

## Pharma & Healthcare Update

March 29, 2022

### THE FUTURE OF HEALTH EDUCATION IN INDIA: STRUCTURES FOR CROSS BORDER COLLABORATIONS IN THE DIGITAL WORLD

Education and Healthcare have a lot in common. They both serve the greater social good and are basic human necessities. Looking back over the course of the pandemic, these industries have also witnessed a high degree of adaptability and resultantly, a significant boom. For instance, instead of “going” to the doctor’s office like we were used to, the doctor comes home through telemedicine. Instead of “going” to school, teaching comes home through online classes. The adoption cut both ways – physicians and academicians who were reluctant to move online earlier have also become very comfortable with this new approach, with some even having moved to digital media exclusively. Due to comfort with technology, medical education and research also has moved online, paving way for cross border collaborative opportunities.

Foreign universities and research institutes have always looked at India due to its brainpower, research, infrastructure, and availability of resources. The ongoing conflict in Ukraine has further highlighted the need for more medical education resources, and India has already started ramping up. Use of digital medium for communication and monitoring is making it easier for foreign universities and institutes to work in India, without on-ground presence, as long as they have the help of Indian partnering institutes on their side.

One of the most common ways of foreign and Indian institutes to work together is through collaboration. Foreign educational institutes license its existing research and R&D to an Indian counterpart and the parties work together to build on it. The support from foreign institute can be provided via on-line medium on a real time basis. Often, collaborations are aimed at setting up R&D centres or centres of specialization or excellence in India in the long-term. Since the entire effort is focused on development of valuable intellectual property, robust legal clauses including those with respect to confidentiality are key. If the collaboration is with an Indian university or college, and the students are likely to receive any degree or diploma at the end of it, then review of Indian education laws may also be important from a structuring and compliance perspective.

There are variations to this model. One being where the licence is accompanied by services. Here, the foreign institute provides services like training and, consultation. This, too, can happen via virtual mode. Even teaching services can be provided via online medium. Historically, there are also arrangements where foreign qualified physicians visit Indian medical colleges to teach students. While this works great, one needs to be mindful that the movement of employees or the presence of employees of the foreign institute in India does not lead to the creation of a permanent establishment (PE), resulting in tax exposure for the foreign institute. The analysis is tricky, but important. If a PE is formed, the foreign institute would be taxed at 40% (exclusive of surcharge and cess) in India on the profits attributable to such a PE. Given the high tax rate, online teaching services works better to minimize the risk of a PE in India.

There has been a growing interest in collaborations for tele-consultations as well. Here, foreign physicians associated with a foreign medical institute, research centre or university provide tele-consultations to Indian physicians. This model has seen increased adoption, primarily because territorial limitations to providing medical advice still apply, leading to foreign physicians being unable to consult with Indian patients directly or prescribe medications for treatment. Thanks to physician-to-physician or second opinion consults, Indian patients are still able to benefit from global expertise of foreign physicians through their Indian referring physician without the need to travel across the globe. Indian physicians are also able to physically examine the patient (for in-person consults) and prescribe medications based on the guidance provided by the foreign physician. However, some do’s don’t’s apply. For instance, foreign institutes should ensure that medical advice is provided to the Indian physician, who would then use their professional judgement to determine the best course of treatment for the patient. Where patient data is being shared, Indian data privacy and protection compliances should also be considered. The question of liability and indemnity from any misuse of data, data breach or adverse impact cause due to reliance on advice should also be addressed contractually. There is also an additional tax consideration - foreign telemedicine platforms may be viewed as an e-commerce operator for the purposes of Indian income tax law. Payments made by Indian physicians, hospitals or patients to such platforms may attract an equalisation levy of 2%, which is payable by the foreign provider to the Indian tax authorities.

Where foreign physicians visit India, additional considerations would also apply. Currently, foreign licensed physicians are permitted to undertake limited activities such as becoming an observer, for post graduate training or fellowships with Indian institutions, provided that the foreign physician obtains a temporary registration from the National Medical Commission – the Indian medical practice and education regulator - for this purpose. They are not entitled to examine patients, or perform any procedures per se. The responsibility for the foreign physician’s actions during their visit is tied to the institute, who is also responsible for applying for the registration on the physician’s

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behalf. Prior planning would also be required, given that the registration typically takes a few months to be issued. Given these restrictions and obligations, it may make sense to engage in teleconsultations or online teaching and research, over in-person visits.

There has also been an uptick in providing mental healthcare and overall wellness services online. In fact, the Indian government announced the launch of a National Tele-Mental Health Programme in the recent Union budget, considering the overall toll of the pandemic on the Indian population. Foreign institutions looking to enter into or collaborate with Indian partners in this space need to keep in mind that clinical psychologists, counsellors and nutritionists are regulated differently in India, with each speciality having licensure requirements under different laws such as the Mental Healthcare Act, 2017, the Rehabilitation Council of India Act, 1992 and the recently introduced National Commission for Allied Healthcare Professions Act, 2021. While this may pose challenges for foreign professionals directly consulting with Indian patients, like medical consults, physician-to-physician and second opinion consult models in collaboration with Indian partners can be explored for the mental health and wellness space as well.

Overall, there are many structures that exist for collaborative opportunities between foreign universities, research centres or hospitals with their Indian counterparts in the field of medicine and medical education, research and consultancy. Most of them can now also be achieved through virtual mode. With right planning, strategy and legal advice, virtual media can be an excellent way for exploring collaborative cross border research and education opportunities— all for the greater good.

— **Darren Punnen & Aarushi Jain**

You can direct your queries or comments to the authors

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