

TELEMEDICINE IN FOCUS: ANALYSIS OF THE MOST COMMON ERRORS AND ETHICAL-LEGAL PARAMETERS

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Abstract: This article analyzes the advances and challenges of telemedicine in Brazil, recognized as a strategic tool for expanding access to healthcare, driven by technological progress and definitively regulated by the Federal Council of Medicine (CFM). The trajectory of national telehealth has been marked by significant transformations in the use of remote communication technologies, with its expansion accelerated during the COVID-19 pandemic. In this context, the emergency regulation of this practice culminated in the enactment of Law No. 14.510/2022, which provided legal support for remote medical care. The objective of this study is to identify the main errors that medical professionals must avoid in the practice of telemedicine, based on a critical analysis of scientific, normative, and doctrinal literature on the subject. To this end, a bibliographic review was conducted with emphasis on publications from the last five years, consulting the SciELO, Scopus, REASE, and LILACS databases. The investigation highlights the importance of professional civil liability, informed patient consent, and compliance with the General Data Protection Law (LGPD). As a result, it presents a synthesis of practices to be avoided and essential ethical-legal precautions for safe telemedicine practice. Thus, the study reinforces the potential of telemedicine as an instrument of health equity, provided it is used under appropriate technical, legal, and ethical standards.

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INTRODUCTION

Telemedicine is a modality of distance health care that has been gaining ground in the medical field along with technological advancement. Teleconsultations can include both users of the Unified Health System (SUS) and customers of health plans and private services (Brasil, 2020). In recent years, as a result of the need to provide patients with access to health services during the Covid-19 pandemic, the adoption of this tool has accelerated even more (Araújo et al., 2023). Such technology has proven to be beneficial and has been definitively regulated by the Federal Council of Medicine (CFM), through Resolution No. 2,314/2022.

Parallel to the advancement of telemedicine, the accelerated development of artificial intelligence (AI) stands out, which has expanded diagnostic and therapeutic possibilities in the medical field. According to the Future of Health (2024), AI tends to optimize the assertiveness of diagnoses and contribute to the development of innovative therapies. The insertion of digital solutions in daily care is evident, with emphasis on online scheduling, electronic medical record records and the recently launched “Meu SUS Digital” system, an initiative of the Ministry of Health aimed at integrating the clinical information of Brazilian citizens. These tools facilitate the performance of remote assistance and extend the reach of medicine, even in contexts of physical distance. Virtual consultations, in addition, reduce the exposure of vulnerable professionals and patients to contamination, minimizing unnecessary travel (Cezário, 2024).

However, such innovations are not without challenges. The lack of equity in internet access, inequality in the distribution of technological devices, and the vulnerability of personal data are important obstacles to the consolidation of this modality (Santos and Franqueira, 2024). Such limitations demand attention from health authorities, especially with regard to the protection of users’ sensitive information and the universality of care. Although it is valid and effective in many circumstances, virtual medicine does not replace, in its entirety, face-to-face care. It is up to the



medical professional to evaluate the most appropriate conduct for the specific clinical situation, a decision that must preserve the integrity and ethics of the doctor-patient relationship, as highlighted by the rapporteur of CFM Resolution No. 2,314/2022, counselor Donizetti Giamberardino.

From a constitutional and legal perspective, it is essential that both physicians and patients understand their ethical and legal responsibilities, especially in the face of the weaknesses of technological mediation. As Bueno and Tavares (2024) warn, the impasses involving the regulation of telemedicine in Brazil are not merely technical, but sociotechnical, revealing symbolic and institutional disputes between the actors in the network. Maldonado (2016), although published before the definitive regulation of the practice, remains a fundamental reference for understanding the structural, economic, and social challenges that still face the implementation of telehealth in the country. Although recent literature is prioritized, classic authors are used when their approach remains conceptually current and relevant to the object of research.

In this scenario, this study seeks to answer the following research question: What ethical-legal failures should physicians avoid in the practice of telemedicine, according to the normative and jurisprudential frameworks in force in Brazil? The relevance of the research lies in identifying ethical and legal risk conducts that can compromise the quality of care, providing theoretical and practical subsidies to guide health professionals regarding the safe and legally supported use of virtual medicine.

The present research adopts a qualitative and multidisciplinary approach, articulating references from medicine, bioethics and law to critically analyze the main risks and responsibilities associated with the practice of telemedicine. It is expected, with this, to collaborate with the medical and legal community in the prevention of irregularities and in the promotion of efficient, safe and responsible clinical action, contributing to the improvement of public policies aimed at telehealth in Brazil.



METHODOLOGY

This is a qualitative research, with an exploratory approach and descriptive character, developed through a critical bibliographic review. The study aimed to identify the main legal and ethical risks associated with the practice of telemedicine in Brazil, focusing on the conducts to be avoided by physicians during remote care, in light of the current regulation.

To build the theoretical basis, scientific publications, resolutions of the Federal Council of Medicine (CFM), judicial jurisprudence extracted from the Jusbrasil platform and doctrinal texts in the field of Medical Law were analyzed. The selection of sources prioritized studies and documents published from 2020 onwards, the year in which the practice of telemedicine began to be formally authorized on an emergency basis, culminating in the enactment of Law No. 14,510, of December 27, 2022.

Data collection was carried out in the SciELO, Scopus, REASE and LILACS databases, using the descriptors “Telemedicine”, “Telehealth”, “Remote consultation”, “Legal aspects” and “Medical liability”, combined with the Boolean operators “AND” and “OR”. The inclusion criteria involved complete texts, available in Portuguese, with thematic adherence to the research objectives. Publications that did not directly address the legal and ethical implications of remote medical practice were excluded.

The analysis of the selected materials occurred through interpretative reading, with extraction of the most relevant excerpts and subsequent critical systematization. Although it is not a formal integrative review, the research adopts a multidisciplinary model, integrating the legal, medical, and bioethical fields to build a comprehensive overview of the failures that should be avoided in professional performance in digital health environments.



ANALYSIS AND DISCUSSION OF THE RESULTS

The origin of telemedicine and its historical consolidation

The history of telemedicine dates back to the late nineteenth century, following the advances in distance communication for health care purposes. According to Wen (2020), the first modern remote medicine initiatives are linked to the space race period, when technologies were developed to monitor the health of astronauts in real time, inaugurating the idea of medical care without physical presence. However, as early as the First and Second World Wars, records of medical care via telegraph and radio demonstrate the primitive use of remote technologies (Boas et al., 2022).

In the Brazilian context, the initial records of structured use of telemedicine appear in the 1980s, as indicated by Maldonado et al. (2016), with the aim of integrating remote regions into the health system. The institutionalization of the practice, in turn, occurred through CFM Resolution No. 1,643/2002 and the creation of the Brazil Networks Telehealth Program, in 2007, recognized by PAHO as a model of regional cooperation. These data are corroborated by Nunes et al. (2016), who analyzed the applicability of telemedicine in the Family Health Strategy, demonstrating its structuring role for the problem-solving capacity of Primary Care.

The pandemic context and emergency regulation

The Covid-19 pandemic decisively boosted the consolidation of telemedicine in Brazil. According to Bueno and Tavares (2024), the emergence of SARS-CoV-2 worked as a “non-human actor” catalyzing regulatory changes, by imposing institutional urgency for the adoption of the practice. In March 2020, the Ministry of Health issued Ordinance No. 467/2020, temporarily authorizing telemedicine on an exceptional basis. The definitive legalization occurred through Law No. 14,510/2022, which delegated to the Federal Council of Medicine the ethical regulation of the practice, made effective through CFM Resolution No. 2,314/2022.



Wen (2020) emphasizes that telemedicine should be understood as a method, and not as a mere tool, and that its incorporation requires clear guidelines regarding information security, informed consent, and ethical responsibility. The contribution of the Actor-Network Theory (Callon, Latour, and Law) was used by Bueno and Tavares (2024) to map the conflicts between CFM, the Ministry of Health, and professional categories, revealing a dispute for the legitimacy of the practice and evidencing the sociotechnical nature of regulation.

Civil liability and data protection in remote medical practice

The study by Martins and Teles (2021) makes a relevant contribution when discussing the civil liability of physicians as data processing agents. According to the authors, unlike the classic subjective liability of medical practice, remote work implies a dimension of strict liability, under the terms of the General Data Protection Law (LGPD). This means that the damage resulting from the leakage of sensitive information, even without direct fault of the professional, may give rise to a duty to indemnify.

This paradigm shift is especially relevant when considering that the practice of telemedicine is linked to digital platforms, whose vulnerabilities are not always under the exclusive control of health professionals. Thus, the duty of vigilance over information security and the correct completion of the electronic medical record become central elements of a good ethical practice.

National jurisprudence on telemedicine: health plans as the focus of demands

The jurisprudential analysis carried out based on decisions available on the Jusbrasil platform reveals a predominant trend: legal controversies involving telemedicine in Brazil are mostly focused on the relationships between users and health plan operators, and not on direct actions against doctors. This finding is relevant to the legal and ethical field, as it indicates, to date, a relative compliance of



medical practice with the regulatory frameworks established by the Federal Council of Medicine (CFM) and Law No. 14,510/2022.

Paradigmatic decisions handed down by the Court of Justice of the State of Mato Grosso, such as in case No. 1001086-96.2021.8.11.0025, reinforce the mandatory coverage of telemedicine consultations by health operators, especially in nationwide plans. In this case, the court recognized the right of a patient to have a telepresence consultation with a doctor located in another state, indicated on the health operator's own website, in the absence of qualified professionals in the state of origin. The decision emphasized that the denial of coverage violated the principles of continuity of care and dignity of the consumer (TJMT, Civil Appeal, Rel. Des. João Ferreira Filho, judged on 11/28/2023).

In addition, a decision by the Court of Appeals of the State of São Paulo, in an interlocutory appeal from the District of São José dos Campos, reaffirmed that telemedicine is a consolidated modality of medical care and that its coverage must be guaranteed by health plans, under the terms of article 1 of CFM Resolution No. 2,314/2022. The decision highlighted that the operator's refusal to authorize remote service characterizes a breach of contract and an affront to consumer rights.

The courts have interpreted telemedicine as a contemporary expression of the right to health, compatible with article 196 of the Federal Constitution, which ensures universal and integral access to health actions and services. The National Supplementary Health Agency (ANS), through a technical note during the pandemic period, had already positioned itself for the mandatory coverage of remote care. This guideline was accepted by the state courts, which began to require operators to provide qualified professionals for virtual consultations, under penalty of violation of the contractual and legal duties of the consumer relationship, according to the provisions of the Consumer Protection Code (CDC).

De Moraes et al. (2023), Oliveira e Silva (2024) and Sarlet and Sarlet (2023) reinforce the understanding of telemedicine as an important tool in promoting the right to health in Brazil, especially by expanding access and equity in health services.

On the other hand, the absence of litigation directly involving the conduct of physicians reveals



not only the effectiveness of the CFM's ethical and technical regulations, but also the adaptation of professionals to the use of digital platforms. Such a jurisprudential panorama strengthens confidence in the practice of telemedicine as a legitimate modality of care and reinforces the urgency of regulatory advances to ensure the universalization of this care model.

Judicialization of access to telemedicine in health plans: a look at Brazilian jurisprudence

The incorporation of telemedicine as a legitimate modality of health care, as provided for in article 1 of CFM Resolution No. 2,314/2022, implies contractual obligations to health plan operators. As service providers in the supplementary health regime, governed by Law No. 9,656/1998 and the Consumer Protection Code (CDC), operators must ensure the continuity of medical care, including by digital means, when available. The denial of coverage for remote consultations, especially in the absence of qualified local providers, represents an affront to the principles of objective good faith and the social function of the contract.

Two emblematic judgments of the Court of Justice of Mato Grosso illustrate this issue. In case No. 1001086-96.2021.8.11.0025, the court recognized the right of a patient to have a telemedicine consultation with a homeopathic doctor from another state, indicated on Unimed's own website, in the absence of locally accredited professionals. In a similar decision, in case No. 1001075-60.2021.8.11.0025, the court reaffirmed the mandatory coverage of remote care and recognized the solidarity between Unimed units nationally. Both decisions invoke the understanding that telemedicine is consolidated as a contemporary expression of health care, and its access is protected by consumer legislation and ANS regulations.

It is observed that the difficulty of access does not result from the unavailability of telemedicine itself, but from the omission of the plans to provide qualified specialists, especially for teleradiology. According to article 8 of CFM Resolution No. 2,314/2022, this type of medical act can only be performed by professionals with a Specialist Qualification Registration (RQE).



CFM RESOLUTION No. 2,314/2022

[...] Art. 8 - TELEDIAGNOSIS is the medical act at a distance, geographic and/or temporal, with the transmission of graphics, images and data for the issuance of a report or opinion by a physician with a specialist qualification record (RQE) in the area related to the procedure, in response to the request of the attending physician.

The absence of these professionals in the accredited network makes it impossible for beneficiaries to exercise their right to health, especially in contexts of geographic or clinical vulnerability. Thus, the judicialization of coverage reveals the role of the Judiciary as a guarantor of equity in access to health mediated by technologies.

In continuity with this analysis, it is essential to reflect on the doctor-patient relationship mediated by digital technologies. The strengthening of trust in this modality of care is intrinsically linked to the observance of strict ethical parameters, in this way, based on the contributions of authors such as Maldonado (2016), Martins and Teles (2021) and the regulations of the Federal Council of Medicine, we seek to evidence the relationship between the subjects involved in distance care and the expanded understanding of humanization, responsibility and professional secrecy.

Considerations on the doctor-patient relationship and ethical standardization

The doctor-patient relationship represents one of the central pillars of clinical practice and, in the telemedicine modality, requires rigorous adaptations that ensure the maintenance of the ethical principles that govern the profession. As provided for in the Code of Medical Ethics, remote consultation does not exempt the fulfillment of professional obligations related to qualified listening, clear information, and respect for patient autonomy.

According to Maldonado (2016), the use of technologies in the therapeutic relationship should not be understood only as a technical mediation, but as a field of symbolic interaction that requires



expanded communication skills from the professional. This becomes even more relevant in the digital context, where facial expression, body contact, and the physical environment are replaced by screen-mediated interactions, which can make it difficult to perceive clinical and subjective signs.

Martins and Teles (2021) highlight that the ethical relationship in telemedicine depends on factors such as informed consent, transparency in communication, adequate recording of care, and the security of shared data. The LGPD (General Law for the Protection of Personal Data) imposes strict liability on the professional for the processing of sensitive data, requiring the adoption of digital protection measures that guarantee the confidentiality and integrity of the information.

CFM Resolution No. 2,314/2022 reinforces that remote care must comply with the same ethical principles as face-to-face medicine, including the obligation of complete electronic medical records. According to Article 87, paragraph 1 of the Code of Medical Ethics: “The medical record must contain the clinical data necessary for the proper conduct of the case, being filled out, in each evaluation, in chronological order with date, time, signature and registration number of the physician with the Regional Council of Medicine.”

In this sense, the doctor-patient relationship in telemedicine cannot be reduced to a digital transaction. It is a complex human relationship, crossed by values such as empathy, listening, respect for vulnerability and civil responsibility. As provided for in Article 32 of the Code of Medical Ethics: “Failure to use all available means of health promotion and prevention, diagnosis and treatment of diseases, scientifically recognized and within his reach, in favor of the patient” is forbidden to the physician.

In addition, Article XIV of Chapter I of the Code of Medical Ethics provides: “The physician shall strive to improve the standards of medical services and to assume his responsibility in relation to public health, sanitary education and health legislation.”

Article 37, paragraph 1, also of the Code of Medical Ethics, establishes that: “Distance medical care, in the form of telemedicine or other method, will be provided under the regulation of the Federal Council of Medicine.”



Also, according to Article 8 of CFM Resolution No. 2,314/2022:

Telediagnosis is the medical act at a distance, geographic and/or temporal, with the transmission of graphs, images and data for the issuance of a report or opinion by a physician with a specialist qualification record (RQE) in the area related to the procedure, in response to the request of the attending physician.

In addition to what is provided for in the Code of Medical Ethics, the Civil Code also establishes the limits of professional performance. Article 951 of the Civil Code provides:

Art.951. The provisions of arts. 948, 949 and 950 also apply in the case of compensation due by the person who, in the exercise of professional activity, due to negligence, imprudence or malpractice, causes the death of the patient, aggravates his illness, causes him injury, or disqualifies him for work.

Thus, it is concluded that the consolidation of telemedicine depends, to a large extent, on the qualification of the professional to maintain an empathetic, safe and ethically oriented therapeutic relationship. Normative frameworks must be allies in the formation of a new relational model, in which technology acts as a means and not as an end, preserving the centrality of care in medical practice. In addition, the scarcity of lawsuits against physicians in telemedicine reflects not only the strict compliance with ethical and legal standards by professionals, but also the appreciation of this modality as a viable, safe, and effective alternative of care, in line with the principles of the right to health and equity in access to services.

Given this scenario, there is a need to deepen the analysis of the most recurrent mistakes in the practice of telemedicine, in light of the current ethical-legal parameters and the recommendations present in the specialized literature, in order to prevent failures and promote excellence in remote care. to maintain an empathetic, safe and ethically oriented therapeutic relationship. Normative frameworks must be allies in the formation of a new relational model, in which technology acts as a means and not as an end, preserving the centrality of care in medical practice.



Analysis of the most common errors and ethical-legal parameters

The practice of telemedicine, despite being regulated and widely accepted as an instrument for expanding access to health, is not free from risks and misconceptions that can compromise the quality of care provided and patient safety. In this context, the identification of the most common errors is essential for the improvement of professional conduct, especially in view of the ethical and legal complexity that involves remote medical practice.

Based on the contributions of Santos and Araújo (2022) and the current legislation — especially CFM Resolution No. 2,314/2022, the Code of Medical Ethics, the General Data Protection Law (Law No. 13,709/2018), and the guidelines of the Brazilian Public Key Infrastructure (ICP-Brasil), the following table was prepared, which presents the main ethical-legal parameters for the safe practice of telemedicine. The objective is to contribute to remote medical conduct, reinforcing good practices and preventing recurring failures.

Chart 1 – Main mistakes to be avoided by medical professionals in telemedicine

No.	Common Mistake	Ethical-Legal Basis
I	Not adequately informing or clarifying the patient about the modality of care adopted and its limitations.	CFM Resolution No. 2,314/2022 (Art. 3 and Art. 4); Code of Medical Ethics (Art. 31).
II	Failure to obtain free and informed consent for teleconsultation.	CFM Resolution No. 2,314/2022 (Art. 4); Code of Medical Ethics (Art. 22).
III	Performing consultations without formal scheduling, compromising the organization, time and focus of care.	Santos & Araújo (2022); Principles of good clinical practice.
IV	Omitting information regarding the cost of the consultation and the average duration of the service.	CFM Resolution No. 2,314/2022 (Art. 2, §2); Consumer Protection Code (Law No. 8,078/1990).
V	Do not advise the patient about the need for face-to-face care whenever the clinical case requires it.	CFM Resolution No. 2,314/2022 (Art. 6); Code of Medical Ethics (Art. 32).



SAW	Neglecting to record the clinical history and exams in the medical record safely and in accordance with the requirements of the LGPD.	Law No. 13,709/2018 (LGPD); Code of Medical Ethics (Art. 87, §1).
VII	Using videoconferencing platforms without the minimum requirements of information security and data protection.	CFM Resolution No. 2,314/2022 (Art. 7); LGPD (Art. 46).
VIII	Disregard that teleconsultation is subject to the same ethical principles as face-to-face consultation, including respect, confidentiality, and professional responsibility.	Code of Medical Ethics (Art. 2 and Art. 6); CFM Resolution No. 2,314/2022.
IX	Performing telediagnosics without having the proper Specialty Qualification Record (RQE).	CFM Resolution No. 2,314/2022 (Art. 8).
X	Issue prescriptions, certificates or opinions without the use of a certified electronic signature.	ICP-Brasil; CFM Resolution No. 2,314/2022 (Art. 11).

Source: Prepared by the authors, 2025.

The clarity of these parameters seeks to support medical conduct, promoting a responsible, legally safe, and technically appropriate practice for the contemporary reality of digital health. The systematization of these errors, with their respective justifications, allows the medical professional to recognize the requirements of remote practice with greater security and effectiveness.

Studies such as Maldonado (2016) and Wen (2020) argue that the insertion of digital technologies in the context of health care should be accompanied by a broader view of medical practice, in which the principles of ethics, professional responsibility, and patient centrality remain fundamental references. According to Maldonado (2016), technological mediation in the therapeutic relationship should not weaken human bonds, but rather enhance the reach and effectiveness of care based on respect, communication and empathy.

Wen (2020), when analyzing the evolution of telemedicine in Brazil, highlights that distance practice needs to be understood not as a replacement for traditional medicine, but as a complementary instrument that expands access, especially in contexts of territorial and socioeconomic inequality. For the author, technical regulation must go hand in hand with the strengthening of the ethical dimension of professional performance.

Thus, the commitment to good practices in telemedicine is not restricted to formal compliance



with the rules, but also involves a reflective, humanized and technically qualified posture, which reaffirms the advances in health as a social right and ethical-political duty of the medical professional.

Final Thoughts

In view of the guiding question of this study: what ethical-legal failures should physicians avoid in the practice of telemedicine, according to the normative and jurisprudential frameworks in force in Brazil? it was possible to identify, based on the studies of Santos and Araújo (2022), Maldonado (2016), Wen (2020) and the legal analyses of the Federal Council of Medicine (2022), that the main risks are related to the omission of information to the patient, the absence of informed consent, the non-compliance with technical requirements and the non-compliance with legal requirements regarding confidentiality, data security and civil liability.

The systematic analysis of the applicable legislation, court decisions and specialized literature has shown that the practice of telemedicine requires the same ethical and technical rigor as face-to-face medicine. CFM Resolution No. 2,314/2022, the LGPD, the Code of Medical Ethics, and the decisions of the higher courts point to prudent, informed, empathetic, and properly documented medical performance.

In this way, the study contributes to the strengthening of medical conduct in the remote modality, offering a framework of ethical-legal parameters that can guide professional practice with greater legal certainty, moral responsibility, and respect for patient rights. By preventing common errors, the transformative potential of telemedicine in equitable access to health is expanded, reaffirming its value as an instrument of ethical, legitimate, and socially committed care.

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