



**MEDICAL EXAMINING BOARD
TELEMEDICINE RULE COMMITTEE
Room 121A, 1400 East Washington Avenue, Madison
Contact: Tom Ryan (608) 266-2112
July 20, 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. Minutes of May 18, 2016 – Review and Approval (2)

C. Legislative and Rule Matters – Discussion and Consideration (3-9)

- 1) Review Background Materials
 - a. Wall Street Journal Article – “How Telemedicine is Transforming Health Care”
 - b. Recommendations from Elli Health, Inc.
 - c. Recommendation from the Wisconsin Academy of Physician Assistants
 - d. Florida Telemedicine Rules
- 2) Review Revised Draft of 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

**TELEMEDICINE RULE COMMITTEE OF THE
MEDICAL EXAMINING BOARD
MEETING MINUTES
MAY 18, 2016**

PRESENT: Carolyn Ogland Vukich, M.D.; David Roelke, M.D.; Kenneth Simons, M.D.; Robert Zondag

STAFF: Tom Ryan, Executive Director; Nifty Lynn Dio, Bureau Assistant; and other Department staff

CALL TO ORDER

Kenneth Simons, Chair, called the meeting to order at 10:57 a.m. A quorum of four (4) members was confirmed.

ADOPTION OF AGENDA

MOTION: David Roelke moved, seconded by Robert Zondag, to adopt the agenda as published. Motion carried unanimously.

MINUTES OF MARCH 16, 2016 – REVIEW AND APPROVAL

MOTION: David Roelke moved, seconded by Robert Zondag, to approve the minutes of March 16, 2016 as published. Motion carried unanimously.

ADJOURNMENT

MOTION: Carolyn Ogland Vukich moved, seconded by David Roelke, to adjourn the meeting. Motion carried unanimously.

The meeting adjourned at 12:20 p.m.

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

AGENDA REQUEST FORM

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| 1) Name and Title of Person Submitting the Request: Dale Kleven Administrative Rules Coordinator | | 2) Date When Request Submitted: 7/8/16 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: 7/20/16 | 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. Review Background Materials a. Wall Street Journal Article – “How Telemedicine Is Transforming Health Care” b. Recommendations from Elli Health, Inc. c. Recommendation from the Wisconsin Academy of Physician Assistants d. Florida Telemedicine Rules 2. Review Revised Draft of 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: 1. Wall Street Journal Article “How Telemedicine Is Transforming Health Care”: http://on.wsj.com/29PRbTP | | | |
| 11) <i>Dale Kleven</i> <hr/> Signature of person making this request | | Authorization <i>July 8, 2016</i> <hr/> 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. | | | |

To: Tom Ryan, Executive Director of the Wisconsin Medical Examining Board
From: Tom Reilly, Vice President of Elli Health, Inc.
Date: June 30, 2016
Re: Wisconsin Telemedicine Rule

Elli Health (d/b/a Intellivisit) is a Wisconsin based company that enables health care providers to diagnose and treat patients with the support of our adaptive and interactive web-based application. I am writing in response to your agency's efforts to develop a telemedicine rule for consideration by the Telehealth subcommittee of the Wisconsin Medical Examining Board.

It is my understanding that the intention of the subcommittee is to seek the advancement of a rule that is less restrictive than the previously released draft of WI MED 24 and based in part of the existing Florida telemedicine law 64B15-14.0081. Overall our company supports those objectives. However, there are two provisions of the Florida law that are actually more restrictive than MED 24 that should have clearer and more appropriate language if those concepts are to be applied in the Wisconsin rule.

Recommendation #1

Language in WI MED 24 appropriately distinguished between a "static questionnaire", which it prohibited, and "an adaptive, interactive and responsive online interview", which it allowed. A static questionnaire does not allow questions about the patient's symptoms to adjust accordingly based upon each patient response, while an adaptive, interactive, and responsive online interview does.

Unlike MED 24, Section 5 of the Florida law which addresses medication prescriptions for non-controlled substances does not make this important distinction which your agency has recognized.

Therefore, we recommend that if your agency is going to include the concept of Section 5 of the Florida law, it clarifies that any prohibitions are only related to **static** electronic medical questionnaires.

Recommendation #2

Language in Section 6a of the Florida law requires a "physical" exam of the patient in order to provide treatment. The value of telemedicine is that it enables providers to extend access to care for individuals who for reasons of time, distance, or lack of availability of local providers cannot or choose not to make an actual office appointment. A physical exam could imply a hands-on exam to listen, palpate, touch, manipulate and assess the physical condition of the patient. By definition telemedicine is a remote evaluation of the patient's health and a hands-on exam is not feasible.

The final determination of a diagnosis and plan of treatment must be made by a clinician without compromise of their medical judgment. If they believe a physical exam is warranted, then arrangements can be made to provide one. However, it is not our belief that a blanket insistence on a physical exam - as opposed to medical review -- serves the purpose of safety.

Therefore we recommend using the term “medical exam” rather than “physical exam” in this context.

Thank you for the opportunity to comment on your efforts to develop safe and practical rules to practice telemedicine in Wisconsin.

July 8, 2016

TO: Medical Examining Board

FROM: Reid Bowers, PA-C

Advocacy Chair, Wisconsin Academy of Physician Assistants

RE: Proposed Telemedicine Rules



The Wisconsin Academy of Physician Assistants (“WAPA”) appreciates the opportunity to address the Telemedicine Rule Committee regarding proposals for Med 24. WAPA has been the organization representing the interests of physician assistants in Wisconsin for over 40 years on matters of legislation and administrative rulemaking. WAPA is proud to note the role physician assistants have played in ensuring that Wisconsinites have access to safe, affordable quality healthcare.

WAPA understands, as no doubt the Committee does as well, that telemedicine is an important and evolving health care delivery platform, integral to continuing this access to care. As with any new platform, it also recognizes that many in the industry harbor uncertainties regarding its proper scope. The Committee’s efforts will no doubt bring significant clarity to this area. WAPA looks forward to reviewing and providing its perspective on any drafts generated by the Committee.

As the Committee moves forward in this process, WAPA asks that the Committee be cognizant of a particular concern. WAPA’s members have noticed that a byproduct of the current uncertainty regarding telemedicine is an overabundance of caution on the part of hospital and system legal counsel and human resource advisors. It has found that many of the employers of PAs have restricted PA participation in the growth of telemedicine because of something as simple as the fact that PA’s are not affirmatively identified as practitioners of telemedicine in Med 8.

In this regard, WAPA notes that the Florida revised Telemedicine Rule, Rule 64B8-9.0141, F.A.C. eliminates this problem by specifically enumerating physician assistants as recognized practitioners of telemedicine. It does so in keeping the scope of their telemedicine practice in Florida consistent with the scope of their practice in more traditional settings. While some of the specifics of the Florida rule would be inconsistent with the scope of PA practice in Wisconsin, WAPA believes the affirmative inclusion of physician assistants in the rule would go a long way in addressing some of the hospital and system concerns PAs have been encountering. To be clear, WAPA does not seek any expanded scope of practice for physician assistants. It seeks only the express authority for physician assistants to provide care to patients to the full extent of their existing scope of practice and to ensure sure that role is not artificially restrained.

As the Committee moves forward, WAPA will be happy to assist in this important endeavor in any way it can. Again, thank you for your efforts in this important endeavor.

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.

TEXT OF RULE

SECTION 1. Chapter Med 24 is created to read:

CHAPTER MED 24

TELEMEDICINE

Med 24.01 Authority and scope. The rules in this chapter are adopted by the medical examining board pursuant to the authority delegated by ss. 15.08 (5), 227.11, and 448.40, Stats., and govern the standards of the practice of medicine using telemedicine. The rules in this chapter may not be construed to prohibit:

(1) Consultations between physicians or the transmission and review of digital images, pathology specimens, test results, or other medical data by physicians related to the care of Wisconsin patients.

(2) Patient care in consultation with another physician who has an established physician-patient relationship with the patient.

(3) Patient care in on-call or cross-coverage situations in which the physician has access to patient records.

(4) Treating a patient with an emergency medical condition. In this subsection, “emergency medical condition” means 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.

Med 24.02 Definition of telemedicine. In this chapter, “telemedicine” means the practice of medicine by a physician where patient care, treatment, or services are provided through the use of medical information exchanged from one site to another via electronic communications. Telemedicine does not include the provision of health care services only through an audio-only telephone, email messages, text messages, facsimile transmission, mail or parcel service, or any combination thereof.

Med 24.03 Physician-patient relationship. A physician-patient relationship may be established through telemedicine.

Med 24.04 Wisconsin medical license required. A physician who uses telemedicine in the diagnosis and treatment of a patient located in Wisconsin shall hold an active Wisconsin medical license.

Med 24.05 Standards of practice and conduct. A Wisconsin licensed physician shall be held to the same standards of practice and conduct, including patient confidentiality and recordkeeping, regardless of whether health care services are provided in person or by telemedicine.

Med 24.06 Equipment and technology. A Wisconsin licensed physician providing health care services by telemedicine is responsible for the quality and safe use of equipment and technology that is integral to patient diagnosis and treatment. The equipment and technology used by a Wisconsin licensed physician to provide health care services by telemedicine shall be able to provide, at a minimum, information that will enable the physician to meet or exceed the standard of minimally competent medical practice.

Med 24.07 Internet diagnosis and treatment. (1) When a physician uses a website to communicate to a patient located in Wisconsin, the physician may not provide treatment recommendations, including issuing a prescription, unless the following requirements are met:

(a) The physician holds an active Wisconsin medical license as required under s. Med 24.04.

(b) The physician's name and contact information have been made available to the patient.

(c) Informed consent as required under s. 448.30, Stats., and ch. Med 18.

(d) A documented patient evaluation has been performed. A patient evaluation shall include a medical history and, to the extent required to meet or exceed the standard of minimally competent medical practice, an examination or evaluation, or both, and diagnostic tests.

(e) A patient health care record is prepared and maintained as required under ch. Med 21.

(2) Providing treatment recommendations, including issuing a prescription, based solely on a static electronic questionnaire does not meet the standard of minimally competent medical practice.

SECTION 2. EFFECTIVE DATE. The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register, pursuant to s. 227.22 (2) (intro.), Stats.

(END OF TEXT OF RULE)
