatrist or mental health professional carrying the responsibility. They are obligated to ask for and obtain consent for the provision of telepsychiatry or telecounseling services, from the person that has parental responsibility or from the individual that has custody of the child. This is in accordance to what is stated in the medical code of ethics, in articles 1 and 12 as far as telepsychiatry is concerned with or in the case of a psychologist providing telecounseling services, it is in agreement with the code of ethics for psychologists.

The management of personal data collected from the patient during virtual sessions, is regulated by the second paragraph of article 9 of the Regulation 2016/679 set by the European Parliament and the Council. More

specifically, the second paragraph specifies in which cases the processing of data, which is generally prohibited according to the first paragraph, is allowed. In telepsychiatry and telepsychology services for children and adolescents, processing is allowed when necessary to protect the vital interests of the data subject or of another person, as the data subject here being underage is legally incapable of giving consent. Processing of data of underage individuals, is also allowed for the purposes of preventative medicine, for the provision of a medical diagnosis and of healthcare and treatment. Finally processing of data is not prohibited when it is necessary for reasons of public interest in the area of public health.[44]

Finally, in article 36 of the Law 4865/2021, it is stated that the guidelines from hospitals and mental health centers that provide telepsychiatry and telecounseling services have an advisory but not a compulsory role.

Legal issues

From the above it becomes evident that Greece's legislation for telemedicine leaves room for a number of legal challenges. [45]

More precisely, a potential legal issue that could come up concerns the fact that telemedicine and as a result telepsychiatry could be considered a form of itinerant practice of medicine, which according to the medical code of ethics is not allowed. This is due to the fact that the psychiatrist and the patients may live in different regions, with the physician not being a member of the patient's local medical association. [37,45]

Another legal question that remains unanswered by the current legislation is what happens if the patient is in need of and asks for a medical certificate that describes the current status of their health. According to the code of ethics, publication of such a certificate without the physical examination of the patient is not permitted and an invalid certificate could lead to legal trouble for the physician. In telepsychiatry, because of the nature of illnesses treated, a physical in person examination may not be needed for the assessment of the health of the patient. However, as nothing has been specified on the matter in the legislation for telemedicine, it is uncertain if that could constitute a legal challenge for psychiatrists. [37,46]

Furthermore, there could exist issues with the protection of data from third parties and the preservation of confidentiality, which are of both ethical and legal nature. Another ethical and legal issue is the matter of obtaining informed consent from the patient or another legally appointed person, in cases where the patient cannot physically or legally consent. [37] In telepsychiatry, supplementary consent to the use of technological innovations and electronic platforms has to be obtained, apart from consent to the psychiatric assessment and treatment, after making sure that the patient is aware of the danger for data breaches during their transmission, storage and processing. Both of these matters, need to be more regulated in the field of telemedicine, so that the pivotal rights of the patient are protected and the physician is able to avoid potential legal repercussions.[45,46]

An additional legal challenge that could come up concerns the matter of medical errors and medical malpractice. For example in the case of a false diagnosis because of lack of an in person assessment, the physician could face serious legal repercussions, as it can be considered medical negligence and specifications in the legislation for telemedicine have not yet been made.[45] Also, in the instance that a medical treatment has resulted in serious endangerment of the patient's health and especially when the therapeutic team consists of the trio patient-primary doctor- specialist via telehealth, it may be difficult to judge to whom the legal consequences should fall onto. [46]

Finally, in the current legislation for telemedicine, there is nothing stated regarding the public health insurance coverage of virtual sessions. The prescription of medicines may also come in contrast with the instructions provided by EOPYY.[45]

Summary and Discussion

It's safe to conclude that telepsychiatry, constituting an innovative way of delivering mental healthcare to a diverse group of individuals, is here to stay and will continue to grow in popularity in the years to come. It offers a multitude of benefits and even if it cannot completely replace treatment in an office setting, it can be used as a supplement to in person care and in cases when that is not possible, telepsychiatry alone can be the way that individuals who in other instances would not be able to, access mental health services. Nonetheless, the potential ethical and legal challenges that have been analyzed in this paper cannot be ignored so that it can be ensured that the basic rights and freedoms of patients are protected to the maximum degree. The need for a more specialized legislation in Greece and in other countries is evident, as the percentage of people using telepsychiatry continues to increase. To make a few suggestions, firstly, the legislation medical professionals abide by should clearly specify whether telemedicine and thus telepsychiatry could be considered itinerant practices of medicine and under which circumstances this could be the case, so that physicians do not break the medical code of ethics due to this lack of specification. Additionally, regarding the publication of medical certificates, the conditions under which this is legal and ethical via the use of telecommunication services should be outlined in the legislation. Further parameters for getting informed consent could also be added in the current legislation along with concise statements on how to avoid medical malpractice when means of telecommunication are an integral part of the care of patients. With these as well as some other specifications in the current legislation that could solve the aforementioned legal issues and higher standards for the protection of data with stricter regulation of the telecommunication technologies used, telepsychiatric services can become much more safe. Moreover, the conduction of further research into the benefits and risks of telepsychiatry with possibly more long term studies taking place is suggested, so as to not only examine the short term results telepsychiatric treatment can have, but study its lasting impact on patients and medical professionals. Finally, with the introduction of specific ethical guidelines and training programs for physicians, telepsychiatry can become a far more advantageous way of providing mental health services in the future.

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