



**MEDICAL EXAMINING BOARD
TELEMEDICINE RULE COMMITTEE
Room 121A, 1400 East Washington Avenue, Madison
Contact: Tom Ryan (608) 266-2112
March 16, 2016**

The following agenda describes the issues that the Committee plans to consider at the meeting. At the time of the meeting, items may be removed from the agenda. Please consult the meeting minutes for a record of the actions of the Committee.

AGENDA

10:30 A.M. OR IMMEDIATELY FOLLOWING THE FULL BOARD MEETING

OPEN SESSION – CALL TO ORDER – ROLL CALL

A. Adoption of Agenda (1)

B. Election of Committee Officers (2)

C. Legislative and Rule Matters – Discussion and Consideration (3-35)

- 1) News Article Relating to Telemedicine
- 2) Other States Telemedicine Rules
- 3) Med 24 Relating to Telemedicine

D. Deliberation on Items Added After Preparation of Agenda:

- 1) Introductions, Announcements and Recognition
- 2) Election of Committee Officers
- 3) Appointment of Committee Liaison(s)
- 4) Administrative Updates
- 5) Nominations, Elections, and Appointments
- 6) Education and Examination Matters
- 7) Credentialing Matters
- 8) Practice Matters
- 9) Legislative/Administrative Rule Matters
- 10) Liaison Reports
- 11) Informational Items
- 12) Appearances from Requests Received or Renewed
- 13) Speaking Engagement(s), Travel, or Public Relation Request(s)

E. Public Comments

ADJOURNMENT

**State of Wisconsin
Department of Safety & Professional Services**

AGENDA REQUEST FORM

1) Name and Title of Person Submitting the Request: Nifty Lynn Dio, Bureau Assistant		2) Date When Request Submitted: 03/10/2016 Items will be considered late if submitted after 12:00 p.m. on the deadline date which is 8 business days before the meeting	
3) Name of Board, Committee, Council, Sections: Telemedicine Rule Committee of the Medical Examining Board			
4) Meeting Date: 03/16/2016	5) Attachments: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	6) How should the item be titled on the agenda page? Election of Committee Officers	
7) Place Item in: <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session		8) Is an appearance before the Board being scheduled? <input type="checkbox"/> Yes (Fill out Board Appearance Request) <input checked="" type="checkbox"/> No	9) Name of Case Advisor(s), if required:
10) Describe the issue and action that should be addressed: 1. Elect Committee Officers for 2016			
11) Authorization			
Nifty Lynn Dio		03/10/2016	
Signature of person making this request		Date	
Supervisor (if required)		Date	
Executive Director signature (indicates approval to add post agenda deadline item to agenda)		Date	
Directions for including supporting documents: 1. This form should be attached to any documents submitted to the agenda. 2. Post Agenda Deadline items must be authorized by a Supervisor and the Policy Development Executive Director. 3. If necessary, provide original documents needing Board Chairperson signature to the Bureau Assistant prior to the start of a meeting.			

**State of Wisconsin
Department of Safety & Professional Services**

AGENDA REQUEST FORM

1) Name and Title of Person Submitting the Request: Dale Kleven Administrative Rules Coordinator		2) Date When Request Submitted: 3/7/16 Items will be considered late if submitted after 12:00 p.m. on the deadline date: ▪ 8 business days before the meeting	
3) Name of Board, Committee, Council, Sections: Telemedicine Rules Committee of the Medical Examining Board			
4) Meeting Date: 3/16/16	5) Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	6) How should the item be titled on the agenda page? Legislation and Rule Matters – Discussion and Consideration 1. News Article Relating to Telemedicine 2. Other States Telemedicine Rules 3. Med 24 Relating to Telemedicine	
7) Place Item in: <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session <input type="checkbox"/> Both	8) Is an appearance before the Board being scheduled? <input type="checkbox"/> Yes (Fill out Board Appearance Request) <input checked="" type="checkbox"/> No	9) Name of Case Advisor(s), if required:	
10) Describe the issue and action that should be addressed:			
11) <i>Dale Kleven</i> Signature of person making this request		Authorization <i>March 7, 2016</i> Date	
Supervisor (if required)		Date	
Executive Director signature (indicates approval to add post agenda deadline item to agenda) Date			
Directions for including supporting documents: 1. This form should be attached to any documents submitted to the agenda. 2. Post Agenda Deadline items must be authorized by a Supervisor and the Policy Development Executive Director. 3. If necessary, Provide original documents needing Board Chairperson signature to the Bureau Assistant prior to the start of a meeting.			

HEADLINE: Doctor fined for improper Internet prescriptions for pain medication

BYLINE: By, Tony Leys

A Quad Cities doctor who admitted on national TV last year that he prescribed pain medication to unfamiliar patients via the Internet has agreed to pay a \$10,000 fine.

Dr. Paul Bolger, 44, reached a settlement with the Iowa Board of Medicine last week, according to documents released Wednesday.

Bolger was confronted last spring by a CBS News crew investigating sales of expensive painkilling creams to soldiers and veterans. A CBS reporter had entered his own information into a website, requesting medication for pain and scars. Two weeks later, he received the medication from a California pharmacy, with a notation that Bolger had written the prescription.

In an interview that aired last May, CBS reporter Jim Axelrod asked Bolger if he'd done something wrong by signing such prescriptions without interacting with patients. "I couldn't disagree with that," the doctor replied.

The Iowa Board of Medicine began investigating after the CBS report aired. In the settlement reached last week, Bolger agreed not to participate in telemedicine "until he demonstrates that he is able to do so in a safe manner and he receives prior written approval from the board."

The board said Bolger prescribed medication without properly obtaining a medical history or interviewing the patients. It warned him that if he does so again, he could lose his medical license. In the CBS story, the doctor also admitted he didn't have a medical license in New York, from which the reporter ordered the medication. Bolger said the Internet company he worked for was only supposed to be sending him records from patients in states in which he is licensed.

"I'm not going to make excuses for what I was doing," Bolger told Axelrod. "It's not that I had bad intentions, it was that I was under the mistaken impression that patients such as yourself were being spoken with by a qualified medical provider - someone who's qualified to screen you, do an intake over the phone, and make sure you were safe to have these meds."

Bolger, who works at an "aesthetics and wellness center" in Davenport, did not immediately respond to a request for comment Wednesday. In his agreement with the board, he did not admit to breaking any laws, but said he decided to settle the case to avoid the expense and uncertainty of fighting with regulators.

After the CBS story aired last summer, he released this statement: "I have done everything I can to provide and promote high quality medical care here in the Quad Cities for many years, whether in the emergency room or at the clinic. That includes our military veterans who I've always dropped everything to care for. In looking back, I should have verified my understanding that the patients had been seen by qualified health care providers before I signed those prescriptions. I sincerely regret I did not live up to my own high standards."

February 11, 2016

Florida

64B8-9.0141 Standards for Telemedicine Practice.

(1) “Telemedicine” means the practice of medicine by a licensed Florida physician or physician assistant where patient care, treatment, or services are provided through the use of medical information exchanged from one site to another via electronic communications. Telemedicine shall not include the provision of health care services only through an audio only telephone, email messages, text messages, facsimile transmission, U.S. Mail or other parcel service, or any combination thereof.

(2) The standard of care, as defined in Section 456.50(1)(e), F.S., shall remain the same regardless of whether a Florida licensed physician or physician assistant provides health care services in person or by telemedicine.

(3) Florida licensed physicians and physician assistants providing health care services by telemedicine are responsible for the quality of the equipment and technology employed and are responsible for their safe use. Telemedicine equipment and technology must be able to provide, at a minimum, the same information to the physician and physician assistant which will enable them to meet or exceed the prevailing standard of care for the practice of medicine.

(4) Controlled substances shall not be prescribed through the use of telemedicine except for the treatment of psychiatric disorders. This provision does not preclude physicians or physician assistants from ordering controlled substances through the use of telemedicine for patients hospitalized in a facility licensed pursuant to Chapter 395, F.S.

(5) Prescribing medications based solely on an electronic medical questionnaire constitutes the failure to practice medicine with that level of care, skill, and treatment which is recognized by reasonably prudent physicians as being acceptable under similar conditions and circumstances, as well as prescribing legend drugs other than in the course of a physician’s professional practice.

(6) Physicians and physician assistants shall not provide treatment recommendations, including issuing a prescription, via electronic or other means, unless the following elements have been met:

(a) A documented patient evaluation, including history and physical examination to establish the diagnosis for which any legend drug is prescribed.

(b) Discussion between the physician or the physician assistant and the patient regarding treatment options and the risks and benefits of treatment.

(c) Maintenance of contemporaneous medical records meeting the requirements of Rule 64B8-9.003, F.A.C.

(7) The practice of medicine by telemedicine does not alter any obligation of the physician or the physician assistant regarding patient confidentiality or recordkeeping.

(8) A physician-patient relationship may be established through telemedicine.

(9)(a) Nothing contained in this rule shall prohibit consultations between physicians or the transmission and review of digital images, pathology specimens, test results, or other medical data by physicians or other qualified providers related to the care of Florida patients.

(b) This rule does not apply to emergency medical services provided by emergency physicians, emergency medical technicians (EMTs), paramedics, and emergency dispatchers. Emergency medical services are those activities or services to prevent or treat a sudden critical illness or injury and to provide emergency medical care and prehospital emergency medical transportation to sick, injured, or otherwise incapacitated persons in this state.

(c) The provisions of this rule shall not apply where a physician or physician assistant is treating a patient with an emergency medical condition that requires immediate medical care. An emergency medical condition is a medical condition manifesting itself by acute symptoms of sufficient severity that the absence of immediate medical attention will result in serious jeopardy to patient health, serious impairment to bodily functions, or serious dysfunction of a body organ or part.

(d) The provisions of this rule shall not be construed to prohibit patient care in consultation with another physician who has an ongoing relationship with the patient, and who has agreed to supervise the patient’s treatment, including the use of any prescribed medications, nor on-call or cross-coverage situations in which the physician has access to patient records.

Rulemaking Authority 458.331(1)(v) FS. Law Implemented 458.331(1)(v), 458.347(4)(g) FS. History–New 3-12-14, Amended 7-22-14, 10-26-14, 3-7-16.

Georgia

360-3-.07 Practice Through Electronic or Other Such Means

(a) Under O.C.G.A. §§ 43-34-8 and 43-1-19, the Board is authorized to take disciplinary action against licensees for unprofessional conduct, and in connection therewith, to establish standards of practice. Except as otherwise provided, in order for a physician to practice within the minimum standards of practice while providing treatment and/or consultation recommendations by electronic or other such means, all the following conditions must be met:

- (1) All treatment and/or consultations must be done by Georgia licensed practitioners;
- (2) A history of the patient shall be available to the Georgia licensed physician, physician assistant or advanced practice registered nurse who is providing treatment or consultation via electronic or other such means;
- (3) A Georgia licensed physician, physician assistant or advanced practice registered nurse either:
 - a. Has personally seen and examined the patient and provides ongoing or intermittent care by electronic or other such means; or
 - b. Is providing medical care by electronic or other such means at the request of a physician, physician assistant or advanced practice registered nurse licensed in Georgia who has personally seen and examined the patient; or
 - c. Is providing medical care by electronic or other such means at the request of a Public Health Nurse, a Public School Nurse, the Department of Family and Children's Services, law enforcement, community mental health center or through an established child advocacy center for the protection of a minor, and the physician, physician assistant or advanced practice registered nurse is able to examine the patient using technology and peripherals that are equal or superior to an examination done personally by a provider within that provider's standard of care; or
 - d. Is able to examine the patient using technology and peripherals that are equal or superior to an examination done personally by a provider within that provider's standard of care.
- (4) The Georgia licensed physician, physician assistant or advanced practice registered nurse providing treatment or consultations by electronic or other means must maintain patient records on the patient and must document the evaluation and treatment along with the identity of the practitioners providing the service by electronic or other means, and if there is a referring practitioner, a copy of this record must also be provided to the referring physician, physician assistant or advanced practice registered nurse;

(5) To delegate to a nurse practitioner or to supervise a physician assistant doing telemedicine, the physician must document to the board that that the provision of care by telemedicine is in his or her scope of practice and that the NP or PA has demonstrated competence in the provision of care by telemedicine.

(6) Patients treated by electronic or other such means or patient's agent must be given the name, credentials and emergency contact information for the Georgia licensed physician, physician assistant and/or advanced practice registered nurse providing the treatment or consultation. Emergency contact information does not need to be provided to those treated within the prison system while incarcerated but should be provided to the referring provider. For the purposes of this rule, "credentials" is defined as the area of practice and training for physicians, and for physician assistants and advanced practice registered nurses, "credentials" shall mean the area of licensure and must include the name of the delegating physician or supervising physician;

(7) The patient being treated via electronic or other means or the patient's agent must be provided with clear, appropriate, accurate instructions on follow-up in the event of needed emergent care related to the treatment. In the case of prison patients, prison staff will be provided this information if the consult is provided to an inmate; and

(8) The physician, physician assistant or nurse practitioner who provides care or treatment for a patient by electronic or other such means must make diligent efforts to have the patient seen and examined in person by a Georgia licensed physician, physician assistant or nurse practitioner at least annually.

(b) This rule should not be interpreted to interfere with care and treatment by telephonic communication in an established physician-patient relationship, call coverage for established physician-patients relationships, or telephone and internet consultations between physicians, nurse practitioners, physician assistants, other healthcare providers or child protection agencies.

(c) This rule does not authorize the prescription of controlled substances for the treatment of pain or chronic pain by electronic or other such means. All treatment of pain or chronic pain must be in compliance with Rule 360-3-.06.

(d) Nothing in this rule shall excuse a physician, nurse practitioner or physician assistant from ordering appropriate laboratory or other diagnostic tests needed to make diagnoses within the minimum standard of care.

(e) Nothing in this rule shall supersede any requirements provided for by other rules or laws.

(f) Licensees practicing by electronic or other means will be held to the same standard of care as licensees employing more traditional in-person medical care. A failure to conform to the appropriate standard of care, whether that care is rendered in person or via electronic or other such means, may subject the licensee to disciplinary action by the Board.

Authority: O.C.G.A. Sections 43-34-5(c), 43-34-8, 43-34-23 and 43-34-25, 43-34-31, 43-34-103 and 43-34-105.

RULE **Louisiana**
Department of Health and Hospitals
Board of Medical Examiners

Physician Licensure and Practice; Telemedicine
(LAC 46:XLV.408 and Chapter 75)

Pursuant to the authority vested in the Louisiana State Board of Medical Examiners (the "Board") by the Louisiana Medical Practice Act, R.S. 37:1261-1292, as amended during the 2008 Session of the Louisiana Legislature by Acts 2008, Number 850, R.S. 37:1262(4) and 37:1276.1, and in accordance with the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., the board has adopted LAC Title 46:XLV, Subpart 2, Chapter 3, Subchapter H, Section 408 and Subpart 3, Chapter 75, Subchapter A, Sections 7501-7521 to govern the practice of all physicians who utilize telemedicine in this state.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XLV. Medical Profession

Subpart 2. Licensure and Certification

Chapter 3. Physicians

Subchapter H. Restricted Licensure, Permits

§408. Telemedicine Permit Qualifications, Procedure, Issuance, Expiration and Renewal

A. Qualifications. A physician who does not hold a license to practice medicine in Louisiana may not engage in the practice of medicine across state lines in this state via telemedicine, as defined in Chapter 75 of these rules, unless he or she holds a telemedicine permit issued by the board. To be eligible for a telemedicine permit an applicant shall:

1. possess the qualifications for licensing prescribed by §311 of these rules;
2. possess an unrestricted license to practice medicine issued by the medical licensing authority of a state other than Louisiana (whether allopathic or osteopathic);
3. not be enrolled in a medical residency or other post graduate medical training program. The board may, in its discretion, grant an exception to this requirement on a case-by-case basis where the applicant is enrolled in fellowship or other advanced training and it has been shown to the board's satisfaction that the applicant has completed all training relevant to his or her designated area of practice;
4. have attended the board's physician orientation program described in §449 of these rules or completed it online; and
5. have completed a board-approved application and satisfied the applicable fee.

B. Permit Denial. The board may deny or refuse to issue a telemedicine permit to an otherwise eligible applicant:

1. who does not satisfy the qualifications prescribed by this Chapter;
2. for any of the causes enumerated by R.S. 37:1285(A), or violation of any other provision of the Louisiana Medical Practice Act, R.S. 37:1261 et seq.;
3. who has been the subject of previous disciplinary action by the medical licensing authority of any state;
4. who is the subject of a pending investigation by the board, the medical licensing authority of another state or a federal agency;

5. who has been denied, had suspended, revoked, restricted or relinquished staff or clinical privileges at a hospital or institution while under investigation for, or as a result of, professional competency or conduct;

6. who has been, or is currently in the process of being denied, terminated, suspended, refused, limited, placed on probation or under other disciplinary action with respect to participation in any private, state, or federal health care insurance program; or

7. who voluntarily surrendered while under investigation by the issuing authority, or had suspended, revoked or restricted, his or her state or federal controlled substance permit or registration.

C. Applicant's Burden. The burden of satisfying the board as to the qualifications and eligibility of the applicant for a telemedicine permit shall be upon the applicant, who shall demonstrate and evidence such qualifications in the manner prescribed by and to the satisfaction of the board.

D. Application. Application for a telemedicine permit shall be made in a format approved by the board and shall include:

1. proof documented in a form satisfactory to the board that the applicant possesses the qualifications set forth in this Subchapter;
2. certification of the truthfulness and authenticity of all information, representations and/or documents contained in or submitted with the completed application;
3. a description of the manner of and the primary practice site from which telemedicine is to be utilized by the applicant;
4. acknowledgment that the applicant shall only utilize telemedicine in accordance with the telemedicine rules promulgated by the board in Chapter 75 of these rules and shall retain professional responsibility for the services provided to any patient by telemedicine;
5. criminal history record information;
6. such other information, acknowledgments and documentation as the board may require; and
7. a fee of \$150. The board may waive such fee in favor of an applicant who advises the board in writing that his or her use of telemedicine in this state shall be limited to the provision of voluntary, gratuitous medical services.

E. Appearances. An applicant shall be required to appear before the board or its designee if the board has questions concerning the applicant's qualifications.

F. Effect of Application. The submission of an application pursuant to this Subchapter shall constitute and operate as an authorization and consent by the applicant to:

1. submit to the jurisdiction of the board in all matters set forth in the Act or any other applicable Louisiana law, as well as the board's rules;
2. produce medical or other documents, records, or materials and appear before the board upon written request; and
3. report to the board in writing within 30 days of any disciplinary action against the applicant's:
 - a. license to practice medicine in another state; or
 - b. federal or state registration or permit to prescribe, dispense or administer controlled substances or the voluntary surrender thereof while under investigation by the issuing authorities.

G. Permit Expiration, Renewal. A telemedicine permit shall expire annually on the expiration date stated thereon or

the first day of the month in which the licensee was born, whichever is the later, unless renewed by the submission of a renewal application containing such information as the board may require, together with a renewal fee of \$100.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1262, 1270, 1271, 1275, 1276.1 and 1281.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 35:1532 (August 2009).

Subpart 3. Practice

Chapter 75. Telemedicine

Subchapter A. General Provisions

§7501. Scope of Subchapter

A. The rules of this Subchapter govern the use of telemedicine by physicians licensed to practice medicine in this state and those who hold a telemedicine permit issued by the board to practice medicine across state lines in this state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1262, 1270, 1271, 1275 and 1276.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 35:1532 (August 2009).

§7503. Definitions

A. As used in this Chapter and in §408 of these rules, unless the content clearly states otherwise, the following words and terms shall have the meanings specified.

Board—the Louisiana State Board of Medical Examiners, as constituted in the Medical Practice Act.

Controlled Substance—any substance defined, enumerated, or included in federal or state statute or regulations 21 C.F.R. 1308.11-.15 or R.S. 40:964, or any substance which may hereafter be designated as a controlled substance by amendment or supplementation of such regulations or statute.

Department—The Louisiana Department of Health and Hospitals.

Medical Practice Act or the Act—R.S. 37:1261-92, as may from time to time be amended.

Physician—an individual lawfully entitled to engage in the practice of medicine in this state as evidenced by a current license or telemedicine permit duly issued by the board.

Primary Practice Site—the location at which a physician spends the majority of time in the exercise of the privileges conferred by licensure or permit issued by the board.

State—any state of the United States, the District of Columbia and Puerto Rico.

Telemedicine—the practice of health care delivery, diagnosis, consultation, treatment, and transfer of medical data by a physician using interactive telecommunication technology that enables a physician and a patient at two locations separated by distance to interact via two-way video and audio transmissions simultaneously. Neither a telephone conversation, an electronic mail message between a physician and a patient, or a true consultation constitutes telemedicine for the purposes of this Part.

Telemedicine Permit—a permit issued by the board in accordance with Chapter 3 of the board's rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1262, 1270, 1271, 1275 and 1276.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 35:1533 (August 2009).

§7505. General Uses, Limitations

A. Telemedicine shall not be utilized by a physician with respect to any patient located in this state in the absence of a physician-patient relationship as provided in §7509 of these rules.

B. The practice of medicine by telemedicine, including the issuance of any prescription via electronic means, shall be held to the same prevailing and usually accepted standards of medical practice as those in traditional (face-to-face) settings. An online, electronic or written mail message, or a telephonic evaluation by questionnaire or otherwise, does not satisfy the standards of appropriate care.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1262, 1270, 1271, 1275 and 1276.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 35:1533 (August 2009).

§7507. Prerequisite Conditions

A. Prior to utilizing telemedicine the physician shall ensure that:

1. he or she has access to those portions of the patient's medical record pertinent to the visit;
2. there exists appropriate support staff who:
 - a. are trained to conduct the visit by telemedicine;
 - b. are available to implement physician orders, identify where medical records generated by the visit are to be transmitted for future access, and provide or arrange back up, follow up, and emergency care to the patient; and
 - c. provide or arrange periodic testing and maintenance of all telemedicine equipment.

B. A licensed health care professional who can adequately and accurately assist with the requirements of §§7509 and 7511 of this Chapter shall be in the examination room with the patient at all times that the patient is receiving telemedicine services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1262, 1270, 1271, 1275 and 1276.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 35:1533 (August 2009).

§7509. Providing Telemedicine Services; Records

A. Physicians who utilize telemedicine shall insure that a proper physician-patient relationship is established that at a minimum includes:

1. verification of the patient. Establishing that the person requesting the treatment is who the person claims to be;
2. evaluation. Conducting an appropriate evaluation of the patient, including review of any relevant history, laboratory or diagnostic studies, diagnoses, or other information deemed pertinent by the physician;
3. diagnosis. A diagnosis shall be established through the use of accepted medical practices including, but not limited to patient history, mental status and appropriate diagnostic and laboratory testing and fully documented in the patient's medical record. The diagnosis shall indicate the nature of the patient's disorder, illness, disease or condition and the reason for which treatment is being sought or provided;
4. treatment plan. The physician shall discuss with his or her patient the diagnosis, as well as the risks and benefits of appropriate treatment options, and establish a treatment plan

tailored to the needs of the patient. A treatment plan shall be established and fully documented in the patient's record; and

5. follow-up care. A plan for accessing follow-up care shall be provided to the patient in writing and documented in the patient's record.

B. Patient records generated by a physician conducting a telemedicine visit shall be maintained at the physician's primary practice site and at the location of the patient where such visit was conducted, or such other location as may be directed by the physician(s) responsible for the patient's care.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1262, 1270, 1271, 1275, and 1276.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 35:1533 (August 2009).

§7511. Informed Consent

A. In addition to any informed consent and right to privacy and confidentiality that may be required by state or federal law or regulation, a physician shall insure that each patient to whom he or she provides medical services by telemedicine is:

1. informed of the relationship between the physician and patient and the respective role of any other health care provider with respect to management of the patient; and

2. notified that he or she may decline to receive medical services by telemedicine and may withdraw from such care at any time.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1262, 1270, 1271, 1275 and 1276.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 35:1534 (August 2009).

§7513. Prohibitions

A. Telemedicine shall not be utilized to provide medical services to patients located in this state in the absence of medical licensure or a current telemedicine permit issued by the board and other than in compliance with the rules of this Chapter.

B. No physician shall utilize telemedicine:

1. for the treatment of non-cancer related chronic or intractable pain, as set forth in §§6915-6923 of the board's rules;

2. for the treatment of obesity, as set forth in §§6901-6913 of the board's rules;

3. to authorize or order the prescription, dispensation or administration of any amphetamine or narcotic, provided, however, that this limitation shall not apply to a physician who is currently certificated by a specialty board of the American Board of Medical Specialties or the American Osteopathic Association:

a. in the specialty of psychiatry from using amphetamines in the treatment of his or her patients suffering from attention deficit disorder; or

b. the American Society of Addiction Medicine in the subspecialty of addictive medicine from using narcotics in the treatment of an addictive disorder, provided such is permitted by and in conformity with all applicable federal and state laws and regulations; or

4. to provide care to a patient who is physically located outside of this state, unless the physician possesses lawful authority to do so by the licensing authority of the state in which the patient is located.

C. A physician shall not utilize telemedicine except in the usual course and scope of his or her medical practice.

D. A non-Louisiana licensed physician who practices across state lines by virtue of a telemedicine permit issued by the board shall not:

1. open an office in this state;

2. meet with patients in this state;

3. receive telephone calls in this state from patients; or

4. engage in the practice of medicine in this state beyond the limited authority conferred by his or her telemedicine permit.

E. No physician shall supervise, collaborate or consult with an allied health care provider located in this state via telemedicine unless he or she possesses a full and unrestricted license to practice medicine in this state and satisfies and complies with the prerequisites and requirements specified by all applicable laws and rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1262, 1270, 1271, 1275 and 1276.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 35:1534 (August 2009).

§7515. Exceptions

A. The following activities shall be exempt from the requirements of this Chapter:

1. furnishing medical assistance in case of a declared emergency or disaster, as defined by the Louisiana Health Emergency Powers Act, R.S. 29:760 et seq., or as otherwise provided in Title 29 of the Louisiana Revised Statutes of 1950, or the board's rules;

2. issuance of emergency certificates in accordance with the provisions of R.S. 28:53; and

3. a true consultation, e.g., an informal consultation or second opinion, provided by an individual licensed to practice medicine in a state other than Louisiana, provided that the Louisiana physician receiving the opinion is personally responsible to the patient for the primary diagnosis and any testing and treatment provided.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1262, 1270, 1271, 1275 and 1276.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 35:1534 (August 2009).

§7517. Action against Medical License

A. Any violation or failure to comply with the provisions of this Chapter shall be deemed to constitute unprofessional conduct and conduct in contravention of the board's rules, in violation of R.S. 37:1285(A)(13) and (30), respectively, as well as violation of any other applicable provision of R.S. 37:1285(A), and may provide just cause for the board to suspend, revoke, refuse to issue or impose probationary or other restrictions on any license held or applied for by a physician or applicant culpable of such violation, or for such other administrative action as the board may in its discretion determine to be necessary or appropriate under R.S. 37:1285(A).

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1262, 1270, 1271, 1275 and 1276.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 35:1534 (August 2009).

§7519. Action against Permit

A. For noncompliance with any of the provisions of this Chapter, or upon a finding of the existence of any of the causes enumerated by R.S. 37:1285(A), the board may, in

addition to or in lieu of administrative proceedings provided by this Chapter, suspend, revoke, refuse to issue or impose probationary or other restrictions on any permit held or applied for by a physician or applicant culpable of such violation, or take such other administrative action as the board may in its discretion determine to be necessary or appropriate under R.S. 37:1285(A).

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1262, 1270, 1271, 1275 and 1276.1.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 35:1534 (August 2009).

§7521. Unauthorized Practice

A. Any individual who utilizes telemedicine to practice medicine in this state in the absence of a medical license or a telemedicine permit duly issued by the board, shall be deemed to be engaged in the unauthorized practice of medicine and subject to the civil, injunctive and criminal penalties prescribed by the Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1262, 1270, 1271, 1275, 1276.1 and 1290.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 35:1535 (August 2009).

Robert L. Marier, M.D.
Executive Director

0908#077

TITLE 10. DEPARTMENT OF HEALTH AND MENTAL HYGIENE

SUBTITLE 32. BOARD OF PHYSICIANS

CHAPTER 05. TELEMEDICINE

*COMAR 10.32.05 (2011)**COMAR 10.32.05.01 (2011)***.01 Scope.**

A. This chapter governs the practice of medicine using telecommunication systems as an adjunct to, or replacement for, traditional face-to-face patient visits.

B. This chapter does not apply to the use of an electronic means by a treating physician licensed in Maryland who is seeking consultative services of another licensed health care provider with respect to an individual patient.

.02 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) Consultative Service.

(a) "Consultative service" means a service provided by a physician for the sole purpose of offering an expert opinion or advising the treating physician about an individual patient.

(b) "Consultative service" does not include:

(i) Decisions that direct patient care; or

(ii) Interpretation of images, tracings, or specimens on a regular basis.

(2) "Face-to-face" means within each other's sight and presence.

(3) "Group practice" means a group of two or more health care practitioners legally organized as a partnership, professional corporation, foundation, not-for-profit corporation, faculty practice plan, or similar association:

(a) In which each health care practitioner who is a member of the group provides substantially the full range of services that the practitioner routinely provides through the joint use of shared office space, facilities, equipment, and personnel;

(b) For which substantially all of the services of the health care practitioners who are members of the group are provided through the group and are billed in the name of the group, and amounts so received are treated as receipts of the group; and

(c) In which the overhead expenses of, and the income from, the practice are distributed in accordance with methods previously determined on an annual basis by members of the group.

(4) Interpretive Services.

(a) "Interpretive services" means official readings of images, tracings, or specimens through a telemedicine link.

(b) "Interpretive services" includes remote, real-time monitoring of a patient being cared for within a health care facility.

(5) "Notice of privacy practices" means a written statement that meets the:

(a) Requirement of the Health Insurance Portability and Accountability Act of 1996; and

(b) Standards found at *45 CFR § 164.520*, as amended.

(6) "Physician-patient relationship" means a relationship between a physician and a patient in which there is an exchange of individual, patient-specific information.

(7) "Real-time" means simultaneously or quickly enough to allow two or more individuals to conduct a conversation.

(8) "Telemedicine" means the practice of medicine from a distance in which intervention and treatment decisions and recommendations are based on clinical data, documents, and information transmitted through telecommunications systems.

.03 Licensure.

Except as specified in *Health Occupations Article, § 14-302*, Annotated Code of Maryland, an individual shall be a licensed Maryland physician in order to practice telemedicine if one or both of the following occurs:

A. The individual practicing telemedicine is physically located in Maryland;

B. The patient is in Maryland.

.04 Standards Related to Telemedicine.

A. A physician, including a physician in a group practice, who practices telemedicine using a website to communicate with patients, shall:

(1) Disclose on the website the following:

(a) Licensure status and Maryland physician license number, which may be accomplished as follows:

(i) For a website sponsored by a group practice, disclosure of the licensure status and physician license number of each physician practicing within the group;

(ii) For a website sponsored by a health insurer or HMO licensed in Maryland, identification of the health plan or HMO that has credentialed the physicians, and the name, Maryland license number, and licensure status for all Maryland-licensed physicians using the website; or

(iii) Disclosure of the names, licensure status, and Maryland physician license numbers of each individual physician practicing through the website;

(b) Physician ownership of the website, if applicable;

(c) Fees for services offered on the website, to be disclosed before a patient incurs any charges;

(d) Financial interest of the physician or group practice in the products or services advertised or offered on the site, if applicable; and

(e) The notice of privacy practices used by the physician, group practice, or HMO, or a statement regarding what user data is being collected and how the data will be used;

(2) Develop a procedure to verify the identification of the individual transmitting a communication;

(3) Develop a procedure to prevent access to data by unauthorized persons through password protection, encryption, or other means; and

(4) Develop a policy on how soon an individual can expect a response from the physician to questions or other requests included in transmissions.

B. A physician, including a physician in a group practice, who practices telemedicine using a website to communicate with patients, shall communicate the policies established in § A of this regulation, via the website of the physician or group practice, or by other means, to any individual with whom the physician exchanges or intends to exchange information.

.05 Patient Evaluation.

A. A physician shall perform a patient evaluation adequate to establish diagnoses and identify underlying conditions or contraindications to recommended treatment options before providing treatment or prescribing medication.

B. A Maryland-licensed physician may rely on a patient evaluation performed by another Maryland-licensed physician if one physician is providing coverage for the other physician.

C. If a physician-patient relationship does not include prior in-person, face-to-face interaction with a patient, the physician shall incorporate real-time auditory communications or real-time visual and auditory communications to allow a free exchange of information between the patient and the physician performing the patient evaluation.

.06 Standard of Quality Care.

A. A physician shall ensure that the quality and quantity of data and other information is sufficient in making medical decisions.

B. Except when a physician is performing interpretive services, the physician shall perform a patient evaluation that meets the requirements set forth in Regulation .05 of this chapter before providing recommendations or making treatment decisions for a patient.

C. When a physician is providing interpretive services, the physician shall ensure that there is no clinically significant loss of data from image acquisition through transmission to final image display.

D. A physician practicing telemedicine shall:

(1) Except when providing interpretive services, obtain and document patient consent;

(2) Create and maintain adequate medical records;

(3) Follow requirements of Maryland and federal law and regulations with respect to the confidentiality of medical records and disclosure of medical records; and

(4) Adhere to requirements and prohibitions found in *Health Occupations Article, §§ 1-212, 1-301-- 1-306, and 14-404*, Annotated Code of Maryland.

.07 Physician Discipline.

The Board shall use the same standards in evaluating and investigating a complaint and disciplining a licensee who practices telemedicine as it would use for a licensee who does not use telemedicine technology in the licensee's practice.

Mississippi

Part 2635 Chapter 5: Practice of Telemedicine

Rule 5.1 Definitions. For the purpose of Part 2635, Chapter 5 only, the following terms have the meanings indicated:

A. “Physician” means any person licensed to practice medicine or osteopathic medicine in the state of Mississippi.

B. “Telemedicine” is the practice of medicine using electronic communication, information technology or other means between a physician in one location and a patient in another location with or without an intervening health care provider. This definition does not include the practice of medicine through postal or courier services.

C. “Teleemergency medicine” is a unique combination of telemedicine and the collaborative/consultative role of a physician board certified in emergency medicine, and an appropriate skilled health professional (nurse practitioner or physician assistant).

Source: *Miss. Code Ann. §73-25-34 (1972, as amended)*. 10

Rule 5.2 Licensure. The practice of medicine is deemed to occur in the location of the patient. Therefore only physicians holding a valid Mississippi license are allowed to practice telemedicine in Mississippi. However, a valid Mississippi license is not required where the evaluation, treatment and/or medicine given to be rendered by a physician outside of Mississippi is requested by a physician duly licensed to practice medicine in Mississippi, and the physician who has requested such evaluation, treatment and/or medical opinion has already established a doctor/patient relationship with the patient to be evaluated and/or treated.

Source: *Miss. Code Ann. §73-25-34 (1972, as amended)*.

Rule 5.3 Informed Consent. The physician using telemedicine should obtain the patient’s informed consent before providing care via telemedicine technology. In addition to information relative to treatment, the patient should be informed of the risk and benefits of being treated via a telemedicine network including how to receive follow-up care or assistance in the event of an adverse reaction to treatment or if there is a telemedicine equipment failure.

Source: *Miss. Code Ann. §73-25-34 (1972, as amended)*.

Rule 5.4 Physician Patient Relationship. In order to practice telemedicine a valid “physician patient relationship” must be established. The elements of this valid relationship are:

- A. verify that the person requesting the medical treatment is in fact who they claim to be;
- B. conducting an appropriate examination of the patient that meets the applicable standard of care;
- C. establishing a diagnosis through the use of accepted medical practices, i.e., a patient history, mental status exam, physical exam and appropriate diagnostic and laboratory testing;
- D. discussing with the patient the diagnosis, risks and benefits of various treatment options to obtain informed consent;
- E. insuring the availability of appropriate follow-up care; and
- F. maintaining a complete medical record available to patient and other treating health care providers.

Source: *Miss. Code Ann. §73-25-34 (1972, as amended)*.

Rule 5.5 Examination. Physicians using telemedicine technologies to provide medical care to patients located in Mississippi must provide an appropriate examination prior to diagnosis and treatment of the patient. However, this exam need not be in person if the technology is sufficient to provide the same information to the physician as if the exam had been performed face to face.

Other exams may be appropriate if a licensed health care provider is on site with the patient and is able to provide various physical findings that the physician needs to complete an adequate assessment. However a simple questionnaire without an appropriate exam is in violation of this policy and may subject the physician to discipline by the Board.

Source: *Miss. Code Ann. §73-25-34 (1972, as amended)*. 11

Rule 5.6 Medical Records. The physician treating a patient through a telemedicine network must maintain a complete record of the patient's care. The physician must maintain the record's confidentiality and disclose the record to the patient consistent with state and federal laws. If the patient has a primary treating physician and a telemedicine physician for the same medical condition, then the primary physician's medical record and the telemedicine physician's record constitute one complete patient record.

Source: *Miss. Code Ann. §73-25-34 (1972, as amended)*.

Rule 5.7 Collaborative/Consultative Physician Limited. No physician practicing telemergency medicine shall be authorized to function in a collaborative/consultative role as outlined in Part 2630, Chapter 1 unless his or her practice location is a Level One Hospital Trauma Center that is able to provide continuous twenty-four hour coverage and has an existing air ambulance system in place. Coverage will be authorized only for those emergency departments of licensed hospitals who have an average daily census of thirty (30) or fewer acute care/medical surgical occupied beds as defined by their Medicare Cost Report.

Source: Miss. Code Ann. §73-25-34 (1972, as amended).

Rule 5.8 Reporting Requirements. Annual reports detailing quality assurance activities, adverse or sentinel events shall be submitted for review to the Mississippi State Board of Medical Licensure by all institutions and/or hospitals operating telemergency programs.

Amended October 15, 2003. Amended November 4, 2004. Amended January 30, 2006. Amended May 20, 2010.

Source: Miss. Code Ann. §73-25-34 (1972, as amended).

Montana

24.156.801 PURPOSE AND AUTHORITY

(1) These rules are promulgated to promote the efficient administration of the provisions of the Medical Practice Act, [37-3-341](#) through [37-3-349](#), MCA, regulating the practice of medicine across state lines.

History: [37-3-203](#), MCA; IMP, [37-3-341](#), MCA; NEW, 2000 MAR p. 2967, Eff. 10/27/00; TRANS, from Commerce, 2001 MAR p. 1471.

24.156.802 DEFINITIONS

(1) "Practice of telemedicine" means the practice of telemedicine as defined in [37-3-342](#)(1), MCA.

(2) Exemptions to the practice of telemedicine are defined in [37-3-342](#)(2), MCA.

(3) "Occasional telemedicine case" means the practice of medicine across state lines occurring less than five times in a calendar year or involves fewer than five patients in a calendar year.

(4) "Board" means the Board of Medical Examiners for the state of Montana created under [2-15-1841](#), MCA.

(5) "Telemedicine license" means a license issued by the board to practice telemedicine which:

(a) is only issued to an applicant who meets all of the requirements of [37-3-344](#) and [37-3-345](#), MCA; and

(b) limits the licensee to the practice of telemedicine as defined in these rules and only with respect to the specialty in which the licensee is board-certified or meets the current requirements to take the examination to become board-certified and on which the licensee bases the application for a telemedicine license pursuant to [37-3-345](#), MCA.

(6) "Licensee" means the current holder of a telemedicine license.

History: [37-3-203](#), MCA; IMP, [37-3-342](#), MCA; NEW, 2000 MAR p. 2967, Eff. 10/27/00; TRANS, from Commerce, 2001 MAR p. 1471; AMD, 2010 MAR p. 1187, Eff. 5/14/10.

24.156.803 LICENSE REQUIREMENT

(1) To engage in the practice of telemedicine in the state of Montana, a person shall hold:

(a) a current telemedicine license issued in accordance with the provisions of [37-3-341](#) through [37-3-349](#), MCA, or the rules of the board; or

(b) a full, unrestricted and current license issued under [37-3-301](#), MCA, and the rules of the board.

History: [37-1-131](#), [37-3-203](#), MCA; [IMP](#), [37-1-131](#), [37-3-343](#), MCA; [NEW](#), 2000 MAR p. 2967, Eff. 10/27/00; [TRANS](#), from Commerce, 2001 MAR p. 1471; [AMD](#), 2010 MAR p. 1187, Eff. 5/14/10.

24.156.804 APPLICATION FOR A TELEMEDICINE LICENSE

(1) An applicant for a telemedicine license shall:

(a) complete and return an application on a form approved by the board, together with accompanying documentation specified in [37-3-344](#), MCA;

(b) submit an application fee pursuant to ARM [24.156.805](#);

(c) submit proof of current malpractice or professional negligence insurance coverage in the amount of \$1,000,000; and

(d) satisfy all of the requirements set forth in [37-3-345](#), MCA.

History: [37-1-131](#), [37-3-203](#), MCA; [IMP](#), [37-1-131](#), [37-3-344](#), [37-3-345](#), MCA; [NEW](#), 2000 MAR p. 2967, Eff. 10/27/00; [TRANS](#), from Commerce, 2001 MAR p. 1471; [AMD](#), 2010 MAR p. 1187, Eff. 5/14/10.

24.156.805 FEES

(1) The following fees will be charged:

(a) The applicant shall submit an application fee of \$500 in the form of a check or money order payable to the board.

(b) The licensee shall submit a renewal fee of \$500 (on or before the date set by ARM [24.101.413](#)) in the form of a check or money order payable to the board, together with a completed renewal form.

(2) Additional standardized fees are specified in ARM [24.101.403](#).

(3) All application fees and renewal application fees are nonrefundable.

(4) All licensees will renew for a period of two years.

History: [37-1-134](#), [37-3-203](#), MCA; [IMP](#), [37-1-134](#), [37-1-141](#), [37-3-344](#), [37-3-345](#), [37-3-347](#), MCA; [NEW](#), 2000 MAR p. 2967, Eff. 10/27/00; [TRANS](#), from Commerce, 2001 MAR p. 1471; [AMD](#), 2006 MAR p. 1583, Eff. 7/1/06; [AMD](#), 2010 MAR p. 1187, Eff. 5/14/10; [AMD](#), 2015 MAR p. 820, Eff. 6/26/15.

[24.156.806](#) FAILURE TO SUBMIT FEES

(1) Failure of an applicant for a telemedicine license to submit the required application fee and properly completed form within one year from receipt of the original application materials, shall be grounds for the board to discontinue processing the application.

History: [37-3-203](#), MCA; [IMP](#), [37-3-347](#), MCA; [NEW](#), 2000 MAR p. 2967, Eff. 10/27/00; [TRANS](#), from Commerce, 2001 MAR p. 1471; [AMD](#), 2010 MAR p. 1187, Eff. 5/14/10.

[24.156.807](#) ISSUANCE OF A TELEMEDICINE LICENSE

(1) The telemedicine license issued by the board shall contain the name of the person to whom it is issued, the address of the person, the date and number of the license and such other information as the board deems necessary. The address contained on the telemedicine license shall be the address of the licensee where all correspondence and renewal forms from the board shall be sent during the two years for which the license has been issued and shall be the address deemed sufficient for purposes of service of process.

History: [37-3-203](#), MCA; [IMP](#), [37-3-343](#), MCA; [NEW](#), 2000 MAR p. 2967, Eff. 10/27/00; [TRANS](#), from Commerce, 2001 MAR p. 1471; [AMD](#), 2010 MAR p. 1187, Eff. 5/14/10.

[24.156.808](#) RENEWALS

(1) Renewal notices will be sent as specified in ARM [24.101.414](#).

(2) The provisions of ARM [24.101.408](#) apply.

History: [37-1-141](#), [37-3-203](#), MCA; [IMP](#), [37-1-141](#), MCA; [NEW](#), 2000 MAR p. 2967, Eff. 10/27/00; [TRANS](#), from Commerce, 2001 MAR p. 1471; [AMD](#), 2006 MAR p. 1583, Eff. 7/1/06.

[24.156.809](#) EFFECT OF DETERMINATION THAT APPLICATION FOR TELEMEDICINE LICENSE DOES NOT MEET REQUIREMENTS

(1) An applicant, who receives notice that the board has determined that an application for a telemedicine license does not meet the licensing requirements because the anticipated practice will exceed the scope of a telemedicine license, may apply for a physician's license to practice medicine in Montana.

History: [37-3-203](#), MCA; [IMP](#), [37-3-347](#), MCA; [NEW](#), 2000 MAR p. 2967, Eff. 10/27/00; [TRANS](#), from Commerce, 2001 MAR p. 1471; [AMD](#), 2010 MAR p. 1187, Eff. 5/14/10.

24.156.810 EFFECT OF TELEMEDICINE LICENSE

- (1) The issuance by the board of a telemedicine license to practice medicine across state lines subjects the licensee to the jurisdiction of the board in all matters set forth in [37-3-341](#) through [37-3-349](#), MCA, and the implementing rules and regulations of the board, including all matters related to discipline.
- (2) It shall be the affirmative duty of every licensee to report to the board in writing within 15 days of the denial of hospital privileges, restriction or limitation of practice, or the initiation of any disciplinary action against the license to practice medicine by any state or territory in which the licensee is licensed.
- (3) The licensee agrees, by accepting the telemedicine license, to produce patient medical records or other materials as requested by the board and to appear before the board or any of its screening panels following receipt of a written notice issued by the board or its authorized representative.
- (4) The licensee is subject to each of the grounds for disciplinary action as provided in [37-1-316](#) and [37-3-348](#), MCA, and ARM [24.156.625](#), in accordance with the procedures set forth in Title 37, chapters 1 and 3, MCA, and the Montana Administrative Procedure Act.
- (5) The licensee shall comply with all laws, rules, and regulations governing the maintenance of patient medical records, including patient confidentiality requirements, regardless of the state where the medical records of any patient within the state of Montana are maintained.
- (6) The licensee shall notify the board of any change in licensee's address as contained on the telemedicine license within 30 days of such change.
- (7) The licensee shall cooperate in the investigation of any possible grounds for discipline, including revocation or limitation of the license, by timely compliance with all inquiries and subpoenas issued by the board for evidence or information. The licensee shall provide, within 21 days of receipt of a written request from the board, clear and legible copies of requested documents, including medical records, which may be related to possible grounds for discipline, including revocation or limitation of a telemedicine license. Failure to timely comply with a board inquiry or subpoena or to provide clear and legible copies of requested records shall be grounds for discipline pursuant to the provisions of [37-3-348](#), MCA.

History: [37-3-203](#), MCA; IMP, [37-3-342](#), [37-3-348](#), [37-3-349](#), MCA; NEW, 2000 MAR p. 2967, Eff. 10/27/00; TRANS, from Commerce, 2001 MAR p. 1471; AMD, 2010 MAR p. 1187, Eff. 5/14/10.

24.156.811 SANCTIONS

(1) Any person who violates the provisions of these rules is subject to criminal prosecution for the unlicensed practice of medicine and/or injunctive or other action authorized in this state to prohibit or penalize continued practice without a license. Nothing in this rule shall be interpreted to limit or restrict the board's authority to discipline any physician licensed to practice in this state who violates the Medical Practice Act while engaging in the practice of medicine within this or any other state.

History: [37-3-203](#), MCA; [IMP](#), [37-3-348](#), MCA; [NEW](#), 2000 MAR p. 2967, Eff. 10/27/00; [TRANS](#), from Commerce, 2001 MAR p. 1471.

24.156.812 OBLIGATION TO REPORT TO THE BOARD

(1) A telemedicine practitioner shall report to the board within three months from the date of a final judgment, order, or agency action, all information related to malpractice, misconduct, criminal, or disciplinary action in which the telemed is a named party.

History: [37-1-131](#), [37-1-319](#), [37-3-202](#), MCA; [IMP](#); [37-1-131](#), [37-1-319](#), [37-3-323](#), [37-3-401](#), [37-3-405](#), MCA; [NEW](#), 2012 MAR p. 2464, Eff. 12/7/12.

Oklahoma

Telemedicine rules adopted by the Board of Medical Licensure & Supervision on January 16, 2014 and effective September 12, 2014.

TITLE 435. STATE BOARD OF MEDICAL LICENSURE AND SUPERVISION CHAPTER 10. PHYSICIANS AND SURGEONS SUBCHAPTER 1. GENERAL PROVISIONS

435:10-1-4. Definitions [AMENDED]

The following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"**Act**" means the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act, 59 O.S. §§ 480 **et seq.**

"**APA**" means either or both Article I and Article II, as applicable of the Administrative Procedures Act, 75 O.S.1991, §§ 250 **et seq.**, as amended.

"**Applicant**" means a person who applies for licensure from the Board.

"**Board**" means the Oklahoma Board of Medical Licensure and Supervision.

"**Foreign applicant**" means an applicant who is a graduate of a foreign medical school.

"**Foreign medical school**" means a medical school located outside of the United States.

"**Originating site**" means the location of the patient at the time the service being furnished via a telecommunications system occurs.

"**Distant site**" means the location of medical doctor providing care via telecommunications systems.

"**Patient**" means the patient and/or patient surrogate.

"**Physician/patient relationship**" means a relationship established when a physician agrees by direct or indirect contact with a patient to diagnose or treat any condition, illness or disability presented by a patient to that physician, whether or not such a presenting complaint is considered a disease by the general medical community. The physician/patient relationship shall include a medically appropriate, timely-scheduled, actual face-to-face encounter with the patient, subject to any supervisory responsibilities established elsewhere in these rules except as allowed in OAC 435:10-7-12 in this Subchapter. The act of scheduling an appointment, whether by a physician or by a physician's agent, for a future evaluation will not in and of itself be considered to establish a physician/patient relationship.

"**Supervision and Control**" means the physical presence of the supervising physician in the office or operating suite before, during and after the treatment or procedure and includes diagnosis, authorization and evaluation of the treatment or procedure with the physician/patient relationship remaining intact.

"**Surrogate**" means individuals closely involved in patients' medical decision-making and care and include:

(A) spouses or partners;

(B) parents;

(C) guardian; and

(D) other individuals involved in the care of and/or decision-making for the patient.

"**Telemedicine**" means the practice of healthcare delivery, diagnosis, consultation, treatment, including but not limited to, the treatment and prevention of conditions appropriate to treatment by telemedicine management, transfer of medical data, or exchange of medical education information by means of audio, video, or data communications. Telemedicine is not a

consultation provided by telephone or facsimile machine (Oklahoma Statutes, Title 36, Sec. 6802). This definition excludes phone or Internet contact or prescribing and other forms of communication, such as web-based video, that might occur between parties that does not meet the equipment requirements as specified in OAC 435:10-7-13 and therefore requires an actual face-to-face encounter. Telemedicine physicians who meet the requirements of OAC 435:10-7-13 do not require a face to face encounter

**TITLE 435. STATE BOARD OF MEDICAL LICENSURE AND SUPERVISION
CHAPTER 10. PHYSICIANS AND SURGEONS
SUBCHAPTER 7. REGULATION OF PHYSICIAN AND SURGEON PRACTICE**

435:10-7-13. Telemedicine [NEW]

a. Physicians treating patients in Oklahoma through telemedicine must be fully licensed to practice medicine in Oklahoma; and

b. Must practice telemedicine in compliance with standards established in these rules. In order to be exempt from the face-to-face meeting requirement set out in these rules, the telemedicine encounter must meet the following:

1. **Telemedicine encounters.** Telemedicine encounters require the distant site physician to perform an exam of a patient at a separate, remote originating site location. In order to accomplish this, and if the distant site physician deems it to be medically necessary, a licensed healthcare provider trained in the use of the equipment may be utilized at the originating site to “present” the patient, manage the cameras, and perform any physical activities to successfully complete the exam. A medical record must be kept and be accessible at both the distant and originating sites, preferably a shared Electronic Medical Record, that is full and complete and meets the standards as a valid medical record. There should be provisions for appropriate follow up care equivalent to that available to face-to-face patients. The information available to the distant site physician for the medical problem to be addressed must be equivalent in scope and quality to what would be obtained with an original or follow-up face-to-face encounter and must meet all applicable standards of care for that medical problem including the documentation of a history, a physical exam, the ordering of any diagnostic tests, making a diagnosis and initiating a treatment plan with appropriate discussion and informed consent.

2. **Equipment and technical standards**

A. Telemedicine technology must be sufficient to provide the same information to the provider as if the exam has been performed face-to-face.

B. Telemedicine encounters must comply with HIPAA (Health Insurance Portability and Accountability Act of 1996) security measures to ensure that all patient communications and records are secure and remain confidential.

3. **Technology guidelines**

A. Audio and video equipment must permit interactive, real-time communications.

B. Technology must be HIPAA compliant.

4. **Board Approval of Telemedicine**

In the event a specific telemedicine program is outside the parameters of these rules, the Board reserves the right to approve or deny the program.

Oregon

410-130-0610

Telemedicine

(1) For the purposes of this rule, telemedicine is defined as the use of telephonic or electronic communications to medical information from one site to another to improve a patient's health status.

(2) Unless authorized in OAR 410-120-1200 Exclusions, other types of telecommunications are not covered, such as telephone calls, images transmitted via facsimile machines and electronic mail:

(a) When those types are not being used in lieu of videoconferencing, due to limited videoconferencing equipment access, or

(b) When those types and specific services are not specifically allowed in this rule per the Oregon Health Services Commission's Prioritized List of Health Services and Practice Guideline.

(3) Provider Requirements:

(a) The referring and evaluating practitioner must be licensed to practice medicine within the state of Oregon or within the contiguous area of Oregon and must be enrolled as a Division of Medical Assistance Programs (Division) provider.

(b) For Addiction and Mental Health Division (AMH) providers, in addition to being enrolled as a Division provider under (3)(a). AMH providers must have an AMH agency letter of approval, certification of Approval or license issued by AMH. Individuals must also be providing covered services and be authorized to submit claims for covered telemedicine services under this rule.

(c) Providers billing for covered telemedicine services are responsible for the following:

(A) Complying with Health Insurance Portability and Accountability Act (HIPAA) and Authority Confidentiality and Privacy Rules and security protections for the patient in connection with the telemedicine communication and related records. Examples of applicable Authority rules are Confidentiality and Privacy Rules: OAR 943 Division 14 and 407-014-0300 to 407-014-0320 (Access Control); OAR 943-120-0170, 410-120-1360, and 410-120-1380. Examples of federal and state privacy and security laws that may apply include, if applicable, HIPAA (45 CFR Parts 160, 162, and 164), and 42 CFR Part 2, and ORS 646A.600 to 646A.628 (Oregon Consumer Identity Theft Protection Act);

(B) Obtaining and maintaining technology used in the telemedicine communication that is compliant with privacy and security standards in HIPAA and Department Privacy and Confidentiality Rules described in subsection (3)(A);

(C) Ensuring policies and procedures are in place to prevent a breach in privacy or exposure of patient health information or records (whether oral or recorded in any form or medium) to unauthorized persons;

(D) Complying with the relevant Health Evidence Review Commission (HERC) practice guideline for telephone and email consultation. Refer to the current prioritized list and practice guidelines at www.oregon.gov/oha/herc/Pages/PrioritizedList.aspx;

(E) Maintaining clinical and financial documentation related to telemedicine services as required in OAR 410-120-1360.

(4) Coverage for telemedicine services:

(a) The telemedicine definition encompasses different types of programs, services and delivery mechanisms for medically appropriate covered services within the patient's benefit package;

(b) Patient consultations using telephone and online or electronic mail (e-mail) are covered when billed services comply with the practice guidelines set forth by the Health Service Commission (HSC) and the applicable HSC-approved code requirements, delivered consistent with the HSC practice guideline;

(c) Patient consultations using videoconferencing, a synchronous (live two-way interactive) video transmission resulting in real time communication between a medical practitioner located in a distant site and the client being evaluated and located in an originating site, is covered when billed services comply with the billing requirements stated in below;

(d) Telephonic codes may be used in lieu of videoconferencing codes, if videoconferencing equipment is not available.

(5) Telephone and E-mail billing requirements: Use the Evaluation and Management (E/M) code authorized in the HSC practice guideline, unless otherwise authorized in OAR 410-120-1200.

(6) Videoconferencing billing requirements:

(a) Only the transmission site (where the patient is located) may bill for the transmission:

(A) Bill the transmission with code Q3014;

(B) The referring practitioner may bill an E/M code only if a separately identifiable visit is performed. The visit must meet all of the criteria of the E/M code billed;

(C) The referring provider is not required to be present with the client at the originating site.

(b) The evaluating practitioner at the distant site may bill for the evaluation, but not for the transmission (code Q3014):

(A) Bill the most appropriate E/M code for the evaluation;

(B) Add modifier GT to the E/M code to designate that the evaluation was made by a synchronous (live and interactive) transmission.

(c) In addition, for AMH services specifically identified as allowable for telephonic delivery when appropriate, refer to the procedure code and reimbursement rates published by AMH.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.025 & 414.065

Hist.: OMAP 8-2005, f. 3-9-05, cert. ef. 4-1-05; DMAP 10-2008(Temp), f. & cert. ef. 4-1-08 thru 9-15-08; DMAP 20-2008, f. 6-13-08, cert. ef. 7-1-08

Texas

[TITLE 22](#) EXAMINING BOARDS

[PART 9](#) TEXAS MEDICAL BOARD

[CHAPTER 174](#) TELEMEDICINE

RULE §174.1 Purpose

Pursuant to §153.001 and §157.001 of the Medical Practice Act, the Board is authorized to adopt rules relating to the practice of medicine. This chapter is promulgated to establish standards for the use of the Internet and the provision of telemedicine medical services by physicians who are licensed to practice medicine in this State. This chapter does not apply to out-of-state telemedicine licenses issued by the Board pursuant to §151.056 of the Act and §172.12 of this title (relating to Out-of-State Telemedicine License), federally qualified health centers (FQHCs), or to consultations provided by health insurance help lines.

RULE §174.2 Definitions

The following words and terms, when used in this chapter shall have the following meanings unless the context indicates otherwise.

(1) Distant site provider--A physician or a physician assistant or advanced practice nurse who is supervised by and has delegated authority from a licensed Texas physician, who uses telemedicine to provide health care services to a patient in Texas. Distant site providers must be licensed in Texas.

(2) Established medical site--A location where a patient will present to seek medical care where there is a patient site presenter and sufficient technology and medical equipment to allow for an adequate physical evaluation, as appropriate for the patient's presenting complaint. It requires establishing a defined physician-patient relationship, as defined by §190.8(1)(L) of this title (relating to Violation Guidelines). A patient's private home is not considered an established medical site, except as provided in §174.6(d) of this title (relating to Telemedicine Medical Services Provided at an Established Medical Site). An established medical site includes all Mental Health and Mental Retardation Centers (MHMRs), and Community Centers, as defined by Health and Safety Code, Chapter 534, where the patient is a resident and the medical services provided are limited to mental health services.

(3) Face-to-face visit--An evaluation performed on a patient where the provider and patient are both at the same physical location or where the patient is at an established medical site.

(4) In-person evaluation--A patient evaluation conducted by a provider who is at the same physical location as the location of the patient.

(5) Medium--Any mechanism of information transfer including electronic means.

(6) Patient site location--The patient site location is where the patient is physically located.

(7) Patient site presenter--The patient site presenter is the individual at the patient site location who introduces the patient to the distant site physician for examination and to whom the distant site physician may delegate tasks and activities. A patient site presenter must be:

(A) licensed or certified in this state to perform health care services or a qualified mental health professional-community services (QMHP-CS) as defined in 25 TAC §412.303(48); and

(B) delegated only tasks and activities within the scope of the individual's licensure or certification.

(8) Person--An individual unless otherwise expressly made applicable to a partnership, association, or corporation.

(9) Physician-patient e-mail--An interactive communication via an interactive electronic text messaging system between a physician (or their medical staff and patients within a professional relationship in which the physician has taken on an explicit measure of responsibility for the patient's care.

(10) Telemedicine medical service--The practice of medical care delivery, initiated by a distant site provider, who is physically located at a site other than the site where the patient is located, for the purposes of evaluation, diagnosis, consultation, or treatment which requires the use of advanced telecommunications technology that allows the distant site provider to see and hear the patient in real time.

(11) Group or Institutional Setting--These include residential treatment facilities, halfway houses, jails, juvenile detention centers, prisons, nursing homes, group homes, rehabilitation centers, and assisted living facilities.

RULE §174.3 Telemedicine Medical Services

(a) All physicians that use telemedicine medical services in their practices shall adopt protocols to prevent fraud and abuse through the use of telemedicine medical services. These standards must be consistent with those established by the Health and Human Services Commission pursuant to §531.02161 of the Government Code.

(b) In order to establish that a physician has made a good faith effort in the physician's practice to prevent fraud and abuse through the use of telemedicine medical services, the physician must implement written protocols that address the following:

(1) authentication and authorization of users;

- (2) authentication of the origin of information;
- (3) the prevention of unauthorized access to the system or information;
- (4) system security, including the integrity of information that is collected, program integrity, and system integrity;
- (5) maintenance of documentation about system and information usage;
- (6) information storage, maintenance, and transmission; and
- (7) synchronization and verification of patient profile data.

RULE §174.5 Notice to Patients

(a) Privacy Practices.

(1) Physicians that communicate with patients by electronic communications other than telephone or facsimile must provide patients with written notification of the physicians' privacy practices prior to evaluation or treatment. In addition, a good faith effort must be made to obtain the patient's written acknowledgement, including by e-mail, of the notice.

(2) The notice of privacy practices shall include language that is consistent with federal standards under 45 CFR Parts 160 and 164 relating to privacy of individually identifiable health information.

(b) Limitations of Telemedicine. Physicians who use telemedicine medical services must, prior to providing services, give their patients notice regarding telemedicine medical services, including the risks and benefits of being treated via telemedicine, how to receive follow-up care or assistance in the event of an adverse reaction to the treatment or in the event of an inability to communicate as a result of a technological or equipment failure. A signed and dated notice, including an electronic acknowledgement, by the patient establishes a presumption of notice.

(c) Necessity of In-Person Evaluation. When, for whatever reason, the telemedicine modality in use for a particular patient encounter is unable to provide all pertinent clinical information that a health care provider exercising ordinary skill and care would deem reasonably necessary for the practice of medicine at an acceptable level of safety and quality in the context of that particular medical encounter, then the distant site provider must make this known to the patient prior to the conclusion of the live telemedicine encounter and advise the patient, prior to the conclusion of the live telemedicine encounter, regarding the need for the patient to obtain an additional in-person medical evaluation reasonably able to meet the patient's needs.

(d) Complaints to the Board. Physicians that use telemedicine medical services must provide notice of how patients may file a complaint with the Board on the physician's website or with informed consent materials provided to patients prior to rendering telemedicine medical services. Written content and method of the notice must be consistent with §178.3 of this title (relating to Complaint Procedure Notification).

RULE §174.6 Telemedicine Medical Services Provided at an Established Medical Site

(a) Telemedicine medical services provided at an established medical site may be used for all patient visits, including initial evaluations to establish a defined physician-patient relationship between a distant site provider and a patient.

(b) For new conditions, a patient site presenter must be reasonably available onsite at the established medical site to assist with the provision of care. It is at the discretion of the distant site physician if a patient site presenter is necessary for follow-up evaluation or treatment of a previously diagnosed condition.

(1) A distant site provider may delegate tasks and activities to a patient site presenter during a patient encounter.

(2) A distant site provider delegating tasks to a patient site presenter shall ensure that the patient site presenter to whom delegation is made is properly supervised.

(c) If the only services provided are related to mental health services, a patient site presenter is not required, except in cases of behavioral emergencies, as defined by 25 TAC §415.253 (relating to Definitions).

(d) For the purposes of this chapter the following shall be considered to be an established medical site:

(1) The patient's home, including a group or institutional setting where the patient is a resident, if the medical services being provided in this setting are limited to mental health services;

(2) For medical services, other than mental health services, to be provided at the patient's home, including a group or institutional setting where the patient is a resident, the following requirements must be met:

(A) a patient site presenter is present;

(B) there is a defined physician-patient relationship as set out in §174.8 of this title (relating to Evaluation and Treatment of the Patient);

(C) the patient site presenter has sufficient communication and remote medical diagnostic technology to allow the physician to carry out an adequate physical examination appropriate for the patient's presenting condition while seeing and hearing the patient in real time. All such examinations will be held to the same standard of acceptable medical practices as those in traditional clinical settings; and

(D) An online questionnaire or questions and answers exchanged through email, electronic text, or chat or telephonic evaluation of or consultation with a patient do not meet the requirements for subparagraph (C) of this paragraph.

RULE §174.7 Telemedicine Medical Services Provided at Sites other than an Established Medical Site

(a) A distant site provider who provides telemedicine medical services at a site other than an established medical site for a patient's previously diagnosed condition must either:

(1) see the patient one time in a face-to-face visit before providing telemedicine medical care; or

(2) see the patient without an initial face-face to visit, provided the patient has received an in-person evaluation by another physician who has referred the patient for additional care and the referral is documented in the medical record.

(b) Patient site presenters are not required for pre-existing conditions previously diagnosed by a physician through a face-to-face visit.

(c) All patients must be seen by a physician for an in-person evaluation at least once a year.

(d) Telemedicine medical services may not be used to treat chronic pain with scheduled drugs at sites other than medical practice sites.

(e) A distant site provider may treat an established patient's new symptoms which are unrelated to a patient's preexisting condition provided that the patient is advised to see a physician in a face-to-face visit within 72 hours. A distant site provider may not provide continuing telemedicine medical services for these new symptoms to a patient who is not seen within 72 hours. If a patient's symptoms are resolved within 72 hours, such that continuing treatment for the acute symptoms is not necessary, then a follow-up face-to-face visit is not required.

RULE §174.8 Evaluation and Treatment of the Patient

(a) Evaluation of the Patient. Distant site providers who utilize telemedicine medical services must ensure that a defined physician-patient relationship is established which at a minimum includes:

(1) establishing that the person requesting the treatment is in fact who the person claims to be;

(2) establishing a diagnosis through the use of acceptable medical practices, including documenting and performing patient history, mental status examination, and physical examination that must be performed as part of a face-to-face or in-person evaluation as defined in §174.2(3) and (4) of this title (relating to Definitions). The requirement for a face-to-face or in-person evaluation does not apply to mental health services, except in cases of behavioral emergencies, as defined by 25 TAC §415.253 (relating to Definitions), and appropriate diagnostic and laboratory testing to establish diagnoses, as well as identify underlying conditions or contra-indications, or both, to treatment recommended or provided;

(3) discussing with the patient the diagnosis and the evidence for it, the risks and benefits of various treatment options; and

(4) ensuring the availability of the distant site provider or coverage of the patient for appropriate follow-up care.

(b) Treatment. Treatment and consultation recommendations made in an online setting, including issuing a prescription via electronic means, will be held to the same standards of acceptable medical practices as those in traditional in-person clinical settings.

(c) An online questionnaire or questions and answers exchanged through email, electronic text, or chat or telephonic evaluation of or consultation with a patient are inadequate to establish a defined physician-patient relationship.

RULE §174.9 Technology and Security Requirements

(a) At a minimum, advanced communication technology must be used for all patient evaluation and treatment conducted via telemedicine.

(b) Adequate security measures must be implemented to ensure that all patient communications, recordings and records remain confidential.

(c) Electronic Communications.

(1) Written policies and procedures must be maintained when using electronic mail for physician-patient communications. Policies must be evaluated periodically to make sure they are up to date. Such policies and procedures must address:

(A) privacy to assure confidentiality and integrity of patient-identifiable information;

(B) health care personnel, in addition to the physician, who will process messages;

- (C) hours of operation and availability;
- (D) types of transactions that will be permitted electronically;
- (E) required patient information to be included in the communication, such as patient name, identification number and type of transaction;
- (F) archival and retrieval; and
- (G) quality oversight mechanisms.

(2) All relevant patient-physician e-mail, as well as other patient-related electronic communications, must be stored and filed in the patient's medical record.

(3) Patients must be informed of alternative forms of communication for urgent matters.

RULE §174.10 Medical Records for Telemedicine Medical Services

(a) Medical records must be maintained for all telemedicine medical services. Both the distant site provider and the patient site presenter must maintain the records created at each site unless the distant site provider maintains the records in an electronic health record format.

(b) Distant site providers must obtain an adequate and complete medical history for the patient prior to providing treatment and must document this in the medical record.

(c) Medical records must include copies of all relevant patient-related electronic communications, including relevant patient-physician e-mail, prescriptions, laboratory and test results, evaluations and consultations, records of past care and instructions. If possible, telemedicine encounters that are recorded electronically should also be included in the medical record.

RULE §174.11 On-call Services

Physicians, who are of the same specialty and provide reciprocal services, may provide on-call telemedicine medical services for each other's active patients.

RULE §174.12 State Licensure

Physicians who treat and prescribe through advanced communications technology are practicing medicine and must possess appropriate licensure in all jurisdictions where their patients presently reside. An out-of-state physician may provide episodic consultations without a Texas medical license, as provided in Texas Occupations Code, §151.056 and §172.12(f) of this title (relating to Out-of-State Telemedicine License-Exemptions).