

ST	Definition of telehealth or telemedicine	Practitioner →	<ul style="list-style-type: none"> <li>Physicians</li> <li>Physician Assistants</li> <li>Osteopathic physicians and surgeons</li> <li>Naturopathic physicians</li> <li>Podiatric physicians</li> <li>Chiropractic physicians</li> </ul>	<ul style="list-style-type: none"> <li>Registered nurses</li> <li>Licensed practical nurses</li> <li>Nurse-midwives</li> </ul>	Mental health practitioners, therapists	Pharmacists and pharmacies	Other licensed practitioners
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AK	No licensed practitioner references found.						
<a href="#">AL</a>	<p>Telehealth medical service means “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 appropriate telecommunication technology.</p> <p>Telehealth 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,</p>		<p>Requirements for physicians delivering telehealth medical services:</p> <ul style="list-style-type: none"> <li>-- Protocols to prevent fraud and abuse through the use of telehealth medical services.</li> <li>-- Written patient notification of provider’s privacy practices prior to evaluation or treatment. consistent with federal standards under 45 CFR Parts 160 and 164 relating to privacy of individually identifiable health information.</li> <li>-- Patient notice of risks and benefits of being treated pursuant to telehealth; how to receive follow-up care or assistance in the event of an adverse reaction</li> </ul>				

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	<p>consultation or treatment which requires the use of appropriate telecommunication technology.</p> <p><i>Authority: AL Admin. Code 540-X-15-.05</i></p>		<p>to the treatment; and how to receive follow-up care or assistance in the event of an inability to communicate as a result of a technological or equipment failure.</p> <p>-- Notice to patient of necessity of in-person evaluation when patient encounter unable to provide all pertinent clinical information which a healthcare 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.</p> <p>--Appropriate communication technology must be used for all patient</p>				
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			<p>evaluation and treatment conducted via telehealth.</p> <p>--Adequate security measures must be implemented to ensure that all patient communications, recordings and records remain confidential.</p> <p><i>Authority: Alabama Board of Medical Examiners Statutory Authority: Code of Ala. 1975, §§34-24-53, 34-24-508. History: New Rule: Filed December 12, 2013; effective January 16, 2014.</i></p>				
<a href="#">AR</a>	An interactive telecommunications system that: Utilizes information technology, audio, video and other appropriate elements, and is compatible with other						"Telepractice" means telespeech, teleaudiology, teleSLP, telehealth, or telerehabilitation when used separately

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	<p>telemedicine networks; and is used for the purpose of enhancing the delivery of medical information and health care to medical facilities in rural and urban areas throughout Arkansas.</p> <p><i>Authority: A.C.A. § 10-3-1702 (10)</i></p>						<p>or together; and</p> <p>"Telepractice service" means the application of telecommunication technology equivalent in quality to services delivered face-to-face to deliver speech-language pathology or audiology services, or both, at a distance for assessment, intervention or consultation, or both.</p> <p><i>Authority: A.C.A. § 17-100-103 (2014)</i></p>
<a href="#">AZ</a>	The practice of health care delivery, diagnosis, consultation and treatment and the transfer of medical data through interactive audio, video or data communications that occur in the physical presence of						

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	the patient, including audio or video communications sent to a health care provider for diagnostic or treatment consultation.  <i>Authority: AZ Revised Statute Sec. 36-3601.</i>						
CA	"Telehealth" means the mode of delivering health care services and public health via information and communication technologies to facilitate the diagnosis, consultation, treatment, education, care management, and self-management of a patient's health care while the patient is at the originating site and the health care provider is at a distant site. Telehealth facilitates patient self-management and caregiver support for patients and includes				<p>Psychologists deemed health care practitioners subject to telehealth statute.</p> <p><i>Authority: Cal Bus &amp; Prof Code § 2904.5</i></p> <p>Clinical social workers deemed health care practitioners subject to telehealth statute.</p> <p><i>Authority: Cal Bus &amp; Prof Code § 4996(c)</i></p> <p>Unprofessional conduct by clinical</p>		<p>Dentists deemed health care practitioners subject to telehealth statute.</p> <p><i>Authority: Cal Bus &amp; Prof Code § 1626.2</i></p> <p>Optometrists deemed health care practitioners subject to telehealth statute.</p> <p><i>Authority: Cal Bus &amp; Prof Code § 3041(i)</i></p>

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	<p>synchronous interactions and asynchronous store and forward transfers.</p> <p><i>Authority: CA Business &amp; Professions Code Sec. 2290.5(a)(6).</i></p> <p>A health care practitioner licensed under Division 2 (commencing with Section 500) providing services via telehealth shall be subject to the requirements and definitions set forth in Section 2290.5, to the practice act relating to his or her licensed profession, and to the regulations adopted by a board pursuant to that practice act.</p> <p><i>Authority: Cal Bus &amp; Prof Code § 686</i></p>				<p>counselors includes failure to comply with state telehealth statute when delivering health care via telehealth.</p> <p><i>Authority: Cal Bus &amp; Prof Code § 4990(ac)</i></p>		
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<a href="#">CO</a>	<p>Telemedicine means the delivery of medical services and any diagnosis, consultation, or treatment using interactive audio, interactive video, or interactive data communication.</p> <p><i>Authority: CO Revised Statutes 12-36-102.5.</i></p>		<p>Telemedicine specifically included within definition of practice of medicine.</p> <p><i>Authority: CO Revised Statutes 12-36-106(a).</i></p> <p>Acts or omissions in the practice of telemedicine that fails to meet generally accepted standards of medical practice included within statutory definition of professional misconduct.</p> <p><i>Authority: CO Revised Statutes 12-36-117(jj).</i></p>				<p>Telehealth included within definition of occupational therapy and authorizes adoption of rules governing use of telehealth.</p> <p><i>Authority: CO Revised Statutes 12-40.5-103 (XIV)</i></p>
CT	No practitioner licensure references found						
DC	No practitioner licensure references found						
DE	No practitioner licensure references found						

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FL	<p>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.</p> <p><i>Authority: 64B8-9.0141, F.A.C.</i></p>		<p>Standard of care for physician or physician assistant same whether health care services in provided in person or by telemedicine.</p> <p>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.</p>				
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			<p>Controlled substances shall not be prescribed through the use of telemedicine.</p> <p>The practice of medicine by telemedicine does not alter any obligation of the physician or the physician assistant regarding patient confidentiality or recordkeeping. A physician-patient relationship may be established through telemedicine.</p> <p>Telehealth 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 Florida patients permitted.</p>				
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			<p>Excepted: Emergency medical services provided by emergency physicians, emergency medical technicians (EMTs), paramedics, and emergency dispatchers.</p> <p><i>Authority: 64B8-9.0141, F.A.C.</i></p> <p>Prescribing medications based solely on an electronic medical questionnaire barred and violates standard of care. 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:</p> <p>(a) A documented patient</p>				
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			<p>evaluation, including history and physical examination to establish the diagnosis for which any legend drug is prescribed.</p> <p>(b) Discussion between the physician or the physician assistant and the patient regarding treatment options and the risks and benefits of treatment.</p> <p>(c) Maintenance of contemporaneous medical records meeting the requirements of Rule 64B8-9.003, F.A.C.</p> <p><i>Authority: 64B8-9.014, F.A.C.</i></p> <p><i>(Same rule for osteopaths found at 64B15-14.008, F.A.C.)</i></p>				
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GA	No practitioner licensure references found						
<a href="#">HI</a>	<p>"Telemedicine" means the use of telecommunications services, as that term is defined in section 269-1, including real-time video conferencing-based communication, secure interactive and non-interactive web-based communication, and secure asynchronous information exchange, to transmit patient medical information, such as diagnostic-quality digital images and laboratory results for medical interpretation and diagnosis, and deliver health care services and information to parties separated by distance.</p> <p><i>Authority: HRS § 453-2(b)(7)</i></p>		<p>Telemedicine services shall include a documented patient evaluation, including history and a discussion of physical symptoms adequate to establish a diagnosis and to identify underlying conditions or contra-indications to the treatment recommended or provided.</p> <p>Treatment recommendations made via telemedicine, including issuing a prescription via electronic means, shall be held to the same standards of appropriate practice as those in traditional physician-patient settings that do not include a face-to-face visit but in which prescribing is appropriate,</p>	<p>Telehealth means the use of electronic information and telecommunication technologies to support long-distance clinical health care, patient and professional health-related education, public health and health administration, to the extent that it relates to nursing.</p> <p><i>Authority: HRS § 457-2(a)</i></p> <p>Board of Nursing authorized to adopt rules as necessary relating to the practice of nursing in telehealth.</p> <p><i>Authority: HRS § 457-5(a)(15)</i></p>			

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	<p>Relative to physician licensure, "telemedicine" means the use of telecommunications services, including real-time video or web conferencing communication or secure web-based communication to establish a physician-patient relationship, to evaluate a patient, or to treat a patient.</p> <p><i>Authority: HRS § 453-1.3(b)</i></p>		<p>including on-call telephone encounters and encounters for which a follow-up visit is arranged. Issuing a prescription based solely on an online questionnaire is not treatment for the purposes of this section and does not constitute an acceptable standard of care. For the purposes of prescribing a controlled substance, a physician-patient relationship shall be established pursuant to chapter 329.</p> <p>All medical reports resulting from telemedicine services are part of a patient's health record and shall be made available to the patient. Patient medical records shall be maintained in compliance with all applicable state and federal</p>				
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			requirements including privacy requirements.				
ID	No practitioner licensure references found						
<a href="#">IL</a>	<p>Telemedicine defined as performance of diagnosing patients, prescribing drugs, maintaining a medical office, etc., including but not limited to rendering written or oral opinions concerning diagnosis or treatment of a patient in Illinois by a person located outside the State of Illinois as a result of transmission of individual patient data by telephonic, electronic, or other means of communication from within Illinois.</p> <p>"Telemedicine" does not include the following:</p> <p>(1) periodic consultations between a person licensed</p>						

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	<p>under this Act and a person outside the State of Illinois;</p> <p>(2) a second opinion provided to a person licensed under this Act; and</p> <p>(3) diagnosis or treatment services provided to a patient in Illinois following care or treatment originally provided to the patient in the state in which the provider is licensed to practice medicine.</p> <p><i>Authority: 225 ILCS 60/49.5(c)</i></p>						
IN	No practitioner licensure references found						
IA	No practitioner licensure references found						
KS	No practitioner licensure references found						
<a href="#">KY</a>	"Telehealth means the use		Physicians providing or	Nurses providing or	Licensees providing or	Pharmacists providing	Licensees providing or

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<p>of interactive audio, video, or other electronic media to deliver health care. It includes the use of electronic media for diagnosis, consultation, treatment, transfer of health or medical data, and continuing education.”</p> <p><i>Authority: KRS §311.550(17)</i></p>		<p>facilitating use of telehealth shall ensure patient's informed consent and maintain confidentiality. Board to promulgate administrative regulations to prevent abuse and fraud and fee splitting and use of telehealth in the provision of medical services and continuing medical education.</p> <p><i>Authority: KRS § 311.5975</i></p>	<p>facilitating use of telehealth have duty to ensure patient's informed consent and maintain confidentiality. Board to promulgate administrative regulations to prevent abuse and fraud and fee splitting through the use of telehealth services and utilization of telehealth in the provision of services and in continuing education.</p> <p><i>Authority: KRS § 314.155</i></p>	<p>facilitating use of telehealth have duty to ensure patient's informed consent and maintain confidentiality. Board to promulgate administrative regulations to prevent abuse and fraud and fee splitting through the use of telehealth services and utilization of telehealth in the provision of services and in continuing education.</p> <p>Psychologists: <i>Authority: KRS § 319.140</i></p> <p>Regulations define "Telepsychology" as "practice of</p>	<p>or facilitating use of telehealth have duty to ensure patient's informed consent and maintain confidentiality. Board to promulgate administrative regulations to prevent abuse and fraud and fee splitting through the use of telehealth services and utilization of telehealth in the provision of services and in continuing education.</p> <p><i>Authority: KRS § 315.310</i></p>	<p>facilitating use of telehealth have duty to ensure patient's informed consent and maintain confidentiality. Board to promulgate administrative regulations to prevent abuse and fraud and fee splitting through the use of telehealth services and utilization of telehealth in the provision of services and in continuing education.</p> <p>Dietitians or nutritionists: <i>Authority: KRS § 310.200</i> Regulations define "Telepractice" as the practice of dietetics or nutrition as defined by</p>
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					<p>psychology" as defined by KRS 319.010(7) between the psychologist and the patient:  (a) Provided using an electronic communication technology; or  (b) Two (2) way, interactive, simultaneous audio and video</p> <p><i>Authority: 201 KAR 26:310</i></p> <p>Clinical social workers:  <i>Authority: KRS § 335.158</i></p> <p>Marriage and Family Therapists:  <i>Authority: KRS § 335.380</i></p>		<p>KRS 310.005(2) and provided by using communication technology that is two-way, interactive, simultaneous audio and video.</p> <p>Initial, in-person meeting for the practitioner and patient who prospectively utilize telehealth shall occur in order to determine whether the potential or current client is a candidate to receive services via telehealth; see Appendix for full requirements.  <i>Authority: 201 KAR 33:070</i></p> <p>Chiropractors:  <i>Authority: KRS §</i></p>
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					Applied behavior analysts: <i>Authority: KRS § 319C.140</i>		<i>312.220</i>  Dentists and dental specialists: <i>Authority: KRS § 313.060</i>  Respiratory care practitioners <i>Authority: KRS § 314A.230</i>  Occupational therapists: <i>Authority: KRS § 319A.300</i>  Optometrists: <i>Authority: KRS § 320.390</i>  Speech-Language Pathologists and Audiologists: <i>Authority: KRS § 334A.200</i>
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							<p>"Telepractice" means the practice of speech language pathology or audiology as defined by KRS 334A.020(4) and KRS 334.020(6) respectively provided by using communication technology that is two (2) way, interactive, and simultaneously audio and video. Initial, in-person meeting for the practitioner and patient; see text of rule in appendix for complete requirements.</p> <p><i>Authority: 201 KAR 17:110</i></p>
LA	"Telemedicine" means the practice of health care		Telemedicine--the practice of health care delivery,				Individuals may practice by

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	<p>delivery, diagnosis, consultation, treatment, and transfer of medical data using interactive telecommunication technology that enables a health care practitioner and a patient at two locations separated by distance to interact via two-way video and audio transmissions simultaneously. Neither a telephone conversation nor an electronic mail message between a health care practitioner and patient, or a true consultation as may be defined by rules promulgated by the board pursuant to the Administrative Procedure Act, constitutes telemedicine for the purposes of this Part.</p> <p><i>Authority: La. R.S. 37:1262(4)</i></p>		<p>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.</p> <p><i>Authority: LAC 46:XLV.7503</i></p> <p>Prior to utilizing telemedicine physicians shall ensure that:</p>				<p>telecommunication (i.e., telepractice, telehealth, e-health) provided they hold the appropriate licensure for the jurisdiction in which the service is rendered and delivered.</p> <p><i>Authority: LAC 46:LXXV.701(E)(1)(f)</i></p> <p>Licensed audiologists and speech-language pathologists can provide telehealth services through telephonic, electronic, or other means including diagnosis, consultation, treatment, transfer of healthcare information and continuing education.</p>
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			<ol style="list-style-type: none"> <li>1. he or she has access to those portions of the patient's medical record pertinent to the visit;</li> <li>2. there exists appropriate support staff who: <ol style="list-style-type: none"> <li>a. are trained to conduct the visit by telemedicine;</li> <li>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</li> <li>c. provide or arrange periodic testing and maintenance of all telemedicine equipment.</li> </ol> </li> </ol>				<i>Authority: LAC 46:LXXV.130</i>
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			<p>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.</p> <p><i>Authority: LAC 46:XLV.7507</i></p> <p>Physicians who utilize telemedicine shall insure that a proper physician-patient relationship is established that at a minimum includes:</p> <p>1. verification of the patient. Establishing that the person requesting the treatment is who the person claims to be;</p>				
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			<p>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;</p> <p>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;</p>				
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			<p>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</p> <p>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.</p> <p>B. Patient records generated by a physician conducting a telemedicine visit shall be maintained at the</p>				
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			<p>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.</p> <p><i>Authority: LAC 46:XLV.7509</i></p> <p>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:</p> <ol style="list-style-type: none"> <li>informed of the relationship between the physician and patient and the respective role of any other health care provider</li> </ol>				
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			<p>with respect to management of the patient; and</p> <p>2. notified that he or she may decline to receive medical services by telemedicine and may withdraw from such care at any time.</p> <p><i>Authority: LAC 46:XLV.7511</i></p> <p>Violation or failure to comply with telemedicine provisions deemed to constitute unprofessional conduct 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</p>				
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			<p>culpable of such violation, or for such other administrative action as the board may in its discretion determine.</p> <p><i>Authority: LAC 46:XLV.7515</i></p> <p>In lieu of administrative proceedings board may suspend, revoke, refuse to issue or impose probationary or other restrictions on any permit held or applied for by a physician or applicant</p> <p><i>Authority: LAC 46:XLV.7519</i></p>				
<a href="#">MA</a>	Telemedicine is the provision of services to a patient by a physician from a distance by electronic communication in order to improve patient care, treatment or services.		<p>The practice of medicine includes telemedicine.</p> <p><i>Authority: 243 CMR 2.01(b)</i></p>				

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	<i>Authority: 243 CMR 2.01 (4)</i>						
MD	<p>"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.</p> <p><i>Authority: COMAR 10.32.05.02(B)(8)</i></p>		<p>Standards Related to Telemedicine.</p> <p>A. A physician, including a physician in a group practice, who practices telemedicine using a website to communicate with patients, shall:</p> <p>(1) Disclose on the website the following:</p> <p>(a) Licensure status and Maryland physician license number, which may be accomplished as follows:</p> <p>(i) For a website sponsored by a group practice, disclosure of the licensure status and physician license number of each physician</p>				<p><b>Audiologists, Hearing Aid Dispensers, And Speech-Language Pathologists</b></p> <p>"Telehealth" means the use of telecommunications and information technologies for the exchange of information from one site to another for the provision of health care to an individual from a provider through hardware or Internet connection.</p> <p><i>Authority: Md. Health Occupations Code Ann. § 2-101(u)</i></p> <p>A. A provider of telehealth services</p>

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			<p>practicing within the group;</p> <p>(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</p> <p>(iii) Disclosure of the names, licensure status, and Maryland physician license numbers of each individual physician practicing through the website;</p> <p>(b) Physician ownership of the website, if applicable;</p>				<p>who practices in the State shall be licensed by the Board.</p> <p>A provider of telehealth services shall be competent in both the type of services provided and the methodology and equipment used to provide the service.</p> <p>Authority: COMAR 10.41.06.05</p> <p>Board authorized to adopt regulations governing the use of telehealth communications by audiologists, hearing aid dispensers, and speech-language pathologists.</p>
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			<p>(c) Fees for services offered on the website, to be disclosed before a patient incurs any charges;</p> <p>(d) Financial interest of the physician or group practice in the products or services advertised or offered on the site, if applicable; and</p> <p>(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;</p> <p>(2) Develop a procedure to verify the identification of the individual transmitting a communication;</p> <p>(3) Develop a procedure to</p>				<p><i>Authority: Md. Health Occupations Code Ann. § 2-205(7)</i></p> <p>Service Delivery Models</p> <p>A. Telehealth may be delivered in a variety of ways including those listed in §§ B--E of this regulation.</p> <p>B. Store-and-forward model/electronic transmission is an asynchronous electronic transmission of stored clinical data from one location to another usually by the internet via email and fax.</p> <p>C. Clinician interactive</p>
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			<p>prevent access to data by unauthorized persons through password protection, encryption, or other means; and</p> <p>(4) Develop a policy on how soon an individual can expect a response from the physician to questions or other requests included in transmissions.</p> <p>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</p>				<p>model is a synchronous, real time interaction between the provider and patient or consultant that may occur via audio and video transmission over telecommunication links such as telephone, internet, fax, or other methods for distance communication, including:</p> <p>(1) Videoconferencing;  (2) Remote control software applications;  (3) Computer applications;  (4) Fax transmittal and receipt;</p>
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			<p>intends to exchange information.</p> <p><i>Authority: COMAR 10.32.05.04</i></p> <p>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.</p> <p>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</p>				<p>(5) Email correspondence including attachments; or</p> <p>(6) Video and audio transmission through regular mail service delivery and express delivery services.</p> <p>D. Self-monitoring/testing model refers to when the patient or consultant receiving the services provides data to the provider without a facilitator present at the site of the patient or consultant.</p> <p>E. Live versus stored data refers to the actual data</p>
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			<p>physician.</p> <p>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.</p> <p><i>Authority: COMAR 10.32.05.05</i></p> <p>Standard of Quality Care.</p> <p>A. A physician shall ensure that the quality and quantity of data and other</p>				<p>transmitted during the telepractice. Both live, real-time and stored clinical data may be included during the telepractice.</p> <p><i>Authority: COMAR 10.41.06.02</i></p> <p>Guidelines for the Use of Telehealth.</p> <p>A. A provider shall be accountable for any ethical and scope of practice requirements when providing telehealth services.</p> <p>B. The scope, nature, and quality of services provided via telepractice are the same as that provided during in-person sessions by the</p>
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			<p>information is sufficient in making medical decisions.</p> <p>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.</p> <p>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.</p> <p>D. A physician practicing</p>				<p>provider.</p> <p>C. The quality of electronic transmissions shall be appropriate for the provision of telehealth services as if those services were provided in person.</p> <p>D. A provider shall only utilize technology with which they are competent to use as part of their telepractice services.</p> <p>E. Equipment used for telehealth services shall be maintained in appropriate operational status to provide appropriate quality of services.</p>
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			<p>telemedicine shall:</p> <p>(1) Except when providing interpretive services, obtain and document patient consent;</p> <p>(2) Create and maintain adequate medical records;</p> <p>(3) Follow requirements of Maryland and federal law and regulations with respect to the confidentiality of medical records and disclosure of medical records; and</p> <p>(4) Adhere to requirements and prohibitions found in Health Occupations Article, §§ 1-212, 1-301-- 1-306, and 14-404, Annotated Code of Maryland.</p>				<p>F. Equipment used at the site at which the patient or consultant is present shall be in appropriate working condition and deemed appropriate by the provider.</p> <p>G. A provider shall be aware of the patient or consultant level of comfort with the technology being used as part of the telehealth services and adjust their practice to maximize the patient or consultant level of comfort.</p> <p>H. When a provider collaborates with a consultant from another state in which the telepractice</p>
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			<p><i>Authority: COMAR 10.32.05.06</i></p> <p><b>Physician Discipline</b></p> <p>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.</p> <p><i>Authority: COMAR 10.32.05.07</i></p>				<p>services are eventually delivered, the consultant in the state in which the patient lives shall be the primary care provider for the patient.</p> <p>I. As pertaining to liability and malpractice issues, a provider shall be held to the same standards of practice as if the telepractice services were provided in person.</p> <p><i>Authority: COMAR 10.41.06.03</i></p> <p>Limitations of Telehealth Services.</p> <p>A. A provider of telehealth services</p>
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							<p>shall inform the patient and consultants as to the limitations of providing these services, including the following:</p> <p>(1) The inability to have direct, physical contact with the patient is a primary difference between telehealth and direct in-person service delivery;</p> <p>(2) The knowledge, experiences, and qualifications of the consultant providing data and information to the provider of the telehealth services need not be completely known to</p>
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							<p>and understood by the provider;</p> <p>(3) The quality of transmitted data may affect the quality of services provided by the provider; and</p> <p>(4) That changes in the environment and test conditions could be impossible to make during delivery of telehealth services.</p> <p>B. Telehealth services may not be provided by correspondence only.</p> <p><i>Authority: COMAR 10.41.06.04</i></p>
ME	No practitioner licensure references found.						

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MI	No practitioner licensure references found.						
<a href="#">MN</a>	No practitioner licensure references found.					Pharmacy Practice Act of 1988 requires referring practitioner to have performed an examination in the case of a consultant practitioner issuing a prescription or drug order when providing services by means of telemedicine.  <i>Authority: Minn. Stat. § 151.37(e)(5)</i>	
<a href="#">MO</a>	Relative to advanced practice nurses, "telehealth" means the use of medical information exchanged from one site to another via electronic communications to improve the health status of a patient.  <i>Authority: § 335.175</i>			Advanced Practice Registered Nurses who provides nursing services under a collaborative practice arrangement may provide telehealth services outside of the geographic proximity requirements (stipulated in the written agreement with the			

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	(2)R.S.Mo.			<p>collaborating physician) when provided in a health professional shortage area.</p> <p>Telehealth providers shall be required to obtain patient consent before telehealth services are initiated and ensure confidentiality of medical information.</p> <p>Boards shall jointly promulgate rules governing the practice of telehealth under this section. Such rules shall address, but not be limited to, appropriate standards for the use of telehealth.</p> <p>Utilization of telehealth by nurses established NLT January 1, 2014 within the state board of registration for the healing arts and the</p>			
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ST	Definition of telehealth or telemedicine	Practitioner →	<ul style="list-style-type: none"> <li>Physicians</li> <li>Physician Assistants</li> <li>Osteopathic physicians and surgeons</li> <li>Naturopathic physicians</li> <li>Podiatric physicians</li> <li>Chiropractic physicians</li> </ul>	<ul style="list-style-type: none"> <li>Registered nurses</li> <li>Licensed practical nurses</li> <li>Nurse-midwives</li> </ul>	Mental health practitioners, therapists	Pharmacists and pharmacies	Other licensed practitioners
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				<p>state board of nursing Termination date September 1, 2020, unless reauthorized.</p> <p><i>Authority: § 335.175 R.S.Mo</i></p>			
<a href="#">MS</a>	<p>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.</p> <p>"Teleemergency medicine" is a unique combination of telemedicine and the</p>		<p>Rule 5.3 Informed Consent.</p> <p>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</p>				<p><b>Physical therapists and assistants</b></p> <p>Telehealth is an appropriate model of service delivery when it is provided in a manner consistent with the standards of practice, ethical principles, rules and regulations for Mississippi physical therapy practitioners.</p> <p><i>Authority: CMSR 50-034-001(1.3)(6(c))</i></p>

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	<p>collaborative/consultative role of a physician board certified in emergency medicine, and an appropriate skilled health professional (nurse practitioner or physician assistant).</p> <p><i>Authority: CMSR 50-013-2635, Rule 5.1(B) &amp; (C)</i></p> <p>Mississippi law permits all licensees to offer services via telehealth after having performed an appropriate examination of the patient either in person or by the use of instrumentation and diagnostic equipment through which images and medical records may be transmitted electronically.</p>		<p>treatment or if there is a telemedicine equipment failure.</p> <p>Rule 5.4 Physician Patient Relationship.</p> <p>In order to practice telemedicine a valid "physician patient relationship" must be established. The elements of this valid relationship are:</p> <p>A. verify that the person requesting the medical treatment is in fact who they claim to be;</p> <p>B. conducting an appropriate examination of the patient that meets the applicable standard of care;</p> <p>C. establishing a diagnosis through the use of accepted medical practices, i.e., a</p>				
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	<p>Treatment recommendations made via electronic means, including issuing a prescription via electronic means, shall be held to the same standards of appropriate practice as those in traditional provider-patient settings.</p> <p><i>Authority: Miss. Code Ann. § 41-127-1</i></p>		<p>patient history, mental status exam, physical exam and appropriate diagnostic and laboratory testing;</p> <p>D. discussing with the patient the diagnosis, risks and benefits of various treatment options to obtain informed consent;</p> <p>E. insuring the availability of appropriate follow-up care; and</p> <p>F. maintaining a complete medical record available to patient and other treating health care providers.</p> <p>Source: Miss. Code Ann. §73-25-34 (1972, as amended).</p> <p>Rule 5.5 Examination.</p>				
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			<p>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.</p> <p>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</p>				
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			<p>appropriate exam is in violation of this policy and may subject the physician to discipline by the Board.</p> <p>Rule 5.6 Medical Records.</p> <p>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.</p>				
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			<p>Rule 5.7 Collaborative/Consultative Physician Limited.</p> <p>No physician practicing teleemergency 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</p>				
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			<p>their Medicare Cost Report.</p> <p>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.</p> <p><i>Authority: CMSR 50-013-2635, Chapter 5</i></p>				
<a href="#">MT</a>	Montana defines telemedicine as practiced by out of state physicians; no definition for Montana licensees found.		<p>“Telemedicine means the practice of medicine by a physician located outside the state, who performs an evaluative or therapeutic act relating to the treatment or correction of a patient's physical or mental</p>				

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			<p>condition, ailment, disease, injury, or infirmity, and who transmits that evaluative or therapeutic act into Montana through any means, method, device, or instrumentality under the following conditions:</p> <p>The information or opinion is provided directly to a patient in Montana for compensation or with the expectation of compensation;</p> <p>The physician does not limit the physician's services to an occasional case;</p> <p>The physician has an established or regularly used connection with</p>				
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			<p>the state, including but not limited to: (i) an office or another place for the reception of a transmission from the physician; (ii) a contractual relationship with a person or entity in Montana related to the physician's practice of medicine; or (iii) privileges in a Montana hospital or another Montana health care facility.”</p> <p>License not required for informal consultation made without compensation or expectation of compensation between an out-of-state physician and a physician or other health care provider located in Montana.</p>				
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			<i>Authority: 37-3-342, MCA</i>				
<a href="#">NC</a>	No practitioner licensure references found in statute; see North Carolina Medical Board position re telemedicine.		<p>“Telemedicine” is the practice of medicine using electronic communication, information technology or other means between a licensee in one location and a patient in another location with or without an intervening health care provider.</p> <p>Licensees practicing via telemedicine will be held to the same standard of care as licensees employing more traditional in-person medical care. Failure to conform to the appropriate standard of care, whether that care is rendered in-person or via telemedicine, may subject the licensee to potential discipline by Board.</p>				

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			<i>Authority: North Carolina Medical Board Position Statement on Telemedicine, July 2010.</i>				
<a href="#">ND</a>	See practitioner-based definitions.		Referring practitioner must perform in-person medical evaluation in the case of a consultant practitioner issuing a prescription or drug order when providing services by means of telemedicine. Telemedicine definition references federal law at 21 USCS § 802(54): The term "practice of telemedicine" means, for purposes of this title, the practice of medicine in accordance with applicable Federal and State laws by a practitioner (other than a pharmacist) who is at a location remote from the patient and is				<b>Physical Therapists</b>  Consultation by means of telecommunications means that a physical therapist renders professional or expert opinion or advice to another physical therapist or health care provider via telecommunications or computer technology from a distant location. It includes the transfer of data or exchange of educational or related information by means

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			<p>communicating with the patient, or health care professional who is treating the patient, using a telecommunications system, as specified.</p> <p><i>Authority: N.D. Cent. Code, § 19-02.1-15.1</i></p>				<p>of audio, video, or data communications. The physical therapist may use telehealth technology as a vehicle for providing only services that are legally or professionally authorized. The patient's written or verbal consent will be obtained and documented prior to such consultation. All records used or resulting from a consultation by means of telecommunications are part of a patient's record and are subject to applicable confidentiality requirements.</p>
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							<i>Authority: N.D. Admin. Code 61.5-01-02-01(3)</i>
<a href="#">NE</a>	<p>Telehealth means the use of telecommunications technology by a health care practitioner to deliver health care services within his or her scope of practice at a site other than the site where the patient is located.</p> <p>Telehealth consultation means any contact between a patient and a health care practitioner relating to the health care diagnosis or treatment of such patient through telehealth but does not include a telephone conversation, electronic mail message, or facsimile transmission between a health care practitioner and a patient or a consultation between two health care</p>						<p><b>All practitioners:</b></p> <p>Prior to an initial telehealth consultation under section 71-8506, a health care practitioner who delivers a health care service to a patient through telehealth shall ensure that the following written information is provided to the patient:</p> <p>(a) A statement that the patient retains the option to refuse the telehealth consultation at any</p>

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<p>practitioners.</p> <p><i>Authority: R.R.S. Neb. § 71-8503(3)&amp;(4).</i></p> <p><b>NOTE: Below definition limited to Medicaid enrolled practitioners:</b></p> <p>Health care practitioner means a Nebraska Medicaid-enrolled provider who is licensed, registered, or certified to practice in this state by the department.</p> <p><i>Authority: R.R.S. Neb. § 71-8503(2)</i></p> <p>The Nebraska Telehealth Act does not: (1) Alter the scope of practice of any health care practitioner; (2) authorize the delivery of health care services in a setting or</p>							<p>time without affecting the patient's right to future care or treatment and without risking the loss or withdrawal of any program benefits to which the patient would otherwise be entitled;</p> <p>(b) A statement that all existing confidentiality protections shall apply to the telehealth consultation;</p> <p>(c) A statement that the patient shall have access to all medical information resulting from the telehealth consultation as provided by law for patient access to his or</p>
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	<p>manner not otherwise authorized by law; or (3) limit a patient's right to choose in-person contact with a health care practitioner for the delivery of health care services for which telehealth is available.</p> <p><i>Authority: R.R.S. Neb. § 71-8504</i></p> <p>By July 1, 2000, the department shall adopt and promulgate rules and regulations to carry out the Nebraska Telehealth Act, including, but not limited to, rules and regulations to: (1) Ensure the provision of appropriate care to patients; (2) prevent fraud and abuse; and (3) establish methods and procedures necessary to safeguard against unnecessary utilization of</p>						<p>her medical records; and</p> <p>(d) A statement that dissemination of any patient identifiable images or information from the telehealth consultation to researchers or other entities shall not occur without the written consent of the patient.</p> <p>(2) The patient shall sign a written statement prior to an initial telehealth consultation, indicating that the patient understands the written information provided pursuant to subsection (1) of this section and that this</p>
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	<p>telehealth consultations.</p> <p><i>Authority: R.R.S. Neb. § 71-8508</i></p>						<p>information has been discussed with the health care practitioner or his or her designee. Such signed statement shall become a part of the patient's medical record.</p> <p>(3) If the patient is a minor or is incapacitated or mentally incompetent such that he or she is unable to sign the written statement required by subsection (2) of this section, such statement shall be signed by the patient's legally authorized representative.</p> <p>(4) This section shall</p>
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							<p>not apply in an emergency situation in which the patient is unable to sign the written statement required by subsection (2) of this section and the patient's legally authorized representative is unavailable.</p> <p><i>Authority: R.R.S. Neb. § 71-8505</i></p>
<a href="#">NH</a>	<p>"Telemedicine," as it pertains to the delivery of health care services, means the use of audio, video, or other electronic media for the purpose of diagnosis, consultation, or treatment. Telemedicine does not include the use of audio-only</p>				<p>Board authorized to adopt standards of care for the practice of telemedicine or tele-health by psychologists.</p> <p><i>Authority: RSA 329-B:10 (XVII)</i></p>		

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	<p>telephone or facsimile.</p> <p><i>Authority: RSA 415-J:2 (III)</i></p>				<p>Psychologists who practice electronically shall be subject to standards of care for the practice of telemedicine and telehealth for psychology established by the board pursuant to rules adopted under RSA 541-A.</p> <p><i>Authority: RSA 329-B:16</i></p>		
NJ	No practitioner licensure references found.						
<a href="#">NM</a>	Telehealth means the use of electronic information, imaging and communication technologies, including interactive audio, video, data communications as well as store-and-forward technologies, to provide and		<p>For physicians, the following is deemed unprofessional or dishonorable conduct:</p> <p>Consultation, recommendation, or treatment during a face-to-face telehealth encounter</p>				

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<p>support health care delivery, diagnosis, consultation, treatment, transfer of medical data and education.</p> <p><i>Authority: N.M. Stat. Ann. § 24-25-3(C)</i></p> <p>The delivery of health care via telehealth is recognized and encouraged as a safe, practical and necessary practice in New Mexico. No health care provider or operator of an originating site shall be disciplined for or discouraged from participating in telehealth pursuant to the New Mexico Telehealth Act [24-25-1 NMSA 1978]. In using telehealth procedures, health care providers and operators of originating sites shall comply with all applicable federal and state</p>		<p>online, using standard videoconferencing technology, where a medical history and informed consent are obtained and a medical record generated by the practitioner, and a physical examination is:</p> <p>(a) recorded as appropriate by the practitioner, or a practitioner such as a physician, a physician or anesthesiologist assistant, or an advanced practice nurse, with the results communicated to the telehealth practitioner; or</p> <p>(b) waived when a physical examination would not normally be part of a typical physical face-to-face encounter with the patient for the specific services</p>					
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	<p>guidelines and shall follow established federal and state rules regarding security, confidentiality and privacy protections for health care information.</p> <p><i>Authority: N.M. Stat. Ann. § 24-25-4</i></p> <p>The New Mexico Telehealth Act [24-25-1 NMSA 1978] does not alter the scope of practice of any health care provider or authorize the delivery of health care services in a setting, or in a manner, not otherwise authorized by law.</p> <p><i>Authority: N.M. Stat. Ann. § 24-25-5(A)</i></p>		<p>being provided.</p> <p><i>Authority: 16.10.2.11 NMAC (6)</i></p>				
<a href="#">NV</a>	Defined within practitioner		<b>Physicians</b>				

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	scope of practice		<p>Scope of practice of medicine includes “using equipment that transfers information concerning the medical condition of the patient electronically, telephonically or by fiber optics from within or outside this State or the United States.”</p> <p><i>Authority: Nev. Rev. Stat. Ann. § 630.020(3)</i></p> <p><b>Osteopathic physicians</b></p> <p>An osteopathic physician may engage in telemedicine from within or outside this State or the United States if he or she possesses an unrestricted license to practice osteopathic medicine in this State pursuant to this chapter. An osteopathic physician who</p>				
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ST	Definition of telehealth or telemedicine	Practitioner →	<ul style="list-style-type: none"> <li>Physicians</li> <li>Physician Assistants</li> <li>Osteopathic physicians and surgeons</li> <li>Naturopathic physicians</li> <li>Podiatric physicians</li> <li>Chiropractic physicians</li> </ul>	<ul style="list-style-type: none"> <li>Registered nurses</li> <li>Licensed practical nurses</li> <li>Nurse-midwives</li> </ul>	Mental health practitioners, therapists	Pharmacists and pharmacies	Other licensed practitioners
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			<p>engages in telemedicine:</p> <p>(a) Except as otherwise provided by specific statute or regulation, shall comply with the provisions of this chapter and the regulations of the Board; and</p> <p>(b) To the extent not inconsistent with the Nevada Constitution or the United States Constitution, is subject to the jurisdiction of the courts of this State.</p> <p>2. If an osteopathic physician engages in telemedicine with a patient who is physically located in another state or territory of the United States, the osteopathic physician shall, before engaging in telemedicine with the patient, take any steps necessary to be authorized</p>				
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ST	Definition of telehealth or telemedicine	Practitioner →	<ul style="list-style-type: none"> <li>Physicians</li> <li>Physician Assistants</li> <li>Osteopathic physicians and surgeons</li> <li>Naturopathic physicians</li> <li>Podiatric physicians</li> <li>Chiropractic physicians</li> </ul>	<ul style="list-style-type: none"> <li>Registered nurses</li> <li>Licensed practical nurses</li> <li>Nurse-midwives</li> </ul>	Mental health practitioners, therapists	Pharmacists and pharmacies	Other licensed practitioners
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			<p>or licensed to practice osteopathic medicine in the other state or territory of the United States in which the patient is physically located.</p> <p>3. Except as otherwise provided in subsections 4 and 5, before an osteopathic physician may engage in telemedicine pursuant to this section:</p> <p>(a) A bona fide relationship between the osteopathic physician and the patient must exist which must include, without limitation, a history and an examination or consultation which occurred in person or through the use of telemedicine and which was sufficient to establish a diagnosis and identify any</p>				
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ST	Definition of telehealth or telemedicine	Practitioner →	<ul style="list-style-type: none"> <li>Physicians</li> <li>Physician Assistants</li> <li>Osteopathic physicians and surgeons</li> <li>Naturopathic physicians</li> <li>Podiatric physicians</li> <li>Chiropractic physicians</li> </ul>	<ul style="list-style-type: none"> <li>Registered nurses</li> <li>Licensed practical nurses</li> <li>Nurse-midwives</li> </ul>	Mental health practitioners, therapists	Pharmacists and pharmacies	Other licensed practitioners
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			<p>underlying medical conditions of the patient.</p> <p>(b) The osteopathic physician must obtain informed consent from the patient or the legal representative of the patient to engage in telemedicine with the patient. The osteopathic physician shall document the consent as part of the permanent medical record of the patient.</p> <p>(c) The osteopathic physician must inform the patient:</p> <p>(1) That the patient or the legal representative of the patient may withdraw the consent provided pursuant to paragraph (b) at any time;</p>				
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			<p>(2) Of the potential risks, consequences and benefits of telemedicine;</p> <p>(3) Whether the osteopathic physician has a financial interest in the Internet website used to engage in telemedicine or in the products or services provided to the patient via telemedicine; and</p> <p>(4) That the transmission of any confidential medical information while engaged in telemedicine is subject to all applicable federal and state laws with respect to the protection of and access to confidential medical information.</p> <p>4. An osteopathic physician is not required to comply</p>				
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			<p>with the provisions of paragraph (a) of subsection 3 if the osteopathic physician engages in telemedicine for the purposes of making a diagnostic interpretation of a medical examination, study or test of the patient.</p> <p>5. An osteopathic physician is not required to comply with the provisions of paragraph (a) or (c) of subsection 3 in an emergency medical situation.</p> <p>6. The provisions of this section must not be interpreted or construed to:</p> <p>(a) Modify, expand or alter the scope of practice of an osteopathic physician pursuant to this chapter; or</p>				
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			<p>(b) Authorize the practice of osteopathic medicine or delivery of care by an osteopathic physician in a setting that is not authorized by law or in a manner that violates the standard of care required of an osteopathic physician pursuant to this chapter.</p> <p><i>Authority: Nev. Rev. Stat. Ann. § 633.165</i></p> <p><b>Physician Assistants</b></p> <p>Board shall adopt regulations governing supervision of medical services of a physician assistant by a supervising physician, including, without limitation, supervision that is performed electronically, telephonically or by fiber</p>				
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			<p>optics from within or outside this State or the United States and physician assistant's use of equipment that transfers information concerning the medical condition of a patient in this State electronically, telephonically or by fiber optics from within or outside this State or the United States.</p> <p><i>Authority: Nev. Rev. Stat. Ann. § 630.275(8) &amp; (9)</i></p>				
NY	No practitioner licensure references found.						
<a href="#">OH</a>	Defined within practitioner scope of practice						<p><b>Physical Therapy</b></p> <p>(10) "Telehealth" means the use of electronic communications to provide and deliver a</p>

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							<p>host of health-related information and healthcare services, including, but not limited to physical therapy related information and services, over large and small distances.</p> <p>(a) Telehealth encompasses a variety of healthcare and health promotion activities, including, but not limited to, education, advice, reminders, interventions, and monitoring of interventions.</p> <p><i>Authority: OAC Ann. 4755-27-01(10)</i></p>
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							<p><b>Speech Language Pathology</b></p> <p>"Telehealth" means the use of telecommunications and information technologies for the exchange of information from one site to another for the provision of audiology or speech-language pathology services to an individual from a provider through hardwire or internet connection.</p> <p>"Telepractice" means the practice of telehealth.</p> <p>(B) Service delivery models (1) Telehealth</p>
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ST	Definition of telehealth or telemedicine	Practitioner →	<ul style="list-style-type: none"> <li>Physicians</li> <li>Physician Assistants</li> <li>Osteopathic physicians and surgeons</li> <li>Naturopathic physicians</li> <li>Podiatric physicians</li> <li>Chiropractic physicians</li> </ul>	<ul style="list-style-type: none"> <li>Registered nurses</li> <li>Licensed practical nurses</li> <li>Nurse-midwives</li> </ul>	Mental health practitioners, therapists	Pharmacists and pharmacies	Other licensed practitioners
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							<p>may be delivered in a variety of ways, including but not limited to, those models listed this paragraph.</p> <p>(2) Store-and-forward model/electronic transmission is an asynchronous electronic transmission of stored clinical data from one location to another usually by the internet via email and fax.</p> <p>(3) Synchronous clinician interactive model is a real time interaction between the provider and patient that may occur via encrypted audio</p>
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							<p>and video transmission over telecommunication links including, but not limited to, videoconferencing.</p> <p>(4) Live versus stored data refers to the actual data transmitted during the telepractice. Both live, real-time and stored clinical data may be included during the telepractice.</p> <p>(C) Guidelines for the use of telehealth (1) A provider shall be accountable for any ethical and scope of practice requirements when providing</p>
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							<p>telehealth services.</p> <p>(2) The scope, nature, and quality of services provided via telepractice are the same as that provided during in-person sessions by the provider.</p> <p>(3) The quality of electronic transmissions shall be appropriate for the provision of telehealth services as if those services were provided in person.</p> <p>(4) A provider shall only utilize technology with which they are competent to use as part of their</p>
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							<p>telepractice services.</p> <p>(5) Equipment used for telehealth services shall be maintained in appropriate operational status to provide appropriate quality of services.</p> <p>(6) Equipment used at the site at which the patient is present shall be in appropriate working condition and deemed appropriate by the provider.</p> <p>(7) The provider shall be responsible for assessing the client's candidacy for telehealth, including behavioral, physical, and cognitive abilities</p>
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							<p>to participate in services provided via telecommunications.</p> <p>(8) A provider shall be aware of the patient's level of comfort with the technology being used as part of the telehealth services and only accept for treatment via telecommunications patients who can reasonably be expected to benefit from a service delivery model in paragraph (B) of this rule and continue with such treatment when there is reasonable expectation of further benefit.</p>
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							<p>(9) As pertaining to liability and malpractice issues, a provider shall be held to the same standards of practice as if the telepractice services were provided in person.</p> <p>(10) A provider shall be sensitive to cultural and linguistic variables that affect the identification, assessment, treatment, and management of the clients.</p> <p>(11) Telehealth providers shall comply with all laws, rules, and regulations governing the maintenance of client</p>
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							<p>records, including client confidentiality requirements, regardless of the state where the records of any client within this state are maintained.</p> <p>(12) Notification of telehealth services should be provided to the client, the guardian, the caregiver, and the multi-disciplinary team, if appropriate. The notification shall include, but not be limited to: the right to refuse telehealth services, options for service delivery, and instructions on filing and resolving complaints.</p>
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							<p>(D) Limitations of telehealth services</p> <p>A provider of telehealth services shall inform the patient as to the limitations of providing these services, including, but not limited to, the following:</p> <p>(1) The inability to have direct, physical contact with the patient is a primary difference between telehealth and direct in-person service delivery; and</p> <p>(2) The quality of transmitted data may affect the quality of</p>
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							<p>services provided by the provider.</p> <p>(E) Requirements of personnel providing telehealth services (1) A provider of telehealth services who practices in the state shall be licensed by the board.</p> <p>(2) A provider of telehealth services shall be competent in both the type of services provided and the methodology and equipment used to provide the service.</p> <p><i>Authority: OAC Ann. 4753-2-01</i></p>
<a href="#">OK</a>	As used in this act, "telemedicine" means the				For purposes of the delivery of mental		<b>All practitioners</b>

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	<p>practice of health care delivery, diagnosis, consultation, treatment, including but not limited to, the treatment and prevention of strokes, 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.</p> <p><i>Authority: 36 Okl. St. § 6802</i></p>				<p>health care via telemedicine, the use of telemedicine shall be considered a face-to-face, physical contact and in-person encounter between the health care provider and the patient, including the initial visit.</p> <p><i>Authority: 36 Okl. St. § 6804(H)</i></p> <p>"Telemedicine" means the practice of health care delivery, diagnosis, consultation, evaluation, treatment, transfer of medical data, or exchange of medical education information by means of audio, video, or</p>		<p>A. Prior to the delivery of health care via telemedicine, the health care practitioner who is in physical contact with the patient shall have the ultimate authority over the care of the patient and shall obtain informed consent from the patient. The informed consent procedure shall ensure that, at least, all the following information is given to the patient:</p> <p>1. A statement that the individual retains the option to withhold or withdraw consent at any time without affecting the right to future care or</p>
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					<p>data communications. Telemedicine uses audio and video multimedia telecommunication equipment which permits two-way real-time communication between a health care practitioner and a patient who are not in the same physical location. Telemedicine shall not include consultation provided by telephone or facsimile machine.</p> <p><i>Authority: 43A Okl. St. § 1-103(18)</i></p>		<p>treatment or risking the loss or withdrawal of any program benefits to which the individual would otherwise be entitled;</p> <p>2. A description of the potential risks, consequences, and benefits of telemedicine;</p> <p>3. A statement that all existing confidentiality protections apply;</p> <p>4. A statement that patient access to all medical information transmitted during a telemedicine interaction is guaranteed, and that</p>
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							<p>copies of this information are available at stated costs, which shall not exceed the direct cost of providing the copies; and</p> <p>5. A statement that dissemination to researchers or other entities or persons external to the patient-practitioner relationship of any patient-identifiable images or other patient-identifiable information from the telemedicine interaction shall not occur without the written consent of the patient.</p> <p>B. The patient shall</p>
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							<p>sign a written statement prior to the delivery of health care via telemedicine indicating that the patient understands the written information provided pursuant to subsection A of this section and that this information has been discussed with the health care practitioner or the practitioner's designee.</p> <p>C. If the patient is a minor or is incapacitated or mentally incompetent such that the patient is unable to give informed consent, the consent provisions of</p>
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							<p>this section shall apply to the patient's representative. The consent provisions of this section shall not apply in an emergency situation in which a patient is unable to give informed consent and the patient's representative is unavailable.</p> <p>D. The failure of a health care practitioner to comply with the provisions of this section shall constitute unprofessional conduct.</p> <p>E. The written consent statement signed by the patient shall become part of</p>
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							<p>the patient's medical record.</p> <p>F. The consent provisions of this section shall not apply to consultations among or between health care practitioners or to other telemedicine interactions in which the patient is not directly involved.</p> <p>G. The consent provisions of this section shall not apply to consultations among or between health care practitioners and inmates in the custody of the Department of</p>
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							<p>Corrections.</p> <p><i>Authority: 36 Okl. St. § 6804</i></p>
OR	No practitioner licensure references found.						
PA	No practitioner licensure references found.						
RI	No practitioner licensure references found.						
SC	No practitioner licensure references found.						
<a href="#">SD</a>	Defined relative to speech-language pathologists only						<p><b>Speech-language pathologists</b></p> <p>"Telepractice," "telespeech," "telespeech-language pathology," or "telehealth," whether used separately or together. Telepractice service means the</p>

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							application of telecommunication technology to deliver speech-language pathology at a distance for assessment, intervention, or consultation. <i>Authority: S.D. Codified Laws § 36-37-1</i>
TN	No practitioner licensure references found.						
<a href="#">TX</a>	No general definition found; see practitioner specific definitions.		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.	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.			<b>Optometrists</b>  Telehealth service--A health service, other than a telemedicine service, that is delivered by a licensed optometrist or therapeutic optometrist acting within the scope of his or her license, and

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			<p><i>Authority: 22 TAC § 174.2</i></p> <p>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.</p> <p>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</p>	<p><i>Authority: 22 TAC § 174.2</i></p>			<p>that requires the use of advanced telecommunications technology, other than telephone or facsimile technology, including:</p> <p>(A) compressed digital interactive video, audio, or data transmission;</p> <p>(B) clinical data transmission using computer imaging by way of still-image capture and store and forward; and</p> <p>(C) other technology that facilitates access to health care services or optometric specialty expertise.</p>
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			<p>services, the physician must implement written protocols that address the following:</p> <p>(1) authentication and authorization of users;</p> <p>(2) authentication of the origin of information;</p> <p>(3) the prevention of unauthorized access to the system or information;</p> <p>(4) system security, including the integrity of information that is collected, program integrity, and system integrity;</p> <p>(5) maintenance of documentation about system and information usage;</p>				<p>Extensive requirements for delivery of telehealth services (See appendix)</p> <p><i>Authority: 22 TAC § 279.16</i></p> <p><b>Speech-Language Pathology and Audiology</b></p> <p>Telehealth--The use of telecommunications and information technologies for the exchange of information from one site to another for the provision of speech-language pathology or audiology services to an individual from a provider through</p>
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			<p>(6) information storage, maintenance, and transmission; and</p> <p>(7) synchronization and verification of patient profile data.</p> <p><i>Authority: 22 TAC § 174.3</i></p> <p>A treating physician or health professional who provides or facilitates the use of telemedicine medical services or telehealth services shall ensure that the confidentiality of the patient's medical information is maintained as required by Chapter 159 or other applicable law.</p> <p><i>Authority: Tex. Occ. Code § 111.003</i></p>				<p>hardwire or internet connection.</p> <p>Telepractice defined as the practice of telehealth</p> <p><i>Authority: 22 TAC § 741.1(15)&amp;(16)</i></p> <p>Telehealth--The use of telecommunications and information technologies for the exchange of information from one site to another for the provision of speech-language pathology or audiology services to a</p> <p>Telehealth Service--The application of telecommunication technology to deliver speech-language</p>
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			<p>A treating physician or health professional who provides or facilitates the use of telemedicine medical services or telehealth services shall ensure that the informed consent of the patient, or another appropriate individual authorized to make health care treatment decisions for the patient, is obtained before telemedicine medical services or telehealth services are provided.</p> <p><i>Authority: Tex. Occ. Code § 111.002</i></p> <p>(a) Privacy Practices.</p> <p>(1) Physicians that communicate with patients by electronic communications other than</p>				<p>pathology and/or audiology services at a distance for assessment, intervention, and/or consultation. Telepractice--The practice of telehealth.</p> <p><i>Authority: 22 TAC § 741.211</i></p> <p>A provider of telehealth services who practices in the State shall be licensed by the board.</p> <p>A provider of telehealth services shall be competent in both the type of services provided and the methodology and equipment used to</p>
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			<p>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.</p> <p>(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.</p> <p><i>Authority: 22 TAC § 174.5</i></p> <p>Limitations of Telemedicine. Physicians who use</p>				<p>provide the service.</p> <p><i>Authority: 22 TAC § 741.215</i></p> <p>Telehealth may be delivered in a variety of ways, including, but not limited to those set out in this section.</p> <p>(1) Store-and-forward model/electronic transmission is an asynchronous electronic transmission of stored clinical data from one location to another.</p> <p>(2) Clinician interactive model is a synchronous, real time interaction between the provider and client</p>
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			<p>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.</p> <p>(c) Necessity of In-Person Evaluation. When, for whatever reason, the telemedicine modality in use</p>				<p>or consultant that may occur via telecommunication links.</p> <p>(b) Self-monitoring/testing model refers to when the client or consultant receiving the services provides data to the provider without a facilitator present at the site of the client or consultant.</p> <p>c) Live versus stored data refers to the actual data transmitted during the telepractice. Both live, real-time and stored clinical data may be included during the</p>
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			<p>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 and counsel 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</p>				<p>telepractice.</p> <p><i>Authority: 22 TAC § 741.212</i></p> <p>(a) A provider shall comply with the board's Code of Ethics and Scope of Practice requirements when providing telehealth services.</p> <p>(b) The scope, nature, and quality of services provided via telehealth are the same as that provided during in-person sessions by the provider.</p> <p>(c) The quality of electronic transmissions shall be</p>
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			<p>to meet the patient's needs.</p> <p>(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).</p> <p><i>Authority: 22 TAC § 174.5</i></p> <p>(a) Telemedicine medical services provided at an established medical site may</p>				<p>equally appropriate for the provision of telehealth services as if those services were provided in person.</p> <p>(d) A provider shall only utilize technology which they are competent to use as part of their telehealth services.</p> <p>(e) Equipment used for telehealth services at the clinician site shall be maintained in appropriate operational status to provide appropriate quality of services.</p> <p>(f) Equipment used at the client/patient site at which the client or</p>
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			<p>be used for all patient visits, including initial evaluations to establish a proper physician-patient relationship between a distant site provider and a patient.</p> <p>(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.</p> <p>(1) A distant site provider may delegate tasks and activities to a patient site presenter during a patient encounter.</p>				<p>consultant is present shall be in appropriate working condition and deemed appropriate by the provider.</p> <p>(g) The initial contact between the provider and client shall be at the same physical location to assess the client's candidacy for telehealth, including behavioral, physical, and cognitive abilities to participate in services provided via telecommunications.</p> <p>(h) A provider shall be aware of the client or consultant level of comfort with the technology being used as part of the telehealth services</p>
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			<p>(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.</p> <p>(c) If the only services provided are related to mental health, a patient site presenter is not required except in cases where the patient may be a danger to themselves or others.</p> <p><i>Authority: 22 TAC § 174.6</i></p> <p>Telemedicine Medical Services Provided at Sites other than an Established Medical Site:</p> <p>(a) A distant site provider who provides telemedicine</p>				<p>and adjust their practice to maximize the client or consultant level of comfort.</p> <p>(i) When a provider collaborates with a consultant from another state in which the telepractice services are delivered, the consultant in the state in which the client receives services shall be the primary care provider for the client.</p> <p>(j) As pertaining to liability and malpractice issues, a provider shall be held to the same standards of practice as if the telehealth services</p>
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			<p>medical services at a site other than an established medical site for a patient's previously diagnosed condition must either:</p> <p>(1) see the patient one time in a face-to-face visit before providing telemedicine medical care; or</p> <p>(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.</p> <p>(b) Patient site presenters are not required for pre-existing conditions previously diagnosed by a</p>				<p>were provided in person.</p> <p>(k) A provider shall be sensitive to cultural and linguistic variables that affect the identification, assessment, treatment, and management of the clients.</p> <p>(l) Upon request, a provider shall submit to the board data which evaluates effectiveness of services provided via telehealth including, but not limited to, outcome measures.</p> <p>(m) Telehealth providers shall comply</p>
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			<p>physician through a face-to-face visit.</p> <p>(c) All patients must be seen by a physician for an in-person evaluation at least once a year.</p> <p>(d) Telemedicine medical services may not be used to treat chronic pain with scheduled drugs at sites other than medical practice sites.</p> <p>(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</p>				<p>with all laws, rules, and regulations governing the maintenance of client records, including client confidentiality requirements, regardless of the state where the records of any client within this state are maintained.</p> <p>(n) Notification of telehealth services should be provided to the client, the guardian, the caregiver, and the multi-disciplinary team, if appropriate. The notification shall include, but not be limited to: the right to refuse telehealth services, options for service delivery, and</p>
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			<p>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.</p> <p><i>Authority: 22 TAC § 174.7</i></p> <p>Evaluation of the Patient. Distant site providers who utilize telemedicine medical services must ensure that a proper physician-patient relationship is established which at a minimum includes:</p> <p>(1) establishing that the person requesting the treatment is in fact whom</p>				<p>instructions on filing and resolving complaints.</p> <p><i>Authority: 22 TAC § 741.213</i></p> <p>Telehealth services may not be provided by correspondence only, e.g., mail, email, faxes, although they may be adjuncts to telepractice.</p> <p><i>Authority: 22 TAC § 741.214</i></p>
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			<p>he/she claims to be;</p> <p>(2) establishing a diagnosis through the use of acceptable medical practices, including patient history, mental status examination, physical examination (unless not warranted by the patient's mental condition), and appropriate diagnostic and laboratory testing to establish diagnoses, as well as identify underlying conditions or contraindications, or both, to treatment recommended or provided;</p> <p>(3) discussing with the patient the diagnosis and the evidence for it, the risks and benefits of various treatment options; and</p>				
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			<p>(4) ensuring the availability of the distant site provider or coverage of the patient for appropriate follow-up care.</p> <p>Treatment and consultation recommendations made in an online setting, including issuing a prescription via electronic means, will be held to the same standards of appropriate practice as those in traditional in-person clinical settings.</p> <p>An online or telephonic evaluation solely by questionnaire does not constitute an acceptable standard of care.</p> <p><i>Authority: 22 TAC § 174.7</i></p> <p>Evaluation of the Patient. Distant site providers who</p>				
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			<p>utilize telemedicine medical services must ensure that a proper physician-patient relationship is established which at a minimum includes:</p> <p>(1) establishing that the person requesting the treatment is in fact whom he/she claims to be;</p> <p>(2) establishing a diagnosis through the use of acceptable medical practices, including patient history, mental status examination, physical examination (unless not warranted by the patient's mental condition), and appropriate diagnostic and laboratory testing to establish diagnoses, as well as identify underlying conditions or contra-</p>				
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			<p>indications, or both, to treatment recommended or provided;</p> <p>(3) discussing with the patient the diagnosis and the evidence for it, the risks and benefits of various treatment options; and</p> <p>(4) ensuring the availability of the distant site provider or coverage of the patient for appropriate follow-up care.</p> <p>(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 appropriate practice as those in traditional in-person clinical settings.</p>				
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			<p>(c) An online or telephonic evaluation solely by questionnaire does not constitute an acceptable standard of care.</p> <p><i>Authority: 22 TAC § 174.8</i></p> <p>§ 174.9. Technology and Security Requirements</p> <p>(a) At a minimum, advanced communication technology must be used for all patient evaluation and treatment conducted via telemedicine.</p> <p>(b) Adequate security measures must be implemented to ensure that all patient communications, recordings and records remain confidential.</p>				
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			<p>(c) Electronic Communications.</p> <p>(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:</p> <p>(A) privacy to assure confidentiality and integrity of patient-identifiable information;</p> <p>(B) health care personnel, in addition to the physician, who will process messages;</p> <p>(C) hours of operation and availability;</p>				
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			<p>(D) types of transactions that will be permitted electronically;</p> <p>(E) required patient information to be included in the communication, such as patient name, identification number and type of transaction;</p> <p>(F) archival and retrieval; and</p> <p>(G) quality oversight mechanisms.</p> <p>(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.</p> <p>(3) Patients must be</p>				
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ST	Definition of telehealth or telemedicine	Practitioner →	<ul style="list-style-type: none"> <li>Physicians</li> <li>Physician Assistants</li> <li>Osteopathic physicians and surgeons</li> <li>Naturopathic physicians</li> <li>Podiatric physicians</li> <li>Chiropractic physicians</li> </ul>	<ul style="list-style-type: none"> <li>Registered nurses</li> <li>Licensed practical nurses</li> <li>Nurse-midwives</li> </ul>	Mental health practitioners, therapists	Pharmacists and pharmacies	Other licensed practitioners
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			<p>informed of alternative forms of communication for urgent matters.</p> <p><i>Authority: 22 TAC § 174.9</i></p> <p>(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.</p> <p>(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.</p>				
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ST	Definition of telehealth or telemedicine	Practitioner →	<ul style="list-style-type: none"> <li>Physicians</li> <li>Physician Assistants</li> <li>Osteopathic physicians and surgeons</li> <li>Naturopathic physicians</li> <li>Podiatric physicians</li> <li>Chiropractic physicians</li> </ul>	<ul style="list-style-type: none"> <li>Registered nurses</li> <li>Licensed practical nurses</li> <li>Nurse-midwives</li> </ul>	Mental health practitioners, therapists	Pharmacists and pharmacies	Other licensed practitioners
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			<p>(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.</p> <p><i>Authority: 22 TAC § 174.10</i> Physicians, who are of the same specialty and provide reciprocal services, may provide on-call telemedicine medical services for each other's active patients.</p> <p><i>Authority: 22 TAC § 174.11</i></p>				
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ST	Definition of telehealth or telemedicine	Practitioner →	<ul style="list-style-type: none"> <li>Physicians</li> <li>Physician Assistants</li> <li>Osteopathic physicians and surgeons</li> <li>Naturopathic physicians</li> <li>Podiatric physicians</li> <li>Chiropractic physicians</li> </ul>	<ul style="list-style-type: none"> <li>Registered nurses</li> <li>Licensed practical nurses</li> <li>Nurse-midwives</li> </ul>	Mental health practitioners, therapists	Pharmacists and pharmacies	Other licensed practitioners
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UT	No practitioner licensure references found.						
<a href="#">VA</a>	Defined relative to nurse practitioners only.			<p>Collaboration and consultation among nurse practitioners and patient care team physicians may be provided through telemedicine as described in § 38.2-3418.16.</p> <p><i>Authority: Va. Code Ann. § 54.1-2957 (B)</i></p> <p>As used in this section, "telemedicine services," as it pertains to the delivery of health care services, means the use of interactive audio, video, or other electronic media used for the purpose of diagnosis, consultation, or treatment. "Telemedicine services" do not include an</p>			

ST	Definition of telehealth or telemedicine	Practitioner →	<ul style="list-style-type: none"> <li>Physicians</li> <li>Physician Assistants</li> <li>Osteopathic physicians and surgeons</li> <li>Naturopathic physicians</li> <li>Podiatric physicians</li> <li>Chiropractic physicians</li> </ul>	<ul style="list-style-type: none"> <li>Registered nurses</li> <li>Licensed practical nurses</li> <li>Nurse-midwives</li> </ul>	Mental health practitioners, therapists	Pharmacists and pharmacies	Other licensed practitioners
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				<p>audio-only telephone, electronic mail message, or facsimile transmission.</p> <p><i>Authority: Va. Code Ann. § 38.2-3418.16 (B)</i></p>			
<a href="#">VT</a>	<p>General definition and law applying to all licensed practitioners:</p> <p>Licensed health care provider may prescribe, dispense, or administer drugs or medical supplies, or otherwise provide treatment recommendations to a patient after having performed an appropriate examination of the patient either in person or by the use of instrumentation and diagnostic equipment through which images and medical records may be transmitted electronically.</p>		<p>A patient receiving teleophthalmology or teledermatology by store and forward means shall be informed of the right to receive a consultation with the distant site health care provider and shall receive a consultation with the distant site health care provider upon request. If requested, the consultation with the distant site health care provider may occur either at the time of the initial consultation or within a reasonable time of the patient's notification of the results of the initial</p>				

ST	Definition of telehealth or telemedicine	Practitioner →	<ul style="list-style-type: none"> <li>Physicians</li> <li>Physician Assistants</li> <li>Osteopathic physicians and surgeons</li> <li>Naturopathic physicians</li> <li>Podiatric physicians</li> <li>Chiropractic physicians</li> </ul>	<ul style="list-style-type: none"> <li>Registered nurses</li> <li>Licensed practical nurses</li> <li>Nurse-midwives</li> </ul>	Mental health practitioners, therapists	Pharmacists and pharmacies	Other licensed practitioners
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	<p>Treatment recommendations made via electronic means, including issuing a prescription via electronic means, shall be held to the same standards of appropriate practice as those in traditional provider-patient settings. For purposes of this subchapter, "telemedicine" shall have the same meaning as in 8 V.S.A. § 4100k.</p> <p><i>Authority: 18 V.S.A. § 9361</i></p> <p>"Telemedicine means the delivery of health care services such as diagnosis, consultation, or treatment through the use of live interactive audio and video over a secure connection that meets Health Insurance Portability and Accountability Act (HIPAA)</p>		<p>consultation. Receiving teledermatology or teleophthalmology by store and forward means shall not preclude a patient from receiving real time telemedicine or face-to-face services with the distant site health care provider at a future date. Originating site health care providers involved in the store and forward process shall ensure informed consent from the patient. For purposes of this subchapter, "store and forward" shall have the same meaning as in 8 V.S.A. § 4100k.</p> <p><i>Authority: 18 V.S.A. § 9361(b)</i></p> <p>"Store and forward" means an asynchronous transmission of medical</p>				
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ST	Definition of telehealth or telemedicine	Practitioner →	<ul style="list-style-type: none"> <li>Physicians</li> <li>Physician Assistants</li> <li>Osteopathic physicians and surgeons</li> <li>Naturopathic physicians</li> <li>Podiatric physicians</li> <li>Chiropractic physicians</li> </ul>	<ul style="list-style-type: none"> <li>Registered nurses</li> <li>Licensed practical nurses</li> <li>Nurse-midwives</li> </ul>	Mental health practitioners, therapists	Pharmacists and pharmacies	Other licensed practitioners
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	<p>requirements. Telemedicine does not include the use of audio-only telephone, e-mail, or facsimile.”</p> <p><i>Authority: 8 V.S.A. § 4100k(g)(4)</i></p>		<p>information to be reviewed at a later date by a health care provider at a distant site who is trained in the relevant specialty and by which the health care provider at the distant site reviews the medical information without the patient present in real time.</p> <p><i>Authority: 8 V.S.A. § 4100k(g)(3)</i></p>				
<a href="#">WA</a>	Defined only relative to physical therapists and physical therapist assistants						<p><b>Physical therapists and physical therapist assistants</b></p> <p>Licensed physical therapists and physical therapist assistants may provide physical therapy via telehealth following all requirements for standard of care,</p>

ST	Definition of telehealth or telemedicine	Practitioner →	<ul style="list-style-type: none"> <li>Physicians</li> <li>Physician Assistants</li> <li>Osteopathic physicians and surgeons</li> <li>Naturopathic physicians</li> <li>Podiatric physicians</li> <li>Chiropractic physicians</li> </ul>	<ul style="list-style-type: none"> <li>Registered nurses</li> <li>Licensed practical nurses</li> <li>Nurse-midwives</li> </ul>	Mental health practitioners, therapists	Pharmacists and pharmacies	Other licensed practitioners
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							<p>including those defined in chapters 18.74 RCW and 246-915 WAC.</p> <p>The physical therapist or physical therapist assistant must identify in the clinical record that the physical therapy occurred via telehealth.</p> <p>The definitions in this subsection apply throughout this section unless the context clearly requires otherwise:</p> <p>"Telehealth" means providing physical therapy via electronic communication where the physical therapist</p>
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							<p>or physical therapist assistant and the patient are not at the same physical location.</p> <p>"Electronic communication" means the use of interactive, secure multimedia equipment that includes, at a minimum, audio and video equipment permitting two-way, real time interactive communication between the physical therapist or the physical therapist assistant and the patient.</p> <p><i>Authority: WAC § 246-</i></p>
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ST	Definition of telehealth or telemedicine	Practitioner →	<ul style="list-style-type: none"> <li>Physicians</li> <li>Physician Assistants</li> <li>Osteopathic physicians and surgeons</li> <li>Naturopathic physicians</li> <li>Podiatric physicians</li> <li>Chiropractic physicians</li> </ul>	<ul style="list-style-type: none"> <li>Registered nurses</li> <li>Licensed practical nurses</li> <li>Nurse-midwives</li> </ul>	Mental health practitioners, therapists	Pharmacists and pharmacies	Other licensed practitioners
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							915-187
WI	No practitioner licensure references found.						
<a href="#">WV</a>	Defined relative to pharmacy only.					<p>"Practice of telepharmacy" means the provision of pharmacist care by properly licensed pharmacists located within United States jurisdictions through the use of telecommunications or other technologies to patients or their agents at a different location that are located within United States jurisdictions.</p> <p><i>Authority: W. Va. Code § 30-5-4 (58)</i></p> <p>"Valid patient-</p>	

ST	Definition of telehealth or telemedicine	Practitioner →	<ul style="list-style-type: none"> <li>Physicians</li> <li>Physician Assistants</li> <li>Osteopathic physicians and surgeons</li> <li>Naturopathic physicians</li> <li>Podiatric physicians</li> <li>Chiropractic physicians</li> </ul>	<ul style="list-style-type: none"> <li>Registered nurses</li> <li>Licensed practical nurses</li> <li>Nurse-midwives</li> </ul>	Mental health practitioners, therapists	Pharmacists and pharmacies	Other licensed practitioners
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						<p>practitioner relationship" means the following have been established:</p> <p>(A) A patient has a medical complaint;</p> <p>(B) A medical history has been taken;</p> <p>(C) A face-to-face physical examination adequate to establish the medical complaint has been performed by the prescribing practitioner or in the instances of telemedicine through telemedicine practice approved by the appropriate practitioner board; and</p> <p>(D) Some logical</p>	
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						<p>connection exists between the medical complaint, the medical history, and the physical examination and the drug prescribed.</p> <p><i>Authority: W. Va. Code § 30-5-4 (67)</i></p>	
<a href="#">WY</a>	Defined relative to physicians and physical therapists only		<p>"Telemedicine means the practice of medicine by electronic communication or other means from a physician in a location to a patient in another location, with or without an intervening health care provider."</p> <p><i>Authority: Wyo. Stat. § 33-26-102(a)(xxix)</i></p> <p>Board authorized to adopt rules and regulations for the</p>				<p><b>Physical therapists</b></p> <p>"Consultation by means of telecommunications" means that a physical therapist renders professional or expert opinion or advice to another physical therapist or health care provider via telecommunications or computer technology from a distant location. It includes the transfer</p>

ST	Definition of telehealth or telemedicine	Practitioner →	<ul style="list-style-type: none"> <li>Physicians</li> <li>Physician Assistants</li> <li>Osteopathic physicians and surgeons</li> <li>Naturopathic physicians</li> <li>Podiatric physicians</li> <li>Chiropractic physicians</li> </ul>	<ul style="list-style-type: none"> <li>Registered nurses</li> <li>Licensed practical nurses</li> <li>Nurse-midwives</li> </ul>	Mental health practitioners, therapists	Pharmacists and pharmacies	Other licensed practitioners
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			<p>practice of telemedicine.</p> <p><i>Authority: Wyo. Stat. § 33-26-202(b)(xix)</i></p>				<p>of data or exchange of educational or related information by means of audio, video, or data communications.</p> <p>The physical therapist may use telehealth technology as a vehicle for providing only services that are legally or professionally authorized. The patient's written or verbal consent will be obtained and documented prior to such consultation. All records used or resulting from a consultation by means of telecommunications are part of a patient's record and are subject</p>
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							<p>to applicable confidentiality requirements.</p> <p><i>Authority: WCWR 006-062-001(d)</i></p>
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# Alabama

## **Medical Examiners Chapter 540-X-15**

**Supp. 3/31/14 15-1**

### **ALABAMA BOARD OF MEDICAL EXAMINERS**

#### **ADMINISTRATIVE CODE**

#### **CHAPTER 540-X-15**

#### **TELEHEALTH**

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**540-X-15-.01 Purpose.**

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**Supp. 3/31/14 15-2**

Utah Telehealth Study - Phase 2 Report

Prepared by Pilot Healthcare Strategies for the Utah Division of Occupational and Professional Licensing

May 2, 2014

(1) This Chapter is promulgated to establish standards for the provision of telehealth medical services for medical practices regulated by the Alabama Board of Medical Examiners.

**Author:** Alabama Board of Medical Examiners

**Statutory Authority:** Code of Ala. 1975, §§34-24-53, 34-24-508.

**History: New Rule:** Filed December 12, 2013; effective January 16, 2014.

**540-X-15-.02 Telehealth Medical Services By Physicians According To Licensure Status.**

(1) For the provision of telehealth medical services by an MD or DO, the following applies:

(a) Physicians who are issued certificates of qualification by the Alabama Board of Medical Examiners and who are licensed to practice medicine by the Medical Licensure Commission of Alabama pursuant to Code of Ala. 1975, §§34-24-70 and 34-24-311 (full certificates of qualification and licenses), Rules 540-X-15-.05 through .15 apply;

(b) Physicians who are issued certificates of qualification by the Alabama Board of Medical Examiners and who are issued special purpose licenses to practice medicine or osteopathy across state lines by the Medical Licensure Commission of Alabama pursuant to Code of Ala. 1975, §34-24-502 (special purpose licenses), Rule 540-X-15-.16 applies;

(c) Physicians who are issued certificates of qualification without examination by the Alabama Board of Medical Examiners and who are licensed to practice medicine without examination by the Medical Licensure Commission of Alabama pursuant to Code of Ala. 1975, §24-24-75(a) ("limited" license, Teaching Physicians), Rules 540-X-15-.17(1), (2) and (3) apply;

(d) Physicians who are issued certificates of qualification without examination by the Alabama Board of Medical Examiners and who are licensed to practice medicine without examination by the Medical Licensure Commission of Alabama pursuant to Code of Ala. 1975, §34-24-75(c) ("limited" license, Residents), Rules 540-X-15-.17(1), (2) and(4) apply; and

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(e) Physicians who are issued certificates of qualification without examination by the Alabama Board of Medical Examiners and who are licensed to practice medicine without examination by the Medical Licensure Commission of Alabama pursuant to Code of Ala. 1975, §34-24-75(b) ("limited"

license, physicians at state penal and mental institutions), Rules 540-X-15-.17(1), (2) and (5) apply.

**Author:** Alabama Board of Medical Examiners

**Statutory Authority:** Code of Ala. 1975, §§34-24-53, 34-24-508.

**History: New Rule:** Filed December 12, 2013; effective January 16, 2014.

#### **540-X-15-.03 Scope Of Practice Of Non-Physician Healthcare Practitioners.**

(1) The scope of practice for a physician assistant is determined pursuant to Code of Ala. 1975, §§34-24-290 through 306 and the Rules of the Alabama Board of Medical Examiners.

(2) The scope of practice of a CRNP or a CNM is determined pursuant to Code of Ala. 1975, §§34-21-80 through 93, the Rules of the Alabama Board of Medical Examiners and the Rules of the Alabama Board of Nursing

(3) Nothing in these rules shall be interpreted to limit the scope of practice of a healthcare practitioner who is practicing pursuant to a license issued by a state licensing board or authority and who is practicing within the scope of such license.

**Author:** Alabama Board of Medical Examiners

**Statutory Authority:** Code of Ala. 1975, §§34-24-53, 34-24-508.

**History: New Rule:** Filed December 12, 2013; effective January 16, 2014.

#### **540-X-15-.04 Exemptions.**

(1) Telehealth home care services prescribed by a provider, as defined in these rules, and delivered by a licensed or certified home care agency are exempt from these rules.

(2) The Board may exempt from any requirement of these rules telehealth medical services by a provider who proposes and submits to the Board in writing the following:

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##### **Supp. 3/31/14 15-4**

(a) The requirement or requirements for which an exemption is requested, stating the specific rule or rules which apply and stating reasons why the exemption is necessary.

(b) A request that the Board consider the provider's model for the delivery of telehealth medical services as a proposed study so that feedback can be provided to the Board for consideration of future rule amendments.

(c) A proposal which provides details of the delivery of care model and which includes but is not limited to the following:

1. The medical conditions for which care will be rendered.

2. Clinical protocols to be used, how they are selected and how they will be implemented.
3. Whether treatment will be offered for conditions for which the standard of care suggests the provision of laboratory tests, imaging studies or physical exams.
4. The age range of the patient population to be treated.
5. Whether the patient will have the option of sharing the visit documentation with the patient's primary care physician.
6. How the cost of care is reduced.
7. Whether affordable options are provided to patients.

(3) In deciding whether to grant an exemption or to continue an exemption pursuant to paragraph (2) above, the Board will take into consideration the information submitted by the provider and any effect of the exemption on the quality and safety of medical care provided to patients. Whether the model for the delivery of telehealth medical services was in use by providers on or before the effective date of these rules will be considered by the Board.

(4) If a request for an exemption is not granted, the Board shall issue to the provider requesting the exemption, a

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concise statement of the principal reasons for the Board's actions.

**Author:** Alabama Board of Medical Examiners

**Statutory Authority:** Code of Ala. 1975, §§34-24-53, 34-24-508.

**History: New Rule:** Filed December 12, 2013; effective January 16, 2014.

**540-X-15-.05 Definitions.** The following words and terms, when used in this Chapter, shall have the following meanings unless context indicates otherwise.

(1) Provider.

(a) Medical Doctor (M. D.) or Doctor of Osteopathy (D. O.).

(b) A Physician Assistant (P. A.), Certified Registered Nurse Practitioner (CRNP), or Certified Nurse Midwife (CNM) in a supervisory or collaborative relationship with an M. D. or D. O.

(2) Distant site provider. A medical doctor, doctor of osteopathy, Physician Assistant, Certified Registered Nurse Practitioner or Certified Nurse Midwife who uses telehealth to provide healthcare services to a patient in Alabama. A distant

site provider must have a current and unrestricted Alabama license.

(3) Established medical site. A location where a patient would present to seek medical care, where there is a patient site presenter, and where there are sufficient technology and medical equipment to allow for an adequate physical evaluation which is appropriate for the patient's presenting complaint. A defined provider-patient relationship is required. A patient's private home is not considered an established medical site, except for emergent conditions.

(4) 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.

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

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

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

(a) Licensed or certified in the state of Alabama to perform healthcare services; 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) Provider-patient messaging. An interactive communication via a secure interactive electronic text messaging system between a provider (or medical staff member) and a patient within a professional relationship in which the provider has taken on an explicit measure of responsibility for the patient's care.

(10) Telehealth 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 appropriate telecommunication technology.

**Author:** Alabama Board of Medical Examiners

**Statutory Authority:** Code of Ala. 1975, §§34-24-53, 34-24-508.

**History: New Rule:** Filed December 12, 2013; effective January 16, 2014.

**540-X-15-.06 Telehealth Medical Services.**

(1) A provider who uses telehealth medical services in his or her medical practice shall adopt protocols to prevent fraud and abuse through the use of telehealth medical services.

(2) In order to establish that a provider has made a good faith effort in the provider's practice to prevent fraud

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and abuse through the use of telehealth medical services, the provider must implement written protocols which address the following:

- (a) Authentication and authorization of users;
- (b) Authentication of the origin of information;
- (c) The prevention of unauthorized access to the system or information;
- (d) System security, including the integrity of health information which is collected, program integrity, and system integrity;
- (e) Maintenance of documentation concerning system and information usage;
- (f) Information storage, maintenance and transmission; and
- (g) Synchronization and verification of patient profile data.

**Author:** Alabama Board of Medical Examiners

**Statutory Authority:** Code of Ala. 1975, §§34-24-53, 34-24-508.

**History: New Rule:** Filed December 12, 2013; effective January 16, 2014.

**540-X-15-.07 Asynchronous Telehealth Medical Services.**

Asynchronous telehealth medical services in the specialties of radiology (teleradiology), pathology (telepathology) and dermatology (teledermatology) which are provider-to-provider are not prohibited by these rules, and nothing in these rules shall be interpreted to prohibit the provision of such asynchronous services.

**Author:** Alabama Board of Medical Examiners

**Statutory Authority:** Code of Ala. 1975, §§34-24-53, 34-24-508.

**History: New Rule:** Filed December 12, 2013; effective January 16, 2014.

**540-X-15-.08 Notice To Patients.**

(1) Privacy practices.

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(a) A provider who communicates with a patient by electronic communication other than telephone, facsimile or text must provide the patient with written notification of the provider's privacy practices prior to evaluation or treatment. In addition, a good faith effort must be made to obtain the patient's written acknowledgment, including by provider-patient messaging, of the notice.

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

(2) Limitations of telehealth. A provider who uses telehealth medical services must, prior to providing services, give patients notice regarding telehealth medical services, unless the patient is unconscious or otherwise incapable of consenting, and harm from failure to treat is imminent. The notice must include the following: the risks and benefits of being treated pursuant to telehealth; how to receive follow-up care or assistance in the event of an adverse reaction to the treatment; and how to receive follow-up care or assistance 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 acknowledgment, by the patient establishes a presumption of notice.

(3) Necessity of in-person evaluation. When, for any reason, the telehealth modality in use for a particular patient encounter is unable to provide all pertinent clinical information which a healthcare 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 telehealth encounter. The distant site provider must advise and counsel the patient, prior to the conclusion of the live telehealth encounter, regarding the need for the patient to obtain an additional, in-person medical evaluation reasonably able to meet the patient's needs.

**Author:** Alabama Board of Medical Examiners

**Statutory Authority:** Code of Ala. 1975, §§34-24-53, 34-24-508.

**History: New Rule:** Filed December 12, 2013; effective January 16, 2014.

**Medical Examiners Chapter 540-X-15****Supp. 3/31/14 15-9****540-X-15-.09 Telehealth Medical Services Provided At An**

**Established Medical Site.**

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

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

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

(b) 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 trained and supervised or directed.

(3) If the only services provided are related to mental health, a patient site presenter is not required except in cases where the patient may be a danger to himself/herself or others.

**Author:** Alabama Board of Medical Examiners

**Statutory Authority:** Code of Ala. 1975, §§34-24-53, 34-24-508.

**History: New Rule:** Filed December 12, 2013; effective January 16, 2014.

**540-X-15-10 Telehealth Medical Services Provided At A Site Other Than An Established Medical Site.**

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

(a) See the patient one time in a face-to-face visit before providing telehealth medical care; or

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

(2) A patient site presenter is not required for a pre-existing condition previously diagnosed by a provider through a face-to-face visit.

(3) If the only services provided are related to mental health, a patient site presenter is not required except

in cases where the patient may be a danger to himself/herself or others.

(4) Each patient must be seen for an in-person evaluation at least once a year.

(5) Telehealth medical services may not be used to treat non-malignant pain with scheduled drugs, with the exception of patients who are enrolled in a qualified multidisciplinary hospice or a palliative care program.

(6) A distant site provider may treat an established patient's new symptoms which are unrelated to the patient's pre-existing condition, provided that the patient is advised to see a provider in a face-to-face visit within 72 hours. A distant site provider may not provide continuing telehealth medical services for these new symptoms to a patient who is not seen by a provider in a face-to-face visit within 72 hours.

**Author:** Alabama Board of Medical Examiners

**Statutory Authority:** Code of Ala. 1975, §§34-24-53, 34-24-508.

**History: New Rule:** Filed December 12, 2013; effective January 16, 2014.

#### **540-X-15-.11 Evaluation And Treatment Of The Patient.**

(1) Evaluation of the patient. A distant site provider who utilizes telehealth medical services must ensure that a proper provider-patient relationship is established. At a minimum, this provider-patient relationship includes the following:

(a) Establishing that the person requesting the treatment is in fact the person he/she claims to be;

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(b) Establishing a diagnosis through the use of acceptable medical practices, including patient history, an appropriate physical examination, and indicated diagnostic studies;

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

(d) Ensuring the availability of appropriate coverage of the patient for follow-up care.

(2) Treatment. Treatment and consultation recommendations made in a telemedicine setting, including issuing a prescription via electronic means, will be held to the same standards of appropriate medical practice applied to traditional in-person clinical settings.

(3) An online or telephonic evaluation solely by questionnaire does not constitute an acceptable standard of

care.

**Author:** Alabama Board of Medical Examiners

**Statutory Authority:** Code of Ala. 1975, §§34-24-53, 34-24-508.

**History: New Rule:** Filed December 12, 2013; effective January 16, 2014.

**540-X-15-.12 Technology And Security Requirements.**

(1) Appropriate communication technology must be used for all patient evaluation and treatment conducted via telehealth.

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

**Author:** Alabama Board of Medical Examiners

**Statutory Authority:** Code of Ala. 1975, §§34-24-53, 34-24-508.

**History: New Rule:** Filed December 12, 2013; effective January 16, 2014.

**540-X-15-.13 Medical Records For Telehealth Medical Services.**

For all telehealth medical services, the distant site provider must maintain medical records in HIPAA compliant (45 CFR Parts

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160 and 164) electronic health record format. This provision will become effective 36 months from the effective date of these rules.

**Author:** Alabama Board of Medical Examiners

**Statutory Authority:** Code of Ala. 1975, §§34-24-53, 34-24-508.

**History: New Rule:** Filed December 12, 2013; effective January 16, 2014.

**540-X-15-.14 On Call Services.** Physicians who are of the same specialty and provide reciprocal services may provide on call telehealth medical services for each others' active patients.

**Author:** Alabama Board of Medical Examiners

**Statutory Authority:** Code of Ala. 1975, §§34-24-53, 34-24-508.

**History: New Rule:** Filed December 12, 2013; effective January 16, 2014.

**540-X-15-.15 State Licensure.** Distant site providers who treat and prescribe through telehealth services are practicing medicine and must comply with all applicable laws and rules in all jurisdictions where their patients reside or seek medical care.

**Author:** Alabama Board of Medical Examiners

**Statutory Authority:** Code of Ala. 1975, §§34-24-53, 34-24-508.

**History: New Rule:** Filed December 12, 2013; effective January 16, 2014.

**540-X-15-.16 Special Purpose Licenses To Practice Medicine Or**

## **Osteopathy Across State Lines.**

(1) This rule is promulgated to establish standards for the provision of telehealth medical services by physicians who are issued certificates of qualification by the Alabama Board of Medical Examiners and who are issued special purpose licenses to practice medicine or osteopathy across state lines by the Medical Licensure Commission of Alabama, pursuant to Code of Ala. 1975, §34-24-502.

(2) The telehealth rules and standards governing full certificates of qualification and licenses found in Board Rules 540-X-15-.05 through .15 are applicable to special purpose licensees except where they conflict with Code of Ala. 1975,

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§§34-24-500 through 34-24-508; Commission Rules, Chapter 545-X-6; Board Rules, Chapter 540-X-16; and this rule. In the event of a conflict, Code of Ala. 1975, §§34-24-500 through 34-24-508; Commission Rules, Chapter 545-X-6; Board Rules, Chapter 540-X-16; and this rule are controlling.

(3) A special purpose licensee is prohibited from entering into a collaborative practice with a Certified Registered Nurse Practitioner or a Certified Nurse Midwife and is prohibited from acting as a covering physician in a collaborative practice.

(4) A special purpose licensee is prohibited from supervising a Physician Assistant either as the physician to whom a Physician Assistant is registered or as a covering physician.

(5) A special purpose licensee is prohibited from utilizing a Certified Registered Nurse Practitioner, a Certified Nurse Midwife, or a Physician Assistant as a patient site presenter.

**Author:** Alabama Board of Medical Examiners

**Statutory Authority:** Code of Ala. 1975, §§34-24-53, 34-24-508.

**History: New Rule:** Filed December 12, 2013; effective January 16, 2014.

### **540-X-15-.17 Certificates Of Qualification And Licenses Issued Without Examination: “Limited” Certificates Of Qualification And Licenses For Teaching Physicians, Residents, And Physicians At State Penal And Mental Institutions.**

(1) This rule is promulgated to establish standards for the provision of telehealth medical services by physicians who are issued certificates of qualification without examination by the Alabama Board of Medical Examiners (“limited” certificates of qualification) and who are issued licenses

without examination by the Medical Licensure Commission of Alabama (“limited” licenses) pursuant to Code of Ala. 1975, §34-24-75(a), (b) and (c).

(2) The telehealth rules and standards governing full certificates of qualification and licenses found in Board 540-X-15-.05 through .15 are applicable to “limited” licensees except where they conflict with Code of Ala. 1975, §34-24-75; Board Rules 540-X-3-.15 through 540-X-3-.17; any Medical

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Licensure Commission rule applicable to “limited” licenses; and this rule. In the event of a conflict, Code of Ala. 1975, §34-24-75; Board Rules 540-X-3-.15 through 540-X-3-.17; Medical Licensure Commission rules applicable to “limited” licenses; and this rule are controlling.

(3) Teaching Physicians.

(a) A full-time employed physician teaching in a medical college in Alabama who holds a certificate of qualification and license pursuant to Code of Ala. 1975, §34-24-75(a) (“limited” license) must limit his or her medical practice to the confines of the medical center of which the medical college is a part, and as an adjunct to his or her teaching functions in that college.

(b) The Teaching Physician may include in his or her medical practice the provision of telehealth services which are external to the medical college; provided that the telehealth services are rendered from the medical college and are rendered as an adjunct to the physician’s teaching functions at that school.

(4) Residents.

(a) A physician enrolled in a residency training program approved by the Board (Resident) who holds a certificate of qualification and license pursuant to Code of Ala. 1975, §34-24-75(c) (“limited” license) must limit his or her medical practice to the confines of the institution in which he or she is placed pursuant to his or her training program.

(b) The Resident may include in his or her medical practice the provision of telehealth services which are external to the training program institution, provided that the telehealth services are rendered from the training program institution and are rendered pursuant to his or her training program.

(5) Physicians at state penal and mental institutions.

(a) A physician employed full-time at a state penal

or mental institution who holds a certificate of qualification and license issued pursuant to Code of Ala. 1975, §34-24-75(b) ("limited" license) must limit his or her medical practice to the confines of the institution in which he or she is employed.

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(b) The limited license physician who provides medical services for state mental institutions may include in his or her medical practice the provision of telehealth medical services; provided that the telehealth services are rendered to patients served in facilities owned and operated by the Alabama Department of Mental Health or patients served by regional mental health programs and facilities created pursuant to Code of Ala. 1975, §§22-51-1 through 22-51-14 (Act 310 corporations).

(c) A limited license physician who provides medical services for a state penal institution may include in his or her medical practice the provision of telehealth services, provided that the telehealth services are rendered to patients incarcerated in Alabama Department of Corrections facilities.

(d) A physician employed full-time at a state penal or mental institution who holds a certificate of qualification and license issued pursuant to Code of Ala. 1975, §34-24-75(b) ("limited" license) is prohibited from providing telehealth services to patients in Alabama from a location outside of the state of Alabama.

**Author:** Alabama Board of Medical Examiners

**Statutory Authority:** Code of Ala. 1975, §§34-24-53, 34-24-508.

**History: New Rule:** Filed December 12, 2013; effective January 16, 2014.

# Arkansas

\*\*\* Legislation is current through the 2013 Regular Session and updates \*\*\*  
\*\*\* received from the Arkansas Code Revision Commission through \*\*\*  
\*\*\* November 15, 2013. \*\*\*  
\*\*\* Annotations are current through January 16, 2014. \*\*\*

Title 10 General Assembly  
Chapter 3 Committees  
Subchapter 17 -- Joint Committee on Advanced Communications and Information Technology

A.C.A. § 10-3-1702 (2014)

## **10-3-1702. Definitions.**

For the purpose of this subchapter:

(1) "Distance learning" means an interactive telecommunications system that:

(A) Utilizes information technology, audio, video, and other appropriate elements and is compatible with other distance learning networks; and

(B) Is used for the purpose of enhancing instructional opportunities in Arkansas public schools, technical colleges, community colleges, and universities, and economic development opportunities in business and industry;

(2) "Governmental entity" means any department, board, bureau, commission, or other agency of the state or any entity created by law to provide services to the state;

(3) "Information technology" means the totality of means employed to collect, classify, process, store, retrieve, evaluate, and disseminate information in voice, video, and data form;

(4) "Infrastructure" means an interlinked system of wires, cables, fiber optics, or other wireline or wireless communications media;

(5) "Medical facilities" means any fully licensed and accredited, publicly or privately funded, medical care providers that furnish either inpatient or outpatient services;

(6) "Network" means an interlinked system of users;

(7) "Public access" means access by the public to public information through the use of information technology;

(8) "Public information" means any information stored, gathered, or generated in electronic or magnetic form

by the State of Arkansas or its agencies or instrumentalities included within the information deemed to be public pursuant to the Freedom of Information Act of 1967, [§ 25-19-101](#) et seq., and amendments thereto;

(9) "Public telecommunications" means the facilities used in providing telecommunication services to the public, including, but not limited to, facilities owned and operated by public utilities;

(10) "Telemedicine" means an interactive telecommunications system that:

(A) Utilizes information technology, audio, video, and other appropriate elements and is compatible with other telemedicine networks; and

(B) Is used for the purpose of enhancing the delivery of medical information and health care to medical facilities in rural and urban areas throughout Arkansas; and

(11) "Universal access" means access to the public telecommunications infrastructure or the state's information system by all state governmental entities.

**HISTORY:** [Acts 1995, No. 737, § 2.](#)

\*\*\* Legislation is current through the 2013 Regular Session and updates \*\*\*  
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Title 17 Professions, Occupations, and Businesses  
Subtitle 3. Medical Professions  
Chapter 100 Speech-Language Pathologists and Audiologists  
Subchapter 1 -- General Provisions

A.C.A. § 17-100-103 (2014)

### **17-100-103. Definitions.**

As used in this chapter:

(1) "Audiologist" means an individual who practices audiology by any title or description of services incorporating the words "audiologist", "hearing clinician", "hearing therapist", or any similar title or description of services;

(2) "Audiology" means the application of principles, methods, and procedures of measurement, testing, evaluation, prediction, consultation, counseling, instruction, habilitation, or rehabilitation related to hearing and balance disorders of the auditory system for the purpose of evaluating, identifying, preventing, ameliorating, or

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Prepared by Pilot Healthcare Strategies for the Utah Division of Occupational and Professional Licensing

May 2, 2014

modifying such disorders and conditions in individuals and groups of individuals;

(3) "Person" means any individual, organization, or corporate body, except that only an individual may be licensed under this chapter;

(4) "Speech-language pathologist" means an individual who practices speech-language pathology by any title or description of services incorporating the words "speech-language pathologist", "speech therapist", "speech correctionist", "speech clinician", "language pathologist", "language therapist", "logopedist", "communicologist", "voice therapist", "voice pathologist", or any similar title or description of service;

(5) "Speech-language pathology" means the application of principles, methods, and procedures for the measurement, testing, evaluation, prediction, counseling, instruction, habilitation, or rehabilitation related to the development and disorders of speech, voice, or language, and dysphagia for the purpose of evaluating, preventing, ameliorating, or modifying such disorders and conditions in individuals and groups of individuals;

(6) "Speech-language pathology support personnel" or any variation, synonym, or coinage of the term means an individual who holds a bachelor's degree in speech pathology or an individual who meets minimum qualifications established by the Board of Examiners in Speech-Language Pathology and Audiology, which are less than those established by this chapter as necessary for licensing as a speech-language pathologist, and who provides services as prescribed, directed, and supervised by a speech-language pathologist licensed under this chapter;

(7) "Telepractice" means telespeech, teleaudiology, teleSLP, telehealth, or telerehabilitation when used separately or together; and

(8) "Telepractice service" means the application of telecommunication technology equivalent in quality to services delivered face-to-face to deliver speech-language pathology or audiology services, or both, at a distance for assessment, intervention or consultation, or both.

**HISTORY:** Acts 1975, No. 277, § 7; A.S.A. 1947, § 72-1807; [Acts 1993, No. 121, § 3](#); [1995, No. 826, § 1](#); [2013, No. 219, § 1](#).

**NOTES: Amendments.**

The 2013 amendment deleted former (1), (2), and (5) and redesignated the remaining subdivisions accordingly; rewrote (2); inserted "and dysphagia" in (5); and added (7) and (8).

## ARIZONA REVISED STATUTES

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\*\*\*Current through\*\*\*

\*\*\* Fifty-first Legislature, 1st Regular Session and 1st Special Session, All 2013 Legislation \*\*\*

\*\*\* Annotations current through opinions posted on Lexis.com as of January 17, 2014\*\*\*

### TITLE 36. PUBLIC HEALTH AND SAFETY CHAPTER 36. TELEMEDICINE ARTICLE 1. GENERAL PROVISIONS

A.R.S. § 36-3601 (2013)

#### § 36-3601. Definitions

For the purposes of this chapter:

1. "Health care decision maker" has the same meaning prescribed in [section 12-2801](#).
2. "Health care provider" means a person licensed pursuant to title 32, chapter 7, 13, 15, 17, 18, 19.1, 25, 28, 29 or 33.
3. "Telemedicine" means the practice of health care delivery, diagnosis, consultation and treatment and the transfer of medical data through interactive audio, video or data communications that occur in the physical presence of the patient, including audio or video communications sent to a health care provider for diagnostic or treatment consultation.

**HISTORY:** [Laws 2004, Ch. 191, § 21](#).

## Cal Bus & Prof Code § 686 (2014)

### § 686. Providing services via telehealth

A health care practitioner licensed under Division 2 (commencing with Section 500) providing services via telehealth shall be subject to the requirements and definitions set forth in Section 2290.5, to the practice act relating to his or her licensed profession, and to the regulations adopted by a board pursuant to that practice act.

#### History:

Added [Stats 2012 ch 782 § 1 \(AB 1733\)](#), effective January 1, 2013.

## Cal Bus & Prof Code § 1626.2 (2014)

### § 1626.2. Applicability of telemedicine provisions of § 2290.5

A dentist licensed under this chapter is a licentiate for purposes of paragraph (2) of subdivision (a) of Section 805, and thus is a health care practitioner subject to the provisions of Section 2290.5 pursuant to subdivision (b) of that section.

#### History:

Added [Stats 2003 ch 20 § 1 \(AB 116\)](#).

*Cal Bus & Prof Code § 2290.5*

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BUSINESS & PROFESSIONS CODE  
Division 2. Healing Arts  
Chapter 5. Medicine  
Article 12. Enforcement

Cal Bus & Prof Code § 2290.5 (2014)

**§ 2290.5. Definitions; Telehealth; Verbal consent from patient; Construction; Confidentiality;  
Legislative intent**

(a) For purposes of this division, the following definitions shall apply:

(1) "Asynchronous store and forward" means the transmission of a patient's medical information from an originating site to the health care provider at a distant site without the presence of the patient.

(2) "Distant site" means a site where a health care provider who provides health care services is located while providing these services via a telecommunications system.

(3) "Health care provider" means a person who is licensed under this division.

(4) "Originating site" means a site where a patient is located at the time health care services are provided via a telecommunications system or where the asynchronous store and forward service originates.

(5) "Synchronous interaction" means a real-time interaction between a patient and a health care provider located at a distant site.

(6) "**Telehealth**" means the mode of delivering health care services and public health via information and

communication technologies to facilitate the diagnosis, consultation, treatment, education, care management, and self-management of a patient's health care while the patient is at the originating site and the health care provider is at a distant site. **Telehealth** facilitates patient self-management and caregiver support for patients and includes synchronous interactions and asynchronous store and forward transfers.

(b) Prior to the delivery of health care via **telehealth**, the health care provider at the originating site shall verbally inform the patient that **telehealth** may be used and obtain verbal consent from the patient for this use. The verbal consent shall be documented in the patient's medical record.

(c) The failure of a health care provider to comply with this section shall constitute unprofessional conduct. Section 2314 shall not apply to this section.

(d) This section shall not be construed to alter the scope of practice of any health care provider or authorize the delivery of health care services in a setting, or in a manner, not otherwise authorized by law.

(e) All laws regarding the confidentiality of health care information and a patient's rights to his or her medical information shall apply to **telehealth** interactions.

(f) This section shall not apply to a patient under the jurisdiction of the Department of Corrections and Rehabilitation or any other correctional facility.

(g)

(1) Notwithstanding any other provision of law and for purposes of this section, the governing body of the hospital whose patients are receiving the **telehealth** services may grant privileges to, and verify and approve credentials for, providers of **telehealth** services based on its medical staff recommendations that rely on information provided by the distant-site hospital or **telehealth** entity, as described in Sections 482.12, 482.22, and 485.616 of Title 42 of the Code of Federal Regulations.

(2) By enacting this subdivision, it is the intent of the Legislature to authorize a hospital to grant privileges to, and verify and approve credentials for, providers of **telehealth** services as described in paragraph (1).

(3) For the purposes of this subdivision, "**telehealth**" shall include "**telemedicine**" as the term is referenced in Sections 482.12, 482.22, and 485.616 of Title 42 of the Code of Federal Regulations.

#### **History:**

Added Stats 2011 ch 547 § 4 (AB 415), effective January 1, 2012.

BUSINESS & PROFESSIONS CODE  
Division 2. Healing Arts  
Chapter 6.6. Psychologists  
Article 1. General Provisions

Cal Bus & Prof Code § 2904.5 (2014)

**§ 2904.5. Applicability of telemedicine provisions of § 2290.5**

A psychologist licensed under this chapter is a licentiate for purposes of paragraph (2) of subdivision (a) of Section 805, and thus is a health care provider subject to the provisions of Section 2290.5.

**History:**

Added [Stats 2003 ch 20 § 3 \(AB 116\)](#). Amended [Stats 2012 ch 799 § 17 \(SB 1575\)](#), effective January 1, 2013.

**Notes:**

Amendments:

**2012 Amendment:**

(1) Substituted "provider" for "practitioner"; and (2) deleted "pursuant to subdivision (b) of that section" at the end.

\*\*\* This document is current through Chapter 10 of \*\*\*  
the 2014 Regular Session of the 2013-2014 Legislature.

BUSINESS & PROFESSIONS CODE  
Division 2. Healing Arts  
Chapter 7. Optometry  
Article 3. Admission to Practice

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Cal Bus & Prof Code § 3041 (2014)

**§ 3041. Acts constituting practice of optometry**

(a) The practice of optometry includes the prevention and diagnosis of disorders and dysfunctions of the visual system, and the treatment and management of certain disorders and dysfunctions of the visual system, as well as the provision of rehabilitative optometric services, and is the doing of any or all of the following:

- (1) The examination of the human eye or eyes, or its or their appendages, and the analysis of the human vision system, either subjectively or objectively.
- (2) The determination of the powers or range of human vision and the accommodative and refractive states of the human eye or eyes, including the scope of its or their functions and general condition.
- (3) The prescribing or directing the use of, or using, any optical device in connection with ocular exercises, visual training, vision training, or orthoptics.
- (4) The prescribing of contact and spectacle lenses for, or the fitting or adaptation of contact and spectacle lenses to, the human eye, including lenses that may be classified as drugs or devices by any law of the United States or of this state.
- (5) The use of topical pharmaceutical agents for the purpose of the examination of the human eye or eyes for any disease or pathological condition.

**(b)**

**(1)** An optometrist who is certified to use therapeutic pharmaceutical agents, pursuant to Section 3041.3, may also diagnose and treat the human eye or eyes, or any of its or their appendages, for all of the following conditions:

**(A)** Through medical treatment, infections of the anterior segment and adnexa, excluding the lacrimal gland, the lacrimal drainage system, and the sclera in patients under 12 years of age.

**(B)** Ocular allergies of the anterior segment and adnexa.

**(C)** Ocular inflammation, nonsurgical in cause except when comanaged with the treating physician and surgeon, limited to inflammation resulting from traumatic iritis, peripheral corneal inflammatory keratitis, episcleritis, and unilateral nonrecurrent nongranulomatous idiopathic iritis in patients over 18 years of age. Unilateral nongranulomatous idiopathic iritis recurring within one year of the initial occurrence shall be referred to an ophthalmologist. An optometrist shall consult with an ophthalmologist or appropriate physician and surgeon if a patient has a recurrent case of episcleritis within one year of the initial occurrence. An optometrist shall consult with an ophthalmologist or appropriate physician and surgeon if a patient has a recurrent case of peripheral corneal inflammatory keratitis within one year of the initial occurrence.

**(D)** Traumatic or recurrent conjunctival or corneal abrasions and erosions.

**(E)** Corneal surface disease and dry eyes.

**(F)** Ocular pain, nonsurgical in cause except when comanaged with the treating physician and surgeon, associated with conditions optometrists are authorized to treat.

**(G)** Pursuant to subdivision (f), glaucoma in patients over 18 years of age, as described in subdivision (j).

**(2)** For purposes of this section, "treat" means the use of therapeutic pharmaceutical agents, as described in subdivision (c), and the procedures described in subdivision (e).

**(c)** In diagnosing and treating the conditions listed in subdivision (b), an optometrist certified to use therapeutic pharmaceutical agents pursuant to Section 3041.3 may use all of the following therapeutic pharmaceutical agents:

**(1)** Pharmaceutical agents as described in paragraph (5) of subdivision (a), as well as topical miotics.

**(2)** Topical lubricants.

**(3)** Antiallergy agents. In using topical steroid medication for the treatment of ocular allergies, an optometrist shall consult with an ophthalmologist if the patient's condition worsens 21 days after diagnosis.

**(4)** Topical and oral anti-inflammatories. In using steroid medication for:

**(A)** Unilateral nonrecurrent nongranulomatous idiopathic iritis or episcleritis, an optometrist shall consult with an ophthalmologist or appropriate physician and surgeon if the patient's condition worsens 72 hours after the diagnosis, or if the patient's condition has not resolved three weeks after diagnosis. If the patient is still receiving medication for these conditions six weeks after diagnosis, the optometrist shall refer the patient to an ophthalmologist or appropriate physician and surgeon.

**(B)** Peripheral corneal inflammatory keratitis, excluding Moorens and Terriens diseases, an optometrist shall consult with an ophthalmologist or appropriate physician and surgeon if the patient's condition worsens 72 hours after diagnosis.

**(C)** Traumatic iritis, an optometrist shall consult with an ophthalmologist or appropriate physician and surgeon if the patient's condition worsens 72 hours after diagnosis and shall refer the patient to an ophthalmologist or appropriate physician and surgeon if the patient's condition has not resolved one week after diagnosis.

**(5)** Topical antibiotic agents.

**(6)** Topical hyperosmotics.

**(7)** Topical and oral antiglaucoma agents pursuant to the certification process defined in subdivision (f).

**(A)** The optometrist shall refer the patient to an ophthalmologist if requested by the patient or if angle closure glaucoma develops.

**(B)** If the glaucoma patient also has diabetes, the optometrist shall consult with the physician treating the patient's diabetes in developing the glaucoma treatment plan and shall inform the physician in writing of any changes in the patient's glaucoma medication.

**(8)** Nonprescription medications used for the rational treatment of an ocular disorder.

**(9)** Oral antihistamines.

**(10)** Prescription oral nonsteroidal anti-inflammatory agents.

**(11)** Oral antibiotics for medical treatment of ocular disease.

**(A)** If the patient has been diagnosed with a central corneal ulcer and the central corneal ulcer has not improved 48 hours after diagnosis, the optometrist shall refer the patient to an ophthalmologist.

**(B)** If the patient has been diagnosed with preseptal cellulitis or dacryocystitis and the condition has not improved 48 hours after diagnosis, the optometrist shall refer the patient to an ophthalmologist.

**(12)** Topical and oral antiviral medication for the medical treatment of the following: herpes simplex viral keratitis, herpes simplex viral conjunctivitis, and periocular herpes simplex viral dermatitis; and varicella zoster viral keratitis, varicella zoster viral conjunctivitis, and periocular varicella zoster viral dermatitis.

**(A)** If the patient has been diagnosed with herpes simplex keratitis or varicella zoster viral keratitis and the patient's condition has not improved seven days after diagnosis, the optometrist shall refer the patient to an ophthalmologist. If a patient's condition has not resolved three weeks after diagnosis, the optometrist shall refer the patient to an ophthalmologist.

**(B)** If the patient has been diagnosed with herpes simplex viral conjunctivitis, herpes simplex viral dermatitis, varicella zoster viral conjunctivitis, or varicella zoster viral dermatitis, and if the patient's condition worsens seven days after diagnosis, the optometrist shall consult with an ophthalmologist. If the patient's condition has not resolved three weeks after diagnosis, the optometrist shall refer the patient to an ophthalmologist.

**(13)** Oral analgesics that are not controlled substances.

**(14)** Codeine with compounds and hydrocodone with compounds as listed in the California Uniform Controlled Substances Act (Division 10 (commencing with Section 11000) of the Health and Safety Code) and the United States Uniform Controlled Substances Act (21 U.S.C. Sec. 801 et seq.). The use of these agents shall be limited to three days, with a referral to an ophthalmologist if the pain persists.

**(d)** In any case where this chapter requires that an optometrist consult with an ophthalmologist, the optometrist shall maintain a written record in the patient's file of the information provided to the ophthalmologist, the ophthalmologist's response, and any other relevant information. Upon the consulting ophthalmologist's request and with the patient's consent, the optometrist shall furnish a copy of the record to the ophthalmologist.

**(e)** An optometrist who is certified to use therapeutic pharmaceutical agents pursuant to Section 3041.3 may also perform all of the following:

**(1)** Corneal scraping with cultures.

- (2) Debridement of corneal epithelia.
- (3) Mechanical epilation.
- (4) Venipuncture for testing patients suspected of having diabetes.
- (5) Suture removal, with prior consultation with the treating physician and surgeon.
- (6) Treatment or removal of sebaceous cysts by expression.
- (7) Administration of oral fluorescein to patients suspected as having diabetic retinopathy.
- (8) Use of an auto-injector to counter anaphylaxis.
- (9) Ordering of smears, cultures, sensitivities, complete blood count, mycobacterial culture, acid fast stain, urinalysis, tear fluid analysis, and X-rays necessary for the diagnosis of conditions or diseases of the eye or adnexa. An optometrist may order other types of images subject to prior consultation with an ophthalmologist or appropriate physician and surgeon.
- (10) A clinical laboratory test or examination classified as waived under CLIA and designated as waived in paragraph (9) necessary for the diagnosis of conditions and diseases of the eye or adnexa, or if otherwise specifically authorized by this chapter.
- (11) Punctal occlusion by plugs, excluding laser, diathermy, cryotherapy, or other means constituting surgery as defined in this chapter.
- (12) The prescription of therapeutic contact lenses, including lenses or devices that incorporate a medication or therapy the optometrist is certified to prescribe or provide.
- (13) Removal of foreign bodies from the cornea, eyelid, and conjunctiva with any appropriate instrument other than a scalpel or needle. Corneal foreign bodies shall be nonperforating, be no deeper than the midstroma, and require no surgical repair upon removal.
- (14) For patients over 12 years of age, lacrimal irrigation and dilation, excluding probing of the nasal lacrimal tract. The board shall certify any optometrist who graduated from an accredited school of optometry before May 1, 2000, to perform this procedure after submitting proof of satisfactory completion of 10 procedures under the supervision of an ophthalmologist as confirmed by the ophthalmologist. Any optometrist who graduated from an accredited school of optometry on or after May 1, 2000, shall be exempt from the certification requirement

contained in this paragraph.

**(f)** The board shall grant a certificate to an optometrist certified pursuant to Section 3041.3 for the treatment of glaucoma, as described in subdivision (j), in patients over 18 years of age after the optometrist meets the following applicable requirements:

**(1)** For licensees who graduated from an accredited school of optometry on or after May 1, 2008, submission of proof of graduation from that institution.

**(2)** For licensees who were certified to treat glaucoma under this section prior to January 1, 2009, submission of proof of completion of that certification program.

**(3)** For licensees who have substantially completed the certification requirements pursuant to this section in effect between January 1, 2001, and December 31, 2008, submission of proof of completion of those requirements on or before December 31, 2009. "Substantially completed" means both of the following:

**(A)** Satisfactory completion of a didactic course of not less than 24 hours in the diagnosis, pharmacological, and other treatment and management of glaucoma.

**(B)** Treatment of 50 glaucoma patients with a collaborating ophthalmologist for a period of two years for each patient that will conclude on or before December 31, 2009.

**(4)** For licensees who completed a didactic course of not less than 24 hours in the diagnosis, pharmacological, and other treatment and management of glaucoma, submission of proof of satisfactory completion of the case management requirements for certification established by the board pursuant to Section 3041.10.

**(5)** For licensees who graduated from an accredited school of optometry on or before May 1, 2008, and not described in paragraph (2), (3), or (4), submission of proof of satisfactory completion of the requirements for certification established by the board pursuant to Section 3041.10.

**(g)** Other than for prescription ophthalmic devices described in subdivision (b) of Section 2541, any dispensing of a therapeutic pharmaceutical agent by an optometrist shall be without charge.

**(h)** The practice of optometry does not include performing surgery. "Surgery" means any procedure in which human tissue is cut, altered, or otherwise infiltrated by mechanical or laser means. "Surgery" does not include those procedures specified in subdivision (e). Nothing in this section shall limit an optometrist's authority to utilize diagnostic laser and ultrasound technology within his or her scope of practice.

**(i)** An optometrist licensed under this chapter is subject to the provisions of Section 2290.5 for purposes of

practicing **telehealth**.

(j) For purposes of this chapter, "glaucoma" means either of the following:

(1) All primary open-angle glaucoma.

(2) Exfoliation and pigmentary glaucoma.

(k) For purposes of this chapter, "adnexa" means ocular adnexa.

(l) In an emergency, an optometrist shall stabilize, if possible, and immediately refer any patient who has an acute attack of angle closure to an ophthalmologist.

#### **History:**

Added Stats 1976 ch 418 § 2. Amended Stats 1989 ch 886 § 61; Stats 1995 ch 279 § 18 (AB 1471); Stats 1996 ch 13 § 6 (SB 668), effective February 21, 1996; Stats 2000 ch 676 § 3 (SB 929); Stats 2007 ch 507 § 2 (AB 1224), effective January 1, 2008; Stats 2008 ch 352 § 1 (SB 1406), effective January 1, 2009; Stats 2009 ch 140 § 11 (AB 1164), effective January 1, 2010; Stats 2012 ch 714 § 3 (AB 761), effective January 1, 2013.

\* This document is current through Chapter 10 of \*\*\*  
the 2014 Regular Session of the 2013-2014 Legislature.

BUSINESS & PROFESSIONS CODE  
Division 2. Healing Arts  
Chapter 14. Social Workers  
Article 4. Licensure

Cal Bus & Prof Code § 4996 (2014)

**§ 4996. Use of designation "Licensed Clinical Social Worker"; Practicing without license; Applicability of telemedicine provisions of Section 2290.5**

(a) Only individuals who have received a license under this article may style themselves as "Licensed Clinical Social Workers." Every individual who styles himself or herself or who holds himself or herself out to be a licensed clinical social worker, or who uses any words or symbols indicating or tending to indicate that he or

she is a licensed clinical social worker, without holding his or her license in good standing under this article, is guilty of a misdemeanor.

(b) It is unlawful for any person to engage in the practice of clinical social work unless at the time of so doing such person holds a valid, unexpired, and unrevoked license under this article.

(c) A clinical social worker licensed under this chapter is a licentiate for purposes of paragraph (2) of subdivision (a) of Section 805, and thus is a health care practitioner subject to the provisions of Section 2290.5 pursuant to subdivision (b) of that section.

**History:**

Added Stats 1985 ch 820 § 1. Amended [Stats 2003 ch 20 § 5 \(AB 116\)](#).

Amended [Stats 2003 ch 20 § 5 \(AB 116\)](#).

*Cal Bus & Prof Code § 4999.90*

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BUSINESS & PROFESSIONS CODE  
Division 2. Healing Arts  
Chapter 16. Licensed Professional Clinical Counselors  
Article 5. Enforcement

Cal Bus & Prof Code § 4999.90 (2014)

**§ 4999.90. Grounds for refusal of registration or license; Unprofessional conduct**

The board may refuse to issue any registration or license, or may suspend or revoke the registration or license of any intern or licensed professional clinical counselor, if the applicant, licensee, or registrant has been guilty of unprofessional conduct. Unprofessional conduct includes, but is not limited to, the following:

**(a)** The conviction of a crime substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge substantially related to the qualifications, functions, or duties of a licensee or registrant under this chapter shall be deemed to be a conviction within the meaning of this section. The board may order any license or registration suspended or revoked, or may decline to issue a license or registration when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or, when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw a plea of guilty and enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

**(b)** Securing a license or registration by fraud, deceit, or misrepresentation on any application for licensure or registration submitted to the board, whether engaged in by an applicant for a license or registration, or by a licensee in support of any application for licensure or registration.

**(c)** Administering to himself or herself any controlled substance or using any of the dangerous drugs specified in Section 4022, or any alcoholic beverage to the extent, or in a manner, as to be dangerous or injurious to the person applying for a registration or license or holding a registration or license under this chapter, or to any other person, or to the public, or, to the extent that the use impairs the ability of the person applying for or holding a registration or license to conduct with safety to the public the practice authorized by the registration or license. The board shall deny an application for a registration or license or revoke the license or registration of any person, other than one who is licensed as a physician and surgeon, who uses or offers to use drugs in the course of performing licensed professional clinical counseling services.

**(d)** Gross negligence or incompetence in the performance of licensed professional clinical counseling services.

**(e)** Violating, attempting to violate, or conspiring to violate any of the provisions of this chapter or any regulation adopted by the board.

**(f)** Misrepresentation as to the type or status of a license or registration held by the person, or otherwise misrepresenting or permitting misrepresentation of his or her education, professional qualifications, or professional affiliations to any person or entity.

**(g)** Impersonation of another by any licensee, registrant, or applicant for a license or registration, or, in the case of a licensee or registrant, allowing any other person to use his or her license or registration.

**(h)** Aiding or abetting, or employing, directly or indirectly, any unlicensed or unregistered person to engage in conduct for which a license or registration is required under this chapter.

**(i)** Intentionally or recklessly causing physical or emotional harm to any client.

**(j)** The commission of any dishonest, corrupt, or fraudulent act substantially related to the qualifications,

functions, or duties of a licensee or registrant.

**(k)** Engaging in sexual relations with a client, or a former client within two years following termination of therapy, soliciting sexual relations with a client, or committing an act of sexual abuse, or sexual misconduct with a client, or committing an act punishable as a sexually related crime, if that act or solicitation is substantially related to the qualifications, functions, or duties of a licensed professional clinical counselor.

**(l)** Performing, or holding oneself out as being able to perform, or offering to perform, or permitting any trainee, applicant, or registrant under supervision to perform, any professional services beyond the scope of the license authorized by this chapter.

**(m)** Failure to maintain confidentiality, except as otherwise required or permitted by law, of all information that has been received from a client in confidence during the course of treatment and all information about the client which is obtained from tests or other means.

**(n)** Prior to the commencement of treatment, failing to disclose to the client or prospective client the fee to be charged for the professional services, or the basis upon which that fee will be computed.

**(o)** Paying, accepting, or soliciting any consideration, compensation, or remuneration, whether monetary or otherwise, for the referral of professional clients. All consideration, compensation, or remuneration shall be in relation to professional clinical counseling services actually provided by the licensee. Nothing in this subdivision shall prevent collaboration among two or more licensees in a case or cases. However, no fee shall be charged for that collaboration, except when disclosure of the fee has been made in compliance with subdivision (n).

**(p)** Advertising in a manner that is false, fraudulent, misleading, or deceptive, as defined in Section 651.

**(q)** Reproduction or description in public, or in any publication subject to general public distribution, of any psychological test or other assessment device, the value of which depends in whole or in part on the naivete of the subject, in ways that might invalidate the test or device.

**(r)** Any conduct in the supervision of a registered intern, associate clinical social worker, or clinical counselor trainee by any licensee that violates this chapter or any rules or regulations adopted by the board.

**(s)** Performing or holding oneself out as being able to perform professional services beyond the scope of one's competence, as established by one's education, training, or experience. This subdivision shall not be construed to expand the scope of the license authorized by this chapter.

**(t)** Permitting a clinical counselor trainee or intern under one's supervision or control to perform, or permitting the clinical counselor trainee or intern to hold himself or herself out as competent to perform, professional services beyond the clinical counselor trainee's or intern's level of education, training, or experience.

**(u)** The violation of any statute or regulation of the standards of the profession, and the nature of the services being rendered, governing the gaining and supervision of experience required by this chapter.

(v) Failure to keep records consistent with sound clinical judgment, the standards of the profession, and the nature of the services being rendered.

(w) Failure to comply with the child abuse reporting requirements of Section 11166 of the Penal Code.

(x) Failing to comply with the elder and dependent adult abuse reporting requirements of Section 15630 of the Welfare and Institutions Code.

(y) Repeated acts of negligence.

(z)

(1) Engaging in an act described in Section 261, 286, 288a, or 289 of the Penal Code with a minor or an act described in Section 288 or 288.5 of the Penal Code regardless of whether the act occurred prior to or after the time the registration or license was issued by the board. An act described in this subdivision occurring prior to the effective date of this subdivision shall constitute unprofessional conduct and shall subject the licensee to refusal, suspension, or revocation of a license under this section.

(2) The Legislature hereby finds and declares that protection of the public, and in particular minors, from sexual misconduct by a licensee is a compelling governmental interest, and that the ability to suspend or revoke a license for sexual conduct with a minor occurring prior to the effective date of this section is equally important to protecting the public as is the ability to refuse a license for sexual conduct with a minor occurring prior to the effective date of this section.

(aa) Engaging in any conduct that subverts or attempts to subvert any licensing examination or the administration of an examination as described in Section 123.

(ab) Revocation, suspension, or restriction by the board of a license, certificate, or registration to practice as a professional clinical counselor, clinical social worker, educational psychologist, or marriage and family therapist.

(ac) Failing to comply with the procedures set forth in Section 2290.5 when delivering health care via **telehealth**.

(ad) Willful violation of Chapter 1 (commencing with Section 123100) of Part 1 of Division 106 of the Health and Safety Code.

#### **History:**

Added Stats 2009 ch 619 § 3 (SB 788), effective January 1, 2010. Amended Stats 2010 ch 653 § 59 (SB 1489), effective January 1, 2011; Stats 2011 ch 350 § 39 (SB 943), effective January 1, 2012; Stats 2012 ch 782 § 3 (AB 1733), effective January 1, 2013, ch 799 § 79.5 (SB 1575), effective January 1, 2013.

## ✚ Notes:

### Amendments:

- ✚ 2010 Amendment
- ✚ 2011 Amendment
- ✚ 2012 Amendment

### ✚ 2010 Amendment:

(1) Amended subd (p) by adding (a) "fraudulent,;" and (b) ", as defined in Section 651"; (2) substituted "a registered intern, associate clinical social worker," for "any intern" in subd (r); and (3) added subds (aa)-(ac).

### ✚ 2011 Amendment:

Added "professional clinical counselor," in subd (ab).

### ✚ 2012 Amendment:

(1) Deleted ", or the conviction of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any of the substances referred to in this subdivision, or any combination thereof" at the end of the first sentence of subd (c); (2) substituted "trainee, applicant, or registrant" for "clinical counselor trainee or intern" in subd (l); (3) substituted "**telehealth**" for "**telemedicine**" in subd (ac); and (4) added subd (ad). (As amended Stats 2012 ch 799, compared to this section as it read prior to 2012. This section was also amended by an earlier chapter, ch 792. See Gov C § 9605.)

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HEALTH AND SAFETY CODE  
Division 106. Personal Health Care (Including Maternal, Child, and Adolescent)  
Part 1. General Administration  
Chapter 1. Patient Access to Health Records

Cal Health & Saf Code § 123149.5 (2014)

## § 123149.5. Telehealth medical records

(a) It is the intent of the Legislature that all medical information transmitted during the delivery of health care via telehealth, as defined in subdivision (a) of [Section 2290.5 of the Business and Professions Code](#), become part of the patient's medical record maintained by the licensed health care provider.

(b) This section shall not be construed to limit or waive any of the requirements of Chapter 1 (commencing with [Section 123100](#)) of Part 1 of Division 106 of the Health and Safety Code.

**History:**

Added [Stats 1996 ch 864 § 8 \(SB 1665\)](#). Amended [Stats 2012 ch 782 § 8 \(AB 1733\)](#), effective January 1, 2013.

*C.R.S. 12-36-102.5*

COLORADO REVISED STATUTES

\*\*\* This document reflects changes current through all laws passed at the First Regular Session of the Sixty-Ninth General Assembly of the State of Colorado (2013) \*\*\*

TITLE 12. PROFESSIONS AND OCCUPATIONS  
HEALTH CARE  
ARTICLE 36. MEDICAL PRACTICE  
PART 1. GENERAL PROVISIONS

C.R.S. 12-36-102.5 (2013)

12-36-102.5. Definitions

As used in this article, unless the context otherwise requires:

(1) (a) "Approved fellowship" means a program that meets the following criteria:

(I) Is specialized, clearly defined, and delineated;

(II) Follows the completion of an approved residency;

(III) Provides additional training in a medical specialty or subspecialty; and

(IV) Is either:

(A) Performed in a hospital conforming to the minimum standards for fellowship training established by the accreditation council for graduate medical education or the American osteopathic association, or by a successor of either organization; or

(B) Any other program that is approved by the accreditation council for graduate medical education or the American osteopathic association or a successor of either organization.

(b) "Approved fellowship" includes any other fellowship that the board, upon its own investigation, approves for purposes of issuing a physician training license pursuant to section 12-36-122.

(2) (a) "Approved internship" means an internship:

(I) Of at least one year in a hospital conforming to the minimum standards for intern training established by the accreditation council for graduate medical education or the American osteopathic association or a successor of either organization; or

(II) Approved by either of the organizations specified in subparagraph (I) of this paragraph (a).

(b) "Approved internship" includes any other internship approved by the board upon its own investigation.

(3) (a) "Approved medical college" means a college that:

(I) Conforms to the minimum educational standards for medical colleges as established by the liaison committee on medical education or any successor organization that is the official accrediting body of educational programs leading to the degree of doctor of medicine and recognized for such purpose by the federal department of education and the council on postsecondary accreditation;

(II) Conforms to the minimum education standards for osteopathic colleges as established by the American osteopathic association or any successor organization that is the official accrediting body of education programs leading to the degree of doctor of osteopathy; or

(III) Is approved by either of the organizations specified in subparagraphs (I) and (II) of this paragraph (a).

(b) "Approved medical college" includes any other medical college approved by the board upon its own investigation of the educational standards and facilities of the medical college.

(4) (a) "Approved residency" means a residency:

(I) Performed in a hospital conforming to the minimum standards for residency training established by the accreditation council for graduate medical education or the American osteopathic association or any successor of either organization; or

(II) Approved by either of the organizations specified in subparagraph (I) of this paragraph (a).

(b) "Approved residency" means any other residency approved by the board upon its own investigation.

(5) "Board" means the Colorado medical board created in section 12-36-103 (1).

(6) "License" means the authority to practice medicine, practice as a physician assistant, or practice as an anesthesiologist assistant under this article.

(7) "Licensee" means any physician, physician assistant, or anesthesiologist assistant who is licensed pursuant to this article.

(8) "**Telemedicine**" means the delivery of medical services and any diagnosis, consultation, or treatment using interactive audio, interactive video, or interactive data communication.

**HISTORY:** Source: L. 2010: Entire section added with relocations, (HB 10-1260), ch. 403, p. 1972, § 41, effective July 1.L. 2012: (6) and (7) amended, (HB 12-1332), ch. 238, p. 1051, § 1, effective August 8.

*C.R.S. 12-36-106*

COLORADO REVISED STATUTES

\*\*\* This document reflects changes current through all laws passed at the First Regular Session of the Sixty-Ninth General Assembly of the State of Colorado (2013) \*\*\*

TITLE 12. PROFESSIONS AND OCCUPATIONS  
HEALTH CARE  
ARTICLE 36. MEDICAL PRACTICE  
PART 1. GENERAL PROVISIONS

C.R.S. 12-36-106 (2013)

12-36-106. Practice of medicine defined - exemptions from licensing requirements - unauthorized practice by physician assistants and anesthesiologist assistants - penalties - rules

(1) For the purpose of this article, "practice of medicine" means:

(a) Holding out one's self to the public within this state as being able to diagnose, treat, prescribe for, palliate, or prevent any human disease, ailment, pain, injury, deformity, or physical or mental condition, whether by the use of drugs, surgery, manipulation, electricity, **telemedicine**, the interpretation of tests, including primary diagnosis of pathology specimens, images, or photographs, or any physical, mechanical, or other means whatsoever;

(b) Suggesting, recommending, prescribing, or administering any form of treatment, operation, or healing for the intended palliation, relief, or cure of any physical or mental disease, ailment, injury, condition, or defect of any person;

(c) The maintenance of an office or other place for the purpose of examining or treating persons afflicted with disease, injury, or defect of body or mind;

(d) Using the title M.D., D.O., physician, surgeon, or any word or abbreviation to indicate or induce others to believe that one is licensed to practice medicine in this state and engaged in the diagnosis or treatment of

Utah Telehealth Study - Phase 2 Report

Prepared by Pilot Healthcare Strategies for the Utah Division of Occupational and Professional Licensing

May 2, 2014

persons afflicted with disease, injury, or defect of body or mind, except as otherwise expressly permitted by the laws of this state enacted relating to the practice of any limited field of the healing arts;

(e) Performing any kind of surgical operation upon a human being; or

(f) The practice of midwifery, except:

(I) Services rendered by certified nurse-midwives properly licensed and practicing in accordance with the provisions of article 38 of this title; or

(II) Repealed.

(g) The delivery of **telemedicine**. Nothing in this paragraph (g) authorizes physicians to deliver services outside their scope of practice or limits the delivery of health services by other licensed professionals, within the professional's scope of practice, using advanced technology, including, but not limited to, interactive audio, interactive video, or interactive data communication.

(2) If a person who does not possess and has not filed a license to practice medicine, practice as a physician assistant, or practice as an anesthesiologist assistant in this state, as provided in this article, and who is not exempted from the licensing requirements under this article, performs any of the acts that constitute the practice of medicine as defined in this section, the person shall be deemed to be practicing medicine, practicing as a physician assistant, or practicing as an anesthesiologist assistant in violation of this article.

(3) A person may engage in, and shall not be required to obtain a license or a physician training license under this article with respect to, any of the following acts:

(a) The gratuitous rendering of services in cases of emergency;

(b) The occasional rendering of services in this state by a physician if the physician:

(I) Is licensed and lawfully practicing medicine in another state or territory of the United States without restrictions or conditions on the physician's license;

(II) Does not have any established or regularly used medical staff membership or clinical privileges in this state;

(III) Is not party to any contract, agreement, or understanding to provide services in this state on a regular or routine basis;

(IV) Does not maintain an office or other place for the rendering of such services;

(V) Has medical liability insurance coverage in the amounts required pursuant to section 13-64-302, C.R.S., for the services rendered in this state; and

(VI) Limits the services provided in this state to an occasional case or consultation.

- (c) The practice of dentistry under the conditions and limitations defined by the laws of this state;
- (d) The practice of podiatry under the conditions and limitations defined by the laws of this state;
- (e) The practice of optometry under the conditions and limitations defined by the laws of this state;
- (f) The practice of chiropractic under the conditions and limitations defined by the laws of this state;
- (g) The practice of religious worship;
- (h) The practice of Christian Science, with or without compensation;
- (i) The performance by commissioned medical officers of the armed forces of the United States of America or of the United States public health service or of the United States veterans administration of their lawful duties in this state as such officers;
- (j) The rendering of nursing services and delegated medical functions by registered or other nurses in the lawful discharge of their duties as such;
- (k) The rendering of services by students currently enrolled in an approved medical college;
- (l) The rendering of services, other than the prescribing of drugs, by persons qualified by experience, education, or training, under the personal and responsible direction and supervision of a person licensed under the laws of this state to practice medicine, but nothing in this exemption shall be deemed to extend or limit the scope of any license, and this exemption shall not apply to persons otherwise qualified to practice medicine but not licensed to so practice in this state;
- (m) The practice by persons licensed or registered under any law of this state to practice a limited field of the healing arts not specifically designated in this section, under the conditions and limitations defined by such law;
- (n) (Deleted by amendment, L. 2000, p. 30, § 1, effective March 10, 2000.)
- (o) (I) The administration and monitoring of medications in facilities as provided in part 3 of article 1.5 of title 25, C.R.S.
- (II) Repealed.
- (p) The rendering of acupuncture services subject to the conditions and limitations provided in article 29.5 of this title;
- (q) (I) The administration of nutrition or fluids through gastrostomy tubes as provided in section 27-10.5-103 (2) (k), C.R.S., as a part of residential or day program services provided through service agencies approved by the department of human services pursuant to section 27-10.5-104.5, C.R.S.;

Editor's note: This version of subparagraph (I) is effective until March 1, 2014.

(q) (I) The administration of nutrition or fluids through gastrostomy tubes as provided in sections 25.5-10-204 (2) (j) and 27-10.5-103 (2) (i), C.R.S., as a part of residential or day program services provided through service agencies approved by the department of health care policy and financing pursuant to section 25.5-10-208, C.R.S.;

Editor's note: This version of subparagraph (I) is effective March 1, 2014.

(II) Repealed.

(r) (I) The administration of topical and aerosol medications within the scope of physical therapy practice as provided in section 12-41-113 (2);

(II) The performance of wound debridement under a physician's order within the scope of physical therapy practice as provided in section 12-41-113 (3);

(s) The rendering of services by an athletic trainer subject to the conditions and limitations provided in article 29.7 of this title;

(t) (I) The rendering of prescriptions by an advanced practice nurse pursuant to section 12-38-111.6.

(II) Repealed.

(II.5) On or after July 1, 2010, a physician who serves as a preceptor or mentor to an advanced practice nurse pursuant to sections 12-36-106.4 and 12-38-111.6 (4.5) shall have a license in good standing without disciplinary sanctions to practice medicine in Colorado and an unrestricted registration by the drug enforcement administration for the same schedules as the collaborating advanced practice nurse.

(III) Repealed.

(IV) It is unlawful and a violation of this article for any person, corporation, or other entity to require payment or employment as a condition of entering into a mentorship relationship with the advanced practice nurse pursuant to sections 12-36-106.4 and 12-38-111.6 (4.5), but the mentor may request reimbursement of reasonable expenses and time spent as a result of the mentorship relationship.

(u) (I) The provision, to a treating physician licensed in this state, of the results of laboratory tests, excluding histopathology tests and cytology tests, performed in a laboratory certified under the federal "Clinical Laboratories Improvement Act of 1967", as amended, 42 U.S.C. sec. 263a, to perform high complexity testing, as such term is used in 42 CFR 493.1701 and any related or successor provision.

(II) The provision, to a pathologist licensed in this state, of the results of histopathology tests and cytology tests performed in a laboratory certified under the federal "Clinical Laboratories Improvement Act of 1967", as amended, 42 U.S.C. sec. 263a, to perform high complexity testing, as such term is used in 42 CFR 493.1701 and any related or successor provision.

(v) The rendering of services by any person serving an approved internship, residency, or fellowship as defined by this article for an aggregate period not to exceed sixty days;

(w) A physician lawfully practicing medicine in another state or territory providing medical services to athletes or team personnel registered to train at the United States olympic training center at Colorado Springs or providing medical services at an event in this state sanctioned by the United States olympic committee. The physician's medical practice shall be contingent upon the requirements and approvals of the United States olympic committee and shall not exceed ninety days per calendar year.

(x) Repealed.

(y) The rendering of services by an emergency medical service provider certified under section 25-3.5-203, C.R.S., if the services rendered are consistent with rules adopted by the executive director or chief medical officer, as applicable, under section 25-3.5-206, C.R.S., defining the duties and functions of emergency medical service providers;

(z) Rendering complementary and alternative health care services consistent with section 6-1-724, C.R.S.

(3.2) Nothing in this section shall be construed to prohibit patient consultation between a practicing physician licensed in Colorado and a practicing physician licensed in another state or jurisdiction.

(3.5) (Deleted by amendment, L. 2009, (SB 09-026), ch. 373, p. 2031, § 2, effective July 1, 2009.)

(4) All licensees designated or referred to in subsection (3) of this section, who are licensed to practice a limited field of the healing arts, shall confine themselves strictly to the field for which they are licensed and to the scope of their respective licenses, and shall not use any title, word, or abbreviation mentioned in paragraph (d) of subsection (1) of this section, except to the extent and under the conditions expressly permitted by the law under which they are licensed.

(5) (a) A person licensed under the laws of this state to practice medicine may delegate to a physician assistant licensed by the board pursuant to section 12-36-107.4 the authority to perform acts that constitute the practice of medicine to the extent and in the manner authorized by rules promulgated by the board, including the authority to prescribe medication, including controlled substances, and dispense only such drugs as designated by the board. Such acts shall be consistent with sound medical practice. Each prescription issued by a physician assistant licensed by the board shall be imprinted with the name of his or her supervising physician. Nothing in this subsection (5) shall limit the ability of otherwise licensed health personnel to perform delegated acts. The dispensing of prescription medication by a physician assistant shall be subject to the provisions of section 12-42.5-118 (6).

(b) (I) If the authority to perform an act is delegated pursuant to paragraph (a) of this subsection (5), the act shall not be performed except under the personal and responsible direction and supervision of a person licensed under the laws of this state to practice medicine. A licensed physician may be responsible for the direction and supervision of up to four physician assistants at any one time, and may be responsible for the direction and supervision of more than four physician assistants upon receiving specific approval from the board. The board, by rule, may define what constitutes appropriate direction and supervision of a physician assistant.

(II) For purposes of this subsection (5), "personal and responsible direction and supervision" means that the direction and supervision of a physician assistant is personally rendered by a licensed physician practicing in the state of Colorado and is not rendered through intermediaries. The extent of direction and supervision shall be determined by rules promulgated by the board and as otherwise provided in this paragraph (b); except that, when a physician assistant is performing a delegated medical function in an acute care hospital, the board shall allow supervision and direction to be performed without the physical presence of the physician during the time the delegated medical functions are being implemented if:

(A) Such medical functions are performed where the supervising physician regularly practices or in a designated health manpower shortage area;

(B) The licensed supervising physician reviews the quality of medical services rendered by the physician assistant by reviewing the medical records to assure compliance with the physicians' directions; and

(C) The performance of the delegated medical function otherwise complies with the board's regulations and any restrictions and protocols of the licensed supervising physician and hospital.

(III) Repealed.

(c) to (f) (Deleted by amendment, L. 2010, (HB 10-1260), ch. 403, p. 1966, § 35, effective July 1, 2010.)

(g) Pursuant to section 12-36-129 (6), the board may apply for an injunction to enjoin any person from performing delegated medical acts that are in violation of this section or of any rules promulgated by the board.

(h) This subsection (5) shall not apply to any person who performs delegated medical tasks within the scope of the exemption contained in paragraph (1) of subsection (3) of this section.

(i) and (j) (Deleted by amendment, L. 2010, (HB 10-1260), ch. 403, p. 1966, § 35, effective July 1, 2010.)

(k) Repealed. / (Deleted by amendment, L. 2010, (HB 10-1260), ch. 403, p. 1966, § 35, effective July 1, 2010.)

(6) Repealed.

(7) (a) A physician licensed in this state that practices as an anesthesiologist may delegate tasks constituting the practice of medicine to an anesthesiologist assistant licensed pursuant to section 12-36-107.3 who has been educated and trained in accordance with rules promulgated by the board. The delegated medical tasks referred to in this paragraph (a) are limited to the medical functions that constitute the delivery or provision of anesthesia services as practiced by the supervising physician.

(b) An anesthesiologist assistant shall perform delegated medical tasks only under the direct supervision of a physician who practices as an anesthesiologist. A patient or the patient's representative shall be advised if an anesthesiologist assistant is involved in the care of a patient. Unless approved by the board, a supervising physician shall not concurrently supervise more than three anesthesiologist assistants; except that the board may, by rule, allow an anesthesiologist to supervise up to four anesthesiologist assistants on and after July 1,

2016. The board may consider information from anesthesiologists, anesthesiologist assistants, patients, and other sources when considering a ratio change of supervision of anesthesiologist assistants. Direct supervision of anesthesiologist assistants may be transferred between anesthesiologists of the same group or practice in accordance with generally accepted standards of care.

(c) Nothing in this subsection (7) affects the practice of dentists and dental assistants practicing pursuant to article 35 of this title.

**HISTORY:** Source: L. 51: p. 565, § 6.CSA: C. 109, § 33(6).CRS 53: § 91-1-6. C.R.S. 1963: § 91-1-6.L. 73: p. 1025, § 1.L. 77: (1)(f) amended and (3)(n) added, p. 684, § 1, 2, effective May 23.L. 79: (1)(d) and (4) amended, p. 508, § 4, effective July 1.L. 80: (1)(f) and (3)(n) amended, p. 494, § 2, effective July 1.L. 83: (3)(l) amended and (5) added, p. 537, § 1, effective July 1.L. 84: (5)(a) amended, p. 419, § 1, effective March 16.L. 85: (5)(a), (5)(c)(III), (5)(d), (5)(i), and (5)(j) amended and (5)(c)(IV) added, p. 518, § 3, effective July 1.L. 86: (3)(m) amended, p. 653, § 30, effective July 1; (5)(d) R&RE and (5)(e) and (5)(j) amended, pp. 638, 639, § 7, 8, effective July 1.L. 88: (3)(o) added, p. 1001, § 4, effective July 1.L. 89: (3)(p) added, p. 661, § 2, effective June 6.L. 90: (3)(j) amended, p. 819, § 2.L. 91: (3)(q) added, p. 1162, § 2, effective March 29; (3)(o)(II) amended, p. 929, § 3, effective April 1; (3)(s) and (3.5) added, p. 1640, § 1, effective May 7; (3)(r) added, p. 1667, § 3, effective July 1.L. 92: (5)(b) amended, p. 2055, § 2, effective April 23; (3)(q)(II) repealed, p. 2010, § 3, effective June 2; (3)(o) amended, p. 1148, § 2, effective July 1.L. 93: (1)(f) amended, p. 1911, § 1, effective July 1.L. 94: (3)(q)(I) amended, p. 2637, § 78, effective July 1.L. 95: (3)(t) added, p. 1087, § 11, and (3.5)(d)(V), (5)(a), (5)(e), and (5)(j) amended, p. 1057, § 2, effective July 1.L. 96: (1)(f)(II) amended, p. 400, § 10, effective April 17; (3)(o)(II) amended, p. 797, § 8, effective May 23; (3.5)(f) amended, p. 1226, § 36, effective August 7.L. 98: (1)(a) and (3)(b) amended and (3)(u) and (3.2) added, pp. 1104, 1105, § 1, 2, effective July 1; (3)(o) amended, p. 542, § 2, effective July 1.L. 2000: (1)(f) and (3)(n) amended, p. 30, § 1, effective March 10.L. 2001: (1)(f)(II)(B) amended, p. 1258, § 1, effective June 5; (3)(r) amended, p. 1256, § 18, effective July 1; (5)(a), (5)(b)(III), IP(5)(c), (5)(d), (5)(e), (5)(f), and (5)(i) amended and (6) added, p. 176, § 2, effective August 8; (1)(g) added, p. 1162, § 7, effective January 1, 2002.L. 2002: IP(3) and (3)(k) amended and (3)(v) added, p. 545, § 1, effective August 7.L. 2003: (3)(o)(I) amended, p. 701, § 11, effective July 1.L. 2006: (5)(e) amended, p. 1492, § 19, effective June 1; (1)(g) amended, p. 1546, § 2, effective July 1; (5)(b)(III) repealed, p. 795, § 27, effective July 1; (5)(k) added, p. 87, § 26, effective August 7.L. 2009: (3)(o)(II) repealed, (SB 09-128), ch. 365, p. 1914, § 4, effective July 1; (3)(s) and (3.5) amended, (SB 09-026), ch. 373, p. 2031, § 2, effective July 1; (3)(t)(II) and (3)(t)(III) amended and (3)(t)(II.5) and (3)(t)(IV) added, (SB 09-239), ch. 401, p. 2181, § 25, effective July 1.L. 2010: (3)(w) and (3)(x) added, (HB 10-1128), ch. 172, p. 612, § 9, effective April 29; (1)(b), (1)(g), (2), IP(3), (3)(b), (5)(a), (5)(b)(I), IP(5)(b)(II), (5)(b)(II)(B), (5)(c) to (5)(g), (5)(i), (5)(j), and (5)(k) amended, (3)(x), (5)(k), and (6) repealed, and (3)(y) and (3)(z) added, (HB 10-1260), ch. 403, pp. 1957, 1966, 1959, 1974, 1948, § 25, 35, 26, 44, 13, effective July 1.L. 2011: (5)(a) amended, (HB 11-1303), ch. 264, p. 1150, § 12, effective August 10.L. 2012: IP(3) and (3)(y) amended, (HB 12-1059), ch. 271, p. 1432, § 7, effective July 1; (5)(a) amended, (HB 12-1311), ch. 281, p. 1611, § 15, effective July 1; (2) amended and (7) added, (HB 12-1332), ch. 238, p. 1052, § 3, effective August 8.L. 2013: (3)(z) added, (SB 13-215), ch. 399, p. 2335, § 3, effective June 5; (3)(q)(I) amended, (HB 13-1314), ch. 323, p.1801, § 19, effective March 1, 2014.

COLORADO REVISED STATUTES

\*\*\* This document reflects changes current through all laws passed at the First Regular Session of the Sixty-Ninth General Assembly of the State of Colorado (2013) \*\*\*

TITLE 12. PROFESSIONS AND OCCUPATIONS  
HEALTH CARE  
ARTICLE 36. MEDICAL PRACTICE  
PART 1. GENERAL PROVISIONS

C.R.S. 12-36-117 (2013)

12-36-117. Unprofessional conduct

(1) "Unprofessional conduct" as used in this article means:

(a) Resorting to fraud, misrepresentation, or deception in applying for, securing, renewing, or seeking reinstatement of a license to practice medicine or a license to practice as a physician assistant in this state or any other state, in applying for professional liability coverage, required pursuant to section 13-64-301, C.R.S., or privileges at a hospital, or in taking the examination provided for in this article;

(b) to (e) Repealed.

(f) Any conviction of an offense of moral turpitude, a felony, or a crime that would constitute a violation of this article. For purposes of this paragraph (f), "conviction" includes the entry of a plea of guilty or nolo contendere or the imposition of a deferred sentence.

(g) Administering, dispensing, or prescribing any habit-forming drug or any controlled substance as defined in section 18-18-102 (5), C.R.S., other than in the course of legitimate professional practice;

(h) Any conviction of violation of any federal or state law regulating the possession, distribution, or use of any controlled substance, as defined in section 18-18-102 (5), C.R.S., and, in determining if a license should be denied, revoked, or suspended, or if the licensee should be placed on probation, the board shall be governed by section 24-5-101, C.R.S. For purposes of this paragraph (h), "conviction" includes the entry of a plea of guilty or nolo contendere or the imposition of a deferred sentence.

(i) Habitual or excessive use or abuse of alcohol, a habit-forming drug, or a controlled substance as defined in section 18-18-102 (5), C.R.S.;

(j) Repealed.

(k) The aiding or abetting, in the practice of medicine, of any person not licensed to practice medicine as defined under this article or of any person whose license to practice medicine is suspended;

(l) Repealed.

(m) (I) Except as otherwise provided in sections 12-36-134, 25-3-103.7, and 25-3-314, C.R.S., practicing medicine as the partner, agent, or employee of, or in joint venture with, any person who does not hold a license to practice medicine within this state, or practicing medicine as an employee of, or in joint venture with, any partnership or association any of whose partners or associates do not hold a license to practice medicine within this state, or practicing medicine as an employee of or in joint venture with any corporation other than a professional service corporation for the practice of medicine as described in section 12-36-134. Any licensee holding a license to practice medicine in this state may accept employment from any person, partnership, association, or corporation to examine and treat the employees of such person, partnership, association, or corporation.

(II) (A) Nothing in this paragraph (m) shall be construed to permit a professional services corporation for the practice of medicine, as described in section 12-36-134, to practice medicine.

(B) Nothing in this paragraph (m) shall be construed to otherwise create an exception to the corporate practice of medicine doctrine.

(n) Violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision or term of this article;

(o) Failing to notify the board, as required by section 12-36-118.5 (1), of a physical or mental illness or condition that impacts the licensee's ability to perform a medical service with reasonable skill and with safety to patients, failing to act within the limitations created by a physical or mental illness or condition that renders the licensee unable to perform a medical service with reasonable skill and with safety to the patient, or failing to comply with the limitations agreed to under a confidential agreement entered pursuant to section 12-36-118.5;

(p) Any act or omission which fails to meet generally accepted standards of medical practice;

(q) Repealed.

(r) Engaging in a sexual act with a patient during the course of patient care or within six months immediately following the termination of the licensee's professional relationship with the patient. "Sexual act", as used in this paragraph (r), means sexual contact, sexual intrusion, or sexual penetration as defined in section 18-3-401, C.R.S.

(s) Refusal of an attending physician to comply with the terms of a declaration executed by a patient pursuant to the provisions of article 18 of title 15, C.R.S., and failure of the attending physician to transfer care of said patient to another physician;

(t) (I) Violation of abuse of health insurance pursuant to section 18-13-119, C.R.S.; or

(II) Advertising through newspapers, magazines, circulars, direct mail, directories, radio, television, or otherwise that the licensee will perform any act prohibited by section 18-13-119 (3), C.R.S.;

(u) Violation of any valid board order or any rule or regulation promulgated by the board in conformance with law;

(v) Dispensing, injecting, or prescribing an anabolic steroid as defined in section 18-18-102 (3), C.R.S., for the purpose of the hormonal manipulation that is intended to increase muscle mass, strength, or weight without a medical necessity to do so or for the intended purpose of improving performance in any form of exercise, sport, or game;

(w) Dispensing or injecting an anabolic steroid as defined in section 18-18-102 (3), C.R.S., unless such anabolic steroid is dispensed from a pharmacy prescription drug outlet pursuant to a prescription order or is dispensed by any practitioner in the course of his professional practice;

(x) Prescribing, distributing, or giving to a family member or to oneself except on an emergency basis any controlled substance as defined in section 18-18-204, C.R.S., or as contained in schedule II of 21 U.S.C. sec. 812, as amended;

(y) Failing to report to the board, within thirty days after an adverse action, that an adverse action has been taken against the licensee by another licensing agency in another state or country, a peer review body, a health care institution, a professional or medical society or association, a governmental agency, a law enforcement agency, or a court for acts or conduct that would constitute grounds for disciplinary or adverse action as described in this article;

(z) Failing to report to the board, within thirty days, the surrender of a license or other authorization to practice medicine in another state or jurisdiction or the surrender of membership on any medical staff or in any medical or professional association or society while under investigation by any of those authorities or bodies for acts or conduct similar to acts or conduct that would constitute grounds for action as described in this article;

(aa) Failing to accurately answer the questionnaire accompanying the renewal form as required pursuant to section 12-36-123 (1) (b);

(bb) (I) Engaging in any of the following activities and practices: Willful and repeated ordering or performance, without clinical justification, of demonstrably unnecessary laboratory tests or studies; the administration, without clinical justification, of treatment which is demonstrably unnecessary; the failure to obtain consultations or perform referrals when failing to do so is not consistent with the standard of care for the profession; or ordering or performing, without clinical justification, any service, X ray, or treatment which is contrary to recognized standards of the practice of medicine as interpreted by the board.

(II) In determining which activities and practices are not consistent with the standard of care or are contrary to recognized standards of the practice of medicine, the board shall utilize, in addition to its own expertise, the standards developed by recognized and established accreditation or review organizations that meet requirements established by the board by rule. Such determinations shall include but not be limited to appropriate ordering of

laboratory tests and studies, appropriate ordering of diagnostic tests and studies, appropriate treatment of the medical condition under review, appropriate use of consultations or referrals in patient care, and appropriate creation and maintenance of patient records.

(cc) Falsifying or repeatedly making incorrect essential entries or repeatedly failing to make essential entries on patient records;

(dd) Committing a fraudulent insurance act, as defined in section 10-1-128, C.R.S.;

(ee) Failing to establish and continuously maintain financial responsibility, as required in section 13-64-301, C.R.S.;

(ff) Repealed.

(gg) Failing to respond in an honest, materially responsive, and timely manner to a complaint issued pursuant to section 12-36-118 (4);

(hh) Advertising in a manner that is misleading, deceptive, or false;

(ii) Repealed.

(jj) Any act or omission in the practice of **telemedicine** that fails to meet generally accepted standards of medical practice;

(kk) Entering into or continuing in a mentorship relationship with an advanced practice nurse pursuant to sections 12-36-106.4 and 12-38-111.6 (4.5) that fails to meet generally acceptable standards of medical practice;

(ll) Verifying by signature the articulated plan developed by an advanced practice nurse pursuant to sections 12-36-106.4 and 12-38-111.6 (4.5) if the articulated plan fails to comply with the requirements of section 12-38-111.6 (4.5) (b) (II);

(mm) Failure to comply with the requirements of section 14 of article XVIII of the state constitution, section 25-1.5-106, C.R.S., or the rules promulgated by the state health agency pursuant to section 25-1.5-106 (3), C.R.S.

(1.5) (a) A licensee shall not be subject to disciplinary action by the board solely for prescribing controlled substances for the relief of intractable pain.

(b) For the purposes of this subsection (1.5), "intractable pain" means a pain state in which the cause of the pain cannot be removed and which in the generally accepted course of medical practice no relief or cure of the cause of the pain is possible or none has been found after reasonable efforts including, but not limited to, evaluation by the attending physician and one or more physicians specializing in the treatment of the area, system, or organ of the body perceived as the source of the pain.

(1.7) The prescribing, dispensing, or distribution of an opiate antagonist by a licensed health care practitioner shall not constitute unprofessional conduct if he or she prescribed, dispensed, or distributed the opiate antagonist in a good faith effort to assist:

(a) A person who is at increased risk of experiencing or likely to experience an opiate-related drug overdose event, as defined in section 18-1-712 (5) (e), C.R.S.; or

(b) A family member, friend, or other person who is in a position to assist a person who is at increased risk of experiencing or likely to experience an opiate-related drug overdose event, as defined in section 18-1-712 (5) (e), C.R.S.

(1.8) A licensee shall not be subject to disciplinary action by the board for issuing standing orders and protocols regarding the use of epinephrine auto-injectors in a public or nonpublic school in accordance with the requirements of section 22-1-119.5, C.R.S., or for the actions taken by a school nurse or by any designated school personnel who administer epinephrine auto-injectors in accordance with the requirements of section 22-1-119.5, C.R.S.

(2) The discipline of a license to practice medicine, of a license to practice as a physician assistant, or of a license to practice as an anesthesiologist assistant in another state, territory, or country shall be deemed to be unprofessional conduct. For purposes of this subsection (2), "discipline" includes any sanction required to be reported pursuant to 45 CFR 60.8. This subsection (2) applies only to discipline that is based upon an act or omission in such other state, territory, or country that is defined substantially the same as unprofessional conduct pursuant to subsection (1) of this section.

(3) (a) For purposes of this section, "alternative medicine" means those health care methods of diagnosis, treatment, or healing that are not generally used but that provide a reasonable potential for therapeutic gain in a patient's medical condition that is not outweighed by the risk of such methods. A licensee who practices alternative medicine shall inform each patient in writing, during the initial patient contact, of such licensee's education, experience, and credentials related to the alternative medicine practiced by such licensee. The board shall not take disciplinary action against a licensee solely on the grounds that such licensee practices alternative medicine.

(b) Nothing in paragraph (a) of this subsection (3) prevents disciplinary action against a licensee for practicing medicine, practicing as a physician assistant, or practicing as an anesthesiologist assistant in violation of this article.

**HISTORY:** Source: L. 51: p. 571, § 17.CSA: C. 109, § 33(17).CRS 53: § 91-1-17. C.R.S. 1963: § 91-1-17.L. 67: p. 813, § § 3, 4.L. 69: p. 825, § 1.L. 73: p. 525, § 50.L. 75: (1)(p) added, p. 461, § 1, effective June 29.L. 79: (1)(c) to (1)(e), (1)(j), and (1)(l) repealed, (1)(n) to (1)(p) amended, and (1)(q) and (2) added, pp. 511, 512, 525, § § 12, 13, 31, effective July 1.L. 81: (1)(g) to (1)(i) amended, p. 735, § 11, effective July 1.L. 85: (1)(s) added, p. 613, § 2, effective May 9; (1)(f) and (1)(g) amended and (1)(r) added, p. 520, § 8, effective July 1; (1)(t) added, p. 682, § 7, effective July 1.L. 87: (1)(p) amended and (1)(u) added, pp. 501, 511, § § 1, 3, effective March 13; (1)(v) and (1)(w) added, p. 501, § 3, effective May 20.L. 88: (1)(a) amended and (1)(x) and (1)(y) to (1)(aa) added, p. 522, § 3, effective July 1.L. 89: (1)(x) amended, p. 677, § 1, effective July 1; (1)(bb) to (1)(dd) added, p. 672, § 13, effective July 1.L. 91: (1)(ff) added, p. 1616, § 8, effective January 1; (1)(q) repealed, p.

884, § 3, effective July 1; (1)(ee) added, p. 1337, § 52, effective July 1.L. 92: (1)(v), (1)(w), and (1)(x) amended, p. 390, § 14, effective July 1.L. 93: (1)(m) amended, p. 723, § 5, effective May 6.L. 94: (1)(m) amended, p. 670, § 2, effective April 19.L. 95: (1)(a), (1)(f), (1)(h), (1)(p), (1)(r), (1)(aa), (1)(ee), and (2) amended and (1)(gg) and (1)(hh) added, p. 1061, § 12, effective July 1; (1)(ii) added, p. 1088, § 13, effective July 1.L. 97: (1.5) added, p. 396, § 1, effective August 6; (3) added, p. 325, § 1, effective August 6.L. 2000: (1)(gg) amended, p. 175, § 2, effective July 1.L. 2001: (1)(a), (1)(r), (1.5)(a), (2), and (3) amended, p. 179, § 6, effective August 8; (1)(jj) added, p. 1162, § 8, effective January 1, 2002.L. 2003: (1)(m) amended, p. 1600, § 3, effective July 1; (1)(dd) amended, p. 621, § 30, effective July 1.L. 2004: (1)(g) and (1)(i) amended, p. 1194, § 35, effective August 4.L. 2009: (1)(ii) amended and (1)(kk) and (1)(ll) added, (SB 09-239), ch. 401, p. 2182, § 26, effective July 1.L. 2010: (1)(ff) repealed, (HB 10-1128), ch. 172, p. 614, § 11, effective April 29; (1)(mm) added, (SB 10-109), ch. 356, p. 1696, § 3, effective June 7; (1)(i), (1)(o), (1)(y), (1)(z), and (1)(bb)(II) amended, (HB 10-1260), ch. 403, pp. 1962, 1961, § § 31, 29, effective July 1; (1)(m)(I) amended, (HB 10-1244), ch. 221, p. 963, § 1, effective August 11.L. 2012: (1)(g), (1)(h), and (1)(i) amended, (HB 12-1311), ch. 281, p. 1611, § 16, effective July 1; (2) and (3)(b) amended, (HB 12-1332), ch. 238, p. 1055, § 8, effective August 8.L. 2013: (1.7) added, (SB 13-014), ch. 178, p. 659, § 4, effective May 10; (1.8) added, (HB 13-1171), ch. 348, p. 2025, § 2, effective May 28; (1)(b) repealed, (HB 13-1154), ch. 372, p. 2192, § 3, effective July 1.

## **NOTES:**

### **LexisNexis 50 State Surveys, Legislation & Regulations**

Corporate Practice of Medicine (March 2012)

Editor's note: (1) Subsection (1)(ii)(II) provided for the repeal of subsection (1)(ii), effective July 1, 2010. (See L. 2009, p. 2182.)

(2) Section 9 of chapter 372, Session Laws of Colorado 2013, provides that the act repealing subsection (1)(b) applies to offenses committed on or after July 1, 2013.

Cross references: (1) For the legislative declaration contained in the 1989 act enacting subsection (1)(bb) to (1)(dd), see section 1 of chapter 111, Session Laws of Colorado 1989. For the legislative declaration contained in the 2000 act amending subsection (1)(gg), see section 1 of chapter 56, Session Laws of Colorado 2000. For the legislative declaration contained in the 2001 act enacting subsection (1)(jj), see section 1 of chapter 300, Session Laws of Colorado 2001. For the legislative declaration contained in the 2003 act amending subsection (1)(m), see section 1 of chapter 240, Session Laws of Colorado 2003. For the legislative declaration in the 2013 act adding subsection (1.7), see section 1 of chapter 178, Session Laws of Colorado 2013. For the legislative declaration in the 2013 act repealing subsection (1)(b), see section 1 of chapter 372, Session Laws of Colorado 2013.

(2) For an exception to the provisions of subsection (1)(m), see § 6-18-303.

COLORADO REVISED STATUTES

\*\*\* This document reflects changes current through all laws passed at the First Regular Session of the Sixty-Ninth General Assembly of the State of Colorado (2013) \*\*\*

TITLE 12. PROFESSIONS AND OCCUPATIONS  
HEALTH CARE  
ARTICLE 40.5. OCCUPATIONAL THERAPY PRACTICE ACT

C.R.S. 12-40.5-103 (2013)

12-40.5-103. Definitions

As used in this article, unless the context otherwise requires:

(1) "Activities of daily living" means activities that are oriented toward taking care of one's own body, such as bathing, showering, bowel and bladder management, dressing, eating, feeding, functional mobility, personal device care, personal hygiene and grooming, sexual activity, sleep, rest, and toilet hygiene.

(2) "Aide" means a person who is not licensed by the director and who provides supportive `services to occupational therapists and occupational therapy assistants.

(3) "Department" means the department of regulatory agencies.

(4) "Director" means the director of the division of professions and occupations.

(5) "Division" means the division of professions and occupations in the department of regulatory agencies created in section 24-34-102, C.R.S.

(6) "Instrumental activities of daily living" means activities that are oriented toward interacting with the environment and that may be complex. These activities are generally optional in nature and may be delegated to another person. "Instrumental activities of daily living" include care of others, care of pets, child-rearing, communication device use, community mobility, financial management, health management and maintenance, home establishment and management, meal preparation and cleanup, safety procedures and emergency responses, and shopping.

(6.5) "Licensee" means a person licensed under this article as an occupational therapist or occupational therapy assistant.

(7) "Low vision rehabilitation services" means the evaluation, diagnosis, management, and care of the low vision patient in visual acuity and visual field as it affects the patient's occupational performance, including low vision rehabilitation therapy, education, and interdisciplinary consultation.

(8) "Occupational therapist" means a person licensed to practice occupational therapy under this article.

(9) "Occupational therapy" means the therapeutic use of everyday life activities with individuals or groups for the purpose of participation in roles and situations in home, school, workplace, community, and other settings. The practice of occupational therapy includes:

(a) Methods or strategies selected to direct the process of interventions such as:

(I) Establishment, remediation, or restoration of a skill or ability that has not yet developed or is impaired;

(II) Compensation, modification, or adaptation of an activity or environment to enhance performance;

(III) Maintenance and enhancement of capabilities without which performance of everyday life activities would decline;

(IV) Promotion of health and wellness to enable or enhance performance in everyday life activities; and

(V) Prevention of barriers to performance, including disability prevention;

(b) Evaluation of factors affecting activities of daily living, instrumental activities of daily living, education, work, play, leisure, and social participation, including:

(I) Client factors, including body functions such as neuromuscular, sensory, visual, perceptual, and cognitive functions, and body structures such as cardiovascular, digestive, integumentary, and genitourinary systems;

(II) Habits, routines, roles, and behavior patterns;

(III) Cultural, physical, environmental, social, and spiritual contexts and activity demands that affect performance; and

(IV) Performance skills, including motor, process, and communication and interaction skills;

(c) Interventions and procedures to promote or enhance safety and performance in activities of daily living, instrumental activities of daily living, education, work, play, leisure, and social participation, including:

(I) Therapeutic use of occupations, exercises, and activities;

(II) Training in self-care, self-management, home management, and community and work reintegration;

(III) Identification, development, remediation, or compensation of physical, cognitive, neuromuscular, sensory functions, sensory processing, and behavioral skills;

(IV) Therapeutic use of self, including a person's personality, insights, perceptions, and judgments, as part of the therapeutic process;

(V) Education and training of individuals, including family members, caregivers, and others;

(VI) Care coordination, case management, and transition services;

(VII) Consultative services to groups, programs, organizations, or communities;

(VIII) Modification of environments such as home, work, school, or community and adaptation of processes, including the application of ergonomic principles;

(IX) Assessment, design, fabrication, application, fitting, and training in assistive technology and adaptive and orthotic devices and training in the use of prosthetic devices, excluding glasses, contact lenses, or other prescriptive devices to correct vision unless prescribed by an optometrist;

(X) Assessment, recommendation, and training in techniques to enhance functional mobility, including wheelchair management;

(XI) Driver rehabilitation and community mobility;

(XII) Management of feeding, eating, and swallowing to enable eating and feeding performance;

(XIII) Application of physical agent modalities and therapeutic procedures such as wound management; techniques to enhance sensory, perceptual, and cognitive processing; and manual techniques to enhance performance skills; and

(XIV) The use of **telehealth** pursuant to rules as may be adopted by the director.

(10) "Occupational therapy assistant" means a person licensed under this article to practice occupational therapy under the supervision of and in partnership with an occupational therapist.

(11) Repealed.

(12) "Supervision" means the giving of aid, directions, and instructions that are adequate to ensure the safety and welfare of clients during the provision of occupational therapy by the occupational therapist designated as the supervisor. Responsible direction and supervision by the occupational therapist shall include consideration of factors such as level of skill, the establishment of service competency, experience, work setting demands, the complexity and stability of the client population, and other factors. Supervision is a collaborative process for responsible, periodic review and inspection of all aspects of occupational therapy services and the occupational therapist is legally accountable for occupational therapy services provided by the occupational therapy assistant and the aide.

(13) "Vision therapy services" means the assessment, diagnosis, treatment, and management of a patient with

vision therapy, visual training, visual rehabilitation, orthoptics, or eye exercises.

**HISTORY:** Source: L. 2008: Entire article added, p. 817, § 1, effective July 1.L. 2013: (2), (7), (8), (9)(c)(III), (9)(c)(IX), (9)(c)(XII), (9)(c)(XIII), and (10) amended, (6.5) and (9)(c)(XIV) added, and (11) repealed, (SB 13-180), ch. 411, p. 2431, § 3, effective June 30.

*64B8-9.0141, F.A.C.*

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TITLE 64 DEPARTMENT OF HEALTH  
DIVISION 64B8 BOARD OF MEDICINE  
CHAPTER 64B8-9 STANDARDS OF PRACTICE FOR MEDICAL DOCTORS

**64B8-9.0141, F.A.C.**

**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.

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

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

(7)(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.

**AUTHORITY:** Rulemaking Authority 458.331(1)(v) FS.  
Law Implemented 458.331(1)(v) FS.

#### HISTORY

New 3-12-14.

*64B8-9.014, F.A.C.*

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TITLE 64 DEPARTMENT OF HEALTH  
DIVISION 64B8 BOARD OF MEDICINE  
CHAPTER 64B8-9 STANDARDS OF PRACTICE FOR MEDICAL DOCTORS

**64B8-9.014, F.A.C.**

**64B8-9.014** Standards for Telemedicine Prescribing Practice.

(1) 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.

(2) 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.

(3) The provisions of this rule are not applicable in an emergency situation. For purposes of this rule an emergency situation means those situations in which the prescribing physician or physician assistant determines that the immediate administration of the medication is necessary for the proper treatment of the patient, and that it is not reasonably possible for the prescribing physician or physician assistant to comply with the provision of this rule prior to providing such prescription.

(4) 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.

(5) For purposes of this rule, the term "telemedicine" shall include, but is not limited to, prescribing legend drugs to patients through the following modes of communication:

(a) Internet;

(b) Telephone; and

(c) Facsimile.

**AUTHORITY:** Rulemaking Authority 458.309, 458.331(1)(v) FS.  
Law Implemented 458.331(1)(q), (t), (v) FS.

#### HISTORY

New 9-14-03.

*64B15-14.008, F.A.C.*

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TITLE 64 DEPARTMENT OF HEALTH  
DIVISION 64B15 BOARD OF OSTEOPATHIC MEDICINE  
CHAPTER 64B15-14 PRACTICE REQUIREMENTS

**64B15-14.008, F.A.C.**

**64B15-14.008** Standards for Telemedicine Prescribing Practice.

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

practice shall constitute grounds for disciplinary action pursuant to Sections 459.015(1)(x) and (t), F.S.

(2) Osteopathic Physicians 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, adequate to establish the diagnosis for which any drug is prescribed.

(b) Sufficient dialogue between the osteopathic physician and the patient regarding treatment options and the risks and benefits of treatment.

(c) Maintenance of contemporaneous medical records meeting the requirements of Rule 64B15-15.004, F.A.C.

(3) The provisions of this rule are not applicable in an emergency situation. For purposes of this rule an emergency situation means those situations in which the prescribing physician determines that the immediate administration of the medication is necessary for the proper treatment of the patient, and that it is not reasonably possible for the prescribing physician to comply with the provision of this rule prior to providing such prescription.

(4) 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.

**AUTHORITY:** Rulemaking Authority 459.005, 459.015(1)(z) FS.

Law Implemented 459.015(1)(x), (t) FS.

#### HISTORY

New 10-16-01.<

*HRS § 453-1.3*

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DIVISION 2. BUSINESS  
TITLE 25 Professions And Occupations  
CHAPTER 453 Medicine and Surgery  
PART I. Generally

**Go to the Hawaii Code Archive Directory**

HRS § 453-1.3 (2013)

**[§ 453-1.3.] Practice of telemedicine.**

(a) Subject to section 453-2(b), nothing in this section shall preclude any physician acting within the scope of the physician's license to practice from practicing **telemedicine** as defined in this section.

(b) For the purposes of this section, "**telemedicine**" means the use of telecommunications services, including real-time video or web conferencing communication or secure web-based communication to establish a physician-patient relationship, to evaluate a patient, or to treat a patient. "**Telehealth**" as used in chapters 431, 432, and 432D, includes "**telemedicine**" as defined in this section.

(c) **Telemedicine** services shall include a documented patient evaluation, including history and a discussion of physical symptoms adequate to establish a diagnosis and to identify underlying conditions or contra-indications to the treatment recommended or provided.

(d) Treatment recommendations made via **telemedicine**, including issuing a prescription via electronic means, shall be held to the same standards of appropriate practice as those in traditional physician-patient settings that do not include a face-to-face visit but in which prescribing is appropriate, including on-call telephone encounters and encounters for which a follow-up visit is arranged. Issuing a prescription based solely on an

online questionnaire is not treatment for the purposes of this section and does not constitute an acceptable standard of care. For the purposes of prescribing a controlled substance, a physician-patient relationship shall be established pursuant to chapter 329.

(e) All medical reports resulting from **telemedicine** services are part of a patient's health record and shall be made available to the patient. Patient medical records shall be maintained in compliance with all applicable state and federal requirements including privacy requirements.

(f) A physician shall not use **telemedicine** to establish a physician-patient relationship with a patient in this State without a license to practice medicine in Hawaii. Once a provider-patient relationship is established, a patient or physician licensed in this State may use **telemedicine** for any purpose, including consultation with a medical provider licensed in another state, authorized by this section, or as otherwise provided by law.

**HISTORY:** L 2009, c 20, § 2, effective April 28, 2009; am L 2013, c 189, § 1, effective June 25, 2013.

**NOTES: Editor's note.**

2009 Haw. Sess. Laws, Act 20, § 1, provides:

"Since 1999, the legislature has supported the use and expansion of **telehealth** services and technology in Hawaii. In the past, **telehealth** services were primarily facility-based without a consumer driven component. With internet-based technology revolutionizing the way consumers acquire goods and services today, it is now possible to apply this technology to health care. Hawaii is poised to become the first state in the nation to provide statewide consumer access to local physicians via the Internet and telephone. Individuals will be able to interact with local physicians in a real time, secure, and private online environment.

"Supporting this expanded use of technology for **telemedicine** services will increase access to health care in rural areas of the State. People living in Hawaii's rural areas often find it more difficult to access specialty physician care. The use of new and improved technologies to deliver effective and prompt health care will allow residents to promptly consult with a specialist.

"Difficulty or inability to visit a specialist often forces individuals to delay appropriate health care. These delays may ultimately lead to worsened health outcomes which could have been avoided. New technology will provide additional options to access care through discussion with a local physician live via the Internet or telephone twenty-four hours a day, seven days a week.

"Expansion of **telemedicine** services may also assist in containing rising health care costs. The availability of immediate access to physicians may prevent inappropriate and expensive trips to the emergency room. Those without health care coverage who currently access non-emergent care in the emergency room would be able to

visit a physician online. As consumers become more comfortable receiving care through **telemedicine**, hospitals could see a decrease not only in inappropriate emergency room usage, but also a decrease in uncompensated care.

"In addition, since rural areas locally and across the nation find it increasingly difficult to attract and retain physicians, particularly specialists, expansion of **telemedicine** services may attract physicians to practice in these areas. **Telemedicine** will provide physicians with greater flexibility and freedom within their practices wherever they are physically located in Hawaii. The resulting lifestyle improvement without sacrifice of income may prove to be an attractive incentive for physicians to practice in rural areas.

"Despite the legislature's clear and consistent support of expanded use of **telemedicine** to improve access to health care services throughout the State, questions have recently been raised by the Hawaii medical board about the appropriate use of this technology to establish the physician-patient relationship. Therefore, the purpose of this Act is to reinforce the legislature's support of online care services through **telemedicine** by:

"(1) Clarifying that **telemedicine** is within a physician's scope of practice and is authorized in Hawaii when practiced by a licensed physician providing services to patients; and

"(2) Further clarifying the current laws regarding **telehealth** to ensure compliance with changes made to the law regulating the practice of medicine."

**Effective date.**

This section becomes effective April 28, 2009.

**The 2013 amendment** added "Subject to section 453-2(b)" in (a) and made a stylistic change.

*HRS § 457-2*

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DIVISION 2. BUSINESS  
TITLE 25 Professions And Occupations  
CHAPTER 457 Nurses

HRS § 457-2 (2013)

**§ 457-2. Definitions.**

(a) As used in this chapter unless the content otherwise requires:

"Advanced practice registered nurse" means a registered nurse who has met the qualifications for advanced practice registered nurse set forth in this chapter and through rules of the board, which shall include educational requirements.

"Board" means the state board of nursing.

"NCSBN" means the National Council of State Boards of Nursing.

"Nurse" means a person licensed under this chapter or a person who holds a license under the laws of another state or territory of the United States that is equivalent to a license under this chapter.

"**Telehealth**" means the use of electronic information and telecommunication technologies to support long-distance clinical health care, patient and professional health-related education, public health and health administration, to the extent that it relates to nursing.

[Effective until July 01, 2017.]

"The practice of nursing as a licensed practical nurse" means the performance of those acts commensurate with the required educational preparation and demonstrated competency of the individual, whereby the

individual shall be accountable and responsible to the consumer for the quality of nursing care rendered. The foregoing may include, but shall not be limited to: implementation of basic nursing procedures in the plan of care; observing and caring for individuals at all levels of the health spectrum, giving counsel and acting to safeguard life and health and functioning as a part of the health care team, under the direction of a dentist, physician, osteopathic physician, registered nurse, or podiatrist licensed in accordance with chapter 448, 453, 457, or 463E, or under the orders of a physician assistant licensed pursuant to chapter 453, practicing with physician supervision as required by chapter 453, and acting as the agent of the supervising physician; administration of treatment and medication as prescribed; promotion of health maintenance of individuals, families, or groups; or teaching and supervision of auxiliary personnel.

[Effective July 01, 2017.]

"The practice of nursing as a licensed practical nurse" means the performance of those acts commensurate with the required educational preparation and demonstrated competency of the individual, whereby the individual shall be accountable and responsible to the consumer for the quality of nursing care rendered. The foregoing may include, but shall not be limited to: implementation of basic nursing procedures in the plan of care; observing and caring for individuals at all levels of the health spectrum, giving counsel and acting to safeguard life and health and functioning as a part of the health care team, under the direction of a dentist, physician, osteopathic physician, registered nurse, or podiatrist licensed in accordance with chapter 448, 453, 457, or 463E; administration of treatment and medication as prescribed; promotion of health maintenance of individuals, families, or groups; or teaching and supervision of auxiliary personnel.

[Effective until July 01, 2017.]

"The practice of nursing as a registered nurse" means the performance of professional services commensurate with the educational preparation and demonstrated competency of the individual having specialized knowledge, judgment, and skill based on the principles of the biological, physical, behavioral, and sociological sciences and nursing theory, whereby the individual shall be accountable and responsible to the consumer for the quality of nursing care rendered. The foregoing may include but shall not be limited to observation, assessment, development, implementation, and evaluation of a plan of care, health counseling, supervision and teaching of other personnel, and teaching of individuals, families, and groups in any stage of health or illness; administration, supervision, coordination, delegation, and evaluation of nursing practice; provision of health care to the patient in collaboration with other members of the health care team as autonomous health care professionals providing the nursing component of health care; or use of reasonable judgment in carrying out prescribed medical orders of a licensed dentist, physician, osteopathic physician, or podiatrist licensed in accordance with chapter 448, 453, or 463E; orders of an advanced practice registered nurse recognized in accordance with this chapter; or the orders of a physician assistant licensed pursuant to chapter 453, practicing with physician supervision as required by chapter 453, and acting as the agent of the supervising physician.

[Effective July 01, 2017.]

"The practice of nursing as a registered nurse" means the performance of professional services commensurate with the educational preparation and demonstrated competency of the individual having specialized knowledge, judgment, and skill based on the principles of the biological, physical, behavioral, and sociological sciences and nursing theory, whereby the individual shall be accountable and responsible to the consumer for the quality of nursing care rendered. The foregoing may include but shall not be limited to observation, assessment, development, implementation, and evaluation of a plan of care, health counseling, supervision and teaching of other personnel, and teaching of individuals, families, and groups in any stage of health or illness; administration, supervision, coordination, delegation, and evaluation of nursing practice; provision of health care to the patient in collaboration with other members of the health care team as autonomous health care professionals providing the nursing component of health care; or use of reasonable judgment in carrying out prescribed medical orders of a licensed dentist, physician, osteopathic physician, or podiatrist licensed in accordance with chapter 448, 453, or 463E or the orders of an advanced practice registered nurse recognized in accordance with this chapter.

**(b)** Definitions applicable to this chapter shall also include those used in the NCSBN Model Nursing Practice Act and the Model Nursing Administrative Rules unless the context otherwise requires. Where a definition in the NCSBN Model Nursing Practice Act or Model Nursing Administrative Rules conflicts with a definition in chapter 457 or 436B, the definitions contained in chapter 457 or 436B and the rules of the board shall apply.

**HISTORY:** L 1970, c 71, pt of § 1; am L 1985, c 238, § 1; am L 1994, c 277, §§ 3, 4; am L 1996, c 150, § 1; am L 2000, c 9, § 1; am L 2009, c 11, § 61, effective April 3, 2008; am L 2010, c 57, § 5, effective April 24, 2010; am L 2012, c 255, § 2, effective July 6, 2012.

**NOTES: Editor's note.**

2012 Haw. Sess. Laws, Act 255, §§ 3 and 5, provide:

"SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date."

"SECTION 5. This Act shall take effect upon its approval and shall be repealed on July 1, 2017; provided that the definitions of 'the practice of nursing as a licensed practical nurse' and 'the practice of nursing as a registered nurse' under section 457-2, Hawaii Revised Statutes, shall be reenacted in the form in which they read on the day prior to the effective date of this Act."

**The 2009 amendment**, retroactively effective April 3, 2008, deleted "460" preceding "or 463E" in the definitions of "The practice of nursing as a licensed practical nurse" and "The practice of nursing as a registered

nurse" and made stylistic changes.

**The 2010 amendment** added the (a) designation; added the definition of "NCSBN" in (a); substituted "physician, osteopathic physician" for "medical doctor or osteopath" in the second sentence of the definitions of "The practice of nursing as a licensed practical nurse" and "The practice of nursing as a registered nurse" in (a); substituted "use" for "utilization" in the second sentence of the definition of "The practice of nursing as a registered nurse" in (a); added (b); and made related and stylistic changes.

**The 2012 amendment** added "or under the orders of a physician assistant licensed pursuant to chapter 453, practicing with physician supervision as required by chapter 453, and acting as the agent of the supervising physician" in the second sentence, in the definition of "The practice of nursing as a licensed practical nurse"; added "or the orders of a physician assistant licensed pursuant to chapter 453, practicing with physician supervision as required by chapter 453, and acting as the agent of the supervising physician" in the second sentence of the definition of "The practice of nursing as a registered nurse"; and made a related change.

*HRS § 457-5*

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DIVISION 2. BUSINESS

TITLE 25 Professions And Occupations

CHAPTER 457 Nurses

HRS § 457-5 (2013)

**§ 457-5. Duties and powers of board.**

(a) In addition to any other powers and duties authorized by law, the board may:

(1) Adopt, amend, or repeal rules, pursuant to chapter 91, not inconsistent with the law, as may be necessary to enable it to carry into effect this chapter, including the definition of the scope of practice of nursing and the delegation of nursing tasks based upon professional nursing standards, which include but are not limited to the standards set forth by national certifying bodies recognized by the board;

(2) Prescribe standards for preparing persons for licensure as practical [nurses] or registered nurses and for recognition as advanced practice registered nurses under this chapter;

- (3) Conduct surveys of educational programs as it may deem necessary and practical;
  - (4) Approve educational programs that meet the requirements of this chapter and the rules of the board;
  - (5) Deny or withdraw approval of educational programs for failure to meet or maintain the standards prescribed in this chapter;
  - (6) License qualified applicants by examination or endorsement, recognize advanced practice registered nurses, and renew, reinstate, and restore licenses and recognitions;
  - (7) Conduct hearings upon request of a denied applicant or upon charges calling for discipline of a licensee;
  - (8) Exercise the power to issue subpoenas, compel the attendance of witnesses, and administer oaths to persons giving testimony at hearings;
  - (9) Cause the prosecution of all persons violating this chapter and incur necessary expenses therefor;
  - (10) Keep a record of all its proceedings;
  - (11) Provide consultation, conduct conferences, forums, studies, and research on nursing education and practice;
  - (12) Communicate with national organizations that promote the improvement of the legal standards of practice of nursing for the protection of public health, safety, and welfare;
  - (13) Authorize the administration of examinations to eligible applicants for licensure as registered nurses or licensed practical nurses, or other examinations required by the board as designated in its rules;
  - (14) Employ, contract, and cooperate, to the extent allowable by law, with any board-approved organization in the preparation and grading of an appropriate nationally uniform examination; provided the board shall retain sole discretion and responsibility for determining the standard of successful completion of such an examination. When such a national examination is used, access to questions and answers shall be restricted by the board; and
  - (15) Develop and adopt rules as necessary relating to the practice of nursing in **telehealth**.
- (b) The board shall monitor and evaluate the scope of the practice of nursing in other states and make recommendations to the legislature, when deemed desirable, for appropriate amendment to the definitions under section 457-2 and any other provision of this chapter.

**HISTORY:** L 1970, c 71, pt of § 1; am L 1981, c 57, § 2; am L 1983, c 119, § 3; am L 1984, c 182, § 2; am L 1985, c 255, § 5; am L 1992, c 202, § 107; am L 1995, c 88, § 1; am L 2000, c 9, § 2

**NOTES: Cross references.**

As to the administration of the board of nursing, see § 26-9.

As to working with crippled children, see § 321-52.

As to the compensation of nurses, see § 377-1(13).

## 225 ILCS 60/49.5 (2014)

§ 225 ILCS 60/49.5. (For postponed repeal of this Act, see notes under 225 ILCS 60/1) Telemedicine

Sec. 49.5. (a) The General Assembly finds and declares that because of technological advances and changing practice patterns the practice of medicine is occurring with increasing frequency across state lines and that certain technological advances in the practice of medicine are in the public interest. The General Assembly further finds and declares that the practice of medicine is a privilege and that the licensure by this State of practitioners outside this State engaging in medical practice within this State and the ability to discipline those practitioners is necessary for the protection of the public health, welfare, and safety.

(b) A person who engages in the practice of telemedicine without a license issued under this Act shall be subject to penalties provided in Section 59 [[225 ILCS 60/59](#)].

(c) For purposes of this Act, "telemedicine" means the performance of any of the activities listed in Section 49 [[225 ILCS 60/49](#)], including but not limited to rendering written or oral opinions concerning diagnosis or treatment of a patient in Illinois by a person located outside the State of Illinois as a result of transmission of individual patient data by telephonic, electronic, or other means of communication from within this State. "Telemedicine" does not include the following:

- (1) periodic consultations between a person licensed under this Act and a person outside the State of Illinois;
- (2) a second opinion provided to a person licensed under this Act; and
- (3) diagnosis or treatment services provided to a patient in Illinois following care or treatment originally provided to the patient in the state in which the provider is licensed to practice medicine.

(d) Whenever the Department has reason to believe that a person has violated this Section, the Department may issue a rule to show cause why an order to cease and desist should not be entered against that person. The rule shall clearly set forth the grounds relied upon by the Department and shall provide a period of 7 days from the date of the rule to file an answer to the satisfaction of the Department. Failure to answer to the satisfaction of the Department shall cause an order to cease and desist to be issued immediately.

(e) An out-of-state person providing a service listed in Section 49 [[225 ILCS 60/49](#)] to a patient residing in Illinois through the practice of telemedicine submits himself or herself to the jurisdiction of the courts of this State.

### **HISTORY:**

Source: [P.A. 90-99](#), § 5.

**NOTES:**

**EFFECTIVE DATE.**

This section became effective January 1, 1998 pursuant to [Ill. Const. \(1970\), Art. IV, § 10](#) and [5 ILCS 75/1](#).

*225 ILCS 75/2*

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CHAPTER 225. PROFESSIONS AND OCCUPATIONS  
HEALTH  
ILLINOIS OCCUPATIONAL THERAPY PRACTICE ACT

*225 ILCS 75/2 (2014)*

§ 225 ILCS 75/2. (For postponed repeal of this Act, see notes under 225 ILCS 75/1) Definitions

Sec. 2. In this Act:

- (1) "Department" means the Department of Financial and Professional Regulation.
- (2) "Secretary" means the Secretary of the Department of Financial and Professional Regulation.
- (3) "Board" means the Illinois Occupational Therapy Licensure Board appointed by the Secretary.
- (4) "Occupational therapist" means a person initially registered and licensed to practice occupational therapy as defined in this Act, and whose license is in good standing.
- (5) "Occupational therapy assistant" means a person initially registered and licensed to assist in the practice of occupational therapy under the supervision of a licensed occupational therapist, and to implement the occupational therapy treatment program as established by the licensed occupational therapist.
- (6) "Occupational therapy" means the therapeutic use of purposeful and meaningful occupations or goal-directed activities to evaluate and provide interventions for individuals, groups, and populations who have a

disease or disorder, an impairment, an activity limitation, or a participation restriction that interferes with their ability to function independently in their daily life roles, including activities of daily living (ADLs) and instrumental activities of daily living (IADLs). Occupational therapy services are provided for the purpose of habilitation, rehabilitation, and to promote health and wellness. Occupational therapy may be provided via technology or telecommunication methods, also known as **telehealth**, however the standard of care shall be the same whether a patient is seen in person, through **telehealth**, or other method of electronically enabled health care. Occupational therapy practice may include any of the following:

- (a) remediation or restoration of performance abilities that are limited due to impairment in biological, physiological, psychological, or neurological processes;
- (b) modification or adaptation of task, process, or the environment or the teaching of compensatory techniques in order to enhance performance;
- (c) disability prevention methods and techniques that facilitate the development or safe application of performance skills; and
- (d) health and wellness promotion strategies, including self-management strategies, and practices that enhance performance abilities.

The licensed occupational therapist or licensed occupational therapy assistant may assume a variety of roles in his or her career including, but not limited to, practitioner, supervisor of professional students and volunteers, researcher, scholar, consultant, administrator, faculty, clinical instructor, fieldwork educator, and educator of consumers, peers, and family.

(7) "Occupational therapy services" means services that may be provided to individuals, groups, and populations, when provided to treat an occupational therapy need, including the following:

- (a) evaluating, developing, improving, sustaining, or restoring skills in activities of daily living, work, or productive activities, including instrumental activities of daily living and play and leisure activities;
- (b) evaluating, developing, remediating, or restoring sensorimotor, cognitive, or psychosocial components of performance with considerations for cultural context and activity demands that affect performance;
- (c) designing, fabricating, applying, or training in the use of assistive technology, adaptive devices, seating and positioning, or temporary, orthoses and training in the use of orthoses and prostheses;
- (d) adapting environments and processes, including the application of ergonomic principles, to enhance performance and safety in daily life roles;

- (e) for the occupational therapist or occupational therapy assistant possessing advanced training, skill, and competency as demonstrated through criteria that shall be determined by the Department, applying physical agent modalities as an adjunct to or in preparation for engagement in occupations;
- (f) evaluating and providing intervention in collaboration with the client, family, caregiver, or others;
- (g) educating the client, family, caregiver, or others in carrying out appropriate nonskilled interventions;
- (h) consulting with groups, programs, organizations, or communities to provide population-based services;
- (i) assessing, recommending, and training in techniques to enhance functional mobility, including wheelchair management;
- (j) driver rehabilitation and community mobility;
- (k) management of feeding, eating, and swallowing to enable or enhance performance of these tasks;
- (l) low vision rehabilitation;
- (m) lymphedema and wound care management;
- (n) pain management; and
- (o) care coordination, case management, and transition services.

(8) (Blank).

(9) "Address of record" means the designated address recorded by the Department in the applicant's or licensee's application file or license file as maintained by the Department's licensure maintenance unit. It is the duty of the applicant or licensee to inform the Department of any change of address, and those changes must be made either through the Department's website or by contacting the Department.

**HISTORY:**

Source: P.A. 85-1209; 88-424, § 2; 92-297, § 5; 92-366, § 5; 92-651, § 54; 93-461, § 10; 98-264, § 10.

**NOTES:**

NOTE.

This section was Ill.Rev.Stat., Ch. 111, para. 3702.

Section 997 of P.A. 92-651 is a no acceleration or delay provision, and Section 998 is a no revival or extension provision.

#### EFFECT OF AMENDMENTS.

The 2013 amendment by P.A. 98-264, effective December 31, 2013, substituted "Department of Financial and Professional Regulation" for "Department of Professional Regulation" in (1); rewrote (2), which formerly read: "'Director' means the Director of Professional Regulation"; substituted "Secretary" for "Director" in (3); deleted the former second sentence of (5), which read: "Such program may include training in activities of daily living, the use of therapeutic activity including task oriented activity to enhance functional performance, and guidance in the selection and use of adaptive equipment"; rewrote the introductory language of (6); added "modification or" to the beginning of (6)(b); in (6)(d), inserted "and wellness" and "including self-management strategies"; inserted "fieldwork educator" in the second paragraph of (6); rewrote (7); deleted the text of subsection (8); and added (9).

The 2001 amendment by P.A. 92-297, effective January 1, 2002, rewrote subdivision (6) to the extent that a detailed comparison would be impracticable, and added subdivisions (7) and (8).

The 2001 amendment by P.A. 92-366, effective January 1, 2002, in the next-to-last sentence of subdivision (6) inserted "or optometrist" and "optometrist".

The 2002 amendment by P.A. 92-651, effective July 11, 2002, combined the amendments by P.A. 92-297 and P.A. 92-366; and made a typographical correction.

The 2003 amendment by P.A. 93-461, effective August 8, 2003, rewrote the section to the extent that a detailed comparison would be impracticable.

## KRS § 310.200 (2013)

### **310.200. Duty of treating dietitian or nutritionist utilizing telehealth to ensure patient's informed consent and maintain confidentiality -- Board to promulgate administrative regulations -- Definition of "telehealth".**

(1) A treating dietitian or nutritionist who provides or facilitates the use of telehealth shall ensure:

(a) That the informed consent of the patient, or another appropriate person with authority to make the health care treatment decision for the patient, is obtained before services are provided through telehealth; and

(b) That the confidentiality of the patient's medical information is maintained as required by this chapter and other applicable law. At a minimum, confidentiality shall be maintained through appropriate processes, practices, and technology as designated by the board and that conform to applicable federal law.

(2) The board shall promulgate administrative regulations in accordance with KRS Chapter 13A to implement this section and as necessary to:

(a) Prevent abuse and fraud through the use of telehealth services;

(b) Prevent fee-splitting through the use of telehealth services; and

(c) Utilize telehealth in the provision of dietitian and nutrition services and in the provision of continuing education.

(3) For purposes of this section, "telehealth" means the use of interactive audio, video, or other electronic media to deliver health care. It includes the use of electronic media for diagnosis, consultation, treatment, transfer of health or medical data, and continuing education.

**HISTORY:** (Enact. Acts [2000, ch. 376, § 10](#), effective July 14, 2000.)

*KRS § 311.550*

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TITLE XXVI Occupations and Professions  
CHAPTER 311 Physicians, Osteopaths, Podiatrists, and Related Medical Practitioners  
Practice of Medicine and Osteopathy

KRS § 311.550 (2013)

**311.550. Definitions for KRS 311.530 to 311.620 and KRS 311.990(4) to (6).**

As used in KRS 311.530 to 311.620 and KRS 311.990(4) to (6):

- (1) "Board" means the State Board of Medical Licensure;
- (2) "President" means the president of the State Board of Medical Licensure;
- (3) "Secretary" means the secretary of the State Board of Medical Licensure;
- (4) "Executive director" means the executive director of the State Board of Medical Licensure or any assistant executive directors appointed by the board;
- (5) "General counsel" means the general counsel of the State Board of Medical Licensure or any assistant general counsel appointed by the board;
- (6) "Regular license" means a license to practice medicine or osteopathy at any place in this state;
- (7) "Limited license" means a license to practice medicine or osteopathy in a specific institution or locale to the extent indicated in the license;

**(8)** "Temporary permit" means a permit issued to a person who has applied for a regular license, and who appears from verifiable information in the application to the executive director to be qualified and eligible therefor;

**(9)** "Emergency permit" means a permit issued to a physician currently licensed in another state, authorizing the physician to practice in this state for the duration of a specific medical emergency, not to exceed thirty (30) days;

**(10)** Except as provided in subsection (11) of this section, the "practice of medicine or osteopathy" means the diagnosis, treatment, or correction of any and all human conditions, ailments, diseases, injuries, or infirmities by any and all means, methods, devices, or instrumentalities;

**(11)** The "practice of medicine or osteopathy" does not include the practice of Christian Science, the domestic administration of family remedies, the rendering of first aid or medical assistance in an emergency in the absence of a person licensed to practice medicine or osteopathy under the provisions of this chapter, the use of automatic external defibrillators in accordance with the provisions of KRS 311.665 to 311.669, the practice of podiatry as defined in KRS 311.380, the practice of a midlevel health care practitioner as defined in KRS 216.900, the practice of dentistry as defined in KRS 313.010, the practice of optometry as defined in KRS 320.210, the practice of chiropractic as defined in subsection (2) of KRS 312.015, the practice as a nurse as defined in KRS 314.011, the practice of physical therapy as defined in KRS 327.010, the performance of duties for which they have been trained by paramedics licensed under KRS Chapter 311A, first responders, or emergency medical technicians certified under Chapter 311A, the practice of pharmacy by persons licensed and registered under KRS 315.050, the sale of drugs, nostrums, patented or proprietary medicines, trusses, supports, spectacles, eyeglasses, lenses, instruments, apparatus, or mechanisms that are intended, advertised, or represented as being for the treatment, correction, cure, or relief of any human ailment, disease, injury, infirmity, or condition, in regular mercantile establishments, or the practice of midwifery by women. KRS 311.530 to 311.620 shall not be construed as repealing the authority conferred on the Cabinet for Health and Family Services by KRS Chapter 211 to provide for the instruction, examination, licensing, and registration of all midwives through county health officers;

**(12)** "Physician" means a doctor of medicine or a doctor of osteopathy;

**(13)** "Grievance" means any allegation in whatever form alleging misconduct by a physician;

**(14)** "Charge" means a specific allegation alleging a violation of a specified provision of this chapter;

**(15)** "Complaint" means a formal administrative pleading that sets forth charges against a physician and commences a formal disciplinary proceeding;

(16) As used in KRS 311.595(4), "crimes involving moral turpitude" shall mean those crimes which have dishonesty as a fundamental and necessary element, including but not limited to crimes involving theft, embezzlement, false swearing, perjury, fraud, or misrepresentation;

(17) "**Telehealth**" means the use of interactive audio, video, or other electronic media to deliver health care. It includes the use of electronic media for diagnosis, consultation, treatment, transfer of medical data, and medical education;

(18) "Order" means a direction of the board or its panels made or entered in writing that determines some point or directs some step in the proceeding and is not included in the final order;

(19) "Agreed order" means a written document that includes but is not limited to stipulations of fact or stipulated conclusions of law that finally resolves a grievance, a complaint, or a show cause order issued informally without expectation of further formal proceedings in accordance with KRS 311.591(6);

(20) "Final order" means an order issued by the hearing panel that imposes one (1) or more disciplinary sanctions authorized by this chapter;

(21) "Letter of agreement" means a written document that informally resolves a grievance, a complaint, or a show cause order and is confidential in accordance with KRS 311.619;

(22) "Letter of concern" means an advisory letter to notify a physician that, although there is insufficient evidence to support disciplinary action, the board believes the physician should modify or eliminate certain practices and that the continuation of those practices may result in action against the physician's license;

(23) "Motion to revoke probation" means a pleading filed by the board alleging that the licensee has violated a term or condition of probation and that fixes a date and time for a revocation hearing;

(24) "Revocation hearing" means a hearing conducted in accordance with KRS Chapter 13B to determine whether the licensee has violated a term or condition of probation;

(25) "Chronic or persistent alcoholic" means an individual who is suffering from a medically diagnosable disease characterized by chronic, habitual, or periodic consumption of alcoholic beverages resulting in the interference with the individual's social or economic functions in the community or the loss of powers of self-control regarding the use of alcoholic beverages;

(26) "Addicted to a controlled substance" means an individual who is suffering from a medically diagnosable disease characterized by chronic, habitual, or periodic use of any narcotic drug or controlled substance resulting

in the interference with the individual's social or economic functions in the community or the loss of powers of self-control regarding the use of any narcotic drug or controlled substance;

(27) "Provisional permit" means a temporary permit issued to a licensee engaged in the active practice of medicine within this Commonwealth who has admitted to violating any provision of KRS 311.595 that permits the licensee to continue the practice of medicine until the board issues a final order on the registration or reregistration of the licensee;

(28) "Fellowship training license" means a license to practice medicine or osteopathy in a fellowship training program as specified by the license; and

(29) "Special faculty license" means a license to practice medicine that is limited to the extent that this practice is incidental to a necessary part of the practitioner's academic appointment at an accredited medical school program or osteopathic school program and any affiliated institution for which the medical school or osteopathic school has assumed direct responsibility.

**HISTORY:** (Enact. Acts 1952, ch. 150, § 1; 1958, ch. 126, § 29; 1968, ch. 152, § 146; 1972, ch. 218, § 5; 1974, ch. 74, Art. VI, § 90(9); 1974, ch. 331, § 1; 1978, ch. 107, § 1, effective June 17, 1978; 1980, ch. 188, § 251, effective July 15, 1980; 1984, ch. 251, § 1, effective July 13, 1984; 1986, ch. 302, § 5, effective July 15, 1986; 1990, ch. 482, § 11, effective July 13, 1990; 1998, ch. 228, § 1, effective July 15, 1998; 1998, ch. 426, § 537, effective July 15, 1998; 2000, ch. 343, § 18, effective July 14, 2000; 2000, ch. 376, § 8, effective July 14, 2000; 2002, ch. 130, § 4, effective July 15, 2002; 2002, ch. 211, § 35, effective July 15, 2002; 2004, ch. 35, § 1, effective July 13, 2004; 2005, ch. 99, § 585, effective June 20, 2005; 2006, ch. 175, § 1, effective July 12, 2006.)

**NOTES: Kentucky Law Journal.**

Smith, Medical and Psychotherapy Privileges and Confidentiality: On Giving With One Hand and Removing With the Other, 75 Ky. L.J. 473 (1986-87).

**Opinions of Attorney General.**

"Naturopathy" which is defined as "a system of therapeutics in which neither surgical nor medicinal agents are used, dependence being placed only on natural non-medicinal forces" cannot be practiced in this state unless the person doing so has a license to practice medicine or osteopathy issued under KRS Ch. 311 or is doing such work as a chiropractor licensed under KRS Ch. 312 or is practicing as a physical therapist licensed under KRS Ch. 327 or has some other state license relating to a limited field of healing which would authorize the application of the principles of naturopathy. OAG 63-443.

Under subsection (7) (now subsection (11)) of this section, arterial punctures and intubations do constitute the practice of medicine and hence cannot be performed by respiratory or inhalation therapy technicians except under the direction and supervision of a physician. OAG 72-183.

There is no statutory definition (or recognition) of "physician assistants," and Kentucky does not recognize that type of medical health provider. OAG 79-97. (Physician assistants are now recognized and licensed under KRS 311.840 to 311.862.)

A medical examination required by a regulation promulgated pursuant to subdivision (5) (now subdivision 1(g)) of KRS 156.160 in order to determine a high school student's eligibility for interscholastic athletics could not be performed by a chiropractor, since another regulation required a medical physician's examination and a chiropractor is not a "physician" under the terms of subsection (10) (now (12)) of this section. OAG 81-335.

Only a doctor of medicine or doctor of osteopathy duly licensed pursuant to KRS Ch. 311 is competent to certify the existence of a handicap pursuant to KRS 189.456(3)(c). OAG 82-130.

There is no conflict between the midwifery statute, KRS 211.180(4) (now KRS 211.180(1)(f)), and the practice of medicine, because the Medical Practice Act itself in subsection (9) (now subsection (11)) of this section excludes midwifery from being considered the practice of medicine. OAG 82-361.

#### KRS § 311.5975 (2013)

#### **311.5975. Duty of treating physician utilizing telehealth to insure patient's informed consent and maintain confidentiality -- Board to promulgate administrative regulations.**

(1) A treating physician who provides or facilitates the use of telehealth shall ensure:

(a) That the informed consent of the patient, or another appropriate person with authority to make the health care treatment decision for the patient, is obtained before services are provided through telehealth; and

(b) That the confidentiality of the patient's medical information is maintained as required by this chapter and other applicable law. At a minimum, confidentiality shall be maintained through appropriate processes, practices, and technology as designated by the board and that conform to applicable federal law.

(2) The board shall promulgate administrative regulations in accordance with KRS Chapter 13A to implement this section and as necessary to:

- (a) Prevent abuse and fraud through the use of telehealth services;
- (b) Prevent fee-splitting through the use of telehealth services; and
- (c) Utilize telehealth in the provision of medical services and in the provision of continuing medical education.

**HISTORY:** (Enact. Acts [2000, ch. 376, § 9](#), effective July 14, 2000.)

TITLE XXVI Occupations and Professions  
CHAPTER 312 Chiropractors

KRS § 312.220 (2013)

**312.220. Duty of treating chiropractor utilizing telehealth to ensure patient's informed consent and maintain confidentiality -- Board to promulgate administrative regulations -- Definition of "telehealth".**

(1) A treating chiropractor who provides or facilitates the use of telehealth shall ensure:

- (a) That the informed consent of the patient, or another appropriate person with authority to make the health care treatment decision for the patient, is obtained before services are provided through telehealth; and
- (b) That the confidentiality of the patient's medical information is maintained as required by this chapter and other applicable law. At a minimum, confidentiality shall be maintained through appropriate processes, practices, and technology as designated by the board and that conform to applicable federal law.

(2) The board shall promulgate administrative regulations in accordance with KRS Chapter 13A to implement this section and as necessary to:

- (a) Prevent abuse and fraud through the use of telehealth services;
- (b) Prevent fee-splitting through the use of telehealth services; and
- (c) Utilize telehealth in the provision of chiropractic services and in the provision of continuing education.

(3) For purposes of this section, "telehealth" means the use of interactive audio, video, or other electronic media to deliver health care. It includes the use of electronic media for diagnosis, consultation, treatment, transfer of health or medical data, and continuing education.

**HISTORY:** (Enact. Acts [2000, ch. 376, § 11](#), effective July 14, 2000.)

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CHAPTER 313 Dentists and Dental Specialists

Practice of Profession

KRS § 313.060 (2013)

313.060. Administrative regulations governing minimal requirements for documentation, oath for disease control compliance, sedation of patients, and compliance with federal statutes and regulations -- Death or incapacity of dentist -- Telehealth -- Continuing education.

(1) The board shall promulgate administrative regulations in accordance with KRS Chapter 13A relating to dental practices which shall include minimal requirements for documentation, Centers for Disease Control compliance, conscious sedation of patients, compliance with federal controlled substances regulations, and any applicable federal statute or regulation.

(2) Any person practicing or offering to practice dentistry or dental surgery shall practice under his or her own name or the name of a deceased or incapacitated dentist for whom the person practicing dentistry has contracted to perform continuing operations.

(3) No person shall conduct a dental office in his or her name nor advertise his or her name in connection with any dental office unless he or she personally performs services as a dentist or dental surgeon in such office or personally supervises such services as are performed in such office during a portion of the time such office is operated by him or her only, and shall not use his or her name in connection with that of any other dentist, except as provided for deceased or incapacitated dentists in subsection (4) of this section.

(4) The executor or administrator of a deceased dentist's estate, or the legal guardian or authorized representative of a dentist who has become incapacitated, may contract with another dentist or dentists to continue the operations of the deceased or incapacitated dentist's practice if the practice of the deceased or incapacitated dentist is a:

(a) Sole proprietorship;

(b) Corporation in which the deceased or incapacitated dentist is the sole shareholder; or

- (c) Limited liability company in which the deceased or incapacitated dentist is the sole member.
- (5) Contracts to continue the operations of a deceased or incapacitated dentist's practice may extend until the practice is sold.
- (6) Prior to contracting with another dentist or dentists to continue operations of a deceased or incapacitated dentist's practice, the executor, administrator, guardian, or authorized representative shall file a notification of intent to contract for continuation of practice with the board on a form prescribed by the board. The notification shall include the following information:
- (a) The name and license number of the deceased or incapacitated dentist;
  - (b) The name and address of the dental practice;
  - (c) The name, address, and tax identification number of the estate;
  - (d) The name and license number of each dentist who will provide services in the dental practice;
  - (e) An affirmation, under penalty of perjury, that the information provided is true and correct and that the executor, administrator, guardian, or authorized representative understands that any interference by the executor, administrator, guardian, or authorized representative, or any agent or assignee of the executor, administrator, guardian, or authorized representative, with the contracting dentist's or dentists' practice of dentistry or professional judgment or any other violation of this chapter is grounds for an immediate termination of the operations of the dental practice; and
  - (f) Any other information the board deems necessary for the administration of this chapter.
- (7) Within thirty (30) days after the death or incapacitation of a dentist, the executor, administrator, guardian, or authorized representative shall send notification of the death or incapacitation by mail to the last known address of each patient of record that has received treatment by the deceased or incapacitated dentist within the previous twelve (12) months, with an explanation of how copies of the practitioner's records may be obtained. This notice may also contain any other relevant information concerning the continuation of dental practice.
- (8) A treating dentist who provides or facilitates the use of **telehealth** shall ensure:
- (a) That the informed consent of the patient, or another appropriate person with authority to make the health care treatment decision for the patient, is obtained before services are provided through **telehealth**; and
  - (b) That the confidentiality of the patient's medical information is maintained as required by this chapter and other applicable law. At a minimum, confidentiality shall be maintained through appropriate processes, practices, and technology as designated by the board and that conform to applicable federal law.
- (9) The board shall promulgate administrative regulations in accordance with KRS Chapter 13A to implement this section and as necessary to:

- (a) Prevent abuse and fraud through the use of **telehealth** services;
- (b) Prevent fee-splitting through the use of **telehealth** services; and
- (c) Utilize **telehealth** in the provision of dental services and in the provision of continuing education.

(10) A licensed dentist may delegate to a licensed dental hygienist the administration of block and infiltration anesthesia and nitrous oxide analgesia under the direct supervision of a dentist if the dental hygienist completes the following requirements and receives a certificate of verification from the board:

(a) Formal training from a dental or dental hygiene school accredited by the Commission on Dental Accreditation;

(b) A minimum of thirty-two (32) hours covering all of the following topics, including but not limited to anatomical considerations, basic injection technique, basic placement technique, nitrous oxide administration, recordkeeping, armamentarium exercise, local anesthesia and nitrous oxide, techniques of maxillary anesthesia, techniques of mandibular injections, partner injections and partner administration of nitrous oxide, neurophysiology, pharmacology of local anesthetics and nitrous oxide, pharmacology of vasoconstrictors, physical and psychological evaluation, local and systemic complications, and contraindications;

(c) A minimum of two (2) hours of clinical education for nitrous oxide administration with successful completion of administration, monitoring, and removal of nitrous oxide on at least two (2) patients;

(d) A minimum of twelve (12) hours demonstrating mastery of local anesthesia applications and successful completion of at least three (3) injections each of all maxillary and mandibular injection sites; and

(e) A score that exceeds seventy-four percent (74%) on a written examination administered after coursework and clinical training.

(11) The board shall approve all continuing education courses and require them for individuals holding anesthesia registration for over one (1) year without practical application. The courses shall be developed and implemented by dental education institutions accredited by the Commission on Dental Accreditation.

**HISTORY:** (Repealed and reenact., Acts 2010, ch. 85, § 10, effective July 15, 2010.)

TITLE XXVI Occupations and Professions  
CHAPTER 314 Registered Nurses -- Practical Nurses  
Board of Nursing -- Advisory Council

KRS § 314.155 (2013)

**314.155. Duty of treating nurse utilizing telehealth to ensure patient's informed consent and maintain confidentiality -- Board to promulgate administrative regulations -- Definition of "telehealth".**

(1) A treating nurse who provides or facilitates the use of telehealth shall ensure:

(a) That the informed consent of the patient, or another appropriate person with authority to make the health care treatment decision for the patient, is obtained before services are provided through telehealth; and

(b) That the confidentiality of the patient's medical information is maintained as required by this chapter and other applicable law. At a minimum, confidentiality shall be maintained through appropriate processes, practices, and technology as designated by the board and that conform to applicable federal law.

(2) The board shall promulgate administrative regulations in accordance with KRS Chapter 13A to implement this section and as necessary to:

(a) Prevent abuse and fraud through the use of telehealth services;

(b) Prevent fee-splitting through the use of telehealth services; and

(c) Utilize telehealth in the provision of nursing services and in the provision of continuing education.

(3) For purposes of this section, "telehealth" means the use of interactive audio, video, or other electronic media to deliver health care. It includes the use of electronic media for diagnosis, consultation, treatment, transfer of health or medical data, and continuing education.

**HISTORY:** (Enact. Acts [2000, ch. 376, § 13](#), effective July 14, 2000.)

TITLE XXVI Occupations and Professions  
CHAPTER 314A Respiratory Care Practitioners

KRS § 314A.230 (2013)

**314A.230. Duty of treating respiratory care practitioner utilizing telehealth to ensure patient's informed consent and maintain confidentiality -- Board to promulgate administrative regulations -- Definition of "telehealth".**

(1) A treating respiratory care practitioner who provides or facilitates the use of telehealth shall ensure:

(a) That the informed consent of the patient, or another appropriate person with authority to make the health care treatment decision for the patient, is obtained before services are provided through telehealth; and

(b) That the confidentiality of the patient's medical information is maintained as required by this chapter and other applicable law. At a minimum, confidentiality shall be maintained through appropriate processes, practices, and technology as designated by the board and that conform to applicable federal law.

(2) The board shall promulgate administrative regulations in accordance with KRS Chapter 13A to implement this section and as necessary to:

(a) Prevent abuse and fraud through the use of telehealth services;

(b) Prevent fee-splitting through the use of telehealth services; and

(c) Utilize telehealth in the provision of respiratory care services and in the provision of continuing education.

(3) For purposes of this section, "telehealth" means the use of interactive audio, video, or other electronic media to deliver health care. It includes the use of electronic media for diagnosis, consultation, treatment, transfer of health or medical data, and continuing education.

**HISTORY:** (Enact. Acts [2000, ch. 376, § 14](#), effective July 14, 2000.)

*KRS § 315.310*

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TITLE XXVI Occupations and Professions

CHAPTER 315 Pharmacists and Pharmacies

KRS § 315.310 (2013)

**315.310. Duty of treating pharmacist utilizing telehealth to ensure patient's informed consent and maintain confidentiality -- Board to promulgate administrative regulations -- Definition of "telehealth".**

(1) A treating pharmacist who provides or facilitates the use of **telehealth** shall ensure:

(a) That the informed consent of the patient, or another appropriate person with authority to make the health care treatment decision for the patient, is obtained before services are provided through **telehealth**; and

(b) That the confidentiality of the patient's medical information is maintained as required by this chapter and other applicable law. At a minimum, confidentiality shall be maintained through appropriate processes, practices, and technology as designated by the board and that conform to applicable federal law.

(2) The board shall promulgate administrative regulations in accordance with KRS Chapter 13A to implement this section and as necessary to:

(a) Prevent abuse and fraud through the use of **telehealth** services;

(b) Prevent fee-splitting through the use of **telehealth** services; and

(c) Utilize **telehealth** in the provision of pharmacy services and in the provision of continuing education.

(3) For purposes of this section, "**telehealth**" means the use of interactive audio, video, or other electronic media to deliver health care. It includes the use of electronic media for diagnosis, consultation, treatment, transfer of health or medical data, and continuing education.

**HISTORY:** (Enact. Acts 2000, ch. 376, § 15, effective July 14, 2000.)

*KRS § 319.140*

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TITLE XXVI Occupations and Professions

CHAPTER 319 Psychologists

KRS § 319.140 (2013)

**319.140. Duty of treating psychologist utilizing telehealth to ensure patient's informed consent and maintain confidentiality -- Board to promulgate administrative regulations -- Definition of "telehealth".**

(1) A treating psychologist or psychological associate who provides or facilitates the use of **telehealth** shall ensure:

(a) That the informed consent of the patient, or another appropriate person with authority to make the health care treatment decision for the patient, is obtained before services are provided through **telehealth**; and

(b) That the confidentiality of the patient's medical information is maintained as required by this chapter and other applicable law. At a minimum, confidentiality shall be maintained through appropriate processes, practices, and technology as designated by the board and that conform to applicable federal law.

(2) The board shall promulgate administrative regulations in accordance with KRS Chapter 13A to implement this section and as necessary to:

(a) Prevent abuse and fraud through the use of **telehealth** services;

(b) Prevent fee-splitting through the use of **telehealth** services; and

(c) Utilize **telehealth** in the provision of psychological services and in the provision of continuing education.

(3) For purposes of this section, "**telehealth**" means the use of interactive audio, video, or other electronic media to deliver health care. It includes the use of electronic media for diagnosis, consultation, treatment, transfer of health or medical data, and continuing education.

**HISTORY:** (Enact. Acts 2000, ch. 376, § 16, effective July 14, 2000.)

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\*\*\* Current through the 2013 First Extraordinary Session \*\*\*  
\*\*\* Annotations current through October 4, 2013 \*\*\*

TITLE XXVI Occupations and Professions  
CHAPTER 319A Occupational Therapists

KRS § 319A.300 (2013)

**319A.300. Duty of treating occupational therapist utilizing telehealth to ensure patient's informed consent and maintain confidentiality -- Board to promulgate administrative regulations -- Definition of "telehealth".**

(1) A treating occupational therapist who provides or facilitates the use of **telehealth** shall ensure:

(a) That the informed consent of the patient, or another appropriate person with authority to make the health care treatment decision for the patient, is obtained before services are provided through **telehealth**; and

(b) That the confidentiality of the patient's medical information is maintained as required by this chapter and other applicable law. At a minimum, confidentiality shall be maintained through appropriate processes, practices, and technology as designated by the board and that conform to applicable federal law.

(2) The board shall promulgate administrative regulations in accordance with KRS Chapter 13A to implement this section and as necessary to:

(a) Prevent abuse and fraud through the use of **telehealth** services;

(b) Prevent fee-splitting through the use of **telehealth** services; and

(c) Utilize **telehealth** in the provision of occupational therapy services and in the provision of continuing education.

(3) For purposes of this section, "**telehealth**" means the use of interactive audio, video, or other electronic media to deliver health care. It includes the use of electronic media for diagnosis, consultation, treatment, transfer of health or medical data, and continuing education.

**HISTORY:** (Enact. Acts 2000, ch. 376, § 17, effective July 14, 2000.)

TITLE XXVI Occupations and Professions  
CHAPTER 319C Applied Behavior Analysts

KRS § 319C.140 (2013)

**319C.140. Patient's informed consent -- Confidentiality of medical information -- Administrative regulations governing telehealth services.**

(1) A treating behavior analyst or assistant behavior analyst who provides or facilitates the use of telehealth, shall ensure:

(a) That the informed consent of the patient, or another appropriate person with authority to make the health-care treatment decision for the patient, is obtained before services are provided through telehealth; and

(b) That the confidentiality of the patient's medical information is maintained as required by this chapter and other applicable law. At a minimum, confidentiality shall be maintained through appropriate processes, practices, and technology as designated by the board and that conform to applicable federal law.

(2) The board shall promulgate administrative regulations in accordance with KRS Chapter 13A to implement this section and as necessary to:

(a) Prevent abuse and fraud through the use of telehealth services;

(b) Prevent fee-splitting through the use of telehealth services; and

(c) Utilize telehealth in the provision of applied behavior analysis and in the provision of continuing education.

(3) For purposes of this section, "telehealth" means the use of interactive audio, video, or other electronic media to deliver health care. It includes the use of electronic media for diagnosis, consultation, treatment, transfer of health or medical data, and continuing education.

**HISTORY:** (Enact. Acts [2010, ch. 150, § 14](#), effective July 15, 2010.)

TITLE XXVI Occupations and Professions  
CHAPTER 320 Optometrists

KRS § 320.390 (2013)

**320.390. Duty of treating optometrist utilizing telehealth to ensure patient's informed consent and maintain confidentiality -- Board to promulgate administrative regulations -- Definition of "telehealth."**

(1) A treating optometrist who provides or facilitates the use of telehealth shall ensure:

(a) That the informed consent of the patient, or another appropriate person with authority to make the health care treatment decision for the patient, is obtained before services are provided through telehealth; and

(b) That the confidentiality of the patient's medical information is maintained as required by this chapter and other applicable law. At a minimum, confidentiality shall be maintained through appropriate processes, practices, and technology as designated by the board and that conform to applicable federal law.

(2) The board shall promulgate administrative regulations in accordance with KRS Chapter 13A to implement this section and as necessary to:

(a) Prevent abuse and fraud through the use of telehealth services;

(b) Prevent fee-splitting through the use of telehealth services; and

(c) Utilize telehealth in the provision of optometric services and in the provision of continuing education.

(3) For purposes of this section, "telehealth" means the use of interactive audio, video, or other electronic media to deliver health care. It includes the use of electronic media for diagnosis, consultation, treatment, transfer of health or medical data, and continuing education.

**HISTORY:** (Enact. Acts [2000, ch. 376, § 18](#), effective July 14, 2000.)

TITLE XXVI Occupations and Professions  
CHAPTER 327 Physical Therapists

KRS § 327.200 (2013)

**327.200. Duty of treating physical therapist utilizing telehealth to ensure patient's informed consent and maintain confidentiality -- Board to promulgate administrative regulations -- Definition of "telehealth".**

(1) A treating physical therapist who provides or facilitates the use of telehealth shall ensure:

(a) That the informed consent of the patient, or another appropriate person with authority to make the health care treatment decision for the patient, is obtained before services are provided through telehealth; and

(b) That the confidentiality of the patient's medical information is maintained as required by this chapter and other applicable law. At a minimum, confidentiality shall be maintained through appropriate processes, practices, and technology as designated by the board and that conform to applicable federal law.

(2) The board shall promulgate administrative regulations in accordance with KRS Chapter 13A to implement this section and as necessary to:

(a) Prevent abuse and fraud through the use of telehealth services;

(b) Prevent fee-splitting through the use of telehealth services; and

(c) Utilize telehealth in the provision of physical therapy and in the provision of continuing education.

(3) For purposes of this section, "telehealth" means the use of interactive audio, video, or other electronic media to deliver health care. It includes the use of electronic media for diagnosis, consultation, treatment, transfer of health or medical data, and continuing education.

**HISTORY:** (Enact. Acts [2000, ch. 376, § 19](#), effective July 14, 2000.)

TITLE XXVI Occupations and Professions  
CHAPTER 334A Speech-Language Pathologists and Audiologists

KRS § 334A.200 (2013)

**334A.200. Duty of treating speech-language pathologist or audiologist utilizing telehealth to ensure patient's informed consent and maintain confidentiality -- Board to promulgate administrative regulations -- Definition of "telehealth".**

(1) A treating speech-language pathologist or audiologist who provides or facilitates the use of telehealth shall ensure:

(a) That the informed consent of the patient, or another appropriate person with authority to make the health care treatment decision for the patient, is obtained before services are provided through telehealth; and

(b) That the confidentiality of the patient's medical information is maintained as required by this chapter and other applicable law. At a minimum, confidentiality shall be maintained through appropriate processes, practices, and technology as designated by the board and that conform to applicable federal law.

(2) The board shall promulgate administrative regulations in accordance with KRS Chapter 13A to implement this section and as necessary to:

(a) Prevent abuse and fraud through the use of telehealth services;

(b) Prevent fee-splitting through the use of telehealth services; and

(c) Utilize telehealth in the provision of speech-language pathology or audiology services and in the provision of continuing education.

(3) For purposes of this section, "telehealth" means the use of interactive audio, video, or other electronic media to deliver health care. It includes the use of electronic media for diagnosis, consultation, treatment, transfer of health or medical data, and continuing education.

**HISTORY:** (Enact. Acts [2000, ch. 376, § 22](#), effective July 14, 2000.)

TITLE XXVI Occupations and Professions  
CHAPTER 335 Social Workers and Professional Counselors  
Social Workers

KRS § 335.158 (2013)

**335.158. Duty of treating clinical social worker utilizing telehealth to ensure patient's informed consent and maintain confidentiality -- Board to promulgate administrative regulations -- Definition of "telehealth".**

(1) A treating clinical social worker who provides or facilitates the use of telehealth shall ensure:

(a) That the informed consent of the patient, or another appropriate person with authority to make the health care treatment decision for the patient, is obtained before services are provided through telehealth; and

(b) That the confidentiality of the patient's medical information is maintained as required by this chapter and other applicable law. At a minimum, confidentiality shall be maintained through appropriate processes, practices, and technology as designated by the board and that conform to applicable federal law.

(2) The board shall promulgate administrative regulations in accordance with KRS Chapter 13A to implement this section and as necessary to:

(a) Prevent abuse and fraud through the use of telehealth services;

(b) Prevent fee-splitting through the use of telehealth services; and

(c) Utilize telehealth in the provision of clinical social work services and in the provision of continuing education.

(3) For purposes of this section, "telehealth" means the use of interactive audio, video, or other electronic media to deliver health care. It includes the use of electronic media for diagnosis, consultation, treatment, transfer of health or medical data, and continuing education.

**HISTORY:** (Enact. Acts [2000, ch. 376, § 20](#), effective July 14, 2000.)

TITLE XXVI Occupations and Professions  
CHAPTER 335 Social Workers and Professional Counselors  
Marriage and Family Therapists

KRS § 335.380 (2013)

**335.380. Duty of treating marriage and family therapist utilizing telehealth to ensure patient's informed consent and maintain confidentiality -- Board to promulgate administrative regulations -- Definition of "telehealth".**

(1) A treating marriage and family therapist who provides or facilitates the use of telehealth shall ensure:

(a) That the informed consent of the patient, or another appropriate person with authority to make the health care treatment decision for the patient, is obtained before services are provided through telehealth; and

(b) That the confidentiality of the patient's medical information is maintained as required by this chapter and other applicable law. At a minimum, confidentiality shall be maintained through appropriate processes, practices, and technology as designated by the board and that conform to applicable federal law.

(2) The board shall promulgate administrative regulations in accordance with KRS Chapter 13A to implement this section and as necessary to:

(a) Prevent abuse and fraud through the use of telehealth services;

(b) Prevent fee-splitting through the use of telehealth services; and

(c) Utilize telehealth in the provision of marriage and family therapy services and in the provision of continuing education.

(3) For purposes of this section, "telehealth" means the use of interactive audio, video, or other electronic media to deliver health care. It includes the use of electronic media for diagnosis, consultation, treatment, transfer of health or medical data, and continuing education.

**HISTORY:** (Enact. Acts [2000, ch. 376, § 21](#), effective July 14, 2000.)

201 KAR 17:110

KENTUCKY ADMINISTRATIVE REGULATIONS

\*\*\* Administrative Regulations and Emergency Administrative \*\*\*  
\*\*\* Regulations Currently in Effect as of March 2014 \*\*\*

TITLE 201. GENERAL GOVERNMENT CABINET  
CHAPTER 17. BOARD OF SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY

201 KAR 17:110 (2014)

201 KAR 17:110. **Telehealth** and telepractice.

Section 1. Definitions. (1) "Client" means the person receiving the services of the speech-language pathologist or audiologist and the representative thereof if required by law.

(2) "**Telehealth**" is defined by KRS 334A.200(3).

(3) "Telepractice" means the practice of speech language pathology or audiology as defined by KRS 334A.020(4) and KRS 334.020(6) respectively provided by using communication technology that is two (2) way, interactive, and simultaneously audio and video.

Section 2. Client Requirements. A practitioner-patient relationship shall not commence via **telehealth**. An initial, in-person meeting for the practitioner and patient who prospectively utilize **telehealth** shall occur. A licensed health care practitioner may represent the licensee at the initial, in-person meeting. A licensee who uses **telehealth** to deliver speech language pathology or audiology services or who telepractices or the licensed healthcare practitioner representing the licensee shall, at the initial, in-person meeting with the client:

- (1) Make reasonable attempts to verify the identity of the client;
- (2) Obtain alternative means of contacting the client other than electronically;
- (3) Provide to the client alternative means of contacting the licensee other than electronically;
- (4) Document if the client has the necessary knowledge and skills to benefit from the type of telepractice provided by the licensee; and
- (5) Inform the client in writing about:
  - (a) The limitations of using technology in the provision of telepractice;
  - (b) Potential risks to confidentiality of information due to technology in the provision of telepractice;
  - (c) Potential risks of disruption in the use of telepractice;

- (d) When and how the licensee will respond to routine electronic messages;
- (e) In what circumstances the licensee will use alternative communications for emergency purposes;
- (f) Who else may have access to client communications with the licensee;
- (g) How communications can be directed to a specific licensee;
- (h) How the licensee stores electronic communications from the client; and
- (i) That the licensee may elect to discontinue the provision of services through **telehealth**.

Section 3. Competence, Limits on Practice, Maintenance, and Retention of Records. A licensee using **telehealth** to deliver services or who telepractices shall:

- (1) Limit the telepractice to the licensee's scope of practice;
- (2) Maintain continuing competency or associate with a group who has experience in **telehealth** delivery of care;
- (3) Use methods for protecting health information which shall include authentication and encryption technology;
- (4) Limit access to that information to only those necessary for the provision of services or those required by law; and
- (5) Ensure that confidential communications obtained and stored electronically cannot be recovered and accessed by unauthorized persons when the licensee disposes of electronic equipment and data.

Section 4. Compliance with Federal, State, and Local Law. (1) A licensee using **telehealth** to deliver speech language pathology and audiology services and telepractice shall comply with:

- (a) State law by being licensed to practice speech language pathology or audiology, whichever is being telepracticed, in the jurisdiction where the practitioner-patient relationship commenced; and
  - (b) Section 508 of the Rehabilitation Act, 29 U.S.C. 794(d), to make technology accessible to a client with disabilities.
- (2) If a person provides speech language pathology and audiology services via telepractice to a person physically located in Kentucky at the time the services are provided, that provider shall be licensed by the board.
  - (3) A person providing speech language pathology and audiology services via telepractice from a physical location in Kentucky shall be licensed by the board. This person may be subject to licensure requirements in

other states where the services are received by the client.

Section 5. Representation of Services and Code of Conduct. A licensee using **telehealth** to deliver services or who telepractices:

- (1) Shall not engage in false, misleading, or deceptive advertising of telepractice; and
- (2) Shall not split fees.

RELATES TO: KRS 334A.200

STATUTORY AUTHORITY: KRS 334A.200

39 Ky.R. 918; 1463; 1680; eff. 3-8-2013.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 334A.200 requires the Board of Speech Language Pathology and Audiology to promulgate administrative regulations to implement the use of **telehealth** services by speech-language pathologists and audiologists. This administrative regulation establishes requirements for the use of **telehealth** services.

*201 KAR 26:310*

KENTUCKY ADMINISTRATIVE REGULATIONS

\*\*\* Administrative Regulations and Emergency Administrative \*\*\*  
\*\*\* Regulations Currently in Effect as of March 2014 \*\*\*

TITLE 201. GENERAL GOVERNMENT CABINET  
CHAPTER 26. BOARD OF EXAMINERS OF PSYCHOLOGISTS

201 KAR 26:310 (2014)

201 KAR 26:310. **Telehealth** and telepsychology.

Section 1. Definitions. (1) "Client" is defined by 201 KAR 26:145, Section 2;

(2) "**Telehealth**" is defined by KRS 319.140(3);

(3) "Telepsychology" means "practice of psychology" as defined by KRS 319.010(7) between the psychologist and the patient:

(a) Provided using an electronic communication technology; or

(b) Two (2) way, interactive, simultaneous audio and video.

Section 2. Client Requirements. A credential holder using **telehealth** to deliver psychological services or who practices telepsychology shall, upon initial contact with the client:

- (1) Make reasonable attempts to verify the identity of the client;
- (2) Obtain alternative means of contacting the client other than electronically;
- (3) Provide to the client alternative means of contacting the credential holder other than electronically;
- (4) Document if the client has the necessary knowledge and skills to benefit from the type of telepsychology provided by the credential holder;
- (5) Use secure communications with clients, including encrypted text messages via e-mail or secure Web sites, and not use personal identifying information in non-secure communications;
- (6) Inform the client in writing about:
  - (a) The limitations of using technology in the provision of telepsychology;
  - (b) Potential risks to confidentiality of information due to technology in the provision of telepsychology;
  - (c) Potential risks of disruption in the use of telepsychology;
  - (d) When and how the credential holder will respond to routine electronic messages;
  - (e) In what circumstances the credential holder will use alternative communications for emergency purposes;
  - (f) Who else may have access to client communications with the credential holder;
  - (g) How communications can be directed to a specific credential holder;
  - (h) How the credential holder stores electronic communications from the client; and
  - (i) The reporting of clients required by 201 KAR 26:145, Section 7.

Section 3. Competence, Limits on Practice, Maintenance, and Retention of Records. A credential holder using **telehealth** to deliver psychological services or who practices telepsychology shall:

- (1) Limit the practice of telepsychology to the area of competence in which proficiency has been gained through education, training, and experience;
- (2) Maintain current competency in the practice of telepsychology through continuing education, consultation, or other procedures, in conformance with current standards of scientific and professional knowledge;

- (3) Document the client's presenting problem, purpose, or diagnosis;
- (4) Follow the record-keeping requirements of 201 KAR 26:145, Section 6; and
- (5) Ensure that confidential communications obtained and stored electronically cannot be recovered and accessed by unauthorized persons when the credential holder disposes of electronic equipment and data.

Section 4. Compliance with Federal, State, and Local Law. A credential holder using **telehealth** to deliver psychological services or who practices telepsychology shall comply with:

- (1) State law where the credential holder is credentialed and be licensed to practice psychology where the client is domiciled; and
- (2) Section 508 of the Rehabilitation Act, 29 U.S.C. 794(d), to make technology accessible to a client with disabilities;

Section 5. Representation of Services and Code of Conduct. A credential holder using **telehealth** to deliver psychological services or who practices telepsychology:

- (1) Shall not by or on behalf of the credential holder engage in false, misleading, or deceptive advertising of telepsychology;
- (2) Shall comply with 201 KAR 26:145.

RELATES TO: KRS 319.140, 29 U.S.C. 794(d)

STATUTORY AUTHORITY: KRS 319.032(2); KRS 319.140(2)

37 Ky.R. 1597; Am. 1987; eff. 3-4-2011.

**NOTES:**

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.140 requires a treating psychologist utilizing **telehealth** to ensure a patient's informed consent and to maintain confidentiality. This administrative regulation protects the health and safety of the citizens of Kentucky and establishes procedures for preventing abuse and fraud through the use of **telehealth**, prevents fee-splitting through the use of **telehealth**, and utilizes **telehealth** in the provision of psychological services and in the provision of continuing education.

201 KAR 33:070

KENTUCKY ADMINISTRATIVE REGULATIONS

\*\*\* Administrative Regulations and Emergency Administrative \*\*\*  
\*\*\* Regulations Currently in Effect as of March 2014 \*\*\*

TITLE 201. GENERAL GOVERNMENT CABINET  
CHAPTER 33. BOARD OF LICENSURE AND CERTIFICATION FOR DIETITIANS AND  
NUTRITIONISTS

201 KAR 33:070 (2014)

201 KAR 33:070. **Telehealth** and telepractice.

- Section 1. Definitions. (1) "Client" means the person receiving the services of the dietitian or nutritionist.
- (2) "Educator" means a presenter speaking to a group of individuals on a topic generally without a focus on the specific needs of any particular individual.
- (3) "Licensed healthcare practitioner" means a medical doctor, registered nurse, practice nurse, nurse practitioner, advanced practice registered nurse, physician's assistant, chiropractor, certified diabetes educator, pharmacist, speech-language pathologist, registered dietitian, certified nutritionist, podiatrist, audiologist, or psychologist licensed in the jurisdiction where they are physically located.
- (4) "Practitioner" means a licensed dietitian or certified nutritionist.
- (5) "**Telehealth**" is defined by KRS 310.200(3).
- (6) "Telepractice" means the practice of dietetics or nutrition as defined by KRS 310.005(2) and provided by using communication technology that is two-way, interactive, simultaneous audio and video.

Section 2. Client Requirements. A practitioner-patient relationship shall not commence via **telehealth**. An initial, in-person meeting for the practitioner and patient who prospectively utilize **telehealth** shall occur in order to determine whether the potential or current client is a candidate to receive services via **telehealth**. A licensed health care practitioner may represent the practitioner at the initial, in-person meeting. A practitioner who uses **telehealth** to deliver dietetics or nutrition services shall, at the initial, in-person meeting with the client:

- (1) Make reasonable attempts to verify the identity of the client;
- (2) Obtain alternative means of contacting the client other than electronically;
- (3) Provide to the client alternative means of contacting the licensee other than electronically;

(4) Document if the client has the necessary knowledge and skills to benefit from the type of telepractice provided by the licensee; and

(5) Inform the client in writing about:

(a) The limitations of using technology in the provision of telepractice;

(b) Potential risks to confidentiality of information due to technology in the provision of telepractice;

(c) Potential risks of disruption in the use of telepractice;

(d) When and how the practitioner will respond to routine electronic messages;

(e) In what circumstances the practitioner will use alternative communications for emergency purposes;

(f) Who else may have access to client communications with the practitioner;

(g) How communications can be directed to a specific licensee;

(h) How the practitioner stores electronic communications from the client; and

(i) That the practitioner may elect to discontinue the provision of services through **telehealth**.

Section 3. Competence, Limits on Practice, Maintenance, and Retention of Records. A practitioner using **telehealth** to deliver services or who telepractices shall:

(1) Limit the telepractice to the area of competence in which proficiency has been gained through education, training, and experience;

(2) Maintain current competency in telepractice through continuing education, consultation, or other procedures, in conformance with current standards of scientific and professional knowledge;

(3) Document the client's presenting problem, purpose, or diagnosis;

(4) Use secure communications with clients, including encrypted text messages, via e-mail or secure Web sites, and not use personal identifying information in non-secure communications; and

(5) Ensure that confidential communications obtained and stored electronically cannot be recovered and accessed by unauthorized persons when the licensee disposes of electronic equipment and data.

Section 4. Compliance with Federal, State, and Local Law.

(1) A practitioner using **telehealth** to deliver dietetics or nutrition services shall comply with Section 508 of the Rehabilitation Act, 29 U.S.C. 794(d), to make technology accessible to a client with disabilities.

(2) A person providing dietetic or nutrition services for which an exception to licensure does not apply or who represents himself or herself as a dietitian, licensed dietitian, or certified nutritionist via **telehealth** to a person who, at the time the services are provided or the representation is made, is physically located in Kentucky shall be licensed by the board.

(3) A person providing dietetic or nutrition services for which an exception to licensure does not apply or who represents himself or herself as a dietitian, licensed dietitian, or certified nutritionist via **telehealth** from a physical location in Kentucky shall be licensed by the board. This person may be subject to licensure requirements in other states where the services are received by the client.

(4) No provision of this administrative regulation shall restrict the ability of educators to present on topics related to dietetics and nutrition.

Section 5. Representation of Services and Code of Conduct. A licensee using **telehealth** to deliver services or who telepractices shall not:

(1) Engage in false, misleading, or deceptive advertising of telepractice; and

(2) Split fees.

AVA EAVES, Board Chair

APPROVED BY AGENCY: January 29, 2014

FILED WITH LRC: February 13, 2014 at 3 p.m.

*La. R.S. 37:1262*

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\*\*\* Annotations are current through March 14, 2014 \*\*\*

LOUISIANA REVISED STATUTES  
TITLE 37. PROFESSIONS AND OCCUPATIONS  
CHAPTER 15. PHYSICIANS, SURGEONS, AND MIDWIVES  
PART 1. MEDICINE, SURGERY, MIDWIFERY

*La. R.S. 37:1262 (2013)*

§ 37:1262. Definition

As used in this Part the following words and phrases shall have the meanings ascribed to them:

(1) "Board" means the Louisiana State Board of Medical Examiners.

(2) "Physician" means a natural person who is the holder of an allopathic (M.D.) degree or an osteopathic (D.O.) degree from a medical college in good standing with the board who holds a license, permit, certification, or registration issued by the board to engage in the practice of medicine in the state of Louisiana. Doctors of allopathic medicine (M.D.) and doctors of osteopathic medicine (D.O.) shall be accorded equal professional status and unrestricted privileges in the practice of medicine. The use of the term "physician" in this Part shall not be construed to prohibit the use of such term by other health care providers specifically authorized to use such term by any other lawful provision of this state.

(3) "Practice of medicine", whether allopathic or osteopathic, means the holding out of one's self to the public as being engaged in the business of, or the actual engagement in, the diagnosing, treating, curing, or relieving of any bodily or mental disease, condition, infirmity, deformity, defect, ailment, or injury in any human being, other than himself, whether by the use of any drug, instrument or force, whether physical or psychic, or of what other nature, or any other agency or means; or the examining, either gratuitously or for compensation, of any person or material from any person for such purpose whether such drug, instrument, force, or other agency or means is applied to or used by the patient or by another person; or the attending of a woman in childbirth without the aid of a licensed physician or midwife.

(4) "**Telemedicine**" means the practice of health care delivery, diagnosis, consultation, treatment, and transfer of medical data using interactive telecommunication technology that enables a health care practitioner and a patient at two locations separated by distance to interact via two-way video and audio transmissions simultaneously. Neither a telephone conversation nor an electronic mail message between a health care practitioner and patient, or a true consultation as may be defined by rules promulgated by the board pursuant to the Administrative Procedure Act, constitutes **telemedicine** for the purposes of this Part.

## **NOTES:**

### **LexisNexis 50 State Surveys, Legislation & Regulations**

#### Physician Licensing & Continuing Education

**HISTORY:** Acts 1975, No. 350, § 1; Acts 1985, No. 302, § 2; Acts 2001, No. 17, § 1, eff. May 17, 2001; Acts 2008, No. 850, § 1.

## **NOTES:**

LexisNexis (R) Notes:

Amendment Notes

LSLI 2008 Amendments.

In accordance with the revision authority set forth in R.S. 24:201 et seq., the Louisiana State Law Institute alphabetized the provisions of R.S. 37:1262, as amended by Acts 2008, No. 850, § 1.

2008 Amendments

Acts 2008, No. 850, § 1, added (4).

2001 Amendments.

Acts 2001, No. 17, § 1, effective May 17, 2001, in (1), substituted "'The practice of medicine', whether allopathic or osteopathic" for "'The practice of medicine, surgery, or midwifery'" near the beginning of the paragraph, and deleted "surgeon" preceding "or midwife" at the end of the paragraph; rewrote (2), which read: "The practice of 'osteopathy' means the holding out of one's self to the public as being engaged in the business of, or the actual engagement in, treatment of disease, infirmity, deformity, defect, ailment, or injury of a human being, by manipulations applied to the nerve centers, bones, muscles, or ligaments, without the use of drugs or medicine, except antiseptics and anodynes locally applied."

Quoted Statutory Material

Acts 2008, No. 850, § 2, provides that "The provisions of this Act shall become effective upon the final adoption of the necessary rules and regulations promulgated by the Louisiana State Board of Medical Examiners."

Utah Telehealth Study - Phase 2 Report

Prepared by Pilot Healthcare Strategies for the Utah Division of Occupational and Professional Licensing

May 2, 2014



## RELATED STATUTES & RULES

### Louisiana Law:

- Definitions, see La. R.S. 37:1333.
- Disclosure, see La. R.S. 37:1742.1.
- Definitions, see La. R.S. 37:2703.
- Definitions, see La. R.S. 40:1299.182.

### *LAC 46:XLV.7501*

## LOUISIANA ADMINISTRATIVE CODE

\*\*\* Last amended December 2013, compiled December 2013 \*\*\*

TITLE 46 PROFESSIONAL AND OCCUPATIONAL STANDARDS  
PART XLV MEDICAL PROFESSIONS  
SUBPART 3 PRACTICE  
CHAPTER 75 TELEMEDICINE  
SUBCHAPTER A GENERAL PROVISIONS

LAC 46:XLV.7501 (2013)

### § 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).

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LOUISIANA ADMINISTRATIVE CODE

\*\*\* Last amended December 2013, compiled December 2013 \*\*\*

TITLE 46 PROFESSIONAL AND OCCUPATIONAL STANDARDS  
PART XLV MEDICAL PROFESSIONS  
SUBPART 3 PRACTICE  
CHAPTER 75 **TELEMEDICINE**  
SUBCHAPTER A GENERAL PROVISIONS

LAC 46:XLV.7503 (2013)

§ 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).

*LAC 46:XLV.7505*

LOUISIANA ADMINISTRATIVE CODE

\*\*\* Last amended December 2013, compiled December 2013 \*\*\*

TITLE 46 PROFESSIONAL AND OCCUPATIONAL STANDARDS  
PART XLV MEDICAL PROFESSIONS  
SUBPART 3 PRACTICE  
CHAPTER 75 TELEMEDICINE  
SUBCHAPTER A GENERAL PROVISIONS

LAC 46:XLV.7505 (2013)

§ 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).

LAC 46:XLV.7507

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TITLE 46 PROFESSIONAL AND OCCUPATIONAL STANDARDS  
PART XLV MEDICAL PROFESSIONS  
SUBPART 3 PRACTICE  
CHAPTER 75 TELEMEDICINE  
SUBCHAPTER A GENERAL PROVISIONS

LAC 46:XLV.7507 (2013)

§ 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).

*LAC 46:XLV.7509*

LOUISIANA ADMINISTRATIVE CODE

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TITLE 46 PROFESSIONAL AND OCCUPATIONAL STANDARDS  
PART XLV MEDICAL PROFESSIONS  
SUBPART 3 PRACTICE  
CHAPTER 75 **TELEMEDICINE**  
SUBCHAPTER A GENERAL PROVISIONS

LAC 46:XLV.7509 (2013)

§ 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).

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*LAC 46:XLV.7511*

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PART XLV MEDICAL PROFESSIONS  
SUBPART 3 PRACTICE  
CHAPTER 75 TELEMEDICINE  
SUBCHAPTER A GENERAL PROVISIONS

LAC 46:XLV.7511 (2013)

§ 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).

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\*\*\* Last amended December 2013, compiled December 2013 \*\*\*

TITLE 46 PROFESSIONAL AND OCCUPATIONAL STANDARDS  
PART XLV MEDICAL PROFESSIONS  
SUBPART 3 PRACTICE  
CHAPTER 75 TELEMEDICINE  
SUBCHAPTER A GENERAL PROVISIONS

LAC 46:XLV.7517 (2013)

§ 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).

*LAC 46:XLV.7519*

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TITLE 46 PROFESSIONAL AND OCCUPATIONAL STANDARDS  
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SUBCHAPTER A GENERAL PROVISIONS

LAC 46:XLV.7519 (2013)

§ 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).

*LAC 46:LXXV.130*

LOUISIANA ADMINISTRATIVE CODE

\*\*\* Last amended April 2013, compiled April 2013 \*\*\*

TITLE 46 PROFESSIONAL AND OCCUPATIONAL STANDARDS  
PART LXXV SPEECH PATHOLOGY AND AUDIOLOGY  
CHAPTER 1 GENERAL RULES

LAC 46:LXXV.130 (2013)

§ 130. Telepractice

A. Licensed audiologists and speech-language pathologists can provide telehealth services through telephonic,

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electronic, or other means including diagnosis, consultation, treatment, transfer of healthcare information and continuing education. Telepractice regardless of where the service is rendered or delivered constitutes the practice of speech-language pathology or audiology and shall require Louisiana licensure.

AUTHORITY NOTE: Promulgated in accordance with [R.S. 37:2650](#) et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners for Speech-Language Pathology and Audiology, [LR 39:1044](#) (April 2013).

*LAC 46:LXXV.701*

LOUISIANA ADMINISTRATIVE CODE

\*\*\* Last amended April 2013, compiled April 2013 \*\*\*

TITLE 46 PROFESSIONAL AND OCCUPATIONAL STANDARDS  
PART LXXV SPEECH PATHOLOGY AND AUDIOLOGY  
CHAPTER 7 CODE OF ETHICS

LAC 46:LXXV.701 (2013)

§ 701. Preamble

A. The code of ethics of the Louisiana Board of Examiners for Speech-Language Pathology and Audiology specifies professional standards that allow for the proper discharge of professionals' responsibilities to those served and that protect the integrity of the profession.

B. Any action that violates the spirit and purpose of this code shall be considered unethical. Failure to specify any particular responsibility or practice in this code of ethics shall not be construed as denial of the existence of such responsibilities or practices.

C. Principles of ethics form the underlying moral basis for the code of ethics. Individuals shall observe these principles as affirmative obligations under all conditions of professional activity.

D. Rules of ethics are specific statements of minimally acceptable professional conduct or of prohibitions and are applicable to all individuals.

E. Rules of Ethics for Audiology, Provisional Audiology, Speech-Language Pathology, Provisional Speech-Language Pathology, and Restricted Speech-Language Pathology Licensees

1. Principle of Ethics I. Licensees shall honor their responsibility to hold paramount the welfare of persons they serve and provide professional services with honesty and compassion and shall respect the dignity, worth, and rights of those served. The licensee shall take all reasonable precautions to avoid harm to the individual served professionally.

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- a. Individuals shall use every resource, including referral when appropriate, to ensure that high-quality service is provided and shall not accept or offer benefits or items of personal value for receiving or making referrals.
- b. Individuals shall not discriminate in the delivery of professional services on the basis of race or ethnicity, gender, age, religion, national origin, sexual orientation, or disability.
- c. Individuals shall fully inform the persons they serve of the nature and possible effects of services rendered and products dispensed.
- d. Individuals shall evaluate the effectiveness of services rendered and of products dispensed and shall provide services or dispense products only when benefits can reasonably be expected.
- e. Individuals shall not guarantee the results of any treatment or procedure, directly or by implication; however, they may make a reasonable statement of prognosis.
- f. Individuals may practice by telecommunication (i.e., telepractice, **telehealth**, e-health) provided they hold the appropriate licensure for the jurisdiction in which the service is rendered and delivered.
- g. Individuals shall maintain adequate records of professional services rendered and products dispensed and shall allow access to these records when appropriately authorized.
- h. Individuals shall not reveal, without authorization, any professional or personal information about the person served professionally, unless required by law to do so, or unless doing so is necessary to protect the welfare of the person or of the community.
- i. Individuals shall not charge for services not rendered, nor shall they misrepresent, in any fashion, services rendered or products dispensed.
- j. Individuals shall not carry out teaching, or research activities in a manner that constitutes an invasion of privacy, or that fails to inform persons fully about the nature and possible effects of these activities, affording all persons informed free-choice and participation.
- k. Individuals whose professional services are adversely affected by substance abuse or other health-related conditions shall seek professional assistance and, where appropriate, withdraw from the affected areas of practice.
- l. Individuals shall not discontinue service to those they are serving without providing reasonable notice and other resources.

2. Principle of Ethics II. Individuals shall honor their responsibility to achieve and maintain the highest level of professional competence and performance consistent with prevailing practice standards.

- a. Individuals shall provide all services competently. Individuals shall engage in only those aspects of the professions that are within the scope of their practice and competence, considering their level of licensure,

education, training and experience.

b. Individuals shall hold the appropriate qualifications for the area(s) in which they are providing or supervising professional services.

c. Individuals shall continue their professional development throughout their careers.

d. Individuals shall provide appropriate supervision and assume full responsibility for services delegated to all supervisees, including assistants or aides. Individuals shall not delegate any service requiring professional competence to persons unqualified.

e. Individuals shall neither provide services nor supervision of services for which they have not been properly prepared, nor shall individuals require or permit their professional staff to provide services or conduct research activities that exceed the staff member's competence, level of education, training, or experience.

f. Individuals shall ensure that all equipment used in the provision of services is in proper working order and is properly calibrated.

3. Principle of Ethics III. Individuals shall honor their responsibility to the public by promoting public understanding of the professions, by supporting the development of services designed to fulfill the unmet needs of the public, and by providing accurate information in all communications involving any aspect of the professions.

a. Individuals shall not misrepresent their credentials, competence, education, training or experience.

b. Individuals shall not misrepresent the credentials of assistants, support personnel, students, or any others under their supervision and shall inform those they serve professionally of the name and professional credentials of persons providing services.

c. Individuals shall not participate in professional activities that constitute a conflict of interest.

d. Individuals shall not misrepresent diagnostic information, services rendered, or products dispensed, or engage in any scheme or maneuver to defraud in connection with obtaining payment or reimbursement for such services or product.

e. Individuals' statements to the public shall provide accurate information about the nature and management of communication disorders, about the professions, about professional services and about products.

f. Individuals' statements to the public advertising, announcing and marketing their professional services, reporting research results, and promoting products shall adhere to prevailing professional standards and shall not contain misrepresentations.

4. Principle of Ethics IV. Individuals shall honor their responsibilities to the professions and their relationships with colleagues, students, and members of other professions and disciplines. Individuals shall uphold the dignity and autonomy of the professions, maintain harmonious interprofessional and intraprofessional

relationships, and accept the professions' self-imposed standards.

a. Individuals shall prohibit anyone under their supervision from engaging in any practice that violates the code of ethics.

b. Individuals shall not engage in dishonesty, fraud, deceit, or misrepresentation.

c. Individuals shall not engage in any form of harassment, power abuse, or any other form of conduct that adversely reflects on the professions or on the individual's fitness to serve persons professionally.

d. Individuals shall not engage in sexual activity with a patient/client or students over whom they exercise professional authority.

e. Individuals shall assign credit only to those who have contributed to a publication, presentation, or product. Credit shall be assigned in proportion to the contribution and only with the contributor's consent.

f. Individuals shall reference the source when using other persons' ideas, research, presentations, or products in written, oral, or any other media presentation or summary.

g. Individuals' statements to colleagues about professional services, research results, and products shall adhere to prevailing professional standards and shall contain no misrepresentations.

h. Individuals shall not provide professional services without exercising independent professional judgment, regardless of referral source or prescription.

i. Individuals shall not discriminate in their relationships with colleagues, students, and members of other professions and disciplines on the basis of race or ethnicity, gender, age, religion, national origin, sexual orientation, or disability.

j. Individuals shall not violate these principles and rules, nor attempt to circumvent them.

k. Individuals shall inform the board of any violations of this code of ethics.

l. Individuals shall cooperate fully with the board on matters of professional conduct relative to this code of ethics.

#### F. Rules of Ethics for Speech-Language Pathology Assistant and Provisional Speech-Language Pathology Assistant Licensees

1. Principle of Ethics I. Licensees shall honor their responsibility to hold paramount the welfare of persons they serve and provide services with honesty and compassion and shall respect the dignity, worth, and rights of those served. The licensee shall take all reasonable precautions to avoid harm to the individual served.

a. Individuals shall not discriminate in the delivery of services on the basis of race or ethnicity, gender, age, religion, national origin, sexual orientation, or disability.

- b. Individuals shall not perform clinical tasks without the knowledge and approval of the supervising speech-language pathologist nor shall the licensee interpret test results, guarantee results, make referrals, discharge patients/clients, or provide patient/client or family counseling.
- c. Individuals may practice by telecommunication (i.e., telepractice, **telehealth**, e-health) under the supervision of a fully licensed individual, provided that both the supervisor and the supervisee hold the appropriate license for the jurisdiction in which the service is rendered and delivered.
- d. Individuals shall maintain adequate records of services rendered and products dispensed and shall allow access to these records when appropriately authorized.
- e. Individuals shall not reveal, without authorization, any professional or personal information about the person served, unless required by law to do so, or unless doing so is necessary to protect the welfare of the person or of the community.
- f. Individuals shall not charge for services not rendered, nor shall they misrepresent, in any fashion, services rendered or products dispensed.
- g. Individuals shall not carry out teaching, or research activities in a manner that constitutes an invasion of privacy, or that fails to inform persons fully about the nature and possible effects of these activities, affording all persons informed free-choice and participation.
- h. Individuals whose services are adversely affected by substance abuse or other health-related conditions shall seek professional assistance and, where appropriate, withdraw from the affected areas of practice.
2. Principle of Ethics II. Individuals shall honor their responsibility to achieve and maintain the highest level of competence and performance.
- a. Individuals shall provide all services competently. Individuals shall engage in only those aspects of service provision that are within the scope of their practice and competence, considering their level of licensure, education, training and experience.
- b. Individuals shall hold the appropriate qualifications for the area(s) in which they are providing services.
- c. Individuals shall engage in lifelong learning throughout their careers.
- d. Individuals shall not provide services unless appropriately supervised.
- e. Individuals shall not provide services for which the licensee has not been properly prepared.
- f. Individuals shall ensure that all equipment used in the provision of services is in proper working order and is properly calibrated.
3. Principle of Ethics III. Individuals shall honor their responsibility to the public by providing accurate

information in all communications.

- a. Individuals shall not misrepresent their credentials, competence, education, training or experience.
  - b. Individuals shall not participate in professional activities that constitute a conflict of interest.
  - c. Individuals shall not misrepresent information or services rendered, or engage in any scheme or maneuver to defraud in connection with obtaining payment or reimbursement for services.
4. Principle of Ethics IV. Individuals shall honor their responsibilities and their relationships with colleagues and members of other professions and disciplines. Individuals shall maintain harmonious interprofessional and intraprofessional relationships.
- a. Individuals shall not engage in dishonesty, fraud, deceit, or misrepresentation
  - b. Individuals shall not engage in any form of harassment, power abuse, or any other form of conduct that adversely reflects on service delivery or on the individual's fitness to serve persons.
  - c. Individuals shall not engage in sexual activity with a patient/client.
  - d. Individuals shall assign credit only to those who have contributed to a publication, presentation, or product. Credit shall be assigned in proportion to the contribution and only with the contributor's consent.
  - e. Individuals shall reference the source when using other persons' ideas, research, presentations, or products in written, oral, or any other media presentation or summary.
  - f. Individuals' statements to colleagues about services, research, or products shall adhere to prevailing standards and shall contain no misrepresentations.
  - g. Individuals shall not discriminate in their relationships with colleagues and members of other professions and disciplines on the basis of race or ethnicity, gender, age, religion, national origin, sexual orientation, or disability.
  - h. Individuals shall not violate these principles and rules, nor attempt to circumvent them.
  - i. Individuals shall inform the board of any violations of this code of ethics.
  - j. Individuals shall cooperate fully with the board on matters of professional conduct relative to this code of ethics.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:2650 et seq.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Examiners for Speech-Language Pathology and Audiology, LR 17:370 (April 1991), amended LR 22:360 (May 1996), LR 30:2324 (October 2004), LR 33:2201 (October 2007), LR 37:2399 (August 2011), LR 39:1044 (April 2013).

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*COMAR 10.32.05.02*

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TITLE 10. DEPARTMENT OF HEALTH AND MENTAL HYGIENE

SUBTITLE 32. BOARD OF PHYSICIANS

CHAPTER 05. TELEMEDICINE

**COMAR 10.32.05.02** (2014)

.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.

Annotated Code of Maryland  
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\*\*\* Statutes current through Chapter 1 of the 2014 General Assembly Regular Session \*\*\*  
\*\*\* Annotations current through December 7, 2013 \*\*\*

HEALTH OCCUPATIONS  
TITLE 2. AUDIOLOGISTS, HEARING AID DISPENSERS, AND SPEECH-LANGUAGE  
PATHOLOGISTS  
SUBTITLE 1. DEFINITIONS; GENERAL PROVISIONS

Md. HEALTH OCCUPATIONS Code Ann. § 2-101 (2014)

§ 2-101. Definitions

- (a) In general. -- In this title the following words have the meanings indicated.
- (b) Audiologist. -- "Audiologist" means an individual who practices audiology.
- (c) Board. -- "Board" means the State Board of Examiners for Audiologists, Hearing Aid Dispensers, and Speech-Language Pathologists.
- (d) Direct supervision. -- "Direct supervision" means on-site and personal oversight by an individual licensed under this title who assumes responsibility for another individual's conduct whether it is consistent or fails to be consistent with professional standards and the provisions of this title.
- (e) Hearing aid. -- "Hearing aid" means any FDA approved instrument or device that is designed for or represented as being capable of improving or correcting impaired human hearing.
- (f) Hearing aid dispenser. -- "Hearing aid dispenser" means an individual who practices hearing aid dispensing.
- (g) Hearing aid dispenser supervisor. -- "Hearing aid dispenser supervisor" means a licensed hearing aid dispenser or licensed audiologist who supervises a limited licensee who is studying hearing aid dispensing for the purpose of becoming eligible to sit for the licensure examination.
- (h) Hearing aid dispensing. --
- (1) "Hearing aid dispensing" means performing, conducting, and interpreting hearing assessment procedures to determine the type and extent of hearing loss for the purpose of:

(i) Fitting suitable hearing instruments;

(ii) Selecting suitable hearing instruments;

(iii) Programming a hearing aid by selecting and determining the frequency response, compression, output, gain, or other parameters of the hearing aid for initial wear by an individual or any required alterations throughout the use of the hearing aid;

(iv) Making ear molds or ear impressions; and

(v) Providing appropriate counseling.

(2) "Hearing aid dispensing" includes:

(i) An act pertaining to the selling, renting, leasing, or delivering of a hearing instrument; and

(ii) Providing maintenance or repair services for a hearing aid.

(i) Hearing aid establishment. -- "Hearing aid establishment" means an establishment that offers, advertises, or performs hearing aid dispensing.

(j) License. --

(1) "License" means, unless the context requires otherwise, a license issued by the Board to practice audiology, hearing aid dispensing, or speech-language pathology, or to assist in the practice of speech-language pathology.

(2) "License" includes, unless the context requires otherwise, a limited license.

(k) Licensed audiologist. -- "Licensed audiologist" means, unless the context requires otherwise, an audiologist who is licensed by the Board to practice audiology.

(l) Licensed hearing aid dispenser. -- "Licensed hearing aid dispenser" means, unless the context requires otherwise, a hearing aid dispenser who is licensed by the Board to practice hearing aid dispensing.

(m) Licensed speech-language pathologist. -- "Licensed speech-language pathologist" means, unless the context requires otherwise, a speech-language pathologist who is licensed by the Board to practice speech-language pathology.

(n) Licensed speech-language pathology assistant. -- "Licensed speech-language pathology assistant" means, unless the context requires otherwise, a speech-language pathology assistant who is licensed by the Board to assist a licensed speech-language pathologist in the practice of speech-language pathology.

(o) Limited license. -- "Limited license" means a license issued by the Board to practice audiology, hearing aid dispensing, or speech-language pathology, or to assist in the practice of speech-language pathology as limited

by §§ 2-310 through 2-310.3 of this title.

(p) Oral competency. -- "Oral competency" means the demonstration of general English-speaking proficiency by receiving a passing score on a standardized test that the Board has approved by regulation.

(q) Practice audiology. --

(1) "Practice audiology" means to apply the principles, methods, and procedures of measurement, prediction, evaluation, testing, counseling, consultation, and instruction that relate to the development and disorders of hearing, vestibular functions, and related language and speech disorders, to prevent or modify the disorders or assist individuals in hearing and auditory and related skills for communication.

(2) "Practice audiology" includes the fitting or selling of hearing aids.

(r) Practice speech-language pathology. -- "Practice speech-language pathology" means to apply the principles, methods, and procedures of measurement, prediction, evaluation, testing, counseling, consultation, and instruction that relate to the development and disorders of speech, voice, swallowing, and related language and hearing disorders, to prevent or modify the disorders or to assist individuals in cognition-language and communication skills.

(s) Speech-language pathologist. -- "Speech-language pathologist" means an individual who practices speech-language pathology.

(t) Speech-language pathology assistant. -- "Speech-language pathology assistant" means an individual who:

(1) Meets the minimum qualifications established by the Board that shall be less stringent than those established by this title to license speech-language pathologists;

(2) Does not work independently;

(3) Works under the direct supervision of a speech-language pathologist licensed under this title.

(u) **Telehealth.** -- "**Telehealth**" means the use of telecommunications and information technologies for the exchange of information from one site to another for the provision of health care to an individual from a provider through hardwire or Internet connection.

**HISTORY:** An. Code 1957, art. 43, § 791; 1981, ch. 8, § 2; 1987, ch. 477; 1990, ch. 6, § 11; 1992, ch. 326, § 3; 1993, ch. 448; 2005, ch. 25, § 13; 2007, ch. 5, § 7; ch. 391.

**NOTES: CROSS REFERENCES.** --As to termination of title provisions and rules and regulations, see § 2-502 of this article.

**EFFECT OF AMENDMENTS.** --Chapter 391, Acts 2007, effective October 1, 2007, rewrote the section.

**EDITOR'S NOTE.** --Pursuant to § 7 of ch. 5, Acts 2007, a comma was deleted after "development and" in (r).

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Prepared by Pilot Healthcare Strategies for the Utah Division of Occupational and Professional Licensing

May 2, 2014

*Md. HEALTH OCCUPATIONS Code Ann. § 2-205*

Annotated Code of Maryland  
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\*\*\* Statutes current through Chapter 1 of the 2014 General Assembly Regular Session \*\*\*  
\*\*\* Annotations current through December 7, 2013 \*\*\*

HEALTH OCCUPATIONS  
TITLE 2. AUDIOLOGISTS, HEARING AID DISPENSERS, AND SPEECH-LANGUAGE  
PATHOLOGISTS  
SUBTITLE 2. STATE BOARD OF EXAMINERS FOR AUDIOLOGISTS, HEARING AID DISPENSERS,  
AND SPEECH-LANGUAGE PATHOLOGISTS

Md. HEALTH OCCUPATIONS Code Ann. § 2-205 (2014)

§ 2-205. Miscellaneous powers and duties

In addition to the powers and duties set forth elsewhere in this title, the Board has the following powers and duties:

- (1) To adopt rules and regulations to carry out the provisions of this title;
- (2) To adopt and publish codes of ethics for the practices of audiology, hearing aid dispensing, and speech-language pathology, and the assistance in the practice of speech-language pathology;
- (3) To adopt an official seal;
- (4) To hold hearings and keep records and minutes necessary for the orderly conduct of business;
- (5) To issue a list annually of the names of all individuals licensed by the Board;
- (6) To send any notice that the Board is required to give to a licensee under this title to the last known address given to the Board by the licensee; and
- (7) To adopt regulations governing the use of **telehealth** communications by audiologists, hearing aid dispensers, and speech-language pathologists.

**HISTORY:** An. Code 1957, art. 43, §§ 797, 804; 1981, ch. 8, § 2; 1990, ch. 6, § 11; 1992, ch. 326, § 3; 1993, ch. 448; 1994, ch. 3, § 1; 2007, ch. 5, § 7; ch. 391.

**NOTES: EFFECT OF AMENDMENTS.** --Chapter 391, Acts 2007, effective October 1, 2007, rewrote (a)(2) and (a)(5); added (a)(7) and made related changes; and deleted (b) and (c).

**EDITOR'S NOTE.** --Pursuant to § 7 of ch. 5, Acts 2007, the (a) designation was deleted, following the deletion of (b) and (c).

*COMAR 10.32.05*

CODE OF MARYLAND REGULATIONS

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TITLE 10. DEPARTMENT OF HEALTH AND MENTAL HYGIENE

SUBTITLE 32. BOARD OF PHYSICIANS

CHAPTER 05. TELEMEDICINE

COMAR 10.32.05 (2014)

.00

Authority: [Health Occupations Article, §§ 14-205, 14-301, 14-601, and 14-602](#), Annotated Code of Maryland

Administrative History

Effective date: December 28, 2009 (36:26 Md. R. 1995)

*COMAR 10.32.05.01*

CODE OF MARYLAND REGULATIONS

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TITLE 10. DEPARTMENT OF HEALTH AND MENTAL HYGIENE

SUBTITLE 32. BOARD OF PHYSICIANS

CHAPTER 05. TELEMEDICINE

COMAR 10.32.05.01 (2014)

.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.

*COMAR 10.32.05.04*

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TITLE 10. DEPARTMENT OF HEALTH AND MENTAL HYGIENE

SUBTITLE 32. BOARD OF PHYSICIANS

CHAPTER 05. **TELEMEDICINE**

COMAR 10.32.05.04 (2014)

.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.

*COMAR 10.32.05.05*

CODE OF MARYLAND REGULATIONS

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TITLE 10. DEPARTMENT OF HEALTH AND MENTAL HYGIENE

SUBTITLE 32. BOARD OF PHYSICIANS

CHAPTER 05. **TELEMEDICINE**

COMAR 10.32.05.05 (2014)

.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.

COMAR 10.32.05.06

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TITLE 10. DEPARTMENT OF HEALTH AND MENTAL HYGIENE

SUBTITLE 32. BOARD OF PHYSICIANS

CHAPTER 05. TELEMEDICINE

COMAR 10.32.05.06 (2014)

.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.

*COMAR 10.32.05.07*

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TITLE 10. DEPARTMENT OF HEALTH AND MENTAL HYGIENE

SUBTITLE 32. BOARD OF PHYSICIANS

CHAPTER 05. TELEMEDICINE

COMAR 10.32.05.07 (2014)

.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.

*COMAR 10.41.06*

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TITLE 10. DEPARTMENT OF HEALTH AND MENTAL HYGIENE

SUBTITLE 41. BOARD OF EXAMINERS FOR AUDIOLOGISTS, HEARING AID DISPENSERS, AND  
SPEECH-LANGUAGE PATHOLOGISTS

CHAPTER 06. TELEHEALTH COMMUNICATION

COMAR 10.41.06 (2014)

.00

Authority: [Health Occupations Article, §§ 2-201](#) and [2-205](#), Annotated Code of Maryland

Administrative History

Effective date: October 20, 2008 (35:21 Md. R. 1824)

*COMAR 10.41.06.01*

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TITLE 10. DEPARTMENT OF HEALTH AND MENTAL HYGIENE

SUBTITLE 41. BOARD OF EXAMINERS FOR AUDIOLOGISTS, HEARING AID DISPENSERS, AND  
SPEECH-LANGUAGE PATHOLOGISTS

CHAPTER 06. TELEHEALTH COMMUNICATION

COMAR 10.41.06.01 (2014)

.01 Definitions.

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

B. Terms Defined.

(1) "Board" means the State Board of Examiners for Audiologists, Hearing Aid Dispensers, and Speech-Language Pathologists.

(2) "Consultant" means any professional who collaborates with a provider of telehealth services to provide services to patients.

(3) "Patient" means a consumer of telehealth services.

(4) "Provider" means an audiologist, hearing aid dispenser, or speech-language pathologist who provides telehealth services.

(5) "Service delivery model" means the method of providing telehealth services.

(6) "Site" means the patient location for providing telehealth services.

(7) "Stored clinical data" means video clips, sound/audio files, photo images, electronic records, and written records that may be available for transmission via telehealth communications.

(8) "Telehealth" means the use of telecommunications and information technologies for the exchange of information from one site to another for the provision of audiology, hearing aid dispensing, or speech-language pathology services to an individual from a provider through hardwire or internet connection.

(9) "Telepractice" means the practice of telehealth.

*COMAR 10.41.06.02*

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TITLE 10. DEPARTMENT OF HEALTH AND MENTAL HYGIENE

SUBTITLE 41. BOARD OF EXAMINERS FOR AUDIOLOGISTS, HEARING AID DISPENSERS, AND  
SPEECH-LANGUAGE PATHOLOGISTS

CHAPTER 06. **TELEHEALTH** COMMUNICATION

COMAR 10.41.06.02 (2014)

.02 Service Delivery Models.

A. **Telehealth** may be delivered in a variety of ways including those listed in §§ B--E of this regulation.

B. Store-and-forward model/electronic transmission is an asynchronous electronic transmission of stored clinical data from one location to another usually by the internet via email and fax.

C. Clinician interactive model is a synchronous, real time interaction between the provider and patient or consultant that may occur via audio and video transmission over telecommunication links such as telephone, internet, fax, or other methods for distance communication, including:

- (1) Videoconferencing;
- (2) Remote control software applications;
- (3) Computer applications;
- (4) Fax transmittal and receipt;
- (5) Email correspondence including attachments; or
- (6) Video and audio transmission through regular mail service delivery and express delivery services.

D. Self-monitoring/testing model refers to when the patient or consultant receiving the services provides data to the provider without a facilitator present at the site of the patient or consultant.

E. Live versus stored data refers to the actual data transmitted during the telepractice. Both live, real-time and stored clinical data may be included during the telepractice.

*COMAR 10.41.06.03*

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TITLE 10. DEPARTMENT OF HEALTH AND MENTAL HYGIENE

SUBTITLE 41. BOARD OF EXAMINERS FOR AUDIOLOGISTS, HEARING AID DISPENSERS, AND  
SPEECH-LANGUAGE PATHOLOGISTS

CHAPTER 06. **TELEHEALTH** COMMUNICATION

COMAR 10.41.06.03 (2014)

.03 Guidelines for the Use of **Telehealth**.

A. A provider shall be accountable for any ethical and scope of practice requirements when providing **telehealth** services.

B. The scope, nature, and quality of services provided via telepractice are the same as that provided during in-person sessions by the provider.

C. The quality of electronic transmissions shall be appropriate for the provision of **telehealth** services as if those services were provided in person.

D. A provider shall only utilize technology with which they are competent to use as part of their telepractice services.

E. Equipment used for **telehealth** services shall be maintained in appropriate operational status to provide appropriate quality of services.

F. Equipment used at the site at which the patient or consultant is present shall be in appropriate working condition and deemed appropriate by the provider.

G. A provider shall be aware of the patient or consultant level of comfort with the technology being used as part of the **telehealth** services and adjust their practice to maximize the patient or consultant level of comfort.

H. When a provider collaborates with a consultant from another state in which the telepractice services are

eventually delivered, the consultant in the state in which the patient lives shall be the primary care provider for the patient.

I. As pertaining to liability and malpractice issues, a provider shall be held to the same standards of practice as if the telepractice services were provided in person.

*COMAR 10.41.06.04*

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TITLE 10. DEPARTMENT OF HEALTH AND MENTAL HYGIENE

SUBTITLE 41. BOARD OF EXAMINERS FOR AUDIOLOGISTS, HEARING AID DISPENSERS, AND  
SPEECH-LANGUAGE PATHOLOGISTS

CHAPTER 06. TELEHEALTH COMMUNICATION

COMAR 10.41.06.04 (2014)

.04 Limitations of Teleheath Services.

A. A provider of telehealth services shall inform the patient and consultants as to the limitations of providing these services, including the following:

- 1) The inability to have direct, physical contact with the patient is a primary difference between telehealth and direct in-person service delivery;
- (2) The knowledge, experiences, and qualifications of the consultant providing data and information to the provider of the telehealth services need not be completely known to and understood by the provider;
- (3) The quality of transmitted data may affect the quality of services provided by the provider; and
- (4) That changes in the environment and test conditions could be impossible to make during delivery of telehealth services.

B. Telehealth services may not be provided by correspondence only.

## 243 CMR 2.01

### CODE OF MASSACHUSETTS REGULATIONS

\*\*\* This document reflects all regulations in effect as of 02/28/2014 \*\*\*

#### TITLE 243: BOARD OF REGISTRATION IN MEDICINE CHAPTER 2.00: LICENSING AND THE PRACTICE OF MEDICINE

#### 243 CMR 2.01 (2014)

### 2.01: Scope and Construction

(1) **Purpose.** 243 CMR 2.00 is the Board of Registration in Medicine's directions concerning licensing and the practice of medicine. The purpose of 243 CMR 2.00 is to prescribe substantive standards which will promote the public health, safety, and welfare and inform physicians of the Board's expectations and requirements. The Board requires that every physician in the Commonwealth has notice of 243 CMR 1.00 through 3.00 and expects that he or she will practice medicine in accordance with 243 CMR 2.00.

(2) **Authority.** The Board adopts 243 CMR 2.00 under the authority of M.G.L. c. 13, §§ 9 through 11; M.G.L. c. 112, §§ 2 through 12DD; M.G.L. c. 112, §§ 61 through 65E and 88; and St. 1977, c. 252.

(3) **Structure.** 243 CMR 2.00 is organized as follows: 243 CMR 2.01 contains general provisions relating to all of 243 CMR 2.00; Part 1 consists of 243 CMR 2.02 through 2.06, the regulations relating to the licensing of physicians and Part 2 consists of 243 CMR 2.07 through 2.15, the regulations relating to the practice of medicine.

(4) **Definitions.** For the purposes of 243 CMR 1.00 through 3.00, the terms listed in 243 CMR 2.01(4) have the following meanings, unless otherwise provided:

**ABMS** means the American Board of Medical Specialties.

**ACGME** means the Accreditation Council for Graduate Medical Education.

**Accredited Canadian Post Graduate Medical Training** means training which has been accredited by the Royal College of Physicians and Surgeons of Canada (RCPSC), the College of Family Physicians of Canada (CFPC), or the Federation of Medical Licensing Authorities of Canada (FMRAC).

**AMA** means the American Medical Association.

**AOA** means the American Osteopathic Association.

**Adjudicatory Hearing** means a hearing conducted in accordance with M.G.L. c. 30A and with 243 CMR 1.00: *Disciplinary Proceedings for Physicians*.

**Board** means the Board of Registration in Medicine established by M.G.L. c. 13, § 10.

**Canadian Medical Graduate** means a person who attained an M.D. or D.O. degree from an accredited Canadian medical school.

**Change of License Status** refers to a voluntary process whereby a full, active licensee may apply to the Board to change his or her active license status to an Inactive, Volunteer, Administrative, Retired or Restricted license status. Change of license status also refers to the voluntary process whereby a Volunteer, Administrative, Inactive, Retired or Lapsed licensee may apply to the Board for a change of license status.

**COMLEX** means Comprehensive Osteopathic Medical Licensing Examination - USA.

**Continuing Professional Development (CPD)** may include continuing medical education (CME), continuing physician professional development (CPPD), and clinical training.

**CORI** means Criminal Offender Record Information, as in M.G.L. c. 6, § 171.

**Data** means any material upon which written, drawn, spoken, visual, or electromagnetic information or images are recorded or preserved, regardless of physical form or characteristics, as defined in M.G.L. c. 93H, § 1.

**Data Subject** means the individual to whom personal data refers, as defined in M.G.L. c. 66A, § 1. This term shall not include corporations, corporate trusts, partnerships, limited partnerships, trusts, sole proprietorships, or other business, not-for-profit or charitable entities.

**ECFMG** means Educational Commission for Foreign Medical Graduates.

**Electronic** means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities. An electronic record is a record created, generated, sent, communicated, received, or stored by electronic means.

**Electronic Health Record (EHR)** means an electronic record of health-related information on an individual that is created, gathered, managed, and consulted by authorized health care clinicians and staff.

**Electronic Medical Record (EMR)** means an individual patient's medical record maintained by the office of the patient's physician.

**End of Life Care** refers to the medical and ethical issues surrounding the end of a patient's life. End-of-life issues include the type and extent of medical care, services, treatments, medications and other options that may be available to the patient.

**Fifth Pathway** means a program of medical education which meets all of the following requirements:

- (a) Completion of two years of pre medical education in a U.S. college or university acceptable to the Board;
- (b) Completion of all the formal requirements for the degree corresponding to doctor of medicine or doctor of osteopathy at a medical school outside the United States which is recognized by the World Health Organization;
- (c) Completion of one academic year of supervised clinical training sponsored by an approved medical school in the United States, the Commonwealth of Puerto Rico or Canada; and
- (d) Completion of one year of graduate medical education in a program approved by the Liaison Committee on Graduate Medical Education of the American Medical Association.

**FLEX** means the Federation Licensing Examination.

**FSMB** means the Federation of State Medical Boards.

**Health Care Facility** means, for purposes of 243 CMR 2.00, any location where medicine is practiced, a hospital or other institution of the commonwealth, or of a county or of a municipality within it; a hospital or clinic duly licensed or approved by the Department of Public Health; and an out patient clinic operated by the Department of Mental Health.

**Health Information Technology (Health IT or HIT)** means the application of computers and technology in health care settings. HIT may include computerized physician order entry systems, e-prescribing, electronic health records and other health information technology systems.

**International Medical School** means a medical or osteopathic school in a country other than the United States, the Commonwealth of Puerto Rico or Canada.

**International Medical Graduate** means a graduate of an international medical school.

**Lapsed License** means the automatic expiration of a certificate of registration of any full licensee upon the licensee's failure to file a completed renewal application together with the required fee within the time period required.

**LCME** means Liaison Committee on Medical Education.

**License** means a certificate of registration which the Board issues to a person pursuant to the requirements of M.G.L. c. 112, §§ 2, 5A, 9, and 9B, and which authorizes the person to engage in the practice of medicine. There are four categories of licenses: full, limited, temporary and restricted. A full license allows a licensee to practice medicine as an independent practitioner free from specific limitations on his or her practice. Any other category of license restricts a licensee's practice.

**Licensing Committee** means a Committee established by the Board to assist the Board in reviewing license

applications filed pursuant to M.G.L. c. 112, §§ 2 through 9B. The Licensing Committee may review the qualifications of applicants and licensees, may conduct an interview, may request additional documentation, may refer an applicant or licensee for an evaluation of health concerns to a Board-approved entity, and may recommend actions to the Board. The Board, with due consideration for patient safety and the public health, safety and welfare, shall determine whether to issue, grant or renew a license, what the license term shall be and whether there shall be any license restrictions.

**LMCC** means Licentiate of the Medical Council of Canada.

**MCCQE** means the Medical Council of Canada Qualifying Examination.

**Majority Vote (of the Board)** means a vote of a majority of the members of the Board present and voting at a Board meeting. A quorum is a majority of the Board, excluding vacancies.

**Medical School** means a legally chartered medical school in any jurisdiction.

**Medical Student** means a person enrolled in a United States or an international medical school.

**NBME** means the National Board of Medical Examiners.

**NPI** means the National Provider Identifier, a unique national identification number issued by the federal government to all providers who bill health insurance plans.

**Pain Management Training** means the education and training required by M.G.L. c. 94C, § 18. Such training shall include, but not be limited to, education in opioids and other pain-relieving medications, training in effective pain management, training in how to identify patients at high risk for substance abuse, and training on how to counsel patients on the side effects and addictive natures of prescription medicines and their proper storage and disposal.

**Personal Data** has the same meaning in 243 CMR 2.00 as it does in M.G.L. c. 66A, § 1.

**Personal Information** has the same meaning in 243 CMR 2.00 as it does in M.G.L. c. 93H, § 1.

**Physician Assistant (PA)** means a person who is duly registered by the Board of Registration of Physician Assistants established by M.G.L. c. 112, § 9F. Supervising physicians and PAs are subject to the requirements of 243 CMR 2.08.

**The Physician Profile Program** means the program established under M.G.L. c. 112, § 5, listing certain information about each active physician holding a full license in Massachusetts and disseminating this to the public, primarily through the Board's website on the Internet.

**Physician Reentry** means a return to clinical practice in the discipline in which one has been trained or certified following an extended period of clinical inactivity not resulting from discipline or impairment.

**The Practice of Medicine** means the following conduct, the purpose or reasonably foreseeable effect of which

is to encourage the reliance of another person upon an individual's knowledge or skill in the maintenance of human health by the prevention, alleviation, or cure of disease, and involving or reasonably thought to involve an assumption of responsibility for the other person's physical or mental well being: diagnosis, treatment, use of instruments or other devices, or the prescribing, administering, dispensing or distributing of drugs for the relief of diseases or adverse physical or mental conditions.

(a) A person who holds himself or herself out to the public as a **physician** or **surgeon**, or with the initials "M.D." or "D.O." in connection with his or her name, and who also assumes responsibility for another person's physical or mental well being, is engaged in the practice of medicine.

(b) The **Practice of Medicine** includes the following:

1. **Telemedicine**, as defined in 243 CMR 2.01: **Telemedicine**; and
2. Providing an independent medical examination or a disability evaluation.

(c) The practice of medicine does not mean the following:

1. Conduct lawfully engaged in by persons licensed by other boards of registration with authority to regulate such conduct; or
2. Assistance rendered in emergency situations by persons other than licensees.

**Reinstatement** means the action of the Board restoring a revoked license. The Board may impose reasonable restrictions on a reinstated license.

**Renewal Date** means the last day on which the license is in effect.

**Reviving a License** means the restoration of a license that has lapsed or is inactive.

**RRC** means Residency Review Committee.

**Risk Management Program** means a patient care assessment program established by the Board pursuant to M.G.L. c. 111, § 203(d) and recognized as a **Risk Management Program** within the meaning of M.G.L. c. 112, § 5.

**Risk Management Study** or **Risk Management CPD** means instruction in medical malpractice prevention, such as risk identification, patient safety, and medical error prevention. Risk management studies may include education in any of the following areas: medical ethics, quality assurance, medical-legal issues, patient relations, electronic health record education, end-of-life care, utilization review that directly relates to quality assurance, and aspects of practice management. Risk management CPD may include study of the Board's regulations at 243 CMR 1.00 through 3.00.

**Specialty Board** means a specialty board recognized by the American Board of Medical Specialties, the American Medical Association or the American Osteopathic Association.

Utah Telehealth Study - Phase 2 Report

Prepared by Pilot Healthcare Strategies for the Utah Division of Occupational and Professional Licensing

May 2, 2014

**Telemedicine** is the provision of services to a patient by a physician from a distance by electronic communication in order to improve patient care, treatment or services.

**United States Medical Graduate** means a person who attained an M.D. or D.O. degree from a United States medical school.

**United States Medical School** means an LCME accredited school of medicine, or an AOA accredited school of osteopathy, located in the United States.

**USMLE** means the United States Medical Licensing Examination.

(5) **Computation of Time.** Any period of time specified in 243 CMR 2.00 includes every calendar day, whether or not the office of the Board is open on that day, except that, when the last day of the period falls on a day when the Board's office is closed, the period ends instead on the next day on which the office is open.

(6) **Public Records and Personal Data.** Documentary information obtained by the Board during the licensing process concerning an applicant or licensee may be a **Public Record**, as defined by M.G.L. c. 4, § 7, clause twenty-sixth, or may be **Personal Data**, as defined by M.G.L. c. 66A, § 1. The Board may not disclose personal data unless disclosure is authorized by statute or is otherwise in accordance with M.G.L. c. 66A, § 2

(7) **Confidentiality of Personal Information.** The security and confidentiality of personal information held by the Board, whether relating to patients, consumers, applicants, licensees or any other persons, shall be protected by the Board in accordance with applicable state and federal laws, including, but not limited to, the Confidentiality of Alcohol and Drug Abuse Patient Records, (42 U.S.C. 290ee-3, also known as "Part 2"); the Health Insurance Portability and Accountability Act of 1996, (P.L. 104-191); the Patient Safety and Quality Improvement Act of 2005, (P.L. 109-41); the Massachusetts Security Breach Law, (M.G.L. c. 93H); the Massachusetts Privacy Act, (M.G.L. c. 214, § 1B); the Massachusetts Freedom of Information Act, (M.G.L. c. 66A) and the Massachusetts Public Records law, (M.G.L. c. 4, § 7, clause twenty-sixth).

(8) **Effective Date.** 243 CMR 2.00 is effective February 1, 2012. License applications received by the Board on or after February 1, 2012 are governed by 243 CMR 2.00.

## REGULATORY AUTHORITY

243 CMR 2.00: M.G.L. c. 13, §§ 9 through 11; c. 112, §§ 2 through 12DD; c. 112, §§ 61 through 65 and 88.

*Minn. Stat. § 151.37*

Minnesota Statutes  
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\*\*\* This document is current through Chapter 147, 2014 Regular Session \*\*\*

\*\*\* Annotations are current through March 20, 2014 \*\*\*

HEALTH  
CHAPTER 151. PHARMACY  
PHARMACY PRACTICE ACT OF 1988

Minn. Stat. § 151.37 (2014)

## 151.37 LEGEND DRUGS, WHO MAY PRESCRIBE, POSSESS

Subdivision 1. *Prohibition.* --Except as otherwise provided in this chapter, it shall be unlawful for any person to have in possession, or to sell, give away, barter, exchange, or distribute a legend drug.

Subd. 2. *Prescribing and filing.*

(a) A licensed practitioner in the course of professional practice only, may prescribe, administer, and dispense a legend drug, and may cause the same to be administered by a nurse, a physician assistant, or medical student or resident under the practitioner's direction and supervision, and may cause a person who is an appropriately certified, registered, or licensed health care professional to prescribe, dispense, and administer the same within the expressed legal scope of the person's practice as defined in Minnesota Statutes. A licensed practitioner may prescribe a legend drug, without reference to a specific patient, by directing a licensed dietitian or licensed nutritionist, pursuant to section 148.634; a nurse, pursuant to section 148.235, subdivisions 8 and 9; physician assistant; medical student or resident; or pharmacist according to section 151.01, subdivision 27, to adhere to a particular practice guideline or protocol when treating patients whose condition falls within such guideline or protocol, and when such guideline or protocol specifies the circumstances under which the legend drug is to be prescribed and administered. An individual who verbally, electronically, or otherwise transmits a written, oral, or electronic order, as an agent of a prescriber, shall not be deemed to have prescribed the legend drug. This paragraph applies to a physician assistant only if the physician assistant meets the requirements of section 147A.18.

(b) The commissioner of health, if a licensed practitioner, or a person designated by the commissioner who is a licensed practitioner, may prescribe a legend drug to an individual or by protocol for mass dispensing purposes where the commissioner finds that the conditions triggering section 144.4197 or 144.4198, subdivision 2, paragraph (b), exist. The commissioner, if a licensed practitioner, or a designated licensed practitioner, may prescribe, dispense, or administer a legend drug or other substance listed in subdivision 10 to control tuberculosis and other communicable diseases. The commissioner may modify state drug labeling requirements, and medical screening criteria and documentation, where time is critical and limited labeling and screening are most likely to ensure legend drugs reach the maximum number of persons in a timely fashion so as to reduce morbidity and mortality.

(c) A licensed practitioner that dispenses for profit a legend drug that is to be administered orally, is ordinarily dispensed by a pharmacist, and is not a vaccine, must file with the practitioner's licensing board a statement indicating that the practitioner dispenses legend drugs for profit, the general circumstances under which the practitioner dispenses for profit, and the types of legend drugs generally dispensed. It is unlawful to dispense legend drugs for profit after July 31, 1990, unless the statement has been filed with the appropriate licensing board. For purposes of this paragraph, "profit" means (1) any amount received by the practitioner in excess of the acquisition cost of a legend drug for legend drugs that are purchased in prepackaged form, or (2) any amount received by the practitioner in excess of the acquisition cost of a legend drug plus the cost of making the drug available if the legend drug requires compounding, packaging, or other treatment. The statement filed under this paragraph is public data under section 13.03. This paragraph does not apply to a licensed doctor of veterinary medicine or a registered pharmacist. Any person other than a licensed practitioner with the authority to prescribe, dispense, and administer a legend drug under paragraph (a) shall not dispense for profit. To dispense for profit does not include dispensing by a community health clinic when the profit from dispensing is used to meet operating expenses.

(d) A prescription or drug order for the following drugs is not valid, unless it can be established that the prescription or order was based on a documented patient evaluation, including an examination, adequate to establish a diagnosis and identify underlying conditions and contraindications to treatment:

(1) controlled substance drugs listed in section 152.02, subdivisions 3 to 5;

(2) drugs defined by the Board of Pharmacy as controlled substances under section 152.02, subdivisions 7, 8, and 12;

(3) muscle relaxants;

(4) centrally acting analgesics with opioid activity;

(5) drugs containing butalbital; or

(6) phosphodiesterase type 5 inhibitors when used to treat erectile dysfunction.

(e) For the purposes of paragraph (d), the requirement for an examination shall be met if an in-person examination has been completed in any of the following circumstances:

(1) the prescribing practitioner examines the patient at the time the prescription or drug order is issued;

(2) the prescribing practitioner has performed a prior examination of the patient;

(3) another prescribing practitioner practicing within the same group or clinic as the prescribing practitioner has examined the patient;

(4) a consulting practitioner to whom the prescribing practitioner has referred the patient has examined the patient; or

(5) the referring practitioner has performed an examination in the case of a consultant practitioner issuing a prescription or drug order when providing services by means of **telemedicine**.

(f) Nothing in paragraph (d) or (e) prohibits a licensed practitioner from prescribing a drug through the use of a guideline or protocol pursuant to paragraph (a).

(g) Nothing in this chapter prohibits a licensed practitioner from issuing a prescription or dispensing a legend drug in accordance with the Expedited Partner Therapy in the Management of Sexually Transmitted Diseases guidance document issued by the United States Centers for Disease Control.

(h) Nothing in paragraph (d) or (e) limits prescription, administration, or dispensing of legend drugs through a public health clinic or other distribution mechanism approved by the commissioner of health or a board of health in order to prevent, mitigate, or treat a pandemic illness, infectious disease outbreak, or intentional or accidental release of a biological, chemical, or radiological agent.

(i) No pharmacist employed by, under contract to, or working for a pharmacy licensed under section 151.19, subdivision 1, may dispense a legend drug based on a prescription that the pharmacist knows, or would reasonably be expected to know, is not valid under paragraph (d).

(j) No pharmacist employed by, under contract to, or working for a pharmacy licensed under section 151.19, subdivision 2, may dispense a legend drug to a resident of this state based on a prescription that the pharmacist knows, or would reasonably be expected to know, is not valid under paragraph (d).

Subd. 2a. *Delegation.* --A supervising physician may delegate to a physician assistant who is registered with the Board of Medical Practice and certified by the National Commission on Certification of Physician Assistants and who is under the supervising physician's supervision, the authority to prescribe, dispense, and administer legend drugs and medical devices, subject to the requirements in chapter 147A and other requirements established by the Board of Medical Practice in rules.

Subd. 3. *Veterinarians.* --A licensed doctor of veterinary medicine, in the course of professional practice only and not for use by a human being, may personally prescribe, administer, and dispense a legend drug, and may cause the same to be administered or dispensed by an assistant under the doctor's direction and supervision.

Subd. 4. *Research.*

(a) Any qualified person may use legend drugs in the course of a bona fide research project, but cannot administer or dispense such drugs to human beings unless such drugs are prescribed, dispensed, and administered by a person lawfully authorized to do so.

(b) Drugs may be dispensed or distributed by a pharmacy licensed by the board for use by, or administration to, patients enrolled in a bona fide research study that is being conducted pursuant to either an investigational new drug application approved by the United States Food and Drug Administration or that has been approved by an institutional review board. For the purposes of this subdivision only:

(1) a prescription drug order is not required for a pharmacy to dispense a research drug, unless the study protocol requires the pharmacy to receive such an order;

(2) notwithstanding the prescription labeling requirements found in this chapter or the rules promulgated by the board, a research drug may be labeled as required by the study protocol; and

(3) dispensing and distribution of research drugs by pharmacies shall not be considered compounding, manufacturing, or wholesaling under this chapter.

(c) An entity that is under contract to a federal agency for the purpose of distributing drugs for bona fide research studies is exempt from the drug wholesaler licensing requirements of this chapter. Any other entity is exempt from the drug wholesaler licensing requirements of this chapter if the board finds that the entity is licensed or registered according to the laws of the state in which it is physically located and it is distributing drugs for use by, or administration to, patients enrolled in a bona fide research study that is being conducted pursuant to either an investigational new drug application approved by the United States Food and Drug Administration or that has been approved by an institutional review board.

Subd. 5. *Exclusion for course of practice.* --Nothing in this chapter shall prohibit the sale to, or the possession of, a legend drug by licensed drug wholesalers, licensed manufacturers, registered pharmacies, local detoxification centers, licensed hospitals, bona fide hospitals wherein animals are treated, or licensed pharmacists and licensed practitioners while acting within the course of their practice only.

Subd. 6. *Exclusion for course of employment.*

(a) Nothing in this chapter shall prohibit the possession of a legend drug by an employee, agent, or sales representative of a registered drug manufacturer, or an employee or agent of a registered drug wholesaler, or registered pharmacy, while acting in the course of employment.

(b) Nothing in this chapter shall prohibit the following entities from possessing a legend drug for the purpose of disposing of the legend drug as pharmaceutical waste:

(1) a law enforcement officer;

(2) a hazardous waste transporter licensed by the Department of Transportation;

(3) a facility permitted by the Pollution Control Agency to treat, store, or dispose of hazardous waste,

including household hazardous waste;

(4) a facility licensed by the Pollution Control Agency or a metropolitan county as a very small quantity generator collection program or a minimal generator;

(5) a county that collects, stores, transports, or disposes of a legend drug pursuant to a program in compliance with applicable federal law or a person authorized by the county to conduct one or more of these activities; or

(6) a sanitary district organized under chapter 115, or a special law.

*Subd. 7. Exclusion for prescriptions.*

(a) Nothing in this chapter shall prohibit the possession of a legend drug by a person for that person's use when it has been dispensed to the person in accordance with a valid prescription issued by a practitioner.

(b) Nothing in this chapter shall prohibit a person, for whom a legend drug has been dispensed in accordance with a written or oral prescription by a practitioner, from designating a family member, caregiver, or other individual to handle the legend drug for the purpose of assisting the person in obtaining or administering the drug or sending the drug for destruction.

(c) Nothing in this chapter shall prohibit a person for whom a prescription drug has been dispensed in accordance with a valid prescription issued by a practitioner from transferring the legend drug to a county that collects, stores, transports, or disposes of a legend drug pursuant to a program in compliance with applicable federal law or to a person authorized by the county to conduct one or more of these activities.

*Subd. 8. Misrepresentation.* --It is unlawful for a person to procure, attempt to procure, possess, or control a legend drug by any of the following means:

(1) deceit, misrepresentation, or subterfuge;

(2) using a false name; or

(3) falsely assuming the title of, or falsely representing a person to be a manufacturer, wholesaler, pharmacist, practitioner, or other authorized person for the purpose of obtaining a legend drug.

*Subd. 9. Exclusion for course of laboratory employment.* --Nothing in this chapter shall prohibit the possession of a legend drug by an employee or agent of a registered analytical laboratory while acting in the course of laboratory employment.

*Subd. 10. Purchase of drugs and other agents by commissioner of health.* --The commissioner of health, in preparation for and in carrying out the duties of sections 144.05, 144.4197, and 144.4198, may purchase, store, and distribute antituberculosis drugs, biologics, vaccines, antitoxins, serums, immunizing agents, antibiotics, antivirals, antidotes, other pharmaceutical agents, and medical supplies to treat and prevent communicable disease.

Subd. 11. *Complaint reporting.* --The Board of Pharmacy shall report on a quarterly basis to the Board of Optometry any complaints received regarding the prescription or administration of legend drugs under section 148.576.

**HISTORY:** 1969 c 933 s 18; 1973 c 639 s 9; 1974 c 369 s 1; 1976 c 222 s 93,94; 1976 c 338 s 6; 1986 c 444; 1988 c 440 s 2; 1988 c 550 s 19; 1990 c 489 s 1; 1990 c 524 s 2; 1991 c 30 s 11; 1991 c 106 s 6; 1993 c 121 s 11; 1994 c 389 s 4,5; 1995 c 69 s 2; 1995 c 205 art 2 s 6; 1996 c 305 art 1 s 43; 2002 c 362 s 4; 2003 c 62 s 7; 2007 c 103 s 3; 2007 c 147 art 12 s 7; 2008 c 321 s 4,5; 2009 c 41 s 8,9; 2009 c 161 s 1; 2010 c 223 s 1,2; 2013 c 43 s 30; 2013 c 55 s 2; 2013 c 108 art 10 s 5

**NOTES:**

**EFFECTIVE NOTE**

The 2013 amendment by chapter 108 in 5. is effective May 24, 2013.

**AMENDMENT NOTE**

The 2013 amendment by chapter 43 in 30. added 2.(k). The 2013 amendment by chapter 55 in 2. added "a licensed dietitian or licensed nutritionist, pursuant to section 148.634" in the second sentence of 2.(a) and made related changes. The 2013 amendment by chapter 108 in 5. added the 4.(a) designation and added 4.(b) and 4.(c).

§ 335.175 R.S.Mo.

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\*\*\* CURRENT THROUGH ACTS APPROVED BY THE GOVERNOR AS OF MARCH 19, 2014, 97TH  
GENERAL ASSEMBLY, 2ND SESSION, 2014 \*\*\*  
\*\*\* MOST CURRENT ANNOTATION FEBRUARY 25, 2014. \*\*\*

TITLE 22. OCCUPATIONS AND PROFESSIONS (Chs. 324-346)  
CHAPTER 335. NURSES

§ 335.175 R.S.Mo. (2014)

§ 335.175. Utilization of **telehealth** by nurses [Expires August 28, 2019]

1. No later than January 1, 2014, there is hereby established within the state board of registration for the healing arts and the state board of nursing the "Utilization of **Telehealth** by Nurses". An advanced practice registered nurse (APRN) providing nursing services under a collaborative practice arrangement under section 334.104 may provide such services outside the geographic proximity requirements of section 334.104 if the collaborating physician and advanced practice registered nurse utilize **telehealth** in the care of the patient and if the services are provided in a rural area of need. **Telehealth** providers shall be required to obtain patient consent before **telehealth** services are initiated and ensure confidentiality of medical information.

2. As used in this section, "**telehealth**" means the use of medical information exchanged from one site to another via electronic communications to improve the health status of a patient, as defined in section 208.670.

3. (1) The boards shall jointly promulgate rules governing the practice of **telehealth** under this section. Such rules shall address, but not be limited to, appropriate standards for the use of **telehealth**.

(2) Any rule or portion of a rule, as that term is defined in section 536.010, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536 and, if applicable, section 536.028. This section and chapter 536 are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536 to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2013, shall be invalid and void.

4. For purposes of this section, "rural area of need" means any rural area of this state which is located in a health professional shortage area as defined in section 354.650.

5. Under section 23.253 of the Missouri sunset act:

(1) The provisions of the new program authorized under this section shall automatically sunset six years after August 28, 2013, unless reauthorized by an act of the general assembly; and

(2) If such program is reauthorized, the program authorized under this section shall automatically sunset twelve years after the effective date of the reauthorization of this section; and

(3) This section shall terminate on September first of the calendar year immediately following the calendar year in which the program authorized under this section is sunset.

**HISTORY:** L. 2013 H.B. 315, § A, eff. Aug. 28, 2013

**NOTES:**

Sunset date August 28, 2019, unless reauthorized.

Termination date September 1, 2020, unless reauthorized.

*Miss. Code Ann. § 41-127-1*

MISSISSIPPI CODE of 1972 ANNOTATED  
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\*\*\* Current through the 2013 Regular Session and 1st and 2nd Extraordinary Sessions \*\*\*

TITLE 41. PUBLIC HEALTH  
CHAPTER 127. TELEMEDICINE SERVICES

Miss. Code Ann. § 41-127-1 (2014)

§ 41-127-1. Licensed health care practitioners authorized to provide health care services via electronic means; standards of practice

Subject to the limitations of the license under which the individual is practicing, a health care practitioner licensed in this state may prescribe, dispense, or administer drugs or medical supplies, or otherwise provide treatment recommendations to a patient after having performed an appropriate examination of the patient either in person or by the use of instrumentation and diagnostic equipment through which images and medical records may be transmitted electronically. Treatment recommendations made via electronic means, including issuing a prescription via electronic means, shall be held to the same standards of appropriate practice as those in traditional provider-patient settings.

**HISTORY:** SOURCES: [Laws, 2013, ch. 478, § 2](#), eff from and after July 1, 2013.

*CMSR 50-034-001*

CODE OF MISSISSIPPI RULES

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\*\*\* This document reflects changes received through March 3, 2014 \*\*\*

AGENCY 50. REGULATORY AGENCIES

SUB-AGENCY 034. STATE BOARD OF PHYSICAL THERAPY

CHAPTER 001. LICENSURE OF PHYSICAL THERAPISTS AND PHYSICAL THERAPIST ASSISTANTS

CMSR 50-034-001 (2014)

CHAPTER 001. LICENSURE OF PHYSICAL THERAPISTS AND PHYSICAL THERAPIST ASSISTANTS

Part 3101

Organization and Structure

Chapter 1 General Provisions.

**Rule 1.1 Purpose.** The purpose of these regulations is to safeguard the public's health, safety, and welfare by establishing minimum qualifications and creating exclusive titles corresponding to the level of qualifications for individuals who wish to offer physical therapy services to the public. Further, in order to insure the highest degree of professional conduct by those engaged in offering physical therapy services to the public, it is the purpose of these regulations to provide and impose disciplinary sanctions, be they civil or criminal, against persons who do not meet or adhere to the procedures, qualifications, and standards set out in these regulations.

Source: Miss. Code Ann. §73-23-43 (Rev. 2008); Miss. Code Ann. §25-43-2.104 (Rev.2010).

**Rule 1.2 Legal Authority.** The Mississippi State Board of Physical Therapy is authorized to establish and enforce these rules and procedures by virtue of the "Mississippi Physical Therapy Practice Law," Sections 73-23-31 et seq. of Mississippi Code of 1972, annotated.

Source: Miss. Code Ann. §73-23-43 (Rev. 2008).

**Rule 1.3 Definitions.** The following terms shall have the meaning set forth below, unless the context otherwise requires:

1. "Board" shall mean the Mississippi State Board of Physical Therapy.
2. "License" shall mean the document of licensure issued by the Board.
3. "Act" shall mean the "Mississippi Physical Therapy Practice Law" sections 73-23-31 et seq. of Mississippi Code of 1972, annotated.
4. "Examination" shall mean a national examination approved by the board for the licensure of a Physical Therapist or a Physical Therapist Assistant.
5. "Physical therapy" or "physiotherapy," are terms that are deemed identical and interchangeable, means the art and science of a health specialty concerned with the prevention of disability, and the physical rehabilitation for congenital or acquired physical or mental disabilities, resulting from or secondary to injury or disease.
6. "Practice of physical therapy" shall mean the practice of the health specialty and encompass physical therapy evaluation, treatment, planning, treatment administration, instruction, and consultative services, including but not limited to:
  - a. Performing and interpreting tests and measurements as an aid to physical therapy treatment, for the purpose of correcting or alleviating any physical condition and to prevent the development of any physical or mental disability within the scope of physical therapy; and the performance of neuromuscular-skeletal tests and measurements as an aid in diagnosis, evaluation, or determination of the existence of and the extent of anybody malfunction and to assess ongoing effects of intervention. Electromyography (EMG)/nerve conduction studies may be performed by a licensed physical therapist who is certified in electromyography by the American Board of Physical Therapy Specialists (ABPTS).
  - b. Planning initial and subsequent treatment programs, on the basis of test findings; and
  - c. Administering treatment by therapeutic exercise, neuro-developmental procedures, therapeutic massage/manual therapy, mechanical devices and therapeutic agents, which employ the physical, chemical and other properties of air, water, heat, cold, electricity, sound and radiant energy for the purpose of correcting or alleviating any physical condition or preventing the development of any physical or mental disability.

**Telehealth** is an appropriate model of service delivery when it is provided in a manner consistent with the standards of practice, ethical principles, rules and regulations for Mississippi physical therapy practitioners. Intramuscular manipulation may be performed by a licensed physical therapist who has met the criteria as described hereunder:

A. Intramuscular manual therapy is a physical intervention that uses a filiform needle no larger than 25 gauge needle to stimulate trigger points, diagnose and treat neuromuscular pain and functional movement deficits; is based upon Western medical concepts; requires an examination and diagnosis, and treats specific anatomic entities selected according to physical signs. Intramuscular manual therapy does not include the stimulation of auricular or distal points or any points based upon areas of Eastern (Oriental) medicine and acupuncture.

B. Intramuscular manual therapy as defined pursuant to this rule is within the scope of practice of physical therapy.

C. A physical therapist must have the knowledge, skill, ability, and documented competency to perform an act that is within the physical therapist's scope of practice.

D. To be deemed competent to perform intramuscular manual therapy a physical therapist must meet the following requirements:

1. Documented successful completion of a intramuscular manual therapy course of study; online study is not considered appropriate training.

a. A minimum of 50 hours of face-to-face IMS/dry needling course study; online study is not considered appropriate training.

b. Three years of practice as a licensed physical therapist prior to using the intramuscular manual therapy technique.

2. The physical therapist must have Board approved credentials for providing intramuscular manipulation which are on file with the Board office prior to using the treatment technique.

E. The provider of the required educational course does not need to be a physical therapist. A intramuscular manual therapy course of study must meet the educational and clinical prerequisites as defined in this rule, D(1)(a)&(b) and demonstrate a minimum of two years of intramuscular manual therapy practice techniques.

F. A physical therapist performing intramuscular manual therapy in his/her practice must have written informed consent for each patient where this technique is used. The patient must sign and receive a copy of the informed consent form. The consent form must, at a minimum, clearly state the following information:

1. Risks and benefits of intramuscular manual therapy.

2. Physical therapist's level of education and training in intramuscular manual therapy.

3. The physical therapist will not stimulate any distal or auricular points during intramuscular manual therapy.

G. When intramuscular manual therapy is performed, this must be clearly documented in the procedure notes and must indicate how the patient tolerated the technique as well as the outcome after the procedure.

H. Intramuscular manual therapy shall not be delegated and must be directly performed by a qualified, licensed physical therapist.

I. Intramuscular manual therapy must be performed in a manner consistent with generally accepted standards of practice, including but not limited to, aseptic techniques and standards of the center for communicable diseases.

J. Failure to provide written documentation of appropriate educational credentials is a violation of this rule, and is prima facie evidence that the physical therapist is not competent and not permitted to perform intramuscular manual therapy.

K. This rule is intended to regulate and clarify the scope of practice for the physical therapist.

7. "Physical therapist (PT)" means a person licensed in this state to practice physical therapy as defined in these regulations, and whose license is in good standing.

8. "Physical therapist assistant (PTA)" means a person who is licensed in this state and who assists a physical therapist in the provision of physical therapy under the direct, on-site supervision of the physical therapist. The physical therapist assistant may perform physical therapy procedures and related tasks that have been selected and delegated by the supervising physical therapists, but shall not perform the following physical therapy activities: interpretation of referrals; physical therapy initial evaluation/screening and reevaluation; identification, determination or modification of plans of care (including goals and treatment programs); final discharge assessment/evaluation or establishment of the discharge plan; or therapeutic techniques beyond the skill and knowledge of the physical therapist assistant.

9. "Referral" means the written or oral designation of physical therapy services by a doctor of medicine, dentistry, osteopathy, podiatry, or chiropractic, physician assistant, or by a nurse practitioner, holding a license in good standing under the laws of the state of Mississippi, another state, a territory of the United States, or the District of Columbia. The instruction may be as detailed or as general as the doctor, physician assistant or nurse practitioner in his or her sound discretion deems necessary in the particular case.

10. "Direct, on-site supervision" means face-to-face oversight by a licensed physical therapist at regular intervals, as prescribed in these regulations adopted by the Board, of the services provided to a patient by a licensed physical therapist assistant.

11. "Direct supervision" means face-to-face oversight at regular intervals of a physical therapist issued a temporary license under Part 3103 Rule 1.4 of these regulations by a licensed physical therapist.

12. "Face-to-face" means within each other's sight or presence at regular intervals.

13. "Regular intervals" means every sixth treatment day or fourteenth calendar day, whichever comes first.

Source: 33 Miss. Code Ann. §§73-23- 33 and 73-23-43 (Rev. 2008).

Rule 1.4 Publication. The Board shall publish, annually, a list of the names and addresses of all persons licensed by the Board as physical therapists and physical therapist assistants and a list of all persons whose licenses have been suspended, revoked, denied renewal, put on probationary status, censured, or reprimanded.

Source: Miss. Code Ann. §73-23-43(1)(e) and (2)(Rev. 2008).

Chapter 2 State Board of Physical Therapy "Board" Organization.

Rule 2.1. Board Structure and Purpose. The Board shall consist of seven (7) members as set forth in the Act, i.e., four (4) licensed physical therapists, one (1) licensed physical therapist assistant, one (1) licensed physician, and one (1) consumer at large, for the terms indicated therein. Each must possess unrestricted

Utah Telehealth Study - Phase 2 Report

Prepared by Pilot Healthcare Strategies for the Utah Division of Occupational and Professional Licensing

May 2, 2014

licenses to practice in his/her profession. The consumer at large shall not be associated with or financially interested in any health care profession and who has an interest in consumer rights. The purpose of the Board is the administration and interpretation of the Act.

Source: 41 Miss. Code Ann. §§73-23- 41(1) and 73-23-43(1)(e)(Rev. 2008); Miss. Code Ann. §25-43-2.104 (Rev.2010).

Rule 2.2. Meetings. The Board shall meet at least once each quarter and those meetings shall be held in compliance with the Open Meetings Law (Section 25-41-1, et seq.). Additional meetings may be held, at the discretion of the chairman of the Board or at the request of four (4) members of the Board, upon ten (10) days written notice to the Board members. A quorum shall consist of four (4) members of the Board, including the chairman, and shall be necessary for the Board to take action by vote.

Source: Miss. Code Ann. §§73-23-41(2) and 73-23-43(1)(e)(Rev. 2008); Miss. Code Ann § 25-43-2.104 (Rev. 2010).

Rule 2.3. Responsibilities. The Board shall have the following powers and duties:

1. To examine and determine the qualifications and fitness of application for licenses to practice as physical therapists and licenses to act as physical therapist assistants in this state, provide for and approve all examinations of applicants for licensure;
2. To issue, renew, deny, suspend, or revoke licenses to practice as physical therapists and licenses to act as physical therapist assistants in this state or otherwise discipline licensed physical therapists and physical therapist assistants;
3. To investigate alleged or suspected violations of the provisions of the act or other laws of this state pertaining to physical therapy and any rules and regulations adopted by the Board;
4. To establish reasonable fees for application for examination, certificates of licensure and renewal and other services provided by the Board;
5. To adopt, amend or repeal any rules or regulations necessary to carry out the purposes of the act and the duties and responsibilities of the Board, in accordance with section 25-43-1 et seq. Such rules, when lawfully adopted, shall have the effect of law;
6. To hire appropriate support personnel to carry out the provisions of the Act;
7. Keep a record of all proceedings of the Board, and make said records available to the public; and
8. To promulgate and implement rules and procedures to carry out the purpose of the Act.
9. To maintain a register listing the name of every physical therapist and physical therapist assistant licensed to practice in this state, his/her last known place of business and last known place of residence, and the date and number of his/her license. At least once a year, compile a list of physical therapists and physical therapist

assistants licensed to practice in Mississippi and make the list available to any person upon application to the Board and the payment of such charges as may be fixed upon it.

10. Subject to any confidentiality provisions established by law, make all written final orders available for public inspection and copying and index them by name and subject.

11. Subject to any confidentiality provisions established by law, when and if declaratory opinions are required by state law, make all declaratory opinions available for public inspection and copying and index them by name and subject, unless information contained within such opinions is confidential by statute or exempt from public disclosure pursuant to another provision of law.

12. To adopt the American Physical Therapy Association Code of Ethics: Standards of Ethical Conduct and the accompanying Guide for Professional Conduct for physical therapists and physical therapist assistants licensed under this chapter. To further adopt the American Physical Therapy Association Standards of Practice for Physical Therapy and the accompanying Criteria.

13. To regulate the practice of physical therapy by interpreting and enforcing this chapter;

14. To provide for the examination of physical therapists and physical therapist assistants;

15. To establish mechanisms for assessing the continuing professional competence of physical therapists and physical therapist assistants;

16. To set criteria for continuing education;

17. To establish and collect fees for sustaining the necessary operation and expenses of the Board;

18. To publish, at least annually, final disciplinary action against a licensee;

19. To report final disciplinary action taken against a licensee to other state or federal regulatory agencies and to a national disciplinary database recognized by the Board or as required by law;

20. To share documents, materials, or other information, including confidential and privileged documents, materials, or information, received or maintained by the Board with other state or federal and with national disciplinary database recognized by the Board or as required by law provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material, or other information;

21. To participate in or conduct performance audits;

22. To, through its employees and/or representatives, enter and make inspections of any place where physical therapy is practiced and inspect and/or copy any record pertaining to clients or the practice of physical therapy under this chapter;

23. To conduct a criminal history records check on licensees whose licensure is subject to investigation by the Board and on applicants for licensure. In order to determine the applicant's or licensee's suitability for licensing,

the applicant or licensee shall be fingerprinted. The Board shall be authorized to charge and collect from the applicant or licensee, in addition to all other applicable fees and costs, such amount as may be incurred by the Board in requesting and obtaining state and national criminal history records information on the applicant or licensee.

Source: 41 Miss. Code Ann. §§73-23- 41(2), 73-23-43 and 73-23-67 (Rev. 2008); Miss. Code Ann.. §§24-43-2.103(5)(c) and 25-43-2.104 (Rev. 2010).

Rule 2.4 Method of Operation. The Mississippi State Board of Physical Therapy, hereinafter "[Board]" is created pursuant to Miss Code Ann. § 73-23-1, et. seq., as amended, in order to examine and determine the qualifications and fitness of applicants for license to practice physical therapy and to practice as physical therapist assistant; to issue, renew, deny, suspend, and revoke licenses; to investigate and inspect, pursuant to the law, and regulate licensure of physical therapists and physical therapist assistants; to establish licensure and examination, fees, pursuant to the law; adopt and amend rules and regulations; hire support personnel; but not limited thereto, and in order to conduct licensure and regulation of physical therapists and physical therapist assistants.

The Board's office is located at 625 Lakeland East Drive, Suite F., Flowood, MS. 39232. The website is [www.msbt.state.ms.us](http://www.msbt.state.ms.us). The phone number is (601) 939-5124 and the fax number is (601) 939-5246. [required by 25-43-2.104]

Source: Miss. Code Ann. §§73-23-41 and 73-23-43 (Rev. 2008); 2.104 Miss. Code Ann. §25-43- 2.104 (Rev. 2010).

### Chapter 3 Oral Proceedings on Proposed Rules.

Rule 3.1 Scope. This rule applies to all oral proceedings held for the purpose of providing the public with an opportunity to make oral presentations on proposed new rules and amendments to rules before the Board pursuant to Rule 3.1 and §25-43-3.104.

1. When Oral Proceedings will be Scheduled on Proposed Rules. The Board will conduct an oral proceeding on a proposed rule or amendment if requested by a political subdivision, an agency or ten (10) persons in writing within twenty (20) days after the filing of the notice of the proposed rule.
2. Request Format. Each request must be printed or typewritten, or must be in legible handwriting. Each request must be submitted on standard business letter-size paper (8-1/2 inches by 11 inches). Requests may be in the form of a letter addressed to the Board and signed by the requestor(s).
3. Notification of Oral Proceeding. The date, time and place of all oral proceedings shall be filed with the Secretary of State's office and mailed to each requestor. The oral proceedings will be scheduled no earlier than twenty (20) days from the filing of this information with the Secretary of State.
4. Presiding Officer. The Commissioner or his designee, who is familiar with the substance of the proposed rule, shall preside at the oral proceeding on a proposed rule.

## 5. Public Presentations and Participation.

- a. At an oral proceeding on a proposed rule, persons may make oral statements and make documentary and physical submissions, which may include data, views, comments or arguments concerning the proposed rule.
- b. Persons wishing to make oral presentations at such a proceeding shall notify the Board at least one business day prior to the proceeding and indicate the general subject of their presentations. The presiding officer in his or her discretion may allow individuals to participate that have not previously contacted the Board.
- c. At the proceeding, those who participate shall indicate their names and addresses, identify any persons or organizations they may represent, and provide any other information relating to their participation deemed appropriate by the presiding officer.
- d. The presiding officer may place time limitations on individual oral presentations when necessary to assure the orderly and expeditious conduct of the oral proceeding. To encourage joint oral presentations and to avoid repetition, additional time may be provided for persons whose presentations represent the views of other individuals as well as their own views.
- e. Persons making oral presentations are encouraged to avoid restating matters that have already been submitted in writing.
- f. There shall be no interruption of a participant who has been given the floor by the presiding officer, except that the presiding officer may in his or her discretion interrupt or end the partisan's time where the orderly conduct of the proceeding so requires.

## 6. Conduct of Oral Proceeding.

- a. Presiding officer. The presiding officer shall have authority to conduct the proceeding in his or her discretion for the orderly conduct of the proceeding. The presiding officer shall (i) call proceeding to order; (ii) give a brief synopsis of the proposed rule, a statement of the statutory authority for the proposed rule, and the reasons provided by the Board for the proposed rule; (iii) call on those individuals who have contacted the board about speaking on or against the proposed rule; (iv) allow for rebuttal statements following all participants comments; (v) adjourn the proceeding.
- b. Questions. The presiding officer, where time permits and to facilitate the exchange of information, may open the floor to questions or general discussion. The presiding officer may question participants and permit the questioning of participants by other participants about any matter relating to that rule-making proceeding, including any prior written submissions made by those participants in that proceeding; but no participant shall be required to answer any question.
- c. Physical and Documentary Submissions. Submissions presented by participants in an oral proceeding shall be submitted to the presiding officer. Such submissions become the property of the Board and are subject to the Board's public records request procedure.
- d. Recording. The Board may record oral proceedings by stenographic or electronic means.

Source: Miss. Code Ann. §25-43-2.104 (Rev. 2010) and Miss. Code Ann. §73-23-43(1)(e).

## Chapter 4 Declaratory Opinions.

**Rule 4.1 Declaratory Opinions. Scope.** These rules set forth the Mississippi State Board of Physical Therapy, hereinafter "[Board]," rules governing the form and content of requests for declaratory opinions, and the Board's procedures regarding the requests, as required by Mississippi Code §25-43-2.103. These rules are intended to supplement and be read in conjunction with the provisions of the Mississippi Administrative Procedures Law, which may contain additional information regarding the issuance of declaratory opinions. In the event of any conflict between these rules and the Mississippi Administrative Procedures Law, the latter shall govern.

**1. Persons Who May Request Declaratory Opinions.** Any person with a substantial interest in the subject matter may request a declaratory opinion from the Board by following the specified procedures. "Substantial interest in the subject matter" means: an individual, business, group or other entity that is directly affected by the Board's administration of the laws within its primary jurisdiction. "Primary jurisdiction of the Board" means the Board has a constitutional or statutory grant of authority in the subject matter at issue.

**2. Subjects Which May Be Addressed In Declaratory Opinions.** The Board will issue declaratory opinions regarding the applicability to specified facts of: (1) a statute administered or enforceable by the Board or (2) a rule promulgated by the Board. The Board will not issue a declaratory opinion regarding a statute or rule which is outside the primary jurisdiction of the Board.

**3. Circumstances In which Declaratory Opinions Will Not Be Issued.** The Board may, for good cause, refuse to issue a declaratory opinion. The circumstances in which declaratory opinions will not be issued include, but are not necessarily limited to:

- a. lack of clarity concerning the question presented;
- b. there is pending or anticipated litigation, administrative action, or other adjudication which may either answer the question presented by the request or otherwise make an answer unnecessary;
- c. the statute or rule on which a declaratory opinion is sought is clear and not in need of interpretation to answer the question presented by the request;
- d. the facts presented in the request are not sufficient to answer the question presented;
- e. the request fails to contain information required by these rules or the requestor failed to follow the procedure set forth in these rules;
- f. the request seeks to resolve issues which have become moot, or are abstract or hypothetical such that the requestor is not substantially affected by the statute or rule on which a declaratory opinion is sought;
- g. no controversy exists concerning the issue the requestor is not faced with existing facts or those certain to arise which raise a question concerning the application of the statute or rule;

- h. the question presented by the request concerns the legal validity of a statute or rule;
  - i. the request is not based upon facts calculated to aid in the planning of future conduct but is, instead, based on past conduct in an effort to establish the effect of that conduct;
  - j. no clear answer is determinable;
  - k. the question presented by the request involves the application of a criminal statute or a set of facts which may constitute a crime;
  - l. the answer to the question presented would require the disclosure of information which is privileged or otherwise protected by law from disclosure;
  - m. the question is currently the subject of an Attorney General's opinion request or has been answered by an Attorney General's opinion;
  - n. a similar request is pending before this Board or any other agency or a proceeding is pending on the same subject matter before any agency, administrative or judicial tribunal, or where such an opinion would constitute the unauthorized practice of law.
  - o. where issuance of a declaratory opinion may adversely affect the interests of the State, the Board or any of their officers or employees in any litigation which is pending or may reasonably be expected to arise;
  - p. the question involves eligibility for a license, permit, certificate or other approval by the Board or some other agency, and there is a statutory or regulatory application process by which eligibility for said license, permit, certificate or other approval would be determined.
4. Written Request Required. Each request must be printed or typewritten, or must be in legible handwriting. Each request must be submitted on standard business letter- size paper (8-1/2 inches by 11 inches). Requests may be in the form of a letter addressed to the Board.
5. Where to Send Requests. All requests must be mailed, delivered or transmitted via facsimile to the Board. The request shall clearly state that it is a request for a declaratory opinion. No oral, telephone requests or email requests will be accepted for official opinions.
6. Name, Address and Signature of Requestor. Each request must include the full name, telephone number, and mailing address of the requestor. All requests shall be signed by the person filing the request, who shall attest that the request complies with the requirements set forth in these rules, including but not limited to a full, complete, and accurate statement of relevant facts and that there are no related proceedings pending before any other administrative or judicial tribunal.
7. Question Presented. Each request shall contain the following:
- a. a clear and concise statement of all facts on which the opinion is requested;

- b. a citation to the statute or rule at issue;
  - c. the question(s) sought to be answered in the opinion, stated clearly;
  - d. a suggested proposed opinion from the requestor, stating the answers desired by petitioner and a summary of the reasons in support of those answers;
  - e. the identity of all other known persons involved in or impacted by the described factual situation, including their relationship to the facts, name, mailing address and telephone number; and
  - f. a statement to show that the person seeking the opinion has a substantial interest in the subject matter.
8. Time for [agency]'s Response. Within forty-five (45) days after the receipt of a request for a declaratory opinion which complies with the requirements of these rules, the Board shall, in writing:
- a. issue a declaratory opinion regarding the specified statute or rule as applied to the specified circumstances;
  - b. decline to issue a declaratory opinion, stating the reasons or its action; or
  - c. agree to issue a declaratory opinion by a specified time but not later than ninety (90) days after receipt of the written request;

The forty-five (45) day period shall begin running on the first State of Mississippi business day on or after the request is received by the Board, whichever is sooner.

9. Opinion Not Final for Sixty Days. A declaratory opinion shall not become final until the expiration of sixty (60) days after the issuance of the opinion. Prior to the expiration of sixty (60) days, the Board may, in its discretion, withdraw or amend the declaratory opinion for any reason which is not arbitrary or capricious. Reasons for withdrawing or amending an opinion include, but are not limited to, a determination that the request failed to meet the requirements of these rules or that the opinion issued contains a legal or factual error.

10. Notice by [agency] to third parties. The Board may give notice to any person, agency or entity that a declaratory opinion has been requested and may receive and consider data, facts, arguments and opinions from other persons, agencies or other entities other than the requestor.

11. Public Availability of Requests and Declaratory Opinions. Declaratory opinions and requests for declaratory opinions shall be available for public inspection and copying in accordance with the Public Records Act and the board's public records request procedure. All declaratory opinions and requests shall be indexed by name and subject. Declaratory opinions and requests which contain information which is confidential or exempt from disclosure under the Mississippi Public Records Act or other laws shall be exempt from this requirement and shall remain confidential.

12. Effect of a Declaratory Opinion. The Board will not pursue any civil, criminal or administrative action against a person who is issued a declaratory opinion from the Board and who, in good faith, follows the

direction of the opinion and acts in accordance therewith unless a court of competent jurisdiction holds that the opinion is manifestly wrong. Any declaratory opinion rendered by the Board shall be binding only on the Board and the person to whom the opinion is issued. No declaratory opinion will be used as precedent for any other transaction or occurrence beyond that set forth by the requesting person.

Source: Miss. Code Ann. §25-43-2.103 (Rev.2010) and Miss. Code Ann. §73-23-43(1)(e).

## Chapter 5 Public Records Request.

Rule 5.1 Scope. All written public records requests pursuant to the statute will be approved or denied in writing within fourteen (14) working days after the request is made.

A document search will be done personally by individual, firm, or their representative requesting reproduction in the presence of the Physical Therapy Board's staff personnel and/or a Board member. Each document will be marked for copying by the searcher. Actual reproduction will be made by the Physical Therapy Board's staff personnel and/or the Board member. Some documents are exempt as privileged by law and are not available for inspection. Examples are, but not limited to, personnel records, appraisals, attorney communications and work products of attorneys, certain records compiled in the process of detecting and investigating any unlawful activity or alleged unlawful activity, licensure application and examination records, records maintained by public hospitals, records the release of which would deprive one criminally accused of his constitutional right to a fair trial, test questions and answers in the possession of the Physical Therapy Board and/or its staff personnel which are to be used in future academic examinations, letters of recommendation in the possession of the Board and/or its staff personnel respecting admission to any educational agency or institution or respecting any application for employment, documents relating to contract authorization under 25-9-120, recommendations in the possession of the Board respecting any application for professional license or certificate, records about a person's individual tax payment or status. All written public records request shall be forwarded immediately by the Board and/or its staff personnel to counsel for the Board for a determination of the availability of the requested information for inspection and copying. Costs of reproductions and certifications will be payable by the requesting individual, firm or their representative in advance of receipt of any requested documents. The attached schedule of charges and/or fees is being filed with the Secretary of State's Office along with the substance of this rule/regulation.

Charges are as follows:

### Xerographic Reproductions:

8 1/2 x 11" .25/page

8 1/2 x 14" .35/page

11 x 17" .75/page

### Microfilm Reproductions:

8 1/2" x 11" .50/page

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Minimum charge of \$ 2.00 per request

Computer Printouts:

11 x 17" Continuous form \$ 1.00/page of reported data

\$ 250.00 for data retrieved from computer file

Charge of \$ 7.50/1000 pages printed with a \$ 7.50 minimum charge

Certification of Documents:

\$ 3.00/First copy or cover letter

\$ 1.00/Each additional page

Minimum charge of \$ 3.00 per request

Additional fees incident to document production may include personnel charges for time expended in the actual searching, reviewing, and/or duplication of documents and, if applicable, the mailing of copies of said public documents. All denials of document request shall be in writing, shall state reasons for denial.

Source: Miss. Code Ann. §§25-61-1 through 25-61-12 (Rev. 2010) and Miss. Code Ann. §73-23-43(1)(e) and (d).

Part 3103

Licensure, Practice, Renewal, Continuing Education, Standard of Conduct & Fee

Chapter 1 Licensure.

Rule 1.1 Licensure Requirements. An applicant for a regular license as a physical therapist or physical therapist assistant shall submit to the Board, verified by oath, written evidence in form and content satisfactory to the Board that the applicant:

1. Is of good moral character which is defined as: a. "Good moral character" is a pattern of behavior conforming to the profession's ethical standards and behavior that indicates honesty and truthfulness, integrity, respect among the community for lawful behavior, respect for the rights of others, and obedience to the lawful directives of public officers or officials or persons charged with the enforcement of the law and showing an absence of moral turpitude.

2.[1] A determination of good moral character shall be based on acts that reflect moral turpitude and upon the consideration of all aspects of a person's character as exemplified by his or her behavior and shall include, but not necessarily be limited to, consideration of the following:

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May 2, 2014

- a. Evidenced among other things of having neither a conviction nor a plea of guilty or nolo contendere, probation, pretrial diversion or payment of any fine for a felony or a misdemeanor involving moral turpitude, regardless of whether the matter is under appeal by the applicant. Fitness for service as it relates to moral character must be verified by an appropriate background investigation.
- b. Disciplinary action taken against any professional license, registration or certification held by the applicant by applicable governmental authority of any state, territory or political subdivision of the United States or any other jurisdiction.
- c. Whether an applicant has been guilty of conduct or practices in this state or elsewhere which would constitute grounds for disciplinary action under the Board's laws, rules and/or regulations.
- d. Civil lawsuits and administrative action bearing upon moral character such as fraud, misrepresentation, theft, assault and battery.
- e. The applicant's prior history of unlicensed practice of a regulated profession in this state.
- f. Conduct that violates any of the provisions in the Code of Professional Ethics, Guidelines and Standards established by the American Physical Therapy Association.
- g. Conduct involving dishonesty, fraud, or attempted deception.
- h. Conduct involving misrepresentation.
- i. Conduct that would adversely reflect on a person's fitness to perform physical therapy.

3.[2] In determining a person's good moral character when there is evidence of the conduct described above in subsection 2 of this Rule, the Board will also consider the following factors:

- a. The nature of the criminal offense(s) or conduct which gave rise to the disciplinary, civil or administrative action.
- b. The age of the applicant at the time of the criminal conviction(s) or conduct which give rise to the disciplinary, civil or administrative action.
- c. The number of criminal convictions or number of disciplinary, civil or administrative actions taken against the applicant.
- d. The nature and severity of the sentence or sanction imposed for each criminal conviction or disciplinary, civil or administrative action.
- e. Whether the probation period given in a conviction has been completed and fully satisfied to include fines, court costs, and other conditions of probation.
- f. Whether restitution ordered by a court in a criminal conviction or civil judgement has been fully satisfied.

g. Satisfactory completion of all terms of a criminal conviction(s) or disciplinary action.

4.[3] The burden of demonstrating that the applicant possesses the good moral character required for licensure shall rest with the applicant.

2. Has graduated from a physical therapist or a physical therapist assistant program accredited by an agency recognized by the US Department of Education, Office on Postsecondary Education and has paid an application fee not to exceed double the price of the examination, no part of which shall be refundable.

3. Has passed an examination approved by the Board with the minimum passing score set by the Board and published annually; and

a. An applicant who has taken the exam more than five times in any jurisdiction and who is not licensed is not eligible to sit for the examination in Mississippi.

b. Has paid the required fee(s);

c. Has valid social security number; and

d. Applicants for licensure must pass the Board's jurisprudence exam.

Source: Miss. Code Ann. §§73-23-43(1)(e), 73-23-47 and 73-23-49 (Rev. 2008).

Rule 1.2 Licensure by Reciprocity. An applicant for licensure by reciprocity shall submit to the Board, verified by oath, written evidence in form and content satisfactory to the Board that:

a. The applicant has a valid unrestricted license from another jurisdiction of the United States.

b. That the requirements for said license are equivalent to or greater than those required in this state as set forth in Part 3103 Rule 1.1 and 1.2 of these regulations; and

c. That said license is in good standing and has not been suspended or revoked.

Source: Miss. Code Ann. §§73-23-43(1)(e) and 73-23-51(1) (Rev. 2008).

Rule 1.3 Foreign Trained Individuals. An applicant for licensure who has been trained as a physical therapist in a foreign country, and desires to be licensed pursuant to the laws of the State of

Mississippi, shall submit to the Board, verified by oath, in form and content satisfactory to the Board:

1. That the applicant is of good moral character;

2. That the applicant holds a diploma from an educational program for physical therapists approved by the Board;

3. Documentary evidence that the educational program is substantially equivalent to that required of a non-foreign trained applicant for licensure; for the purpose of this section "substantially equivalent" means that an applicant for licensure educated outside of the United States shall have:

- a. Graduated from a physical therapist education program that prepares the applicant to engage without restriction in the practice of physical therapy.
- b. Provide written proof that the applicant's school of physical therapy education is recognized by its own ministry of education.
- c. Undergone credentials evaluation as directed by the Board that determines the candidate has met uniform criteria for educational requirements as further established by rule.
- d. Completed any additional education as required by the Board.
- e. Passed the Board approved English proficiency examinations if the applicant's native language is not English.
- f. Passed the examination approved by the Board.
- g. And meets other requirements established by rules of the Board.

4. Notwithstanding the provisions in the above section, if the applicant is educated outside the United States and is a graduate of a professional physical therapy educational program accredited by a national accrediting agency approved by the Board, the Board may waive the requirements in Part 3103 Rule 1.3, paragraph 3.

5. Until and including December 31, 2006, demonstrable proficiency in the English language by passing all of the following English language examinations with scores to be determined by the Board:

a. Minimum scores of:

1. 4.5 on the Test of Written English (TWE); and
2. 50 on the Test of Spoken English (TSE); and
3. 220 on the computer based Test of English as a Foreign Language (TOEFL) or 560 on the paper based TOEFL; and

b. Effective January 1, 2007, evidence of successful completion of a Board approved English proficiency examination:

1. Minimum scores on the TOEFL iBT:

1. 24 on the writing section;

2. 26 on the speaking section;
3. 21 on the reading section; and
4. 18 on the listening comprehension section

The Board reserves the right to require a personal interview with any applicant for final determination of the exemption request.

Source: Miss. Code Ann. §§73-23-43(1)(e) and 73-23-51(2)(Rev. 2008).

#### Rule 1.4 Temporary License.

1. A temporary license to practice as a physical therapist or physical therapist assistant may be granted to an applicant for licensure meeting the requirements of Part 3103 Rule 1.1 or 1.3 who has registered for the exam in this state but has not taken the approved examination or has not received the results of the examination, subject to the conditions of Rule 1.5.
2. The Board may by rule provide for the issuance of a temporary license to a physical therapist or a physical therapist assistant licensed in another state and has filed an application with the Board for a permanent license in this state. This temporary license will be granted for a period not to exceed sixty (60) days.
3. During a lawfully declared local, state, or national disaster or emergency, the Board may issue a temporary license to any otherwise qualified physical therapist or physical therapist assistant licensed and in good standing in another state or territory of the United States and who meets such other requirements as the Board may prescribe by rule and regulations.

Source: Miss. Code Ann. §§73-23-43(1)(e) and 73-23-53 (Rev. 2008).

#### Rule 1.5 Conditions of Temporary Licensure Issued under Part 3103 Rule 1.4.1.

1. A temporary license shall be granted for a period not to exceed ninety (90) days beyond the date of the next scheduled examination.
2. A temporary licensee shall restrict his practice to the State of Mississippi.
3. 1. A physical therapist temporary licensee shall practice under the direct supervision of a physical therapist licensed in Mississippi. Direct supervision in this case shall mean:
  - a. Daily face to face communication between the supervising physical therapist and temporary licensee; and,
  - b. On premises observation of patient care in each of the temporary licensee's practice settings, a minimum of two (2) hours per day;
  - c. Availability of the supervising therapist via telecommunications when he or she is not on premises.

2. A physical therapist assistant temporary licensee shall practice under the direct on-site supervision of a physical therapist licensed in Mississippi. Direct, on-site supervision in this case shall mean:
  - a. Daily face to face communication between the supervising physical therapist and temporary licensee; and,
  - b. On premises observation of patient care in each of the temporary licensee's practice settings, a minimum of two (2) hours per day;
  - c. Availability of the supervising therapist via telecommunications when he or she is not on premises.
4. A temporary licensed physical therapist may not supervise any licensed physical therapist or physical therapist assistant.
5. Documentation in form and substance acceptable to the Board that the conditions of Part 3103 Rule 1.5.3 have been met must be on file with the Board before a temporary license will be issued.
6. The license of a temporary licensee who is required to take the approved examination and fails to take said examination shall be automatically expired by operation of the law and without further action of the Board as of the date the results are received by the Board.
7. The license of a temporary licensee who does not pass the approved examination shall be automatically expired by operation of the law and without further action of the Board on the date that the results of the examination are received by the Board.
8. A temporary license will not be issued to any individual who has had a temporary license expired pursuant to the provisions of these regulations.
9. Any person who has taken but not passed the required examination in this or another jurisdiction shall not be eligible for a license of any type until an approved examination is passed.

Source: Miss. Code Ann. §§73-23-43(1)(e) and 73-23-53 (Rev. 2008).

**Rule 1.6 Inactive Status.** Inactive status indicates the voluntary termination of the right or privilege to practice physical therapy in Mississippi. The Board may allow a licensee who is not actively engaged in the practice of physical therapy in Mississippi to inactivate the license instead of renewing it at the time of renewal. A licensee may remain on inactive status for no more than six consecutive years. After the six year period of inactive status the licensee must comply with Part 3103 Rule 4.4 in order to reinstate his/her license.

1. Requirements for initiation of inactive status. The following is required to put a license on active status:
  1. A signed renewal application form, documenting completion of Board approved continuing education (CE) for the current renewal period, as described in Part 3103 Rule 5.4 of the regulations;
  2. The inactive fee, and any late fees which may be due; and

3. A passing score on the jurisprudence exam.

2. Requirements for renewal of inactive status. An inactive licensee must renew the inactive status every two years. The components required to maintain the inactive status are:

1. A signed renewal application form, documenting completion of Board approved continuing education (CE) for the current renewal period, as described in Part 3103 Rule 5.4 of the regulations;

2. The inactive renewal fee, and any late fees which may be due; and

3. A passing score on the jurisprudence exam.

3. Requirements for reinstatement of active status and must otherwise comply with the law, rules and regulations. A licensee on inactive status may request a return to active status at any time. After the licensee has submitted a complete application for reinstatement, the Board will send a renewal certificate for the remainder of the current renewal period to the licensee.

1. The components required to return to active status are:

a. A signed renewal application form, documenting completion of Board approved continuing education (CE) for the current renewal period;

b. The renewal fee, and any late fees which may be due; and

c. A passing score on the jurisprudence exam.

2. The Board will allow the licensee to substitute one of the following actions for the continuing education requirements:

a. Re-take and pass the national licensure exam;

b. Attend a university review course pre-approved by the Board; or

c. Complete an internship (equal to 150 hours of continuing education) pre-approved by the Board.

Source: Miss. Code Ann. §§73-23-43(1)(e) and 73-23-57(Rev. 2008).

Rule 1.7 Licensees called to Active Military Service.

1. Renewal:

a. A licensee who is a member of the reserves and called to active military service must submit renewal fees within 90 days after active service has ended if their license expired within the months of active service. The regular renewal period will not change. The licensee must submit official documentation of active service and

its inclusive dates.

## 2. Continuing education units (CEUs):

- a. A licensee who is a member of the reserves and called to active military service will have his/her CEUs prorated in proportion to the number of months of documented active service.
- b. A licensee whose license expires during the period of active service will be given a complete waiver of CEUs for the past renewal period, and CEUs for months of documents active service in the current renewal cycle will be prorated.
- c. All licensees must take two hours of Board-approved programs in ethics and professional responsibility as part of their total CE requirement, which cannot be prorated.

Source: Miss. Code Ann. §§73-23-43(1)(e) and 73-23-53 (Rev. 2008); and Miss. Code Ann. §33-1-39 (Rev. 2010).

Rule 1.8 Address/Name Change. The cost of resending any correspondence or materials will be born by the licensee.

1. Change of Address - Each person holding a license who has had a change of address shall file in writing with the Board his/her current mailing address, giving both old and new addresses. Such notification should be received in the Board's administrative office no later than thirty (30) days after such change is effective and must reference the individual's name, profession, and license number.

2. Change of Name - An individual licensed with the Board shall notify the Board in writing within thirty (30) days of a name change. The notice shall provide both the old and new name, a notarized photocopy of the official document involved, and must reference the individual's profession and license number.

Source: Miss. Code Ann. §73-23-43(1)(d), (e) and (2) (Rev. 2008).

Rule 1.9 Abandonment. An application shall be deemed abandoned by the Board if, after one (1) year from the date of filing, the requirements for licensing have not been completed and submitted to the Board.

Source: Miss. Code Ann. §73-23-43(1)(e) (Rev. 2008).

## Chapter 2 Professional Identification.

Rule 2.1 Professional Titles and Abbreviations. The preferred title for use by the licensed physical therapist is the initials PT. The licensed physical therapist assistant may use the title PTA. A person issued a license to practice pursuant to the Act by the Mississippi State Board of Physical Therapy may use the titles physiotherapist, licensed or registered physical therapist, licensed or registered physical therapist assistant, and the abbreviations PT, DPT, LPT, RPT and PTA or LPTA, depending upon the license issued by the Board.

It shall be unlawful for any person, or business entity, its employees, agents or representatives to in any manner,

represent himself/herself or itself as a physical therapist, a physical therapist assistant or someone who provides physical therapy services, or use in connection with his or its name the words or letters physiotherapist, registered or licensed physical therapist, PT, RPT, licensed physical therapist assistant, LPTA, PTA, or any other letters, words, abbreviations or insignia, indicating or implying that he or it is a physical therapist, a physical therapist assistant, or provides physical therapy services, without a valid existing license as a physical therapist or as a physical therapist assistant, as the case may be, issued to that person. It shall be unlawful to employ an unlicensed physical therapist or physical therapist assistant to provide physical therapy services.

Source: Miss. Code Ann. §§73-23-43(1)(e) and 73-23-35 (Rev. 2008).

**Rule 2.2 Production and Display of License.** A person licensed to practice physical therapy in Mississippi shall be issued a "Certificate of Licensure" and "License Identification Card." The licensee shall prominently display the "Certificate of Licensure" or copy thereof at their place(s) of employment. The licensee shall carry the "License Identification Card" with them at all times and show said ID card when requested.

Source: Miss. Code Ann. § 73-23-43(1)(e) and (h) (Rev. 2008).

**Rule 2.3 Consumer Information Sign.** There should at all times be prominently displayed in the place of business each licensee a sign containing the name, mailing address, and telephone number of the Board and a statement informing consumers that complaints against licensees can be directed to the Board. The consumer information sign shall read: Complaints regarding non-compliance with the Mississippi Physical Therapy Practice Act can be directed to the Mississippi State Board of Physical Therapy, P.O. Box 55707, Phone: (601) 939-5124, Fax: (601) 939-5246, Email:

[info@msbpt.state.ms.us](mailto:info@msbpt.state.ms.us). The minimum size of the sign shall be 6 inches by 8 inches.

Source: Miss. Code Ann. §73-23-43(1)(c), (e) and (h) (Rev. 2008). Chapter 3 Practice.

**Rule 3.1 Referrals.**

1. Physical Therapist may evaluate or provide wellness fitness without a referral.
2. A physical therapist licensed under the physical therapy law shall not perform physical therapy services without a prescription or referral from a person licensed as a physician, dentist, osteopath, podiatrist, chiropractor, physician assistant or nurse practitioner. However, a physical therapist may perform physical therapy services without a prescription or referral under the following circumstances:
  - a. To children with a diagnosed developmental disability pursuant to the patient's plan of care.
  - b. As part of a home health care agency pursuant to the patient's plan of care.
  - c. To a patient in a nursing home pursuant to the patient's plan of care.
  - d. Related to conditioning or to providing education or activities in a wellness setting for the purpose of injury prevention, reduction of stress or promotion of fitness.

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Prepared by Pilot Healthcare Strategies for the Utah Division of Occupational and Professional Licensing

May 2, 2014

e. To an individual for a previously diagnosed condition or conditions for which physical therapy services are appropriate after informing the health care provider rendering the diagnosis. The diagnosis must have been made within the previous one hundred eighty (180) days. The physical therapist shall provide the health care provider who rendered the diagnosis with a plan of care for physical therapy services within the first fifteen (15) days of physical therapy intervention.

Source: Miss. Code Ann. §§73-23-43(1)(e) and (h) and 73-23-35(3) (Rev. 2008).

#### Rule 3.2 Code of Ethics.

1. All licensees shall comply with the current American Physical Therapy Association Code of Ethics: Standards of Ethical Conduct and the accompanying Guide for Professional Conduct for physical therapists and physical therapist assistants.

2. All licensees shall comply with the current American Physical Therapy Association Standards of Practice for Physical Therapy and the accompanying Criteria.

Source: Miss. Code Ann. §73-23-43(1)(e) and (g) (Rev. 2008).

#### Chapter 4 Renewal of License.

Rule 4.1 General Provisions. The Board shall issue licenses which shall be subject to biennial renewal.

1. The licensure period shall be construed as July 1 through June 30 of odd-numbered years for persons whose surnames begin with A through L and the licensure period shall be construed as July 1 through June 30 of even-numbered years for persons whose surnames begin with M through Z. For one time only during 2005, those persons whose surnames begin with M through Z would renew for only one year, and thereafter every two years on even-numbered years.

2. Each individual's licensure renewal group is based on the first letter of his or her last name at the time of the implementation of this rule or at the time of initial licensure, whichever occurred later. Each licensee shall remain in his or her originally assigned licensure renewal group for all subsequent license renewals. Thus, even if a licensee's name is changed, he or she shall remain in the same licensure renewal group as originally assigned.

Source: Miss. Code Ann. §§73-23-43(1)(a), (d), (e) and (j) and 73-23-49(1), (2) and (4) and 73-23-64 (4) (Rev. 2008).

Rule 4.2 Procedure for Renewal of License. The Board shall mail notices, approximately sixty (60) days prior to the end of the licensure period, to the last home address registered with the Board, to the persons to whom licenses were issued or renewed during the preceding licensure period. The licensee shall:

1. Complete the renewal form;

2. Submit proof of continuing education credit as detailed in Part 3103 Chapter 5 of these regulations;
3. Enclose the renewal fee; and
4. File the above with the Board prior to the end of the licensure period.
5. Renewal applications filed or postmarked after June 30 are subject to a late fee.

Source: Miss. Code Ann. §§73-23-43(1)(d), (e) and (k) and 73-23-57 (Rev. 2008).

**Rule 4.3 Failure to Renew.** A licensee who does not file, with the Board, all requirements for renewal before the end of the licensure period will be deemed to have allowed his license to lapse. Failure to submit all renewal requirements postmarked on or before September 30 shall result in the necessity of the payment of a reinstatement fee in addition to the late fee and renewal fee. Said license may be reinstated by the Board, in its discretion, by the payment of the renewal fee, the late fee, a reinstatement fee and the required continuing education hours provided said application for reinstatement is made within two (2) years after its last expiration date.

A license may not be reinstated after having lapsed for two (2) consecutive years. A new application must be made and the licensure regulations in effect at that time must be met.

Source: Miss. Code Ann. §§73-23-43(1)(d) and (e), 73-23-57 and 73-23-64(4) (Rev. 2008).

**Rule 4.4 Expired License.** Any person whose license has been expired for more than five years may apply for licensure upon the payment of an application & license fee with the following conditions:

1. Licensee will be subjected to a three (3) month supervisory period;
2. Licensee may only practice under the direct on-site supervision of a currently Mississippi licensed physical therapist;
3. Shall restrict his/her practice to the State of Mississippi;
4. Supervision agreement must be on file and satisfactory to this office prior to the license being issued. The supervision agreement shall be in force for the entire three (3) month supervisory period. This licensee may only practice in the facilities and under the supervision of the licensed physical therapist listed on the supervision agreement of file in this office. Any changes in practice sites and /or supervisors must be reported to this office on a supervision agreement prior to the change taking place. At the end of the supervisory period the supervising physical therapist shall report to the Board completion of satisfactory or unsatisfactory supervision period. If an unsatisfactory supervision period is reported by the supervising physical therapist, the Board, in its discretion may require an additional three (3) month supervisory period;
5. During the supervisory period the supervised physical therapist/physical therapist assistant shall not supervise any currently licensed physical therapist or physical therapist assistant;

6. Complete prescribed remedial courses as approved by the Board.

Source: Miss. Code Ann. §§73-23-43(1)(a), (d), (e) and (j); 73-23-49(1), (2) and (4); and 73-23-64 (4) (Rev. 2008).

## Chapter 5 Continuing Education.

**Rule 5.1 Definition and philosophy.** Each individual licensed as a physical therapist or physical therapist assistant is responsible for optimum service to the consumer and is accountable to the consumer, the employer, and the profession for evidence of maintaining high levels of skill and knowledge. Continuing education is defined as education beyond the basic preparation required for entry into the profession, directly related to the performance and practice of physical therapy.

Source: Miss. Code Ann. §§73-23-43(1)(e), (h), (j) and (k) (Rev. 2008).

## Rule 5.2 Requirements.

1. Regulations set the requirement of 24 contact hours (CH) or 2.4 Continuing Education Units (CEU) to be accrued during the licensing period (July 1- June 30). No carryover of continuing education hours from one licensure period to another shall be allowed. At least 25 percent (6 Contact Hours or .6 CEUs) of the required continuing education must be directly related to the clinical practice of physical therapy. Effective July 1, 2012, physical therapist and physical therapist assistants can take no more than 12 contact hours or 1.2 CEUs of required continuing education online. All licensees must take two hours of board-approved programs in ethics/professional responsibility as part of their total CE requirements. CE hours claimed as clinical may need to be reviewed if considered questionable.
2. Individuals applying for initial licensure within a licensing period must accrue continuing education hours on a prorated scale. Written notification of required hours will be sent to the applicant at the time of licensure.
3. Persons who fail to accrue the required continuing education hours shall be issued a probationary license for one licensure period only. No ensuing license may be probationary as a result of not meeting continuing education requirements. Failure to accrue the required hours during the CE probationary period will result in the revocation of the license. Hours accrued are first credited for the delinquent hours lacking from the previous licensure period, and then applied to the current (probationary) licensing term.
4. Licensees who have accrued the required CE hours within the licensure period but who have not received proof of course completion from CE providers or who have lost or misplaced proof shall be granted 90 days from expiration of licensure in which to provide the Board with proof of completion of courses. Failure to provide proof within 90 days will result in license being placed on CE probationary status for the entire licensure period.
5. Licensees who are enrolled in a residency, fellowship and transitional doctoral of physical therapy programs may be exempted from obtaining the mandatory continuing education hours while completing the program of study. The required documentation is a letter from the director of residency, fellowship program or in the case of the transitional program, a transcript from the institution of enrollment.

NOTE: Reinstatement of a license revoked for failure to meet continuing education requirements is subject to the discretion of the Board. If said license is permitted to be reinstated, the renewal fee, the late fee, and the reinstatement fee as stated in Part 3103 Rule 10.2 of these regulations will be required.

Source: Miss. Code Ann. §73-23-43(1)(a), (d), (e), (h), (j) and (k) (Rev. 2008).

Rule 5.3 Content Criteria. The content must apply to the field of physical therapy and performance and must be designed to meet one of the following goals:

1. Update knowledge and skills required for competent performance beyond entry level of the physical therapist/physical therapist assistant at the time the individual entered the profession as described in current legislation and regulations.
2. Allow the licensee to enhance his/her knowledge and skills.
3. Provide opportunities for interdisciplinary learning.
4. Extend limits of professional capabilities and opportunities.
5. Facilitate personal contributions to the advancement of the profession.

Source: Miss. Code Ann. §73-23-43(1)(e), (h), (j) and (k) (Rev. 2008).

Rule 5.4 Sources of Continuing Education. Continuing education hours may be accrued from the following sources, when the content of the programs relates to the profession of physical therapy:

1. a. Attendance at educational programs where continuing education credit is given and approved by the American Physical Therapy Association (APTA), the Mississippi Physical Therapy Association (MPTA), or any other state Physical Therapy Association educational programs;
- b. Attendance at educational programs where continuing education credit is given and approved by the American Medical Association (AMA) and its components;
- c. Attendance at other programs approved for continuing education credit by MPTA, APTA, AMA, or their components; or
- d. Attendance at educational programs where continuing education credit is given and approved by accredited universities.
2. Presentations made before physical therapists, medical practitioners, or other health related professionals and directly related to the profession of physical therapy. To be considered for continuing an education credit, material outline and a synopsis must be submitted to the Board prior to the presentation date. Notice of approval or disapproval will be sent following a review by the Board. For approved presentations, the presenter may accrue one (1) hour of continuing education credit for each hour of the actual presentation, and one (1) hour of

preparation time, for a total of (2) two hours. Presenter credit is given one (1) time only, even though the session may be presented multiple times. No more than 25% of total required hours may be accrued through presentations.

3. a. Academic course work taken for credit from a regionally accredited college or university may be used. The courses must relate to the profession of physical therapy. One academic semester hour shall be equivalent to fifteen (15) clock hours for continuing education credit. No more than 50% of total required hours may be accrued through academic course work. Courses must be on the graduate level for physical therapists. Undergraduate courses are acceptable for physical therapist assistants.

b. Academic course work taken by a physical therapist/physical therapist assistant for credit toward an advanced degree in physical therapy may be counted as meeting the full continuing education requirements.

4. Home Study Courses approved by an organization in Part 3103 Rule 5.4.1-3

5. Specific UNACCEPTABLE activities include:

a. All in-service programs not approved under Part 3103 Rule 5.4.1, 2, & 4 of these regulations.

b. Orientation to specific work-site programs dealing with organizational structures, processes, or procedures.

c. Meetings for purposes of policy decision.

d. Non-educational meetings at annual conferences, chapter or organizational meetings.

e. Entertainment or recreational meetings or activities.

f. Committee meetings, holding of office, serving as an organizational delegate.

g. Visiting exhibits or poster presentations.

h. CPR education.

i. Self-directed studies other than those previously outlined.

Source: Miss. Code Ann. §73-23-43(1)(e), (h), (j) and (k) (Rev. 2008).

Rule 5.5 Reporting Procedures for Continuing Education. Proof of program approval by an organization listed in section 5-4.1.2.3.4 must be submitted with the certificate if a recognized approval source is not evident on the CE certificate. It is the responsibility of the licensee to insure that the following criteria are met with respect to continuing education credit:

1. Attendance at seminars, workshops, presentations, etc., approved by an organization listed in section 5-4 1.2 are automatically accepted for credit unless sessions are duplicated. Verification of attendance may be made by submission of a continuing education certificate (must include the source, number of continuing education

hours and date of attendance).

2. Credit for presentations: Submit a copy of the Board's approval letter.

3. Academic course work credits must meet the content criteria in section 5-3, and must be accompanied by a course description from the college or university catalog and a copy of the transcript or final grade report. A minimum course grade of "C" is required for CE credit.

4. Home Study Course: A certificate of completion must be submitted to receive continuing education credit.

Source: Miss. Code Ann. §73-23-43(1)(e) and (k) (Rev. 2008).

Rule 5.6 Waiver of Continuing Education Units (CEUs). CEUs required for renewal of license may be waived or extended by the Board if there is a gubernatorial declared emergency.

Source: Miss. Code Ann. §73-23-43(1)(e) and (k) (Rev. 2008).

#### Chapter 6 Revocation, Suspension, and Denial of License.

Rule 6.1 Standards of Conduct. Licensees subject to these regulations shall conduct their activities, services, and practice in accordance with this section. The Board, upon satisfactory proof and in accordance with the provision of this chapter and the regulations of the Board, may suspend, revoke, or refuse to issue or renew any license hereunder, censure or reprimand any license, restrict or limit a license, and/or take any other action in relation to a license as the Board may deem proper under the circumstances upon any of the following grounds:

1. Negligence in the practice or performance of professional services or activities.
2. Engaging in dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm the public in the course of professional services or activities.
3. Perpetrating or cooperating in fraud or material deception in obtaining or renewing a license or attempting the same.
4. Being convicted of any crime, which has a substantial relationship to the licensee's activities and services or an essential element of which is misstatement, fraud, or dishonesty.
5. Having been convicted of or pled guilty to a felony in the courts of this state or any other state, territory or country. Conviction, as used in this paragraph, shall include a deferred conviction, deferred prosecution, deferred sentence, finding or verdict of guilt, an admission of guilty, or a plea of nolo contendere;
6. Engaging in or permitting the performance of unacceptable services personally or by others working under the licensee's supervision due to the licensee's deliberate or negligent act or acts or failure to act, regardless of whether actual damage or damages to the public are established.
7. Continued practice although the licensee has become unfit to practice as a physical therapist or physical

therapist assistant due to:

- a. Failure to keep abreast of current professional theory or practice; or
  - b. Physical or mental disability; the entry of an order or judgment by a court of competent jurisdiction that a licensee is in need of mental treatment or is incompetent shall constitute mental disability; or
  - c. Addiction or severe dependency upon alcohol or other drugs which may endanger the public by impairing the licensee's ability to practice.
8. Having disciplinary action taken against the licensee's license in another state.
  9. Making differential, detrimental treatment against any person because of race, color, creed, sex, religion or national origin.
  10. Engaging in lewd conduct in connection with professional services or activities.
  11. Engaging in false or misleading advertising.
  12. Contracting, assisting, or permitting unlicensed persons to perform services for which a license is required under these regulations.
  13. Violation of any probation requirements placed on a license by the Board.
  14. Revealing confidential information except as may be required by law.
  15. Failing to inform clients of the fact that the client no longer needs the services or professional assistance of the licensee.
  16. Charging excessive or unreasonable fees or engaging in unreasonable collection practices.
  17. For treating or attempting to treat ailments or other health conditions of human beings other than by physical therapy as authorized by these regulations.
  18. Except as authorized in Part 3103 Rule 3.1, for applying or offering to apply physical therapy, exclusive of initial evaluation or screening and exclusive of education or consultation for the prevention of physical and mental disability within the scope of physical therapy, other than upon the referral of a licensed physician, dentist, osteopath, podiatrist, chiropractor, physician assistant or nurse practitioner, or for acting as a physical therapist assistant other than under the direct, on-site supervision of a licensed physical therapist.
  19. Failing to adhere to the recognized standards of ethics of the physical therapy profession as established by Board rule.
  20. Violations of any provisions of this chapter, Board rules or regulations or a written order or directive of the Board.

21. Has engaged in any conduct considered by the Board to be detrimental to the profession of physical therapy.
22. The Board may order a licensee to submit to a reasonable physical or mental examination if the licensee's physical or mental capacity to practice safely is at issue in a disciplinary proceeding. Failure to comply with a Board order to submit to a physical or mental examination shall render a licensee subject to the summary suspension procedures described in Part 3103 Rule 6.2 of these regulations.
23. The Board is authorized by section 93-11-153 of the Mississippi Code to suspend the license of any licensee being out of compliance with an order for support. The procedure for the suspension of a license for being out of compliance with an order for support, and the procedure for the re-issuance or reinstatement of a license suspended for that purpose, and the payment of any fees for the re-issuance or reinstatement of a license suspended by that purpose, shall be governed by section 93-11-157 or 93-11-163, as the case may be.
24. Failing to complete continuing competence requirements as established by Board rule.
25. Failing to supervise physical therapist assistants in accordance with this chapter and/or Board rule.
26. Engaging in sexual misconduct. For the purpose of this paragraph, sexual misconduct includes, but is not necessarily limited to:
  - a. Engaging in or soliciting sexual relationships, whether consensual or nonconsensual, while a physical therapist or physical therapist assistant/patient relationship exists.
  - b. Making sexual advances, requesting sexual favors or engaging in other verbal conduct or physical conduct of a sexual nature with patients or clients.
  - c. Intentionally viewing a completely or partially disrobed patient in the course of treatment if the viewing is not related to patient diagnosis or treatment under current practice standards.
27. The erroneous issuance of a license to any person.
28. Failing to maintain adequate patient records. For the purposes of this paragraph, "adequate patient records" means legible records that contain at minimum sufficient information to identify the patient, an evaluation of objective findings, a diagnosis, a plan of care, a treatment record and a discharge plan.
29. Failing to report to the Board any unprofessional, incompetent or illegal acts that appear to be in violation of this law or any rules established by the Board.

Source: Miss. Code Ann. §§73-23-43(1)(b) and (e); 73-23-59; 73-23-64(1) (Rev. 2008).

#### Rule 6.2 Summary Suspension.

1. The Board may summarily suspend a license without a hearing, simultaneously with the filing of a formal complaint and notice of hearing, if the Board determines that:

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- a. The health, safety, or welfare of the general public is in immediate danger; or
- b. The licensee's physical capacity to practice his/her profession is in issue; or
- c. The licensee's mental capacity to practice his/her profession is in issue.

2. If the Board summarily suspends a license, a hearing must begin within twenty (20) days after such suspension begins, unless continued at the request of the licensee.

Source: Miss. Code Ann. §§73-23-43(1)(c), (e) and (h); 73-23-59; and 73-23-64(2) (Rev. 2008).

**Rule 6.3 Complaints.** All complaints concerning a licensee, a business, or professional practice, shall be reviewed by the Board. Each complaint received shall be logged, recording at a minimum the following information:

1. Name of Licensee, organization, business or practice;
2. The name of the complaining party, if known;
3. Date of complaint;
4. Brief statement of complaint; and
5. Disposition.

Source: Miss. Code Ann. §§73-23-43(1)(c) and (e) and 73-23-63(2)(a) (Rev. 2008).

**Rule 6.4 Investigation.** All complaints will be investigated by the Board and/or its designated representative(s) and evaluated by the Board.

Source: Miss. Code Ann. §73-23-43(1)(c) and (e) (Rev. 2008).

**Rule 6.5 Notice of Charges and Hearing.**

1. Following the investigative process, the Board may file formal charges against the licensee. Such formal complaint shall, at a minimum, inform the licensee of the facts which are the basis of the charge and which are specific enough to enable the licensee to defend against the charges.
2. Each licensee, whose conduct is the subject of a formal charge which seeks to impose disciplinary action against the licensee, shall be served notice of the formal charge at least thirty (30) days before the date of hearing. A hearing shall be presided over by the Board or the Board's designee. Service shall be considered to have been given if the notice was personally served on the licensee or applicant, or if the notice was sent by certified, United States mail to the licensee or applicant to the licensee's or applicant's last known address as listed on record with the Board. The notice of the formal hearing shall consist at a minimum of the following

information:

- a. The time, place and date of hearing;
- b. That the licensee shall appear personally at the hearing and may be represented by counsel;
- c. That the licensee shall have the right to produce witnesses and evidence in the licensee's behalf and shall have the right to cross-examine adverse witnesses and evidence;
- d. That the hearing could result in disciplinary action being taken against the licensee's license;
- e. That rules for the conduct of these hearings exist and it may be in the licensee's best interest to obtain a copy;  
and
- f. That the Board, or its designee, shall preside at the hearing and following the conclusion of the hearing shall make findings of facts, conclusions of law and recommendations, separately stated, to the Board as to what disciplinary action, if any, should be imposed on the licensee.
- g. The Board may order a licensee to submit to a reasonable physical or mental examination if the licensee's physical or mental capacity to practice safely is at issue in a disciplinary proceeding. Failure to comply with a Board order to submit to a physical or mental examination shall render a licensee subject to the summary suspension procedures described in Part 3103 Rule 6.2 of these regulations.
- h. The Board or its designee shall hear evidence produced in support of the formal charges and contrary evidence produced by the licensee. At the conclusion of the hearing, the Board shall issue an order, within sixty (60) days.
- i. Disposition of any complaints may be made by consent order or stipulation between the Board and the licensee.
- j. All proceedings pursuant to this section are matters of public record and shall be preserved pursuant to state law.
- k. The Board or its designee shall conduct all administrative hearings in contested cases that are before the Board.

3. Transcript of Hearing. Each hearing will be recorded by a court reporter. The cost of the transcription shall be born by the person making the request.

Source: Miss. Code Ann. §§73-23-43(1)(e); 73-23-59(2) and (3); 73-23-63(2)(b), (c) and (d); and 73-23-64(3) (Rev. 2008).

Rule 6.6 Sanctions. The Board may impose any of the following sanctions, singly or in combination, when it finds that an applicant or a licensee has committed any violation listed in section 73-23-59 or Part 3103 Rule 6.1:

1. Revoke the license.
2. Suspend the license, for any period of time.
3. Censure the licensee.
4. Impose a monetary penalty in an amount not to exceed \$ 500.00 for the first violation, \$ 1,000.00 for the second violation, and \$ 5,000.00 for the third violation and for each subsequent violation.
5. Place a licensee on probationary status and require the licensee to submit to any of the following:
  - a. Report regularly to the Board, or its designee, upon matters which are the basis of probation;
  - b. Continue to renew professional education until a satisfactory degree of skill has been attained in those areas which are the basis of probation; or
  - c. Such other reasonable requirements or restrictions as are proper.
6. Refuse to issue or renew a license.
7. Revoke probation which has been granted and impose any other disciplinary action in this subsection when the requirements of probation have not been fulfilled or have been violated.
8. The Board may reinstate any licensee to good standing under this chapter if, the Board is satisfied that the applicant's renewed practice is in the public interest.
9. Restrict a license; or
10. Accept a voluntary surrendering of a license based on an order of consent from the Board.
11. In addition to any other power that it has, the Board may issue an advisory letter to a licensee if it finds that the information received in a complaint or an investigation does not merit disciplinary action against the licensee.
12. The Board may also assess and levy upon any licensee or applicant for licensure the costs incurred or expended by the Board in the investigation and prosecution of any licensure or disciplinary action, including, but not limited to, the cost of process service, court reports, expert witness, investigators, and attorney fees.

Source: Miss. Code Ann. §§73-23-43(1)(e) and 73-23-64(1), (4) (6) and (7) (Rev. 2008).

Rule 6.7 Appeals. Any person aggrieved by a decision of the Board shall have a right of appeal in the manner provided for in the Act and the Laws of the State of Mississippi.

Source: Miss. Code Ann. §§73-23-43(1)(e) and 73-23-63(3) ( Rev. 2008).

## Chapter 7 Exceptions and Exemptions.

Rule 7.1 Exceptions. No person shall practice physical therapy or represent himself/herself to be a physical therapist or physical therapist assistant unless he/she is licensed by the Board, except as otherwise provided in this section.

1. Students enrolled in accredited physical therapy educational programs, while engaged in completing a clinical requirement for graduation, which must be performed under direct clinical supervision. Direct clinical supervision shall mean under the direct control of a clinical instructor of the physical therapy program in which the student is enrolled, or his/her designee. Students in an accredited physical therapy program may provide treatment services in a pro bono clinic setting under the supervision of a Mississippi licensed physical therapist when such is done as a part of the clinical requirements for graduation from a physical therapist or physical therapist assistant educational program. The clinical instructor or his/her designee must be a licensed Mississippi physical therapy practitioner and shall be readily accessible and accountable at all times when physical therapy services are being provided by the student. If the student is completing a physical therapist educational program, it's a licensed physical therapist. If the student is completing a physical therapist assistant program, the physical therapist assistant will work collaboratively with a physical therapist to supervise the physical therapist assistant student in full compliance with all laws, rules and regulations regarding physical therapist assistant scope of practice. The Board has adopted the American Physical Therapy Association (APTA) guidelines for supervision of student physical therapist assistants.
2. Physical therapists licensed in other jurisdictions while enrolled in graduate educational programs in this state that include the evaluation and treatment of patients as part of their experience required for credit, so long as the student is not at the same time gainfully employed in this state as a physical therapist;
3. Practitioners of physical therapy employed in the United States Armed Services, United States Public Health Service, Veterans Administration or other federal agency; however, if such individual engages in the practice of physical therapy outside of the scope of official duty, he must be licensed as herein provided;
4. Physical therapists or physical therapist assistants licensed in other jurisdictions who are teaching or participating in physical therapy education projects, demonstrations or courses in this state, or providing physical therapy services to visiting established athletic organizations, performing arts companies or volunteering to provide services to competitors in events such as the Olympics or dance competitions in which their participation in the treatment and/or evaluation of patients is minimal.
5. Schools, YMCAs, athletic clubs and similar organizations furnishing services to their players and members, provided that they do not represent themselves as physical therapists, as physical therapist assistants, or as providing physical therapy services;
6. The performance by any person of simple mechanical or machine assisted acts in the physical care of a patient, not requiring the knowledge and skill of a physical therapist under the order or direction of a licensed doctor of medicine or dentistry or of a physical therapist assistant under the direct, on-site supervision of a licensed physical therapist.

7. Nothing in these regulations is intended to limit, preclude, or otherwise interfere with the practices of other persons and health providers licensed by appropriate agencies of the State of Mississippi.

8. A physical therapist or physical therapist assistant who is licensed in a jurisdiction of the United States and who enters this state to provide physical therapy during a lawfully declared local, state or national disaster or emergency. This exemption applies for no longer than 60 days or the period prescribed by the Board following the declaration of the emergency. In order to be eligible for this exemption the physical therapist or physical therapist assistant shall:

- a. Notify the Board in writing of their intent to practice;
- b. Shall provide a copy of their license in good standing;
- c. Shall, if a physical therapist assistant, practice only under the supervision of a physical therapist who is duly licensed in the State of Mississippi. Any licensee who will supervise a person in this category shall provide the Board with a schedule indicating when the person will be performing therapy services and with the names of the facilities at which the person will perform the services.

Source: Miss. Code Ann. §§73-23-35(1); 73-23-37; 73-23-39; 73-23-43(1)(e); and 73-23-53(6) (Rev. 2008).

Rule 7.2 Good Samaritan Act. [Left Blank on Purpose]

Source: Miss. Code Ann. § 73-25-37 (Rev. 2008).

#### Chapter 8 Physical Therapist Assistant.

Rule 8.1 Definition. A physical therapist assistant (PTA), as defined in Part 3101 Rule 1.3 hereinabove, shall be an individual who meets the qualifications and requirements as set forth in Part 3103 Chapter 1 of these regulations, and has been issued a license by the Board. The roles and responsibilities of a PTA are:

1. To practice only under the direct supervision of a physical therapist licensed to practice in Mississippi.
2. To assist with but not perform patient evaluations.
3. To perform treatment procedures as delegated by the physical therapist but not to initiate or alter a treatment plan.
4. To supervise other supportive personnel as charged by the physical therapist.
5. To notify the physical therapist of changes in the patient's status, including all untoward patient responses.
6. To discontinue immediately any treatment procedures which in their judgment appear to be harmful to the patient.
7. To refuse to carry out treatment procedures that they believe to be not in the best interest of the patient.

Source: Miss. Code Ann. §§73-23-33(c) and 73-23-43(1)(a), (e) and (h) (Rev. 2008).

## Rule 8.2 Direction and Supervision of the physical therapist assistant.

1. Supervision Standards. A Mississippi-licensed physical therapist may delegate the performance of selected acts, tasks, functions, or interventions to a Mississippi licensed physical therapist assistant. The physical therapist shall, however, at all times be responsible for the physical therapy plan of care and instructions provided to the physical therapist assistant; interpretation of referrals; oversight of all documentation for services rendered to each client or patient; providing direct care to the patient; and assuring that the physical therapist assistant does not function autonomously. The supervising physical therapist shall, at a minimum:

a. Ensure that the assignment of responsibilities to the physical therapist assistant is commensurate with his or her qualifications, including training, education, skill level, and experience. In cases when the supervising physical therapist is the direct employer of the physical therapist assistant, the physical therapist shall ensure that the physical therapist assistant holds a valid and current Mississippi license.

b. Examine and evaluate the patient or client to establish a physical therapy diagnosis, treatment goals, frequency, duration, and plan of care before delegating tasks or interventions to be performed by a physical therapist assistant -- the initial evaluation.

c. Before a patient is treated by the physical therapist assistant, evaluate the patient and establish a written plan of care to include the treatment initial and ongoing treatment program goals and plans for the patient or client, the elements of the plan of care to be delegated to the physical therapist assistant and predetermined procedures and protocols for acts, tasks, functions, or interventions delegated to the physical therapist assistant.

d. Review the patient plan of care, treatment goals and delegated tasks with the physical therapist assistant before the physical therapist assistant provides care to a patient for the first time.

e. The supervising physical therapist shall be readily available in person or by telecommunication to the physical therapist assistant at all times for advice, assistance and instruction while the physical therapist assistant is treating patients or clients or providing physical therapy services.

f. Hold regularly scheduled and documented in meetings and case conferences with the physical therapist assistant to evaluate the assistant's performance, review records and changes in plan of care, and assess the plan of care. The frequency of the meetings and case conferences is to be determined by the supervising physical therapist based upon the needs of the patient; the supervisory needs of the physical therapist assistant; and prior to any planned discharge. Notwithstanding the aforesaid, meetings and case conferences must take place at least once every sixth physical therapist assistant visit or at least once every thirtieth (30th) calendar day, whichever occurs first and be documented in the patient or client record.

g. Reevaluate the patient as previously determined during the initial evaluation, or more often if necessary, and modify the treatment, goals and plan as needed. The physical therapist assistant shall not alter a treatment plan or program without the prior evaluation by, and approval of, the supervising physical therapist. A supervising physical therapist must, however, re-evaluate and render personal treatment to a patient receiving physical

therapy services from a physical therapist assistant a minimum of least once every sixth (6th) physical therapist assistant visit or at least once every or thirtieth (30th ) calendar day, whichever occurs first.

h. Treat and assess the patient or client for his or her final treatment session, establish a discharge plan and write a discharge summary/status. If the supervising physical therapist is unable to carry out the provisions of this paragraph due to an emergency or unforeseen situation, an explanation of the circumstances constituting the emergency or unforeseen event must be documented in the treatment record of such patient.

2. Physical Therapist Assistants under Supervision. It is the responsibility of the physical therapist to determine the number of physical therapist assistants he or she can supervise safely and competently. However, in no case shall the physical therapist supervise more than a total of four (4) physical therapist assistants and/or physical therapy students at any point in time during the physical therapist's work day. The number of supervisees is inclusive of all geographic locations or employing agencies.

### 3. Documentation Requirements.

a. A written record of physical therapy treatment shall be maintained for each patient. The written record shall include:

i. A prescription or referral when required showing the written request for physical therapy evaluation or treatment signed by a healthcare provider lawfully authorized to make such request.

ii. Written documentation in each patient's record, along with the physical therapist's signature, of the treatment program goals and plan of care. An initial physical therapy evaluation shall not be documented or signed by a physical therapist assistant or any other personnel.

iii. Progress notes regarding the client's or patient's subjective status, changes in objective findings, and progression or regression toward established goals.

iv. A record of the reassessment or re-evaluation of the patient or client, written and signed by the supervising physical therapist.

v. Written documentation of each patient or client visit which includes specific treatment and services provided.

vi. Written documentation of supervisory visits and/or conferences -- including the date of visit, treatment plans and changes in the treatment plan; other communications between the supervising physical therapist and the physical therapist assistant; and findings and subsequent decisions made. The written documentation must be signed and dated by the supervising physical therapist or the physical therapist assistant.

vii. Documentation of a discharge evaluation by the supervising physical therapist and a discharge summary which must be written and signed by the supervising physical therapist. If the supervising physical therapist is unable to provide a patient discharge evaluation and plan, the reason for or circumstances of such inability must be documented in the physical therapy treatment record of such patient.

viii. Accurate patient or client treatment and billing records.

b. A signature stamp shall not be used in lieu of a written signature on physical therapy patient or client records. Forms of electronic signatures, established pursuant to written policies and procedures to assure that only the author can authenticate his or her own entry, may be acceptable.

4. The supervision requirements stated in these regulations are minimal. It is the professional responsibility and duty of the licensed physical therapist to provide the physical therapist assistant with more supervision if deemed necessary in the physical therapist's professional judgment.

Source: Miss. Code Ann. §§73-23-33(f) and (g) and 73-23-43(1)(a), (e), (h) and (j) (Rev. 2008).

## Chapter 9 Criminal Offenses and Punishment.

Rule 9.1 Offenses. It is a misdemeanor for any person to:

1. Sell, fraudulently obtain, or furnish any physical therapy license, record, or aid or abet therein.
2. Practice physical therapy under cover of any physical therapy diploma, permit, license, or record illegally or fraudulently obtained or issued.
3. Practice physical therapy or bill for physical therapy services, unless duly licensed to do so by the Mississippi State Board of Physical Therapy.
4. Impersonate in any manner or pretend to be a physical therapist or physical therapist assistant or use the titles protected herein, the letters protected herein, or any other words, letters, signs, symbols or devices to indicate the person using them is a licensed physical therapist or physical therapist assistant unless duly authorized by license or permit.
5. Practice physical therapy during the time his/her license or permit is suspended, revoked, or expired.
6. Fail to notify the Board of the suspension, probation or revocation of any past or currently held licenses, required to practice physical therapy in this or any other jurisdiction.
7. Make false representations or impersonate or act as a proxy for another person or allow or aid any person to impersonate him in connection with any examination or application for licensing or request to be examined or licensed.
8. Otherwise violate any provisions of the Act, or the Regulations promulgated thereto.

Source: Miss. Code Ann. §73-23-61 (Rev. 2008).

Rule 9.2 Punishment. Such misdemeanors shall, upon conviction, be punishable by a fine or by imprisonment or by both fine and imprisonment for each offense, as set forth in the Act.

Source: Miss. Code Ann. §73-23-61 (Rev. 2008).

## Chapter 10 Fees.

Rule 10.1 Method of Payment. In accordance with the Act, the following non-refundable fees, where applicable, are payable to the Mississippi State Board of Physical Therapy check or money order.

Source: Miss. Code Ann. §73-23-43(1)(d), (e) and (l) (Rev. 2008).

## Rule 10.2 Schedule of Fees.

### Display Table

Source: Miss. Code Ann. §§73-23-43(1)(d), (e) and (l) and 73-23-49(1) (Rev. 2008).

Rule 10.3 Examination Fee. Fees for the examination are to be paid to the appropriate examination administrant.

Source: Miss. Code Ann. §§73-23-43(1)(d), (e) and (l) and 73-23-49(3) (Rev. 2008).

EDITOR'S NOTE: 30.3101.1 to 30.3103.10 MISS ADMIN CODE  
STATUTORY AUTHORITY: Miss. Code Ann. §§73-23-31 et seq.

EFFECTIVE DATE: November 18, 1992

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AGENCY 50. REGULATORY AGENCIES  
SUB-AGENCY 013. BOARD OF MEDICAL LICENSURE  
CHAPTER **2635**. PRACTICE OF MEDICINE

CMSR 50-013-**2635** (2014)

CHAPTER **2635**. PRACTICE OF MEDICINE

PART **2635** CHAPTER 1  
SURGERY/POST-OPERATIVE CARE

Rule 1.1 Scope.

The following regulation sets forth the policies of the Mississippi State Board of Medical Licensure regarding post-operative surgical care rendered by individuals licensed to practice medicine, osteopathic medicine and podiatric medicine in the state of Mississippi.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

Rule 1.2 Definitions.

For the purpose of Part **2635**, Chapter 1 only, the following terms have the meanings indicated:

A. "Auxiliary" or "Auxiliaries" shall include, but is not limited to, registered nurses, licensed practical nurses, certified nursing assistants, physical therapists, nurse practitioners and optometrists.

B. "Under the supervision" means to critically watch, direct, advise and oversee, and to inspect and examine the actions of another health care practitioner.

C. "Physician" means any person licensed to practice medicine, osteopathic medicine or podiatric medicine in the state of Mississippi.

D. "Surgery" means any invasive procedure which results in the projection into (i.e. laser surgery), entering, cutting or suturing of tissue or any body organ.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

#### Rule 1.3 Informed Consent.

The ultimate responsibility for diagnosing medical and surgical problems is that of the licensed physician. In addition, it is the responsibility of the operating physician to explain the procedure and to obtain informed consent of the patient. It is not necessary, however, that the operating physician obtain or witness the signature of a patient on a written form evidencing informed consent.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

#### Rule 1.4 Post-Surgical Care.

The management of post-surgical care is the responsibility of the operating physician. The operating physician should provide those aspects of post-surgical care which are within the unique competence of the physician. Patients are best served by having post-surgical care conducted by the physician who best knows their condition--the operating physician.

Where the operating physician cannot personally provide post-surgical care, the physician must arrange before surgery for post-surgical care to be performed by another qualified physician who is acceptable to the patient. In this case, the operating physician may delegate discretionary post-operative activities to an equivalently trained licensed physician. Like the operating physician, the physician to whom a patient has been referred for post-surgical care should provide, at a minimum, those aspects of post-surgical care that are not permitted to be performed by auxiliaries.

Unless otherwise provided by law, delegation of post-surgical activities to an auxiliary is permitted only if the auxiliary is under the supervision of the operating physician or the physician to whom the operating physician has referred a patient for post-surgical care. While an auxiliary may be authorized by law to provide certain aspects of post-surgical care, this does not relieve the operating physician of his or her responsibility to provide post-surgical care or arrange for the delegation of post-surgical care, when appropriate, as required by this rule.

Those aspects of post-surgical care which may be delegated to an auxiliary must be determined on a case-by-

case basis, but shall be limited to those procedures which the auxiliary is authorized by law to perform and within the unique competence and training of the auxiliary.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

Rule 1.5 Effective Date of Rules.

The rules pertaining to Surgery/Post-Operative Care shall become effective October 23, 1994.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

## **PART 2635 CHAPTER 2** **OFFICE BASED SURGERY**

Rule 2.1 Scope.

This regulation sets forth the policies of the Mississippi State Board of Medical Licensure regarding office based surgery rendered by individuals licensed to practice medicine, osteopathic medicine and podiatric medicine in the state of Mississippi.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

Rule 2.2 Definitions.

For the purpose of Part **2635**, Chapter 2 only, the following terms have the meanings indicated:

A. "Surgery" is defined as any operative procedure, including the use of lasers, performed upon the body of a living human being for the purposes of preserving health, diagnosing or curing disease, repairing injury, correcting deformity or defects, prolonging life, relieving suffering or any elective procedure for aesthetic, reconstructive or cosmetic purposes, to include, but not be limited to: incision or curettage of tissue or organ; suture or other repair of tissue or organ, including a closed as well as an open reduction of a fracture; extraction of tissue including premature extraction of the products of conception from the uterus; insertion of natural or artificial implants; or an endoscopic procedure. The use of local, general or topical anesthesia and/or intravenous sedation is the prerogative of the surgeon.

B. "Surgeon" is defined as a licensed physician performing any procedure included within the definition of surgery.

C. Implicit within the use of the term "equipment" is the requirement that the specific item named must meet

current performance standards.

D. "Office surgery" is defined as surgery which is performed outside a hospital, an ambulatory surgical center, abortion clinic, or other medical facility licensed by the Mississippi State Department of Health or a successor agency. Physicians performing Level II or Level III office based surgery must register with the Mississippi State Board of Medical Licensure. A copy of the registration form is attached hereto (Appendix A).

E. A "Surgical Event" for the purpose of this regulation is recognized as a potentially harmful or life-threatening episode related to either the anesthetic or the surgery. Any "Surgical Event" in the immediate peri-operative period that must be reported are those which are life-threatening, or require special treatment, or require hospitalization, including, but not limited to the following: (1) serious cardiopulmonary or anesthetic events; (2) major anesthetic or surgical complications; (3) temporary or permanent disability; (4) coma; or (5) death.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

### Rule 2.3 General Requirements for Office Surgery.

For all surgical procedures, the level of sterilization shall meet current OSHA requirements.

The surgeon must maintain complete records of each surgical procedure, including anesthesia records, when applicable and the records on all Level II and Level III cases shall contain written informed consent from the patient reflecting the patient's knowledge of identified risks, consent to the procedure, type of anesthesia and anesthesia provider.

The surgeon must maintain a log of all Level II and Level III surgical procedures performed, which must include a confidential patient identifier, the type of procedure, the type of anesthesia used, the duration of the procedure, the type of post-operative care, and any surgical events. The log and all surgical records shall be provided to investigators of the Mississippi State Board of Medical Licensure upon request.

In any liposuction procedure, the surgeon is responsible for determining the appropriate amount of supernatant fat to be removed from a particular patient. Using the tumescent method of liposuction, it is strongly recommended that a reasonable amount of fat should be removed in the office setting, i.e., a range of 4000cc to 5000cc of supernatant fat in a 70 Kg patient with a BMI (body mass index) of less than 30. This range should be adjusted downward in thin patients (less than 25 BMI) and upward in obese patients (over 30 BMI). Morbidly obese patients should preferably have liposuction performed in the hospital setting.

A policy and procedure manual must be maintained in the office and updated annually. The policy and procedure manual must contain the following: duties and responsibilities of all personnel, cleaning and infection control, and emergency procedures. This shall not apply to offices that limit surgery to Level I procedures.

The surgeon shall report to the Mississippi State Board of Medical Licensure any surgical events that occur within the office based surgical setting. This report shall be made within 15 days after the occurrence of a surgical event. A suggested form for reporting is attached hereto (Appendix B). The filing of a report of surgical event as required by this rule does not, in and of itself, constitute an acknowledgment or admission of malpractice, error, or omission. Upon receipt of the report, the Board may, in its discretion, obtain patient and other records pursuant to authority granted in Mississippi Code, Section 73-25-28.

The surgeon's office must have a written response plan for emergencies within their facility.

In offices where Level II and Level III office based surgery is performed, a sign must be prominently posted in the office which states that the office is a doctor's office regulated pursuant to the rules of the Mississippi State Board of Medical Licensure. This notice must also appear prominently within the required patient informed consent.

It is strongly recommended that the American Society of Anesthesiologists' Guidelines for Office-Based Anesthesia and/or American Association of Nurse Anesthetists' Standards for Office Based Anesthesia be utilized for Level III procedures.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

#### Rule 2.4 Level I Office Surgery.

##### A. Scope

1. Level I office surgery includes, but not limited to, the following:

- i. Minor procedures such as excision of skin lesions, moles, warts, cysts, lipomas, Loop Electrosurgical Excision Procedures (LEEP), laser cone of cervix, laser/cautery ablation of warts or other lesions, and repair of lacerations or surgery limited to the skin and subcutaneous tissue performed under topical or local anesthesia not involving drug-induced alteration of consciousness.
- ii. Incision and drainage of superficial abscesses, limited endoscopies such as proctoscopies, flexible sigmoidoscopies, hysteroscopies, skin biopsies, arthrocentesis, paracentesis, dilation of urethra, cysto-scopic procedures, and closed reduction of simple fractures or small joint dislocations (i.e., finger and toe joints).
- iii. Pre-operative medications not required or used other than minimal pre-operative tranquilization of the patient; anesthesia is local, topical, or none. No drug-induced alteration of respiratory effort or consciousness other than minimal pre-operative tranquilization of the patient is permitted in Level I Office Surgery.

iv. Chances of complication requiring hospitalization are remote.

## 2. Standards for Level I Office Surgery

### i. Training Required

The surgeon's continuing medical education should include proper dosages and management of toxicity or hypersensitivity to regional anesthetic drugs. Basic Life Support Certification is required.

### ii. Equipment and Supplies Required

Oral airway, positive pressure ventilation device, Epinephrine (or other vasopressor), Corticoids, Antihistamine and Atropine, if any anesthesia is used. The equipment and supplies should reflect the patient population, i.e., pediatrics, etc.

### iii. Assistance of Other Personnel Required

No other assistance is required, unless the specific surgical procedure being performed requires an assistant.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

## Rule 2.5 Level II Office Surgery.

### A. Scope

1. Level II Office Surgery is that in which peri-operative medication and sedation are used orally, intravenously, intramuscularly, or rectally, thus making intra and post-operative monitoring necessary. Such procedures shall include, but not be limited to: hernia repair, hemorrhoidectomy, reduction of simple fractures, large joint dislocations, breast biopsies, dilatation and curettage, thoracentesis, and colonoscopy.

2. Level II Office surgery includes any surgery in which the patient is placed in a state which allows the patient to tolerate unpleasant procedures while maintaining adequate cardiorespiratory function and the ability to respond purposefully to verbal command and/or tactile stimulation. Patients whose only response is reflex withdrawal from a painful stimulus are sedated to a greater degree than encompassed by this definition.

3. Any procedures that may yield an excessive loss of blood should be covered under Level II.

### B. Transfer Agreement Required

Utah Telehealth Study - Phase 2 Report

Prepared by Pilot Healthcare Strategies for the Utah Division of Occupational and Professional Licensing

May 2, 2014

The surgeon must have a written transfer agreement from a licensed hospital within reasonable proximity if the surgeon does not have staff privileges to perform the same procedure as that being performed in the office based surgical setting at a licensed hospital within reasonable proximity.

#### C. Level of Anesthetic

Local or peripheral major nerve block, including Bier Block, plus intravenous or intramuscular sedation, but with preservation of vital reflexes.

#### D. Training Required

To perform office based surgery, the physician must be able to document satisfactory completion of surgical training such as Board certification or Board eligibility by a Board approved by the American Board of Medical Specialties or American Board of Osteopathic Specialties. Alternative credentialing for procedures outside the physician's core curriculum must be applied for through the Mississippi State Board of Medical Licensure and reviewed by a multi-specialty board appointed by the Director. The surgeon and one attending assistant must be certified in Basic Life Support. It is recommended that the surgeon and at least one assistant be certified in Advanced Cardiac Life Support or have a qualified anesthetic provider, practicing within the scope of the provider's license, manage the anesthetic.

#### E. Equipment and Supplies Required

1. Full and current crash cart at the location the anesthetizing is being carried out.

The crash cart must include, at a minimum, the following resuscitative medications, or other resuscitative medication subsequently marketed and available after initial adoption of this regulation, provided said medication has the same FDA approved indications and usage as the medications specified below:

- i. Adrenalin (epinephrine) Abboject 1mg-1:10,000; 10ml
- ii. Adrenalin (epinephrine) ampules 1mg-1:1000; 1ml
- iii. Atropine Abboject 0.1mg/ml; 5ml
- iv. Benadryl (diphenhydramine) syringe 50mg/ml; 1ml
- v. Calcium chloride Abboject 10%; 100mg/ml; 10ml

- vi. Dextrose Abboject 50%; 25g/50ml
- vii. Dilantin (phenytoin) syringe 250mg/5ml
- viii. Dopamine 400mg/250ml pre-mixed
- ix. Heparin 10,000 units/ml; 1 ml vial
- x. Inderal (propranolol) 1mg/ml; 1 ml ampule
- xi. Isuprel (isoproterenol) 1mg/5ml; 1:5000 ampule
- xii. Lanoxin (digoxin) 0.5 mg/2ml ampule
- xiii. Lasix (furosemide) 40 mg/4ml vial
- xiv. Lidocaine Abboject 2%; 100mg/5ml
- xv. Lidocaine 2 grams/500ml pre-mixed
- xvi. Magnesium sulfate 50%; 20ml vial (1g/2ml)
- xvii. Narcan (naloxone) 0.4mg/ml; 1ml ampule
- xviii. Pronestyl (procainamide) 100mg/ml; 10ml vial
- xix. Romazicon 5ml or 10 ml (0.1mg/ml)
- xx. Sodium bicarbonate Abboject 50mEq/50ml
- xxi. Solu-medrol (methylprednisolone) 125mg/2ml vial
- xxii. Verapamil syringe 5mg/2ml

The above dosage levels may be adjusted, depending on ages of the patient population.

- 2. Suction devices, endotracheal tubes, laryngoscopes, etc.
- 3. Positive pressure ventilation device (e.g., Ambu) plus oxygen supply.

4. Double tourniquet for the Bier Block procedure.
5. Monitors for blood pressure/EKG/Oxygen saturation and portable approved defibrillator.
6. Emergency intubation equipment.
7. Adequate operating room lighting. Emergency power source able to produce adequate power to run required equipment for a minimum of two (2) hours, which would require generator on site.
8. Appropriate sterilization equipment.
9. IV solution and IV equipment.

#### F. Assistance of Other Personnel Required

The surgeon and at least one attending assistant must be certified in Basic Life Support. It is recommended that the surgeon and at least one assistant be certified in Advanced Cardiac Life Support. A registered nurse may only administer analgesic doses of anesthetic agents under the direct order of a physician. An assisting anesthesia provider cannot function in any other capacity during the procedure. If additional assistance is required by the specific procedure or patient circumstances, such assistance must be provided by a physician, registered nurse, licensed practical nurse, or operating room technician. Surgeon must have a written agreement with a qualified support physician with hospital privileges within reasonable proximity to cope with any problems that may arise if the surgeon performing the procedure does not have such privileges.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

#### Rule 2.6 Level III Office Surgery.

##### A. Scope

1. Level III Office Surgery is that surgery which involves, or reasonably should require, the use of a general anesthesia or major conduction anesthesia and pre-operative sedation. This includes the use of:

- i. Intravenous sedation beyond that defined for Level II office surgery;
- ii. General Anesthesia: loss of consciousness and loss of vital reflexes with probable requirement of external support of pulmonary or cardiac functions; or

iii. Major Conduction anesthesia.

2. Only patients classified under the American Society of Anesthesiologist's (ASA) risk classification criteria as Class I, II, or III are appropriate candidates for Level III office surgery. For ASA Class III patients, the surgeon must document in the patient's record the justification and precautions that make the office an appropriate forum for the particular procedure to be performed.

#### B. Transfer Agreement Required

The surgeon must have a written transfer agreement from a licensed hospital within reasonable proximity if the surgeon does not have staff privileges to perform the same procedure as that being performed in the office based surgical setting at a licensed hospital within reasonable proximity.

#### C. Level of Anesthetic

1. General Anesthetic: loss of consciousness and loss of vital reflexes with probable requirement of external support of pulmonary or cardiac functions.
2. Major Conduction: epidural, spinal, caudal.

#### D. Training Required

1. To perform office based surgery, the physician must be able to document satisfactory completion of surgical training such as board certification or board eligibility by a board approved by the American Board of Medical Specialties or American Board of Osteopathic Specialties. Alternative credentialing for procedures outside the physician's core curriculum must be applied for through the Mississippi State Board of Medical Licensure and reviewed by a multi-specialty board appointed by the Executive Director.
2. The surgeon and at least one attending assistant must be certified in Basic Life Support. It is recommended that the surgeon and at least one assistant be certified in Advanced Cardiac Life Support.
3. Emergency procedures related to serious anesthesia complications should be formulated, periodically reviewed, practiced, updated, and posted in a conspicuous location.

#### E. Equipment and Supplies Required

1. Equipment, medication, including at least 12 ampules of dantrolene on site (in cases involving general inhalation or general endotracheal anesthesia), and monitored post-anesthesia recovery must be available in the office.

2. The office, in terms of general preparation, equipment, and supplies, must be comparable to a free standing ambulatory surgical center, including, but not limited to, recovery capability, and must have provisions for proper record keeping.
3. Blood pressure monitoring equipment; EKG; end tidal CO2 monitor; pulse oximeter, precordial or esophageal stethoscope, emergency intubation equipment and a temperature monitoring device.
4. Table capable of trendelenburg and other positions necessary to facilitate the surgical procedure.
5. IV solutions and IV equipment.
6. All equipment and supplies listed under Part **2635**, Rule 2.5, Level II.

#### F. Assistance of Other Personnel Required

An anesthesiologist or certified registered nurse anesthetist must administer the general or regional anesthesia and a physician, registered nurse, licensed practical nurse, or operating room technician must assist with the surgery. The anesthesia provider cannot function in any other capacity during the procedure. A licensed physician or a licensed registered nurse with post-anesthesia care unit experience or the equivalent, and credentialed in Advanced Cardiac Life Support, or in the case of pediatric patients, Pediatric Advanced Life Support, must be available to monitor the patient in the recovery room until the patient has recovered from anesthesia.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

#### Rule 2.7 Effective Date of Rules.

The above rules pertaining to office based surgery shall become effective June 1, 2002.

Amended April 18, 2002. Amended September 18, 2002.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

### PART **2635** CHAPTER 3 LASER DEVICES

#### Rule 3.1 Laser Devices.

The use of laser, pulsed light or similar devices, either for invasive or cosmetic procedures, is considered to be the practice of medicine in the state of Mississippi and therefore such use shall be limited to physicians and those directly supervised by physicians, such that a physician is on the premises and would be directly involved in the treatment if required. These rules shall not apply to any person licensed to practice dentistry if the laser, pulsed light, or similar device is used exclusively for the practice of dentistry.

Adopted March 18, 1999. Amended May 19, 2005. Amended January 18, 2007. Amended March 8, 2007. Amended May 17, 2007. Amended March 27, 2008.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

## **PART 2635 CHAPTER 4 CHELATION THERAPY**

### **Rule 4.1 Chelation Therapy.**

The use of EDTA (ethylenediaminetetraacetic acid) in a clinical setting by delivering the medicine through parenteral or oral routes beyond its FDA approved clinical indications of laboratory documented heavy metal poisoning/intoxication/toxicity, without support of the scientific literature contained within the National Library of Medicine, or certainly much more than anecdotal evidence of its effective use in the treatment of a disease or medical condition for which a licensee uses it may be considered to be violation of Mississippi Code, Section 73-25-29(8)(d). However, EDTA may be used in the clinical setting when a licensee experienced in clinical investigations has applied for and received from the Board written approval for a carefully controlled clinical investigation of its effectiveness in treating diseases or medical conditions other than those approved by the FDA under a protocol satisfactory to the Board to be conducted in an academic institution. That the advertising of EDTA's administration in any matter to prevent or cure diseases or medical conditions other than laboratory documented heavy metal poisoning/intoxication/toxicity, without support of the scientific literature contained within the National Library of Medicine or certainly much more than anecdotal evidence of its effective use in the treatment of a disease or medical condition for which a licensee advertises it may be considered to be violation of Mississippi Code, Section 73-25-29(8)(d) and/or the rules promulgated pursuant thereto.

Adopted July 18, 2002.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

## **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).

#### 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).

#### 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).

## **PART 2635 CHAPTER 6 ELECTROMYOGRAPHY**

### Rule 6.1 General.

Electromyography (EMG) falls into two primary categories: needle electromyography testing and nerve conduction testing. Needle electromyography testing involves insertion of needle electrodes into skeletal muscles and concurrent observation of the electrical activity in those muscles by means of an oscilloscope and a loudspeaker. Nerve conduction testing is performed using the same equipment, but consists of surface stimulation or needle stimulation of peripheral nerves with an evaluation of the motor and/or sensory action potentials produced.

The purpose of both categories of electromyography is to detect abnormalities of the peripheral neuromuscular system or to determine the extent and degree of recovery of neuromuscular abnormalities--that is, to diagnose.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

## Rule 6.2 Delegation of EMG Procedures.

Electromyography is an extension of the history and physical examination and must be considered only in the light of the clinical finding. The person performing electromyography must be able to elicit the pertinent history and perform the necessary examination to define the clinical problems. Differential diagnoses must be considered, and as abnormalities unfold or fail to unfold during the course of testing, the electromyographic procedure may be modified until a probable diagnosis is reached. Results of electromyographic examinations are used for recommending surgical procedures and for determining the absence of disease with most serious prognoses.

EMG test procedures do not follow any stereotyped pattern, and electromyography is almost impossible to standardize, including both needle explorations and nerve conduction testing. Collection of clinical and electrophysiologic data during EMG test procedures should be done by a qualified electrodiagnostic (EDX) physician consultant, but collection of some data can be delegated to a specifically trained non-physician or physician in a residency training program or fellowship. This is to be done under the direct supervision of the EDX qualified physician consultant, whose presence is not required in the room where the procedure is being performed, but must be immediately available within the same building, in order to furnish the non-physician employee (or other physician) with assistance and direction, if needed, throughout the performance of the entire procedure.

Adopted November 20, 2003.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

## **PART 2635 CHAPTER 7** **INTERNET PRESCRIBING**

### Rule 7.1 Internet Prescribing.

Essential components of proper prescribing and legitimate medical practice require that the physician obtains a thorough medical history and conducts an appropriate physical and/or mental examination before prescribing any medication for the first time.

Exceptions to this circumstance that would be permissible may include, but not be limited to: admission orders for a newly hospitalized patient, prescribing for a patient of another physician for whom the prescriber is taking call, or continuing medication on a short-term basis for a new patient prior to the patient's first appointment. Established patients may not require a new history and physical examination for each new prescription, depending on good medical practice.

Prescribing drugs to individuals that the physician has never met and based solely on answers to a set of questions, as is found in Internet or toll-free telephone prescribing, is inappropriate, fails to meet a basic standard of care that potentially places patient's health at risk and could constitute unprofessional conduct punishable by disciplinary action.

Adopted September 18, 2003. Amended July 15, 2004.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

**PART 2635 CHAPTER 8**  
**MEDICAL EXPERT ACTIVITIES BY PHYSICIANS**

**Rule 8.1 Authority and Purpose.**

The Mississippi State Board of Medical Licensure (hereinafter referred to as "the Board") adopts these rules governing medical expert activities by physicians pursuant to Chapters 25 and 43 of Title 73 of the Mississippi Code. The Mississippi State Board of Medical Licensure finds it necessary to fulfill its statutory responsibilities by adopting these rules in order to protect the public, to set professional standards, to enforce the provisions of law regarding the performance of medical expert activities by physicians, and to further other legitimate government purposes in the public interest.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

**Rule 8.2 Scope.**

These rules apply to any physician who performs medical expert activities regarding any person, facility, or entity located within the state of Mississippi, or regarding an event alleged to have occurred within the state of Mississippi, regardless of the location, type, or status of the physician's medical expert activity, the presence or absence of the physician expert's license to practice medicine in Mississippi, the physician expert's presence or absence of a physician-patient relationship in Mississippi, the type of medical expert activity performed (e.g., oral testimony or a written statement), or the setting in which the medical expert activity is performed (e.g., a state or federal court or administrative agency).

No part of these rules is intended to conflict with or supercede the authority of any state or federal court or administrative agency to designate a physician as a medical expert in a legal matter then pending before the court or agency. The Board does not intend for these rules to conflict with or supercede the description or regulation of the function of a physician serving as an "expert" as that term is used in the Mississippi Rules of Evidence or in other provisions of law, rules, or decisions of any court or administrative agency.

No part of these rules is intended to conflict with or supercede the authority of a person other than a physician to serve as an expert in a legal matter. Furthermore, the Board does not intend for these rules to have any effect on physicians' participation in legal proceedings in a capacity other than as a medical expert.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

#### Rule 8.3 Definition of Medical Expert Activities.

For the purposes of these rules only, the Mississippi State Board of Medical Licensure has determined that the definition of the term "medical expert activities" includes, but is not limited to, the use of medical knowledge and professional judgment by a physician to:

- A. Suggest or recommend to a person any medical advice or other agency (whether material or not material).
- B. Perform medical services (including, but not limited to, a physical or mental examination of a person).
- C. Conduct a review of a person's medical record.
- D. Serve as a medical consultant.
- E. Render a medical opinion concerning the diagnosis or treatment of a person.
- F. Produce a written medical expert opinion report, affidavit, or declaration.
- G. Give testimony under oath as a medical expert at a state or federal hearing, deposition, trial, administrative agency proceeding, alternative dispute resolution proceeding, or any other legal proceeding, regarding the medical issues in a legal matter or claim for injuries that is then pending in a court or administrative agency, or which may be filed or asserted whether or not such claim ever results in a pending legal matter and which involves a person, facility, or entity located within the state of Mississippi, or an event alleged to have occurred within the state of Mississippi.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

#### Rule 8.4 Licensure and Qualification Requirements.

Except as otherwise provided by law, rule or regulation of this state, any medical expert activity by a physician regarding a legal matter pending in a state or federal court or administrative agency in Mississippi must be performed by a physician who holds a current unrestricted medical license in Mississippi, another state or

foreign jurisdiction, and who has the qualifications to serve as a medical expert on the issue(s) in question by virtue of knowledge, skill, experience, training, or education. This rule does not supersede the policies and rules of the Board in regards to unreferral diagnostic screening tests.

The practice of any physician not licensed in Mississippi that meets the licensure and qualification requirements stated in the above paragraph shall be deemed automatically by the Board to be authorized to include the performance of medical expert activities as an otherwise lawful practice, without any need for licensure verification or further requirement for licensure. In accordance with the provisions of law in Mississippi, any physician not licensed in Mississippi whose practice is deemed automatically by the Board to be authorized to include the performance of medical expert activities as an otherwise lawful practice shall be subject to regulation by the Board regarding the physician's performance of such medical expert activities in the state of Mississippi.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

#### Rule 8.5 Professional Standards.

Any physician who performs medical expert activities must:

- A. Comply with these rules and all applicable provisions of Mississippi law (e.g., statutes, court rules and decisions, and other administrative agency rules) with regard to the performance of medical expert activities.
- B. Comply with medical ethics principles, including, but not limited to, ethics principles established by the American Medical Association and relevant medical specialty associations.
- C. Be honest in all professional interactions involving his or her medical expert activities.
- D. Not accept payment for medical expert activities that is contingent upon the result or content of any medical diagnosis, opinion, advice, services, report, or review; or that is contingent upon the outcome of any case, claim, or legal matter then pending or contemplated.
- E. Not make or use any false, fraudulent, or forged statement or document.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

#### Rule 8.6 Professional Accountability for Violation of Rules.

Any physician who performs medical expert activities, whether or not licensed to practice medicine in Mississippi, may be disciplined or otherwise held professionally accountable by the Board, upon a finding by

the Board that the physician is unqualified as evidenced by behavior including, but not limited to, incompetent professional practice, unprofessional conduct, or any other dishonorable or unethical conduct likely to deceive, defraud, or harm the public.

Any violation of Part **2635**, Rule 8.5 as enumerated above shall constitute unprofessional conduct in violation of Mississippi Code, Section 73-25-29(8).

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

#### Rule 8.7 Complaint Procedure,

Investigation, Due Process, and Actions Available to the Board. Any person who has reason to believe that any physician may have failed to comply with any part of these rules in the performance of medical expert activities may make a complaint to the Mississippi State Board of Medical Licensure on a complaint form that is furnished by the Board.

Any physician, whether or not licensed to practice medicine in Mississippi, who performs medical expert activities in the context of a legal matter regarding any person, facility, entity, or event located within the state of Mississippi may be subject to an investigation by the Mississippi State Board of Medical Licensure upon the receipt of a complaint regarding the physician's conduct or practice. Any such physician shall be afforded the due process procedures of the law and Board rules. The Board, in its sole discretion, may refer the complaint to the medical licensure authority of another state, or to any other appropriate legal authority.

Any physician may request, or may be summoned by the Board, to appear before the Board at a hearing to consider the physician's compliance with these rules. Any physician's failure to appear when summoned to a hearing may be deemed by the Board to be a waiver of the physician's due process opportunity to appear before the Board and may result in a finding by the Board that the physician is out of compliance with these rules in absentia.

In disciplining a physician licensed to practice medicine in Mississippi or otherwise holding any physician professionally accountable pursuant to these rules and to the statutes, rulings, and other rules and provisions of Mississippi law, the actions that the Mississippi State Board of Medical Licensure may take include, but are not limited to, one or more of the following:

- A. Denying, suspending, restricting, or revoking a Mississippi license to practice medicine.
- B. Administering a public or private reprimand to a Mississippi licensed physician.
- C. Assessing up to \$ 10,000 of the reasonable investigation costs expended by the Board in investigating a

Mississippi licensed physician.

D. Moving for an injunction in Chancery Court to prohibit any physician's further performance of medical expert activities.

E. Petitioning the Chancery Court to cite any noncompliant physician for contempt of court.

F. Referring the matter to another medical licensure authority or other legal authority for action regarding any physician.

G. Any other action regarding any physician that the Board may deem proper under the circumstances (e.g., issuing an advisory letter of concern; issuing a notice of warning; issuing a cease and desist notice; or adopting a resolution of disapproval of any physician's medical expert activities).

Any physician who is found by the Mississippi State Board of Medical Licensure to have failed to comply with any part of these rules may be reported by the Board to any person or organization appropriate under the circumstances in order to enforce or comply with the law or to protect the public, including, but not limited to, the National Practitioner Data Bank, the U.S. Department of Health and Human Services Office of the Inspector General, the Centers for Medicare and Medicaid Services, the Federation of State Medical Boards, the medical licensure authority or state medical association in any state in which the physician is licensed to practice medicine, the American Board of Medical Specialties and any of its member specialty boards, the Mississippi Attorney General or District Attorney, the United States Attorney, any state or federal court or administrative agency, any national or state professional organization or medical specialty association, and any other appropriate person, government agency, healthcare entity, or legal authority.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

#### Rule 8.8 Compliance Policy and Exemptions.

In assuring compliance with these rules, the duty shall be on the physician, not on the party who engaged the physician to perform medical expert activities and not on any other person or entity, to ensure that his or her medical expert activities comply with these rules. Any physician who claims to be exempt from these rules shall have the burden of proving to the Board that the exemption is valid.

Amended May 20, 2010.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

#### References.

Utah Telehealth Study - Phase 2 Report  
Prepared by Pilot Healthcare Strategies for the Utah Division of Occupational and Professional Licensing  
May 2, 2014

Mississippi Code, Sections 11-1-61, 73-25-27, 73-25-29, 73-25-30, 73-25-33, 73-25-34, 73-25-83, 73-25-87, 73-43-11, 73-51-1, et al

Mississippi Rule of Evidence 702

"Rules, Laws, and Policies of the Mississippi State Board of Medical Licensure." Published by the Mississippi State Board of Medical Licensure and available at Internet address [www.msbml.ms.gov](http://www.msbml.ms.gov)

Hall v. Hilbun, 466 So. 2d 856 (Miss. 1985)

Code of Medical Ethics, Current Opinions with Annotations. Published by the Council on Ethical and Judicial Affairs of the American Medical Association, 2006-07 edition.

"The Role of Licensing Boards in the Evaluation and Discipline of the Expert Witness." Authored by William J. Wenner, Jr., M.D., J.D. Published in the Journal of Medical Licensure and Discipline, Vol. 90, No. 3, 2004, Pp. 15-20 (collecting cases and scholarly publications)

Findings of Fact adopted by the Mississippi State Board of Medical Licensure on May 18, 2006.[n\*\*]

[n\*\*COMMENT: Based on information presented to the Board at a public hearing on this matter on March 9, 2006, and on May 18, 2006, and on research and analysis of information obtained by Board members and its staff and attorneys, and also on comments received from numerous sources, including the Board's Consumer Health Committee, leaders of the medical and legal professions, former judges, officials from the Federation of State Medical Boards, and members of the public, the Mississippi State Board of Medical Licensure makes the following Findings of Fact:

1. A physician's professional practice, conducted pursuant to the privilege of possessing a medical license, historically has been subject to regulation by other members of the medical profession, by methods such as peer review, performance evaluation, quality assurance monitoring, and other methods of regulation. However, there is a problem in Mississippi with the lack of regulation of medical expert activities by physicians. This lack of regulation causes the performance of medical expert activities to be vulnerable to fraud, abuse, dishonesty, deception, incompetence, and other forms of unprofessional, dishonorable, and unethical conduct by physician experts, all of which are harmful to the public.
2. A physician's performance of medical expert activities involves a lawful part of a physician's practice that is historically an area of state concern and that the Board has the statutory authority and duty to regulate in order to protect the public.

3. A physician's medical expert activities involve practices that are likely to affect the health, safety, rights, remedies, and general welfare of persons in Mississippi.
4. In keeping with the public policy and provisions of law in Mississippi, the performance of medical expert activities, regardless of the physician expert's location or state(s) of medical licensure, is a lawful practice that requires a qualified physician, and is therefore subject to regulation by, and professional accountability to, the Mississippi State Board of Medical Licensure.
5. Due to its physician membership and statutory authority, the Mississippi State Board of Medical Licensure is uniquely able to establish and enforce licensure requirements, qualification requirements, and Professional Standards related to the performance of medical expert activities by physicians, especially with regard to ethical conduct and competent practice.
6. Regardless of a physician's state(s) of medical licensure, a physician who performs medical expert activities in a legal matter has an ethical duty to practice according to the standards of medical professionalism, to perform all medical expert activities in an honest and competent manner, and to strive to report to appropriate entities any physician who is deficient in character or competence or who engages in fraud or deception.
7. In keeping with the public policy and provisions of law in Mississippi and principles of medical ethics, it is unprofessional, dishonorable, and unethical for a physician to willfully state an opinion or a material fact as a medical expert in the context of a legal matter that the physician knows or should know is false, or that a reasonable person could objectively conclude was a misrepresentation or other distortion of the truth, or was intended by the physician to mislead or deceive a judge, juror, lawyer, litigant, other expert, hearing officer, administrative body, investigator, legal authority, or any finder of fact.
8. In adopting these rules, the Mississippi State Board of Medical Licensure has attempted to tailor these rules as closely as possible to the current provisions of Mississippi law, in order to regulate medical expert activities for the legitimate government purpose of protecting the public and to further other legitimate government purposes in the public interest.
9. In adopting these rules, the Mississippi State Board of Medical Licensure states that its intent is only to regulate the conduct and practice of physicians who perform medical expert activities in Mississippi. The Board does not intend for these rules to be subverted or misused by participants in legal proceedings as a procedural weapon to intimidate or harass a physician expert or to delay or otherwise complicate the administration of justice.

The Mississippi State Board of Medical Licensure shall provide a copy of these rules, with these Comments appended, to the Mississippi Supreme Court, the Mississippi Court of Appeals, the respective conferences of the Mississippi Circuit, Chancery, and County Judges, the Administrative Office of the Courts, the Mississippi

Attorney General, the United States District Courts and United States attorneys located in Mississippi, the Mississippi Workers' Compensation Commission, the Mississippi Bar Association, the Mississippi State Medical Association, the Federation of State Medical Boards, and any other appropriate person or organization at the discretion of the Board's Executive Director, with the request that those organizations give notice to their members or other interested parties of the existence of these rules.]

**PART 2635 CHAPTER 9**  
**COMMUNITY-BASED IMMUNIZATION PROGRAMS**

Rule 9.1 Scope.

The administration of vaccinations clearly constitutes the practice of medicine, as defined by Mississippi Code Section 73-43-11, and thus may only be performed by a physician licensed to practice medicine in this state, or by a licensed nurse under the direction and supervision of a licensed physician.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

Rule 9.2 Definitions.

For the purpose of Part **2635**, Chapter 9 only, the following term has the meaning indicated:

"Part-time" means a minimum of 20 hours per week.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

Rule 9.3 Position.

It is the position of the Mississippi State Board of Medical Licensure that vaccinations administered pursuant to a community-based public immunization program are considered to be under the direction and supervision of a physician, and thus do not constitute the unlawful practice of medicine, when all of the following criteria are met:

- A. the vaccinations are administered to the public by a licensed nurse and
- B. are carried out pursuant to state and federal public health immunization programs or other programs which:
  - 1. shall be approved in advance by the Board;
  - 2. shall be conducted under the general supervision of a physician licensed in the state of Mississippi , who is in

at least part-time practice of medicine and resides in the state of Mississippi; and,

3. a single physician assumes responsibility for the safe conduct of the immunization program.

Adopted March 24, 2011.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

**PART 2635 CHAPTER 10**  
**RELEASE OF MEDICAL RECORDS**

**Rule 10.1 Definitions.**

For the purpose of Part **2635**, Chapter 10 only, the following terms have the meanings indicated:

A. "Licensee" means any person licensed to practice medicine, osteopathic medicine, podiatric medicine or acupuncture in the state of Mississippi.

B. "Medical Records" means all records and/or documents relating to the treatment of a patient, including, but not limited to, family histories, medical histories, report of clinical findings and diagnosis, laboratory test results, x-rays, reports of examination and/or evaluation and any hospital admission/discharge records which the licensee may have.

C. "Patient" means a natural person who receives or should have received health care from a licensed licensee, under a contract, express or implied, whether or not the licensee is compensated for services rendered.

D. "Legal Representative" means an attorney, guardian, custodian, or in the case of a deceased patient, the executor/administrator of the estate, surviving spouse, heirs and/or devisees.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

**Rule 10.2 Medical Records - Property of Licensee/Clinic.**

Medical records, as defined herein, are and shall remain the property of the licensee or licensees, in whose clinic or facility said records are maintained, subject, however, to reasonable access to the information contained in said records as set forth herein below.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

### Rule 10.3 Transfer of Patient Records to Another Licensee.

A licensee who formerly treated a patient shall not refuse for any reason to make the information contained in his or her medical records of that patient available upon request by the patient, or legal representative of the patient, to another licensee presently treating the patient. The licensee has a right to request a written release from the patient or legal representative of the patient, authorizing the transfer prior to transfer of said documents. Upon receipt of the written release and authorization, the licensee must tender a copy of said documents to the other licensee within a reasonable period of time. Transfer of said documents shall not be withheld because of an unpaid bill for medical services, but the licensee is entitled to reasonable compensation paid in advance for any copy expenses as provided in Part **2635**, Rule 10.6.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

### Rule 10.4 Release of Patient Records to Patient.

A licensee shall, upon request of the patient, patient's legal representative, or other person holding a written release and authorization (hereinafter, "authorized requesting party"), provide a copy of a patient's medical record to the authorized requesting party; provided, however, where release of psychiatric/psychological records directly to a patient would be deemed harmful to the patient's mental health or well-being, the licensee shall not be obligated to release the records directly to the patient, but shall, upon request, release the records to the patient's legal representative. The licensee has a right to request a written authorization prior to release of the records. Upon receipt of the written release and authorization, the licensee must tender a copy of the records to the authorized requesting party within a reasonable period of time. Transfer of the records shall not be withheld because of an unpaid bill for medical services, but the licensee is entitled to reasonable compensation paid in advance for any copy expenses as provided in Part **2635**, Rule 10.6.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

### Rule 10.5 Narrative Summary of Medical Record.

In some cases, a requesting party may wish to obtain a narrative summary of the medical record, in lieu of, or in addition to a copy of the medical record. Upon such a request, the licensee may provide the narrative summary. The licensee may charge a reasonable fee for the time devoted to preparation of the medical record narrative summary.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

### Rule 10.6 Duplication and Administrative Fees.

A. Licensees have a right to be reimbursed for duplication and other expenses relating to requests for medical records. The copying charge is set by Mississippi Code, Section 11-1-52 as follows:

1. Any medical provider or hospital or nursing home or other medical facility shall charge no more than the following amounts to patients or their representatives for photocopying any patient's records:

i. Twenty Dollars (\$ 20.00) for pages one (1) through twenty (20);

ii. One Dollar (\$ 1.00) per page for the next eighty (80) pages;

iii. Fifty Cents (50") per page for all pages thereafter.

iv. Ten percent (10%) of the total charge may be added for postage and handling. v. Fifteen Dollars (\$ 15.00) may be recovered by the medical provider or hospital or nursing home or other medical facility for retrieving medical records in archives at a location off the premises where the facility/office is located.

vi. In addition, the actual costs of reproducing x-rays or other special records may be included.

vii. The duplication and administrative fees authorized herein are not intended to include or restrict any fees charged in relation to expert testimony.

B. A licensee shall only charge normal, reasonable and customary charges for a deposition related to a patient that the licensee is treating or has treated.

C. Any medical provider shall charge no more than Twenty-five Dollars (\$ 25.00) for executing a medical record affidavit, when the affidavit is requested by the patient or the patient's representative.

Source: Miss. Code Ann. §11-1-52 (1972, as amended).

Rule 10.7 Exclusion.

Federal or state agencies providing benefit programs are excluded from the above stated fees. Records that are requested by state or federal agencies for said benefit programs shall pay an acceptable rate as established by the requesting federal or state agency.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

Rule 10.8 Violation of Rules.

Utah Telehealth Study - Phase 2 Report

Prepared by Pilot Healthcare Strategies for the Utah Division of Occupational and Professional Licensing

May 2, 2014

A refusal by a licensee to release patient records as enumerated above shall constitute unprofessional conduct, dishonorable or unethical conduct likely to deceive, defraud or harm the public in violation of Mississippi Code, Section 73-25-29(8)(d).

Amended March 16, 1995. Amended July 18, 2002. Amended September 18, 2003. Amended September 16, 2004. Amended May 17, 2007. Amended January 21, 2010.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

## PART **2635** CHAPTER 11

### PREVENTION OF TRANSMISSION OF HEPATITIS B VIRUS (HBV), HEPATITIS C VIRUS (HCV) AND HUMAN IMMUNODEFICIENCY VIRUS (HIV) TO PATIENTS

#### Rule 11.1 Scope.

The following rules of prescribed practice and reporting requirements for physicians and podiatrists licensed in the state of Mississippi are to protect the public from the risk of transmission of Hepatitis B Virus, Hepatitis C Virus and Human Immunodeficiency Virus from physicians to patients and to insure the maintenance of quality medical care by physicians and podiatrists who are HbeAg, HCV and HIV seropositive.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

#### Rule 11.2 Definitions.

For the purpose of Part **2635**, Chapter 11 only, the following terms have the meanings indicated:

A. "HBV" means Hepatitis B Virus. B. "

C. "HIV" means Human Immunodeficiency Virus.

D. "HBeAg seropositive" means that a test of the practitioner's blood has confirmed the presence of Hepatitis Be antigen.

E. "HCV seropositive" means that a test of the practitioner's blood has confirmed the presence of Hepatitis C antigen.

F. "HIV seropositive" means that a test of the practitioner's blood has confirmed the presence of HIV antibody.

G. "Exposure-Prone Procedure" means an invasive procedure in which there is an increased risk of per

cutaneous injury to the practitioner by virtue of digital palpation of a needle tip or other sharp object in a body cavity or the simultaneous presence of the practitioner's fingers and a needle or other sharp instrument or object in a poorly visualized or highly confined anatomic site, or any other invasive procedure in which there is a significant risk of contact between the blood or body fluids of the practitioner and the blood or body fluids of the patient.

H. "Practitioners" or "Physicians" means any individual licensed to practice medicine, osteopathic medicine or podiatric medicine in the state of Mississippi.

I. "Act" means the Mississippi Medical Practice Act as found at Sections 73-25-1 through 73-27-19, Mississippi Code.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

### Rule 11.3 Use of Infection Control Precautions. General Requirements.

A practitioner who performs or participates in an invasive procedure or performs a function ancillary to an invasive procedure shall, in the performance of or participation in any such procedure or function, be familiar with, observe and rigorously adhere to both general infection control practices and universal blood and body-fluid precautions as then recommended by the Federal Centers for Disease Control and Prevention to minimize the risk of transmission of the HBV or HIV from a practitioner to a patient, from a patient to a practitioner, from a patient to a patient, or from a practitioner to a practitioner.

Universal Blood and Body-Fluid Precautions. For purposes of this rule, adherence to universal blood and body-fluid precautions requires observance of the following minimum standards:

A. Protective Barriers. A practitioner shall routinely use appropriate barrier precautions to prevent skin and mucous-membrane contact with blood and other body fluids of all patients. Gloves and surgical masks shall be worn and shall be changed after contact with each patient. Protective eyewear or face shields and gowns or aprons made of materials that provide an effective barrier shall be worn during procedures that commonly result in the generation of droplets, splashing of blood or body fluids, or the generation of bone chips. A practitioner who performs, participates in, or assists in a vaginal or cesarean delivery shall wear gloves and gowns when handling the placenta or the infant until blood and amniotic fluid have been removed from the infant's skin and shall wear gloves during post-delivery care of the umbilical cord. If, during any invasive procedure, a glove is torn or punctured, the glove should be removed and a new glove used as promptly as patient safety permits.

B. Hand Washing. Hands and other skin surfaces shall be washed immediately and thoroughly if contaminated with blood or other body fluids. Hands shall be washed immediately after gloves are removed.

C. Per Cutaneous Injury Precautions. A practitioner shall take appropriate precautions to prevent injuries caused by needles, scalpels, and other sharp instruments or devices during procedures; when cleaning used instruments; during disposal of used needles, and when handling sharp instruments after procedures. If a needle stick injury occurs, the needle or instrument involved in the incident should be removed from the sterile field. To prevent needle stick injuries, needles should not be recapped, purposely bent or broken by hand, removed from disposable syringes, or otherwise manipulated by hand. After they are used, disposable syringes and needles, scalpel blades, and other sharp items should be placed for disposal in puncture-resistant containers located as close as practical to the use area. Large-bore reusable needles should be placed in puncture-resistant containers for transport to the reprocessing area.

D. Resuscitation Devices. To minimize the need for emergency mouth-to-mouth resuscitation, a practitioner shall ensure that mouthpieces, resuscitation bags, or other ventilation devices are available for use in areas in which the need for resuscitation is predictable.

E. Sterilization and Disinfection. Instruments or devices that enter sterile tissue or the vascular system of any patient or through which blood flows should be sterilized before reuse. Devices or items that contact intact mucous membranes should be sterilized before reuse. Devices or items that contact intact mucous membranes should be sterilized or receive high-level disinfection.

F. Precautions for Practitioners with High Risk Lesions and Dermatitis. Practitioners who have exudative lesions or weeping dermatitis must refrain from all direct patient care and from handling patient care equipment and devices used in performing invasive procedures until the condition is resolved.

G. Failure to Comply with Standards. Failure by a practitioner to adhere to the Universal Blood and Body Fluid Precautions established herein shall be deemed unprofessional conduct in violation of Section 73-25-29(8)(d). Upon report of a violation, the Board of Medical Licensure shall take action consistent with the Medical Practice Act to determine if a violation has occurred, and if a violation has occurred, determine what sanctions, if any, are appropriate. The practitioner shall be entitled to the procedures guaranteed by the Act, including, but not necessarily limited to, a hearing concerning the charge(s).

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

#### Rule 11.4 Screening/Reporting.

It is recommended that physicians know their HIV, HBV or HCV antibody status and submit to the appropriate tests to determine this status on an annual basis on or before the physician's birthday.

Any practitioner who is or becomes HBeAg seropositive, HCV seropositive or HIV seropositive shall give written notice of such seropositivity to the Board of Medical Licensure on or before thirty (30) days from the

date the seropositivity is determined.

The written notice of seropositivity as required in above paragraph shall be sent by registered mail to the attention of the Board's Executive Officer, and shall include a copy of the test results and identification of the physician's treating physician.

A panel shall be established to monitor physicians who are HIV seropositive, HBeAg seropositive or HCV seropositive. The panel shall consist of the physician's private physician(s), an infectious disease specialist with expertise in the epidemiology of HIV, HBV and HCV transmission, a practitioner with expertise in the procedures performed by the infected practitioner, a psychiatrist, and a member and/or Executive Officer of the Board of Medical Licensure. The above list is not intended to be all inclusive and other physicians or representatives of other fields of medicine can be added to the panel, at the request of either the infected physician, a panel member, and/or the Board of Medical Licensure.

The panel shall designate two or more of its members to meet with seropositive physicians to evaluate the physicians' practice, extent of illness and other factors to determine what modifications, if any, will be required in their practice patterns. In addition, the panel shall meet at least annually with the Board to report its progress, discuss enforcement and related issues.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

#### Rule 11.5 Confidentiality of Reported Information.

##### A. General Confidentiality.

Reports and information furnished to the Board pursuant to Part **2635**, Rule 11.4 shall be confidential and privileged. Said reports and information shall not be subject to disclosure without prior written consent of the practitioner identified in the report.

##### B. Confidentiality of Identity of Seropositive Practitioners.

The identity of practitioners who have reported their status as carriers of HBV, HCV or HIV to the Board pursuant to Part **2635**, Rule 11.4 shall be maintained in confidence by the Board and shall not be disclosed to any person, firm, organization, or entity, governmental or private, except as may be necessary in the investigation or prosecution of suspected violations of this rule and regulation or violation of the Mississippi Medical Practice Act.

##### C. Disclosure of Statistical Data.

Provided that the identity of reporting practitioners is not disclosed, the provisions of this rule shall not be deemed to prevent disclosure by the panel or Board of statistical data derived from such reports, including, the number and licensure class of practitioners having reported themselves as HbeAg, HCV and/or HIV seropositive and their geographical distribution.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

#### Rule 11.6 Penalties.

HIV, HBV or HCV positive practitioners who perform exposure-prone procedures or otherwise practice contrary to the direction of the panel shall be guilty of unprofessional conduct in violation of Section 73-25-29(8)(d). Upon report of a violation, the Board shall take action consistent with the Act to determine if a violation has occurred and if so, determine what sanctions, if any, are appropriate. The practitioner shall be entitled to the procedures guaranteed by the Act including, but not limited to, a hearing concerning the charge(s).

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

#### Rule 11.7 HIV, HBV and HCV Tests.

All tests to determine HIV, HbeAg or HCV seropositivity should be performed at a standardized laboratory that is licensed in the state of Mississippi.

Adopted July 1, 1992. Amended November 18, 1993. Amended September 23, 1999.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

## **PART 2635 CHAPTER 12** **PHYSICIAN ADVERTISING**

#### Rule 12.1 Scope.

The following rule on physician advertising applies to all individuals licensed to practice medicine, osteopathic medicine or podiatric medicine in the state of Mississippi.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

#### Rule 12.2 Definitions.

For the purpose of Part **2635**, Chapter 12 only, the following terms have the meanings indicated:

- A. "Board" means the Mississippi State Board of Medical Licensure.
- B. "Physician" means any individual licensed to practice medicine, osteopathic medicine or podiatric medicine in the state of Mississippi.
- C. "Advertisement" or "Advertising" means any form of public communication, such as newspaper, magazine, telephone directory, medical directory, radio, television, direct mail, billboard, sign, computer, business card, billing statement, letterhead or any other means by which physicians may communicate with the public or patients.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

#### Rule 12.3 Requirements.

A. Subject to the requirements set forth herein below, any advertisement by a physician may include:

1. The educational background or specialty of the physician.
2. The basis on which fees are determined, including charges for specific services.
3. Available credit or other methods of payment.
4. Any other non-deceptive information.

B. A physician may publicize himself or herself as a physician through any form of advertisement, provided the communication, (i) shall not be misleading because of the omission of necessary information, (ii) shall not contain any false or misleading statement, or (iii) shall not otherwise operate to deceive.

C. Because the public can sometimes be deceived by the use of medical terms or illustrations that are difficult to understand, physicians should design the advertisement to communicate the information contained therein to the public in a readily comprehensible manner.

D. It is unethical to advertise in such a manner as to create unjustified medical expectations by the public. The key issue is whether advertising or publicity, regardless of format or content, is true and not materially misleading.

E. In addition to the above general requirements, any advertisement or other form of public communication

shall comply with the following specific requirements:

1. All advertisements and written communications pursuant to these rules shall include the name of at least one (1) physician responsible for its content.
2. Whenever a physician is identified in an advertisement or other written communication, the physician should not be identified solely as "Doctor" or "Dr." but shall be identified as M.D. for medical doctors, D.O. for osteopathic physicians and D.P.M. for podiatric physicians.
3. A physician who advertises a specific fee for a particular service or procedure shall honor the advertised fee for at least ninety (90) days unless the advertisement specifies a longer period; provided that for advertisements in the yellow pages of a telephone directory or other media not published more frequently than annually, the advertised fee shall be honored for no less than one (1) year following publication.
4. A physician shall not make statements which are merely self-laudatory or statements describing or characterizing the quality of the physician's services.
5. No physician shall advertise or otherwise hold himself or herself out to the public as being "Board Certified" without, (i) a complete disclosure in the advertisement of the specialty board by which the physician was certified, and (ii) can submit proof of current certification by a specialty board recognized by the American Board of Medical Specialties or the American Osteopathic Association. The term "Board Certified" frequently appears in conjunction with a list of services that the physician or clinic provides. The general public could easily be misled into thinking that the physician is certified in all of those services.
6. No physician shall hold himself or herself out as a specialist in a particular field unless that physician has either, (i) completed a "board approved" residency program, which provides specific training in the specialized field and can submit proof that such training was completed, or (ii) can submit proof that while not completing a residency, was "grandfathered" into a specialty by successful completion of board examinations followed by board certification by the American Board of Medical Specialties or the American Osteopathic Association. A "board approved" residency program shall be limited to residency programs recognized by the American Medical Association, by the American Osteopathic Association, and by the American Podiatric Medical Association.
7. No physician shall compare his or her service with other physicians' services, unless the comparison can be factually substantiated; this precludes the use of terms such as "the best," "one of the best," or "one of the most experienced" or the like.
8. Where an advertisement includes a consumer-endorser's experience (i.e., patient testimonials), the advertisement must contain an appropriately worded, clear and prominent disclosure of (a) what the generally

expected performance would be in the depicted circumstances, and (b) the limited applicability of the endorser's experience. Although testimonials and endorsements are authorized under this rule, compliance will be strictly monitored as endorsements and testimonials are inherently misleading to the lay public and to those untrained in medicine.

9. Any claims of success, efficacy or result (i.e., cure) must have scientific evidence in substantiation of such claims.

10. Any claims that purport to represent "typical" results (results that consumers will generally achieve) must be based on a study of a sample of all patients who entered the program, or, if the claim refers to a subset of those patients, a sample of that subset.

11. Any claim made regarding the safety of a medical procedure or drug must also disclose the risk of adverse medical complications.

12. No physician shall claim to have any new drug or medication or new use of a drug or medication for a specific ailment or condition unless such drug or medication has an F.D.A. approved indication for such purpose.

13. Any claim that improvements can be achieved through surgery in a specified time period must also include disclosure of the typical recovery time.

F. Consistent with federal regulatory standards which apply to commercial advertising, a physician who is considering the placement of an advertisement or publicity release, whether in print, radio or television, should determine in advance that the communication or message is explicitly and implicitly truthful and not misleading. These standards require the advertiser to have a reasonable basis for claims before they are used in advertising. The reasonable basis must be established by those facts known to the advertiser, and those which a reasonable, prudent advertiser should have discovered.

G. The above rules do not prohibit physicians or clinics from authorizing the use of the physician's name or clinic name in medical directories, HMO directories, preferred provider agreements or other communications intended primarily for referral purposes.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

#### Rule 12.4 Violation of Rules.

The above rules on physician advertising shall not be interpreted to alter or amend that which is otherwise provided by Mississippi statutory law or the rules on advertising adopted by the Federal Trade Commission.

If any physician subject to this rule advertises or enters into any communication in violation of the above rules, such act shall constitute unprofessional conduct, which includes dishonorable or unethical conduct likely to deceive, defraud or harm the public, in violation of Mississippi Code, Sections 73-25-29(8)(d) and 73-27-13(h)(iv).

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

#### Rule 12.5 Effective Date of Rules.

The above rules pertaining to physician advertising shall become effective November 2, 1995. Amended January 24, 2008.

Source: Miss. Code Ann. §73-43-11 (1972, as amended).

EDITOR'S NOTE: 30.2635.01-12 MISS ADMIN CODE

STATUTORY AUTHORITY: Miss. Code Ann. §§ 37-41; 41-29; 41-58-7; 73-25; 73-27; 73-43-11

EFFECTIVE DATE: Original effective date not provided

AMENDED: October 31, 1987; November 1, 1990; September 21, 1991; July 31, 1992; November 18, 1993; February 3, 1994; October 23, 1994; March 16, 1995; June 19, 1995; September 10, 1995; November 2, 1993; June 30, 1996; December 25, 1998; February 27, 1999; April 18, 1999; June 26, 1999; October 28, 1999; December 29, 1999; January 20, 2000; March 23, 2000; September 1, 2000; March 22, 2001; May 2, 2001; September 1, 2001; May 19, 2002; August 22, 2002; March 21, 2003; May 18, 2003; November 8, 2003; December 20, 2003; August 17, 2004 [Rules XXIII, XXIX]; October 16, 2004 [Rules XII, XXII]; November 16, 2004 [Rule XXIII]; December 23, 2004 [Rules XXIII, XXVII]; June 18, 2005 [Rule XXII]; June 20, 2005 [Rule XIX]; December 17, 2005 [Rule XXX]; January 31, 2006 [Rule XXVII]; July 1, 2006 [XXXI]; August 20, 2006 [XXX]; October 25, 2006 [II, XXXIII]; December 1, 2006 [XXXI]; December 10, 2006 [XXXIII]; January 18, 2007 [XIX]; April 8, 2007 [II, III, V to VII, XXII]; May 17, 2007 [I to VII, X to XII, XVII, XIX, XXI, XXII]; July 13, 2007 [compilation] Secretary of State Document #14540; November 9, 2007 Secretary of State Document #14766, 14767; January 24, 2008 Secretary of State Document #14884, 14885, 14886, 14887; March 27, 2008 Secretary of State Document #14995; May 16, 2008 Secretary of State Document #15156; July 11, 2008 Secretary of State Document #15411, 15412; December 20, 2008 Secretary of State Document #15739; April 12, 2009 Secretary of State Document #15974 [Chapter 09]; Secretary of State Document #15973 [Chapter 25]; July 1, 2009 Secretary of State Document #15975 [Chapter 2]; October 17, 2009 Secretary of State Document #16492 [Chapter 17]; November 12, 2009 Secretary of State Document #16525 [Chapter 2]; December 19, 2009 Secretary of State Document #16593 [Chapter 9]; May 20, 2010 Secretary of State Document #16948 [Chapter 19], #16949 [Chapter 22]; April 24, 2011 Secretary of State Document

Utah Telehealth Study - Phase 2 Report

Prepared by Pilot Healthcare Strategies for the Utah Division of Occupational and Professional Licensing

May 2, 2014

#17673 [Chapter 25], #17674 [Chapter 25], #17675 [Chapter 28], #17677 [Chapter 17]; August 13, 2011 Secretary of State Document #17931 [Chapter 9]; June 17, 2012 Secretary of State Document #18781; August 16, 2012 Secretary of State Document #18976 [compilation and division into separate rules]

## 37-3-342, MCA

LexisNexis (R) Montana Code Annotated

\*\*\* This document is current through the 2013 Regular and Special Sessions \*\*\*  
\*\*\* Annotations current through October 30, 2013 \*\*\*

### TITLE 37 PROFESSIONS AND OCCUPATIONS CHAPTER 3 MEDICINE PART 3 LICENSING

#### **37-3-342, MCA (2013)**

**37-3-342** Definition -- scope of practice allowed by telemedicine license.

(1) As used in 37-3-301, 37-3-341 through 37-3-345, and 37-3-347 through 37-3-349, "telemedicine" means the practice of medicine, as defined in 37-3-102, by a physician located outside the state who performs an evaluative or therapeutic act relating to the treatment or correction of a patient's physical or mental condition, ailment, disease, injury, or infirmity and who transmits that evaluative or therapeutic act into Montana through any means, method, device, or instrumentality under the following conditions:

- (a) The information or opinion is provided directly to a patient in Montana for compensation or with the expectation of compensation.
- (b) The physician does not limit the physician's services to an occasional case.
- (c) The physician has an established or regularly used connection with the state, including but not limited to:
  - (i) an office or another place for the reception of a transmission from the physician;
  - (ii) a contractual relationship with a person or entity in Montana related to the physician's practice of medicine;  
or
  - (iii) privileges in a Montana hospital or another Montana health care facility, as defined in 50-5-101.

(2) As used in 37-3-301, 37-3-341 through 37-3-345, and 37-3-347 through 37-3-349, telemedicine does not mean:

- (a) an act or practice that is exempt from licensure under 37-3-103;
- (b) an informal consultation, made without compensation or expectation of compensation, between an out-of-state physician and a physician or other health care provider located in Montana;
- (c) the transfer of patient records, independent of any other medical service and without compensation;
- (d) communication about a Montana patient with the patient's physician or other health care provider who practices in Montana, in lieu of direct communication with the Montana patient or the patient's legal representative; or
- (e) a communication from a physician located outside Montana to a patient in Montana in consultation with a physician or other health care provider licensed to practice medicine in Montana.

**HISTORY:**

En. Sec. 2, Ch. 371, L. 1999; amd. Sec. 28, Ch. 467, L. 2005; amd. Sec. 20, Ch. 109, L. 2009.

# North Carolina Medical Board Position Statement on Telemedicine

Created: Jul 1, 2010

“Telemedicine” is the practice of medicine using electronic communication, information technology or other means between a licensee in one location and a patient in another location with or without an intervening health care provider.

The Board recognizes that technological advances have made it possible for licensees to provide medical care to patients who are separated by some geographical distance. As a result, telemedicine is a potentially useful tool that, if employed appropriately, can provide important benefits to patients, including: increased access to health care, expanded utilization of specialty expertise, rapid availability of patient records, and the reduced cost of patient care.

The Board cautions, however, that licensees practicing via telemedicine 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 telemedicine, may subject the licensee to potential discipline by this Board.

The Board provides the following considerations to its licensees as guidance in providing medical services via telemedicine:

**Training of Staff**— Staff involved in the telemedicine visit should be trained in the use of the telemedicine equipment and competent in its operation.

**Examinations**— Licensees using telemedicine technologies to provide care to patients located in North Carolina must provide an appropriate examination prior to diagnosing and/or treating the patient. However, this examination need not be in-person if the technology is sufficient to provide the same information to the licensee as if the exam had been performed face-to-face.

Other examinations may also be considered appropriate if the licensee is at a distance from the patient, but a licensed health care professional is able to provide various physical findings that the licensee needs to complete an adequate assessment. On the other hand, a simple questionnaire without an appropriate examination may be a violation of law and/or subject the licensee to discipline by the Board. (1)

**Licensee-Patient Relationship** – The licensee using telemedicine should have some means of verifying that the person seeking treatment is in fact who he or she claims to be. A diagnosis should be established through the

use of accepted medical practices, i.e., a patient history, mental status examination, physical examination and appropriate diagnostic and laboratory testing. Licensees using telemedicine should also ensure the availability for appropriate follow-up care and maintain a complete medical record that is available to the patient and other treating health care providers.

**Medical Records**—The licensee treating a patient via telemedicine must maintain a complete record of the telemedicine patient’s care according to prevailing medical record standards. The medical record serves to document the analysis and plan of an episode of care for future reference. It must reflect an appropriate evaluation of the patient’s presenting symptoms, and relevant components of the electronic professional interaction must be documented as with any other encounter.

The licensee must maintain the record’s confidentiality and disclose the records to the patient consistent with state and federal law. If the patient has a primary care provider and a telemedicine provider for the same ailment, then the primary care provider’s medical record and the telemedicine provider’s record constitute one complete patient record.

**Licensure**—The practice of medicine is deemed to occur in the state in which the patient is located. Therefore, any licensee using telemedicine to regularly provide medical services to patients located in North Carolina should be licensed to practice medicine in North Carolina. Licensees need not reside in North Carolina, as long as they have a valid, current North Carolina license. (2)

North Carolina licensees intending to practice medicine via telemedicine technology to treat or diagnose patients outside of North Carolina should check with other state licensing boards. Most states require physicians to be licensed, and some have enacted limitations to telemedicine practice or require or offer a special registration. A directory of all U.S. medical boards may be [accessed at the Federation of State Medical Boards website](#).

(1) See also the Board’s Position Statement entitled “Contact with Patients before Prescribing.”

(2) N.C. Gen. Stat. § 90-18(c)(11) exempts from the requirement for licensure: “The practice of medicine or surgery by any nonregistered reputable physician or surgeon who comes into this State, either in person or by use of any electronic or other mediums, on an irregular basis, to consult with a resident registered physician or to consult with personnel at a medical school about educational or medical training. This proviso shall not apply to physicians resident in a neighboring state and regularly practicing in this State.”

The Board also notes that the North Carolina General Statutes define the practice of medicine as including, “The performance of any act, within or without this State, described in this subdivision by use of any electronic or other means, including the Internet or telephone.” N.C. Gen. Stat. § 90-1.1(5)f.

[http://www.ncmedboard.org/position\\_statements/detail/telemedicine/](http://www.ncmedboard.org/position_statements/detail/telemedicine/)

*N.D. Cent. Code, § 19-02.1-15.1*

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\*\*\* Annotations current through July 10, 2013 \*\*\*

TITLE 19 Foods, Drugs, Oils, and Compounds  
CHAPTER 19-02.1 North Dakota Food, Drug, and Cosmetic Act

## **Go to the North Dakota Code Archive Directory**

N.D. Cent. Code, § 19-02.1-15.1 (2013)

### **19-02.1-15.1. Requirements for dispensing controlled substances and specified drugs -- Penalty.**

**1.** As used in this section:

- a.** "Controlled substance" has the meaning set forth in section 19-03.1-01.
- b.** "Deliver, distribute, or dispense by means of the internet" refers, respectively, to delivery, distribution, or dispensing of a controlled substance or specified drug that is caused or facilitated by means of the internet.
- c.** "In-person medical evaluation" means a medical evaluation that is conducted with the patient in the physical presence of the practitioner, without regard to whether portions of the evaluation are conducted by other practitioners, and must include one of the following actions:
  - (1)** The prescribing practitioner examines the patient at the time the prescription or drug order is issued;
  - (2)** The prescribing practitioner has performed a prior examination of the patient within twelve months;
  - (3)** Another prescribing practitioner practicing within the same health system, group, or clinic as the prescribing practitioner has examined the patient within twelve months;
  - (4)** A consulting practitioner to whom the prescribing practitioner has referred the patient has examined the patient within twelve months; or

(5) The referring practitioner has performed an examination in the case of a consultant practitioner issuing a prescription or drug order when providing services by means of **telemedicine**.

d. "Internet" and "practice of **telemedicine**" have the meanings set forth in the Ryan Haight Online Pharmacy Consumer Protection Act of 2008 [Pub. L. 110-425; 21 U.S.C. 802-803].

e. "Specified drugs" mean:

(1) A skeletal muscle relaxant containing carisoprodol, chlorphenesin, chlorzoxazone, metaxalone, or methocarbamol;

(2) A centrally acting analgesic with opioid activity such as tapentadol or tramadol;

(3) A drug containing butalbital; and

(4) Phosphodiesterase type 5 inhibitors when used to treat erectile dysfunction.

f. "Valid prescription" means a prescription that is issued for a legitimate medical purpose in the usual course of professional practice by a practitioner who has conducted an in-person medical evaluation of the patient.

2. A controlled substance or specified drug may not be delivered, distributed, or dispensed without a valid prescription. It is also unlawful for a person to knowingly or intentionally aid or abet in these activities. An example of such an activity includes knowingly or intentionally serving as an agent, intermediary, or other entity that causes the internet to be used to bring together a buyer and seller to engage in the dispensing of a controlled substance or specified drug.

3. This section applies to the delivery, distribution, and dispensing of a controlled substance or specified drug by means of the internet or any other electronic means from a location whether within or outside this state to a person or an address in this state.

4. Nothing in this section may be construed:

a. To apply to the delivery, distribution, or dispensing of a controlled substance or specified drug by a practitioner engaged in the practice of **telemedicine** in accordance with applicable federal and state laws;

b. To prohibit or limit the use of electronic prescriptions for a controlled substance or any other drug;

c. To prohibit a physician from prescribing a controlled substance or specified drug through the use of a guideline or protocol established with an allied health professional, resident, or medical student under the direction and supervision of the physician;

d. To prohibit a practitioner from issuing a prescription or dispensing a controlled substance or specified drug in accordance with administrative rules adopted by a state agency authorizing expedited partner therapy in the management of a sexually transmitted disease; or

e. To limit prescription, administration, or dispensing of a controlled substance or specified drug through a distribution mechanism approved by the state health officer in order to prevent, mitigate, or treat a pandemic illness, infectious disease outbreak, or intentional or accidental release of a biological, chemical, or radiological agent.

5. A person who violates this section is guilty of a class C felony.

**HISTORY:** S.L. 2009, ch. 198, § 1; 2013, ch. 182, § 1.

**NOTES: Effective Date.**

This 2013 amendment of this section by section 1 of chapter 182, S.L. 2013 became effective August 1, 2013.

This section became effective August 1, 2009.

*N.D. Cent. Code, § 19-03.1-22.4*

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TITLE 19 Foods, Drugs, Oils, and Compounds  
CHAPTER 19-03.1 Uniform Controlled Substances Act

N.D. Cent. Code, § 19-03.1-22.4 (2013)

**19-03.1-22.4. Controlled substances dispensed by means of the internet.**

1. As used in this section:

a. "Covering practitioner" means, with respect to a patient, a practitioner who conducts a medical evaluation, other than an in-person medical evaluation, at the request of a practitioner who:

(1) Has conducted at least one in-person medical evaluation of the patient or an evaluation of the patient through the practice of **telemedicine**, within the previous twenty-four months; and

(2) Is temporarily unavailable to conduct the evaluation of the patient.

b. "Deliver, distribute, or dispense by means of the internet" refers, respectively, to delivery, distribution, or dispensing of a controlled substance that is caused or facilitated by means of the internet.

c. "In-person medical evaluation" means a medical evaluation that is conducted with the patient in the physical presence of the practitioner, without regard to whether portions of the evaluation are conducted by other health professionals.

d. "Internet" and "practice of **telemedicine**" have the meanings set forth in the Ryan Haight Online Pharmacy Consumer Protection Act of 2008 [Pub. L. 110-425; 21 U.S.C. 802-803].

e. "Valid prescription" means a prescription that is issued for a legitimate medical purpose in the usual course of professional practice by a:

(1) Practitioner who has conducted at least one in-person medical evaluation of the patient; or

(2) Covering practitioner.

2. A controlled substance that is a prescription drug may not be delivered, distributed, or dispensed by means of the internet without a valid prescription, but nothing in this subsection may be construed to imply that one in-person medical evaluation by itself demonstrates that a prescription has been validly issued for a legitimate medical purpose within the usual course of professional practice.

3. This section applies to the delivery, distribution, and dispensing of a controlled substance by means of the internet from a location whether within or outside this state to a person or an address in this state.

4. Nothing in this section applies to the delivery, distribution, or dispensing of a controlled substance by a practitioner engaged in the practice of **telemedicine** in accordance with applicable federal and state laws.

5. Nothing in this section may be construed as authorizing, prohibiting, or limiting the use of electronic prescriptions for controlled substances.

**HISTORY:** S.L. 2009, ch. 198, § 3.

**NOTES: Effective Date.**

This section became effective August 1, 2009.

*N.D. Admin. Code 61.5-01-02-01*

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\*\*\* This section is current through March 2014 \*\*\*

TITLE 61.5. NORTH DAKOTA BOARD OF PHYSICAL THERAPY  
ARTICLE 1. GENERAL ADMINISTRATION  
CHAPTER 2. DEFINITIONS

N.D. Admin. Code 61.5-01-02-01 (2014)

61.5-01-02-01. Definitions.

Unless specifically stated otherwise, the following definitions are applicable throughout this title:

1. "A school of physical therapy or a program of physical therapist assistant training" is a nationally accredited program approved by the board.
2. "Board" means the North Dakota board of physical therapy.
3. "Consultation by means of telecommunications" means that a physical therapist renders professional or expert opinion or advice to another physical therapist or health care provider via telecommunications or computer technology from a distant location. It includes the transfer of data or exchange of educational or related information by means of audio, video, or data communications. The physical therapist may use **telehealth** technology as a vehicle for providing only services that are legally or professionally authorized. The patient's written or verbal consent will be obtained and documented prior to such consultation. All records used or resulting from a consultation by means of telecommunications are part of a patient's record and are subject to applicable confidentiality requirements.
4. "Direct supervision" means the physical therapist is physically present on the premises and immediately available for direction and supervision. The physical therapist will have direct contact with the patient during each visit. Telecommunications does not meet the requirement for direct supervision.
5. "Examination" means a national examination approved by the board for the licensure of a physical therapist or a physical therapist assistant.
6. "Manual therapy" means the use of techniques such as mobilization or manipulation, manual lymphatic drainage, and manual traction on one or more regions of the body.

7. "Onsite supervision" means the supervising physical therapist is onsite and present in the department or facility where services are provided, is immediately available to the person being supervised, and maintains continued involvement in appropriate aspects of each treatment session in which supportive personnel are involved in components of care.
8. "Physical therapist" means a person licensed under North Dakota Century Code chapter 43-26.1 to practice physical therapy. The term "physiotherapist" is synonymous with "physical therapist" for purposes of these rules.
9. "Physical therapist assistant" means a person licensed under North Dakota Century Code chapter 43-26.1 who assists a physical therapist in selected components of physical therapy intervention. The physical therapist assistant must be a graduate of a physical therapist assistant program approved by the board.
10. "Physical therapy" means the care and services by or under the direction of a physical therapist.
11. "Physical therapy aide" means a person trained under the direction of a physical therapist who performs designated and supervised routine tasks related to physical therapy.
12. "Practice of physical therapy" means:
  - a. Examining, evaluating, and testing individuals with mechanical, physiological, and developmental impairments, functional limitations in movement and mobility, and disabilities or other health-related and movement-related conditions in order to determine a diagnosis for physical therapy, prognosis, and plan of therapeutic intervention, and to assess the ongoing effects of intervention.
  - b. Alleviating impairments, functional limitations in movement and mobility, and disabilities by designing, implementing, and modifying therapeutic interventions that may include therapeutic exercise; neuromuscular education; functional training related to positioning, movement, and mobility in self-care and in-home, community, or work integration or reintegration; manual therapy; therapeutic massage; prescription, application and, as appropriate, fabrication of assistive, adaptive, orthotic, prosthetic, protective, and supportive devices and equipment related to positioning, movement, and mobility; airway clearance techniques; integumentary protection and repair techniques; debridement and wound care; physiotherapy; physical agents or modalities; mechanical and electrotherapeutic modalities; and patient-related instruction.
  - c. Engaging as a physical therapist in reducing the risk of injury, impairment, functional limitation, and disability, including the promotion and maintenance of fitness, health, and wellness in populations of all ages.
  - d. Engaging as a physical therapist in administration, consultation, education, and research.
13. "Restricted license" for a physical therapist or physical therapist assistant means a license on which the board places restrictions or conditions, or both, as to scope of practice, place of practice, supervision of practice, duration of licensed status, or type or condition of patient or client to whom the licensee may provide services.
14. "Student" is an individual who is currently engaged in the fulfillment of a physical therapy or physical therapist assistant educational program approved by the board.

15. "Supportive personnel" are persons other than licensed physical therapists who function in a physical therapy setting and assist with physical therapy care.

16. "Testing" means standard methods and techniques used to gather data about the patient.

GENERAL AUTHORITY: NDCC 43-26.1-03(5)

LAW IMPLEMENTED: NDCC 43-26.1-01, 43-26.1-04

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*21 USCS § 802*

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TITLE 21. FOOD AND DRUGS  
CHAPTER 13. DRUG ABUSE PREVENTION AND CONTROL  
CONTROL AND ENFORCEMENT  
INTRODUCTORY PROVISIONS

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21 USCS § 802

§ 802. Definitions

As used in this title:

(1) The term "addict" means any individual who habitually uses any narcotic drug so as to endanger the public morals, health, safety, or welfare, or who is so far addicted to the use of narcotic drugs as to have lost the power of self-control with reference to his addiction.

(2) The term "administer" refers to the direct application of a controlled substance to the body of a patient or research subject by--

(A) a practitioner (or, in his presence, by his authorized agent), or

(B) the patient or research subject at the direction and in the presence of the practitioner,

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whether such application be by injection, inhalation, ingestion, or any other means.

(3) The term "agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser; except that such term does not include a common or contract carrier, public warehouseman, or employee of the carrier or warehouseman, when acting in the usual and lawful course of the carrier's or warehouseman's business.

(4) The term "Drug Enforcement Administration" means the Drug Enforcement Administration in the Department of Justice.

(5) The term "control" means to add a drug or other substance, or immediate precursor, to a schedule under part B of this title, whether by transfer from another schedule or otherwise.

(6) The term "controlled substance" means a drug or other substance, or immediate precursor, included in schedule I, II, III, IV, or V of part B of this title [21 USCS § 812]. The term does not include distilled spirits, wine, malt beverages, or tobacco, as those terms are defined or used in subtitle E of the Internal Revenue Code of 1954 [26 USCS §§ 5001 et seq.].

(7) The term "counterfeit substance" means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number, or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person or persons who in fact manufactured, distributed, or dispensed such substance and which thereby falsely purports or is represented to be the product of, or to have been distributed by, such other manufacturer, distributor, or dispenser.

(8) The terms "deliver" or "delivery" mean the actual, constructive, or attempted transfer of a controlled substance or a listed chemical, whether or not there exists an agency relationship.

(9) The term "depressant or stimulant substance" means--

(A) a drug which contains any quantity of barbituric acid or any of the salts of barbituric acid; or

(B) a drug which contains any quantity of (i) amphetamine or any of its optical isomers; (ii) any salt of amphetamine or any salt of an optical isomer of amphetamine; or (iii) any substance which the Attorney General, after investigation, has found to be, and by regulation designated as, habit forming because of its stimulant effect on the central nervous system; or

(C) lysergic acid diethylamide; or

(D) any drug which contains any quantity of a substance which the Attorney General, after investigation, has found to have, and by regulation designated as having, a potential for abuse because of its depressant or stimulant effect on the central nervous system or its hallucinogenic effect.

(10) The term "dispense" means to deliver a controlled substance to an ultimate user or research subject by, or pursuant to the lawful order of, a practitioner, including the prescribing and administering of a controlled substance and the packaging, labeling, or compounding necessary to prepare the substance for such delivery. The term "dispenser" means a practitioner who so delivers a controlled substance to an ultimate user or research subject.

(11) The term "distribute" means to deliver (other than by administering or dispensing) a controlled substance or a listed chemical. The term "distributor" means a person who so delivers a controlled substance or a listed chemical.

(12) The term "drug" has the meaning given that term by section 201(g)(1) of the Federal Food, Drug, and Cosmetic Act [21 USCS § 321(g)(1)].

(13) The term "felony" means any Federal or State offense classified by applicable Federal or State law as a felony.

(14) The term "isomer" means the optical isomer, except as used in schedule I(c) and schedule II(a)(4). As used in schedule I(c), the term "isomer" means any optical, positional, or geometric isomer. As used in schedule

II(a)(4), the term "isomer" means any optical or geometric isomer.

(15) The term "manufacture" means the production, preparation, propagation, compounding, or processing of a drug or other substance, either directly or indirectly or by extraction from substances of natural origin, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of such substance or labeling or relabeling of its container; except that such term does not include the preparation, compounding, packaging, or labeling of a drug or other substance in conformity with applicable State or local law by a practitioner as an incident to his administration or dispensing of such drug or substance in the course of his professional practice. The term "manufacturer" means a person who manufactures a drug or other substance.

(16) The term "marihuana" means all parts of the plant *Cannabis sativa* L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin. Such term does not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination.

(17) The term "narcotic drug" means any of the following whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(A) Opium, opiates, derivatives of opium and opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation. Such term does not include the isoquinoline alkaloids of opium.

(B) Poppy straw and concentrate of poppy straw.

(C) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed.

(D) Cocaine, its salts, optical and geometric isomers, and salts of isomers.

(E) Ecgonine, its derivatives, their salts, isomers, and salts of isomers.

(F) Any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subparagraphs (A) through (E).

(18) The term "opiate" means any drug or other substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having such addiction-forming or addiction-sustaining liability.

(19) The term "opium poppy" means the plant of the species *Papaver somniferum* L., except the seed thereof.

(20) The term "poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

(21) The term "practitioner" means a physician, dentist, veterinarian, scientific investigator, pharmacy, hospital, or other person licensed, registered, or otherwise permitted, by the United States or the jurisdiction in which he practices or does research, to distribute, dispense, conduct research with respect to, administer, or use in teaching or chemical analysis, a controlled substance in the course of professional practice or research.

(22) The term "production" includes the manufacture, planting, cultivation, growing, or harvesting of a controlled substance.

(23) The term "immediate precursor" means a substance--

(A) which the Attorney General has found to be and by regulation designated as being the principal compound used, or produced primarily for use, in the manufacture of a controlled substance;

(B) which is an immediate chemical intermediary used or likely to be used in the manufacture of such controlled substance; and

(C) the control of which is necessary to prevent, curtail, or limit the manufacture of such controlled

substance.

(24) The term "Secretary," unless the context otherwise indicates, means the Secretary of Health, Education, and Welfare [Secretary of Health and Human Services].

(25) The term "serious bodily injury" means bodily injury which involves--

(A) a substantial risk of death;

(B) protracted and obvious disfigurement; or

(C) protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

(26) The term "State" means a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

(27) The term "ultimate user" means a person who has lawfully obtained, and who possesses, a controlled substance for his own use or for the use of a member of his household or for an animal owned by him or by a member of his household.

(28) The term "United States", when used in a geographic sense, means all places and waters, continental or insular, subject to the jurisdiction of the United States.

(29) The term "maintenance treatment" means the dispensing, for a period in excess of twenty-one days, of a narcotic drug in the treatment of an individual for dependence upon heroin or other morphine-like drugs.

(30) The term "detoxification treatment" means the dispensing, for a period not in excess of one hundred and eighty days, of a narcotic drug in decreasing doses to an individual in order to alleviate adverse physiological or psychological effects incident to withdrawal from the continuous or sustained use of a narcotic drug and as a method of bringing the individual to a narcotic drug-free state within such period.

(31) The term "Convention on Psychotropic Substances" means the Convention on Psychotropic Substances signed at Vienna, Austria, on February 21, 1971; and the term "Single Convention on Narcotic Drugs" means the Single Convention on Narcotic Drugs signed at New York, New York, on March 30, 1961.

(32) (A) Except as provided in subparagraph (C), the term "controlled substance analogue" means a substance--

(i) the chemical structure of which is substantially similar to the chemical structure of a controlled substance in schedule I or II;

(ii) which has a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in schedule I or II; or

(iii) with respect to a particular person, which such person represents or intends to have a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in schedule I or II.

(B) The designation of gamma butyrolactone or any other chemical as a listed chemical pursuant to paragraph (34) or (35) does not preclude a finding pursuant to subparagraph (A) of this paragraph that the chemical is a controlled substance analogue.

(C) Such term does not include--

(i) a controlled substance;

(ii) any substance for which there is an approved new drug application;

(iii) with respect to a particular person any substance, if an exemption is in effect for investigational use, for that person, under section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) to the extent conduct with respect to such substance is pursuant to such exemption; or

(iv) any substance to the extent not intended for human consumption before such an exemption takes effect with respect to that substance.

(33) The term "listed chemical" means any list I chemical or any list II chemical.

(34) The term "list I chemical" means a chemical specified by regulation of the Attorney General as a chemical that is used in manufacturing a controlled substance in violation of this title and is important to the manufacture of the controlled substances, and such term includes (until otherwise specified by regulation of the Attorney General, as considered appropriate by the Attorney General or upon petition to the Attorney General by any person) the following:

- (A) Anthranilic acid, its esters, and its salts.
- (B) Benzyl cyanide.
- (C) Ephedrine, its salts, optical isomers, and salts of optical isomers.
- (D) Ergonovine and its salts.
- (E) Ergotamine and its salts.
- (F) N-Acetylanthranilic acid, its esters, and its salts.
- (G) Norpseudoephedrine, its salts, optical isomers, and salts of optical isomers.
- (H) Phenylacetic acid, its esters, and its salts.
- (I) Phenylpropanolamine, its salts, optical isomers, and salts of optical isomers.
- (J) Piperidine and its salts.
- (K) Pseudoephedrine, its salts, optical isomers, and salts of optical isomers.
- (L) 3,4-Methylenedioxyphenyl-2-propanone.
- (M) Methylamine.
- (N) Ethylamine.
- (O) Propionic anhydride.
- (P) Isosafrole.
- (Q) Safrole.
- (R) Piperonal.
- (S) N-Methylephedrine.
- (T) N-methylpseudoephedrine.
- (U) Hydriodic acid.
- (V) Benzaldehyde.
- (W) Nitroethane.
- (X) Gamma butyrolactone.
- (Y) Any salt, optical isomer, or salt of an optical isomer of the chemicals listed in subparagraphs (M) through (U) of this paragraph.

(35) The term "list II chemical" means a chemical (other than a list I chemical) specified by regulation of the Attorney General as a chemical that is used in manufacturing a controlled substance in violation of this title, and such term includes (until otherwise specified by regulation of the Attorney General, as considered appropriate by the Attorney General or upon petition to the Attorney General by any person) the following chemicals:

- (A) Acetic anhydride.
- (B) Acetone.
- (C) Benzyl chloride.
- (D) Ethyl ether.
- (E) [Repealed]
- (F) Potassium permanganate.
- (G) 2-Butanone (or Methyl Ethyl Ketone).
- (H) Toluene.
- (I) Iodine.

(J) Hydrochloric gas.

(36) The term "regular customer" means, with respect to a regulated person, a customer with whom the regulated person has an established business relationship that is reported to the Attorney General.

(37) The term "regular importer" means, with respect to a listed chemical, a person that has an established record as an importer of that listed chemical that is reported to the Attorney General.

(38) The term "regulated person" means a person who manufactures, distributes, imports, or exports a listed chemical, a tableting machine, or an encapsulating machine or who acts as a broker or trader for an international transaction involving a listed chemical, a tableting machine, or an encapsulating machine.

(39) The term "regulated transaction" means--

(A) a distribution, receipt, sale, importation, or exportation of, or an international transaction involving shipment of, a listed chemical, or if the Attorney General establishes a threshold amount for a specific listed chemical, a threshold amount, including a cumulative threshold amount for multiple transactions (as determined by the Attorney General, in consultation with the chemical industry and taking into consideration the quantities normally used for lawful purposes), of a listed chemical, except that such term does not include--

(i) a domestic lawful distribution in the usual course of business between agents or employees of a single regulated person;

(ii) a delivery of a listed chemical to or by a common or contract carrier for carriage in the lawful and usual course of the business of the common or contract carrier, or to or by a warehouseman for storage in the lawful and usual course of the business of the warehouseman, except that if the carriage or storage is in connection with the distribution, importation, or exportation of a listed chemical to a third person, this clause does not relieve a distributor, importer, or exporter from compliance with section 310 [21 USCS § 830];

(iii) any category of transaction or any category of transaction for a specific listed chemical or chemicals specified by regulation of the Attorney General as excluded from this definition as unnecessary for enforcement of this title or title III;

(iv) any transaction in a listed chemical that is contained in a drug that may be marketed or distributed lawfully in the United States under the Federal Food, Drug, and Cosmetic Act, subject to clause (v), unless--

(I) the Attorney General has determined under section 204 [21 USCS § 814] that the drug or group of drugs is being diverted to obtain the listed chemical for use in the illicit production of a controlled substance; and

(II) the quantity of the listed chemical contained in the drug included in the transaction or multiple transactions equals or exceeds the threshold established for that chemical by the Attorney General;

(v) any transaction in a scheduled listed chemical product that is a sale at retail by a regulated seller or a distributor required to submit reports under section 310(b)(3) [21 USCS § 830(b)(3)]; or

(vi) any transaction in a chemical mixture which the Attorney General has by regulation designated as exempt from the application of this title and title III based on a finding that the mixture is formulated in such a way that it cannot be easily used in the illicit production of a controlled substance and that the listed chemical or chemicals contained in the mixture cannot be readily recovered; and

(B) a distribution, importation, or exportation of a tableting machine or encapsulating machine.

(40) The term "chemical mixture" means a combination of two or more chemical substances, at least one of which is not a list I chemical or a list II chemical, except that such term does not include any combination of a list I chemical or a list II chemical with another chemical that is present solely as an impurity.

(41) (A) The term "anabolic steroid" means any drug or hormonal substance, chemically and pharmacologically related to testosterone (other than estrogens, progestins, corticosteroids, and dehydroepiandrosterone), and includes--

(i) androstenediol--

- (I) 3 $\beta$ ,17 $\beta$ ;-dihydroxy-5 $\alpha$ ;-androstandiol; and
- (II) 3 $\alpha$ ,17 $\beta$ ;-dihydroxy-5 $\alpha$ ;-androstandiol;
- (ii) androstenedione (5 $\alpha$ ;-androstan-3,17-dione);
- (iii) androstenediol--
  - (I) 1-androstenediol (3 $\beta$ ,17 $\beta$ ;-dihydroxy-5 $\alpha$ ;-androst-1-ene);
  - (II) 1-androstenediol (3 $\alpha$ ,17 $\beta$ ;-dihydroxy-5 $\alpha$ ;-androst-1-ene);
  - (III) 4-androstenediol (3 $\beta$ ,17 $\beta$ ;-dihydroxy-androst-4-ene); and
  - (IV) 5-androstenediol (3 $\beta$ ,17 $\beta$ ;-dihydroxy-androst-5-ene);
- (iv) androstenedione--
  - (I) 1-androstenedione ([5 $\alpha$ ]-androst-1-en-3,17-dione);
  - (II) 4-androstenedione (androst-4-en-3,17-dione); and
  - (III) 5-androstenedione (androst-5-en-3,17-dione);
- (v) bolasterone (7 $\alpha$ ,17 $\alpha$ ; -dimethyl-17 $\beta$ ; -hydroxyandrost-4-en-3-one);
- (vi) boldenone (17 $\beta$ ;-hydroxyandrost-1,4,-diene-3-one);
- (vii) calusterone (7 $\beta$ ,17 $\alpha$ ;-dimethyl-17 $\beta$ ; -hydroxyandrost-4-en-3-one);
- (viii) clostebol (4-chloro-17 $\beta$ ;-hydroxyandrost-4-en-3-one);
- (ix) dehydrochloromethyltestosterone (4-chloro-17 $\beta$ ; -hydroxy-17 $\alpha$ ;-methyl-androst-1,4-dien-3-one);
- (x)  $\Delta$ ; 1-dihydrotestosterone (a.k.a. "1-testosterone") (17 $\beta$ ;-hydroxy-5 $\alpha$ ;-androst-1-en-3-one);
- (xi) 4-dihydrotestosterone (17 $\beta$ ;-hydroxy-androstan-3-one);
- (xii) drostanolone (17 $\beta$ ;-hydroxy-2 $\alpha$ ; -methyl-5 $\alpha$ ;-androstan-3-one);
- (xiii) ethylestrenol (17 $\alpha$ ;-ethyl-17 $\beta$ ;-hydroxyestr-4-ene);
- (xiv) fluoxymesterone (9-fluoro-17 $\alpha$ ;-methyl-11 $\beta$ , 17 $\beta$ ;-dihydroxyandrost-4-en-3-one);
- (xv) formebolone (2-formyl-17 $\alpha$ ;-methyl-11 $\alpha$ , 17 $\beta$ ;-dihydroxyandrost-1,4-dien-3-one);
- (xvi) furazabol (17 $\alpha$ ;-methyl-17 $\beta$ ; -hydroxyandrostano[2,3-c]-furazan);
- (xvii) 13 $\beta$ ;-ethyl-17 $\beta$ ;-hydroxygon-4-en-3-one;
- (xviii) 4-hydroxytestosterone (4,17 $\beta$ ;-dihydroxy-androst-4-en-3-one);
- (xix) 4-hydroxy-19-nortestosterone (4,17 $\beta$ ;-dihydroxy-estr-4-en-3-one);
- (xx) mestanolone (17 $\alpha$ ;-methyl-17 $\beta$ ; -hydroxy-5 $\alpha$ ;-androstan-3-one);
- (xxi) mesterolone (1 $\alpha$ ;-methyl-17 $\beta$ ; -hydroxy-[5 $\alpha$ ]-androstan-3-one);
- (xxii) methandienone (17 $\alpha$ ;-methyl-17 $\beta$ ; -hydroxyandrost-1,4-dien-3-one);
- (xxiii) methandriol (17 $\alpha$ ;-methyl-3 $\beta$ ,17 $\beta$ ; -dihydroxyandrost-5-ene);
- (xxiv) methenolone (1-methyl-17 $\beta$ ;-hydroxy-5 $\alpha$ ; -androst-1-en-3-one);
- (xxv) 17 $\alpha$ ;-methyl-3 $\beta$ , 17 $\beta$ ;-dihydroxy-5 $\alpha$ ;-androstandiol;
- (xxvi) 17 $\alpha$ ;-methyl-3 $\alpha$ , 17 $\beta$ ;-dihydroxy-5 $\alpha$ ;-androstandiol;
- (xxvii) 17 $\alpha$ ;-methyl-3 $\beta$ , 17 $\beta$ ;-dihydroxyandrost-4-ene.
- (xxviii) 17 $\alpha$ ;-methyl-4-hydroxynandrolone (17 $\alpha$ ;-methyl-4-hydroxy-17 $\beta$ ; -hydroxyestr-4-en-3-one);
- (xxix) methyldienolone (17 $\alpha$ ;-methyl-17 $\beta$ ; -hydroxyestra-4,9(10)-dien-3-one);
- (xxx) methyltrienolone (17 $\alpha$ ;-methyl-17 $\beta$ ; -hydroxyestra-4,9-11-trien-3-one);
- (xxxii) methyltestosterone (17 $\alpha$ ;-methyl-17 $\beta$ ; -hydroxyandrost-4-en-3-one);
- (xxxiii) mibolerone (7 $\alpha$ ,17 $\alpha$ ;-dimethyl-17 $\beta$ ; -hydroxyestr-4-en-3-one);
- (xxxiiii) 17 $\alpha$ ;-methyl- $\Delta$ ; 1-dihydrotestosterone (17 $\beta$ ;-hydroxy-17 $\alpha$ ;-methyl-5 $\alpha$ ; -androst-1-en-3-one) (a.k.a. "17- $\alpha$ ;-methyl-1-testosterone");

- (xxxiv) nandrolone (17 $\beta$ -hydroxyestr-4-en-3-one);
- (xxxv) norandrostenediol--
  - (I) 19-nor-4-androstenediol (3 $\beta$ -, 17 $\beta$ -dihydroxyestr-4-ene);
  - (II) 19-nor-4-androstenediol (3 $\alpha$ -, 17 $\beta$ -dihydroxyestr-4-ene);
  - (III) 19-nor-5-androstenediol (3 $\beta$ -, 17 $\beta$ -dihydroxyestr-5-ene); and
  - (IV) 19-nor-5-androstenediol (3 $\alpha$ -, 17 $\beta$ -dihydroxyestr-5-ene);
- (xxxvi) norandrostenedione--
  - (I) 19-nor-4-androstenedione (estr-4-en-3,17-dione); and
  - (II) 19-nor-5-androstenedione (estr-5-en-3,17-dione);
- (xxxvii) norbolethone (13 $\beta$ -,17 $\alpha$ -diethyl-17 $\beta$ -hydroxygon-4-en-3-one);
- (xxxviii) norclostebol (4-chloro-17 $\beta$ -hydroxyestr-4-en-3-one);
- (xxxix) norethandrolone (17 $\alpha$ -ethyl-17 $\beta$ -hydroxyestr-4-en-3-one);
- (xl) normethandrolone (17 $\alpha$ -methyl-17 $\beta$ -hydroxyestr-4-en-3-one);
- (xli) oxandrolone (17 $\alpha$ -methyl-17 $\beta$ -hydroxy-2-oxa-[5 $\alpha$ ] -androst-3-one);
- (xlii) oxymesterone (17 $\alpha$ -methyl-4,17 $\beta$ -dihydroxyandrost-4-en-3-one);
- (xlili) oxymetholone (17 $\alpha$ -methyl-2-hydroxymethylene-17 $\beta$ -hydroxy-[5 $\alpha$ ] -androst-3-one);
- (xliv) stanozolol (17 $\alpha$ -methyl-17 $\beta$ -hydroxy-[5 $\alpha$ ] -androst-2-eno[3, 2-c]-pyrazole);
- (xlv) stenbolone (17 $\beta$ -hydroxy-2-methyl-[5 $\alpha$ ] -androst-1-en-3-one);
- (xlvi) testolactone (13-hydroxy-3-oxo-13,17-secoandrosta-1,4-dien-17-oic acid lactone);
- (xlvii) testosterone (17 $\beta$ -hydroxyandrost-4-en-3-one);
- (xlviii) tetrahydrogestrinone (13 $\beta$ -,17 $\alpha$ -diethyl-17 $\beta$ -hydroxygon-4,9, 11-trien-3-one);
- (xlix) trenbolone (17 $\beta$ -hydroxyestr-4,9,11-trien-3-one); and
- [l](xlx) any salt, ester, or ether of a drug or substance described in this paragraph.

The substances excluded under this subparagraph may at any time be scheduled by the Attorney General in accordance with the authority and requirements of subsections (a) through (c) of section 201 [21 USCS § 811].

(B) (i) Except as provided in clause (ii), such term does not include an anabolic steroid which is expressly intended for administration through implants to cattle or other nonhuman species and which has been approved by the Secretary of Health and Human Services for such administration.

(ii) If any person prescribes, dispenses, or distributes such steroid for human use, such person shall be considered to have prescribed, dispensed, or distributed an anabolic steroid within the meaning of subparagraph (A).

(42) The term "international transaction" means a transaction involving the shipment of a listed chemical across an international border (other than a United States border) in which a broker or trader located in the United States participates.

(43) The terms "broker" and "trader" mean a person that assists in arranging an international transaction in a listed chemical by--

- (A) negotiating contracts;
- (B) serving as an agent or intermediary; or
- (C) bringing together a buyer and seller, a buyer and transporter, or a seller and transporter.

(44) The term "felony drug offense" means an offense that is punishable by imprisonment for more than one year under any law of the United States or of a State or foreign country that prohibits or restricts conduct relating to narcotic drugs, marihuana, anabolic steroids, or depressant or stimulant substances.

(45) (A) The term "scheduled listed chemical product" means, subject to subparagraph (B), a product that--

- (i) contains ephedrine, pseudoephedrine, or phenylpropanolamine; and

(ii) may be marketed or distributed lawfully in the United States under the Federal, Food, Drug, and Cosmetic Act as a nonprescription drug.

Each reference in clause (i) to ephedrine, pseudoephedrine, or phenylpropanolamine includes each of the salts, optical isomers, and salts of optical isomers of such chemical.

(B) Such term does not include a product described in subparagraph (A) if the product contains a chemical specified in such subparagraph that the Attorney General has under section 201(a) [21 USCS § 811(a)] added to any of the schedules under section 202(c) [21 USCS § 812(c)]. In the absence of such scheduling by the Attorney General, a chemical specified in such subparagraph may not be considered to be a controlled substance.

(46) The term "regulated seller" means a retail distributor (including a pharmacy or a mobile retail vendor), except that such term does not include an employee or agent of such distributor.

(47) The term "mobile retail vendor" means a person or entity that makes sales at retail from a stand that is intended to be temporary, or is capable of being moved from one location to another, whether the stand is located within or on the premises of a fixed facility (such as a kiosk at a shopping center or an airport) or whether the stand is located on unimproved real estate (such as a lot or field leased for retail purposes).

(48) The term "at retail", with respect to the sale or purchase of a scheduled listed chemical product, means a sale or purchase for personal use, respectively.

(49) (A) The term "retail distributor" means a grocery store, general merchandise store, drug store, or other entity or person whose activities as a distributor relating to ephedrine, pseudoephedrine, or phenylpropanolamine products are limited almost exclusively to sales for personal use, both in number of sales and volume of sales, either directly to walk-in customers or in face-to-face transactions by direct sales.

(B) For purposes of this paragraph, entities are defined by reference to the Standard Industrial Classification (SIC) code, as follows:

(i) A grocery store is an entity within SIC code 5411.

(ii) A general merchandise store is an entity within SIC codes 5300 through 5399 and 5499.

(iii) A drug store is an entity within SIC code 5912.

(50) The term "Internet" means collectively the myriad of computer and telecommunications facilities, including equipment and operating software, which comprise the interconnected worldwide network of networks that employ the Transmission Control Protocol/Internet Protocol, or any predecessor or successor protocol to such protocol, to communicate information of all kinds by wire or radio.

(51) The term "deliver, distribute, or dispense by means of the Internet" refers, respectively, to any delivery, distribution, or dispensing of a controlled substance that is caused or facilitated by means of the Internet.

(52) The term "online pharmacy"--

(A) means a person, entity, or Internet site, whether in the United States or abroad, that knowingly or intentionally delivers, distributes, or dispenses, or offers or attempts to deliver, distribute, or dispense, a controlled substance by means of the Internet; and

(B) does not include--

(i) manufacturers or distributors registered under subsection (a), (b), (d), or (e) of section 303 [21 USCS § 823] who do not dispense controlled substances to an unregistered individual or entity;

(ii) nonpharmacy practitioners who are registered under section 303(f) [21 USCS § 823(f)] and whose activities are authorized by that registration;

(iii) any hospital or other medical facility that is operated by an agency of the United States (including the Armed Forces), provided such hospital or other facility is registered under section 303(f) [21 USCS § 823(f)];

(iv) a health care facility owned or operated by an Indian tribe or tribal organization, only to the extent such facility is carrying out a contract or compact under the Indian Self-Determination and Education

Assistance Act [25 USCS §§ 450 et seq.];

(v) any agent or employee of any hospital or facility referred to in clause (iii) or (iv), provided such agent or employee is lawfully acting in the usual course of business or employment, and within the scope of the official duties of such agent or employee, with such hospital or facility, and, with respect to agents or employees of health care facilities specified in clause (iv), only to the extent such individuals are furnishing services pursuant to the contracts or compacts described in such clause;

(vi) mere advertisements that do not attempt to facilitate an actual transaction involving a controlled substance;

(vii) a person, entity, or Internet site that is not in the United States and does not facilitate the delivery, distribution, or dispensing of a controlled substance by means of the Internet to any person in the United States;

(viii) a pharmacy registered under section 303(f) [21 USCS § 823(f)] whose dispensing of controlled substances via the Internet consists solely of--

(I) refilling prescriptions for controlled substances in schedule III, IV, or V, as defined in paragraph (55); or

(II) filling new prescriptions for controlled substances in schedule III, IV, or V, as defined in paragraph (56); or

(ix) any other persons for whom the Attorney General and the Secretary have jointly, by regulation, found it to be consistent with effective controls against diversion and otherwise consistent with the public health and safety to exempt from the definition of an "online pharmacy".

(53) The term "homepage" means the opening or main page or screen of the website of an online pharmacy that is viewable on the Internet.

(54) The term "practice of telemedicine" means, for purposes of this title, the practice of medicine in accordance with applicable Federal and State laws by a practitioner (other than a pharmacist) who is at a location remote from the patient and is communicating with the patient, or health care professional who is treating the patient, using a telecommunications system referred to in section 1834(m) of the Social Security Act [42 USCS § 1395m(m)], which practice--

(A) is being conducted--

(i) while the patient is being treated by, and physically located in, a hospital or clinic registered under section 303(f) [21 USCS § 823(f)]; and

(ii) by a practitioner--

(I) acting in the usual course of professional practice;

(II) acting in accordance with applicable State law; and

(III) registered under section 303(f) [21 USCS § 823(f)] in the State in which the patient is located,

unless the practitioner--

(aa) is exempted from such registration in all States under section 302(d) [21 USCS § 822(d)]; or

(bb) is--

(AA) an employee or contractor of the Department of Veterans Affairs who is acting in the scope of such employment or contract; and

(BB) registered under section 303(f) [21 USCS § 823(f)] in any State or is utilizing the registration of a hospital or clinic operated by the Department of Veterans Affairs registered under section 303(f) [21 USCS § 823(f)];

(B) is being conducted while the patient is being treated by, and in the physical presence of, a practitioner--

(i) acting in the usual course of professional practice;

(ii) acting in accordance with applicable State law; and

(iii) registered under section 303(f) [21 USCS § 823(f)] in the State in which the patient is located, unless

the practitioner--

(I) is exempted from such registration in all States under section 302(d) [21 USCS § 822(d)]; or

(II) is--

(aa) an employee or contractor of the Department of Veterans Affairs who is acting in the scope of such employment or contract; and

(bb) registered under section 303(f) [21 USCS § 823(f)] in any State or is using the registration of a hospital or clinic operated by the Department of Veterans Affairs registered under section 303(f) [21 USCS § 823(f)];

(C) is being conducted by a practitioner--

(i) who is an employee or contractor of the Indian Health Service, or is working for an Indian tribe or tribal organization under its contract or compact with the Indian Health Service under the Indian Self-Determination and Education Assistance Act;

(ii) acting within the scope of the employment, contract, or compact described in clause (i); and

(iii) who is designated as an Internet Eligible Controlled Substances Provider by the Secretary under section 311(g)(2) [21 USCS § 831(g)(2)];

(D) (i) is being conducted during a public health emergency declared by the Secretary under section 319 of the Public Health Service Act [42 USCS § 247d]; and

(ii) involves patients located in such areas, and such controlled substances, as the Secretary, with the concurrence of the Attorney General, designates, provided that such designation shall not be subject to the procedures prescribed by subchapter II of chapter 5 of title 5, United States Code [5 USCS §§ 551 et seq.];

(E) is being conducted by a practitioner who has obtained from the Attorney General a special registration under section 311(h) [21 USCS § 831(h)];

(F) is being conducted--

(i) in a medical emergency situation--

(I) that prevents the patient from being in the physical presence of a practitioner registered under section 303(f) [21 USCS § 823(f)] who is an employee or contractor of the Veterans Health Administration acting in the usual course of business and employment and within the scope of the official duties or contract of that employee or contractor;

(II) that prevents the patient from being physically present at a hospital or clinic operated by the Department of Veterans Affairs registered under section 303(f) [21 USCS § 823(f)];

(III) during which the primary care practitioner of the patient or a practitioner otherwise practicing telemedicine within the meaning of this paragraph is unable to provide care or consultation; and

(IV) that requires immediate intervention by a health care practitioner using controlled substances to prevent what the practitioner reasonably believes in good faith will be imminent and serious clinical consequences, such as further injury or death; and

(ii) by a practitioner that--

(I) is an employee or contractor of the Veterans Health Administration acting within the scope of that employment or contract;

(II) is registered under section 303(f) [21 USCS § 823(f)] in any State or is utilizing the registration of a hospital or clinic operated by the Department of Veterans Affairs registered under section 303(f) [21 USCS § 823(f)]; and

(III) issues a controlled substance prescription in this emergency context that is limited to a maximum of a 5-day supply which may not be extended or refilled; or

(G) is being conducted under any other circumstances that the Attorney General and the Secretary have jointly, by regulation, determined to be consistent with effective controls against diversion and otherwise

consistent with the public health and safety.

(55) The term "refilling prescriptions for controlled substances in schedule III, IV, or V"--

(A) means the dispensing of a controlled substance in schedule III, IV, or V in accordance with refill instructions issued by a practitioner as part of a valid prescription that meets the requirements of subsections (b) and (c) of section 309 [21 USCS § 829], as appropriate; and

(B) does not include the issuance of a new prescription to an individual for a controlled substance that individual was previously prescribed.

(56) The term "filling new prescriptions for controlled substances in schedule III, IV, or V" means filling a prescription for an individual for a controlled substance in schedule III, IV, or V, if--

(A) the pharmacy dispensing that prescription has previously dispensed to the patient a controlled substance other than by means of the Internet and pursuant to the valid prescription of a practitioner that meets the applicable requirements of subsections (b) and (c) of section 309 [21 USCS § 829] (in this paragraph referred to as the "original prescription");

(B) the pharmacy contacts the practitioner who issued the original prescription at the request of that individual to determine whether the practitioner will authorize the issuance of a new prescription for that individual for the controlled substance described in subparagraph (A); and

(C) the practitioner, acting in the usual course of professional practice, determines there is a legitimate medical purpose for the issuance of the new prescription.

## **HISTORY:**

(Oct. 27, 1970, P.L. 91-513, Title II, Part A, § 102, 84 Stat. 1242; May 14, 1974, P.L. 93-281, § 2, 88 Stat. 124; Nov. 10, 1978, P.L. 95-633, Title I, § 102(b), 92 Stat. 3772; Nov. 30, 1979, P.L. 96-132, § 16(a), 93 Stat. 1049; Oct. 12, 1984, P.L. 98-473, Title II, Ch V, Part B, § 507, 98 Stat. 2071; Oct. 19, 1984, P.L. 98-509, Title III, § 301(a), 98 Stat. 2364; Oct. 27, 1986, P.L. 99-570, Title I, Subtitle A, § 1003(b), Subtitle E, § 1203, Subtitle Q, § 1870, 100 Stat. 3207-6, 3207-13, 3207-56; Nov. 10, 1986, P.L. 99-646, § 83, 100 Stat. 3619; Nov. 18, 1988, P.L. 100-690, Title VI, Subtitle A, § 6054, 102 Stat. 4316; Nov. 29, 1990, P.L. 101-647, Title XIX, § 1902(b), Title XXIII, § 2301, Title XXXV, § 3599I, 104 Stat. 4852, 4858, 4932; Dec. 17, 1993, P.L. 103-200, §§ 2(a), 7-9(a), 107 Stat. 2333, 2340; Sept. 13, 1994, P.L. 103-322, Title IX, Subtitle A, § 90105(d), Title XXXIII, § 330024(a), (b), (d)(1), 108 Stat. 1988, 2150; Oct. 3, 1996, P.L. 104-237, Title II, §§ 204(a), 209, Title IV, § 401(a), (b), 110 Stat. 3102, 3104, 3107; Oct. 11, 1996, P.L. 104-294, Title VI, §§ 604(b)(4), 607(j), 110 Stat. 3506, 3512; Nov. 21, 1997, P.L. 105-115, Title I, Subtitle B, § 126(c)(3), 111 Stat. 2328; Feb. 18, 2000, P.L. 106-172, §§ 3(c), 5(a), 114 Stat. 9, 10; Oct. 17, 2000, P.L. 106-310, Div B, Title XXXVI, Subtitle A, Part II, § 3622(a), 114 Stat. 1231; Nov. 2, 2002, P.L. 107-273, Div B, Title IV, § 4002(c)(1), 116 Stat. 1808; Oct. 22, 2004, P.L. 108-358, § 2(a), 118 Stat. 1661; Jan. 5, 2006, P.L. 109-162, Title XI, Subtitle C, § 1180, 119 Stat. 3126; March 9, 2006, P.L. 109-177, Title VII, Subtitle A, §§ 711(a)(1), (2)(A), 712(a)(1), 120 Stat. 256, 263; Oct. 15, 2008, P.L. 110-425, § 3(a), 122 Stat. 4821.)

## **HISTORY; ANCILLARY LAWS AND DIRECTIVES**

References in text:

"This title", referred to in this section, is Title II of Act Oct. 27, 1970, P.L. 91-513, 84 Stat. 1242, which appears generally as 21 USCS §§ 801 et seq. For full classification of such Title, consult USCS Tables volumes.

A "schedule under part B of this title", referred to in this section, is a reference to schedules contained in Part

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B of Title II of Act Oct. 27, 1970, P.L. 91-513, 84 Stat. 1245, which appears as 21 USCS §§ 811 et seq. Schedules I, II, III, IV, and V, referred to in this section, are contained in 21 USCS § 812(c).

"Title III", referred to in this section, is Title III of Act Oct. 27, 1970, P.L. 91-513, 84 Stat. 1285, which appears generally as 21 USCS §§ 951 et seq. For full classification of such Title, consult USCS Tables volumes.

"The Indian Self-Determination and Education Assistance Act", referred to in this section, is Act Jan. 4, 1975, P.L. 93-638, 88 Stat. 2203, which appears generally as 25 USCS §§ 450 et seq. For full classification of such Act, consult USCS Tables volumes.

#### Explanatory notes:

The bracketed clause designator "(1)" has been inserted in subsec. (a)(41)(A) to indicate the number probably intended by Congress.

The bracketed words "Secretary of Health and Human Services" have been inserted on authority of Act Oct. 17, 1979, P.L. 96-88, Title V, § 509, 93 Stat. 695, which appears as 20 USCS § 3508, and which redesignated the Secretary of Health, Education, and Welfare as the Secretary of Health and Human Services and provided that any reference to the Secretary of Health, Education, and Welfare, in any law in force on the effective date of such Act Oct. 17, 1979, shall be deemed to refer and apply to the Secretary of Health and Human Services, except to the extent such reference is to a function or office transferred to the Secretary of Education or the Department of Education under such Act Oct. 17, 1979.

#### Effective date of section:

This section took effect upon enactment, pursuant to § 704(b) of Act Oct. 27, 1970, P.L. 91-513, which appears as 21 USCS § 801 note.

#### Amendments:

1974. Act May 14, 1974, added para. (27) and (28).

1978. Act Nov. 10, 1978 (effective 7/15/80, pursuant to § 112 of such Act, which appears as 21 USCS § 801a note), added para. (29).

1979. Act Nov. 30, 1979, substituted para. (4) for one which read: "The term 'Bureau of Narcotics and Dangerous Drugs' means the Bureau of Narcotics and Dangerous Drugs in the Department of Justice.".

1984. Act Oct. 12, 1984, redesignated paras. (14)-(29) as paras. (15)-(30); added new para. (14); and substituted new para. (17) for para. (17) as redesignated, which read:

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"(17) The term 'narcotic drug' means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

"(A) Opium, coca leaves, and opiates.

"(B) A compound, manufacture, salt, derivative, or preparation of opium, coca leaves, or opiates.

"(C) A substance (and any compound, manufacture, salt, derivative, or preparation thereof) which is chemically identical with any of the substances referred to in clause (A) or (B).

Such term does not include decocainized coca leaves or extracts of coca leaves, which extracts do not contain cocaine or ecgonine."

Act Oct. 19, 1984 purported to substitute "one hundred and eighty" for "twenty-one" in para. (28); however, such amendment was executed to para. (29) in order to effectuate the probable intent of Congress.

1986. Act Oct. 27, 1986, in para. (14), substituted "any" for "the" preceding "optical isomer," and "optical, positional," respectively, redesignated paras. (25) through (30) as paras. (26) through (31), added a new para. (25), and added para. (32).

Act Nov. 10, 1986, in para. (14), substituted "any optical" for "the optical" preceding ", positional," and "or geometric" respectively.

1988. Act Nov. 18, 1988 (effective 120 days after enactment, as provided by § 6061 of such Act, which appears as a note to this section), in paras. (8) and (11), inserted "or a listed chemical" wherever appearing, and added paras. (33)-(40).

1990. Act Nov. 29, 1990, in para. (32)(A), in cls. (ii) and (iii), substituted "stimulant" for "stimulent" following "greater than the" in cl. (ii) and "intends to have a" in cl. (iii).

Such Act further (effective 90 days after enactment as provided by § 1902(d) of such Act, which appears as a note to this section) added para. (41).

Such Act further in para. (34), added subparas. (M)-(Y); and in para. (35), deleted former subpara. (E) which read: "Hydriodic acid".

1993. Act Dec. 17, 1993 (effective on the date that is 120 days after enactment, as provided by § 11 of such Act, which appears as a note to this section), as amended by § 33024(d)(1) of Act Sept. 13, 1994 (effective on the date that is 120 days after enactment of Act Dec. 17, 1993, as provided by § 330024(f) of Act Sept. 13, 1994, which appears as a note to this section), in para. (33), substituted "any list I chemical or any list II chemical" for "any listed precursor chemical or listed essential chemical", in para. (34), in the introductory matter, substituted "list I chemical" for "listed precursor chemical" and "important to the manufacture" for "critical to the creation", and, in subparas. (A), (F), and (H), inserted ", its esters,", deleted subparas. (O), (U), and (W), which read:

"(O) D-lysergic acid.

"(U) N-ethylephedrine.

"(W) N-ethylpseudoephedrine.",

redesignated subparas. (P)-(T) as subparas. (O)-(S), respectively, redesignated subpara. (V) as subpara. (T), and subparas. (X) and (Y) as subparas. (U) and (X), respectively, in subpara. (X) as redesignated, substituted

"(U)" for "(X)", and added subparas. (V) and (W), in para. (35), substituted "list II chemical" for "listed essential chemical", inserted "(other than a list I chemical)", and deleted "as a solvent, reagent, or catalyst" following "used", and substituted para. (37) for one which read: "(37) The term 'regular supplier' means, with respect to a regulated person, a supplier with whom the regulated person has an established business relationship that is reported to the Attorney General.", in para. (38), inserted "or who acts as a broker or trader for an international transaction involving a listed chemical, a tableting machine, or an encapsulating machine", in para. (39)(A), in the introductory matter, substituted "importation, or exportation of, or an international transaction involving shipment of," for "importation or exportation of", and inserted "a listed chemical, or if the Attorney General establishes a threshold amount for a specific listed chemical," in cl. (iii), inserted "or any category of transaction for a specific listed chemical or chemicals", substituted cl. (iv) for one which read: "any transaction in a listed chemical that is contained in a drug that may be marketed or distributed lawfully in the United States under the Federal Food, Drug, and Cosmetic Act; or", and, in cl. (v), inserted "which the Attorney General has by regulation designated as exempt from the application of this title and title III based on a finding that the mixture is formulated in such a way that it cannot be easily used in the illicit production of a controlled substance and that the listed chemical or chemicals contained in the mixture cannot be readily recovered", in para. (40), substituted "list I chemical or a list II chemical" for "listed precursor chemical or a listed essential chemical" in two places, and added paras. (42) and (43).

1994. Act Sept. 13, 1994 added para. [(44)](43).

Such Act further (effective on the date that is 120 days after enactment of Act Dec. 17, 1993, as provided by § 330024(f) of Act Sept. 13, 1994, which appears as a note to this section), in para. (34), in subpara. (V), substituted "B" for "b", in subpara. (W), substituted "N" for "n" and corrected the indentation of subparas. (V) and (W) and, in para. (39)A(iv)(II), substituted "; or" for the concluding period.

Such Act further (effective on the date that is 120 days after enactment of Act Dec. 17, 1993, as provided by § 330024(f) of Act Sept. 13, 1994, which appears as a note to this section) amended the directory language of § 2(a)(4)(B) of Act Dec. 17, 1993, P.L. 103-200, without affecting the text of this section.

1996. Act Oct. 3, 1996, in para. (34), substituted subpara. (P) for one which read: "(P) Insosafrole.", substituted subpara. (S) for one which read: "(S) N-Methylephedrine.", and substituted subpara. (U) for one which read: "(U) Hydriotic acid." and, in para. (35), substituted subpara. (G) for one which read: "(G) 2-Butanone.", and added subparas. (I) and (J).

Such Act further (applicable as provided by § 401(g) of such Act, which appears as a note to this section), in para. (39)(A)(iv), in subcl. (I)(aa), substituted ", pseudoephedrine or its salts, optical isomers, or salts of optical isomers, or phenylpropanolamine or its salts, optical isomers, or salts of optical isomers unless otherwise provided by regulation of the Attorney General issued pursuant to section 204(e) of this title;" for "the only active medicinal ingredient or contains ephedrine or its salts, optical isomers, or salts of optical isomers and therapeutically insignificant quantities of another active medicinal ingredient;" and inserted ", except that any sale of ordinary over-the-counter pseudoephedrine or phenylpropanolamine products by retail distributors shall not be a regulated transaction (except as provided in section 401(d) of the Comprehensive Methamphetamine Control Act of 1996)", in subcl. (II), inserted ", pseudoephedrine, phenylpropanolamine," and inserted ", except that the threshold for any sale of products containing pseudoephedrine or phenylpropanolamine products by retail distributors or by distributors required to submit reports by section 310(b)(3) of this title shall be 24 grams of pseudoephedrine or 24 grams of phenylpropanolamine in a single transaction", redesignated para. [(44)](43)

as para. (44), and added paras. (45) and (46).

Act Oct. 11, 1996, § 604(b)(4) (effective on 9/13/94, pursuant to § 604(d) of such Act, which appears as 18 USCS § 13 note), purported to redesignate para. [(44)](43) as para. (44); however, because of a prior amendment, this amendment could not be executed. This amendment was repealed by Act Nov. 2, 2002, effective Oct. 11, 1996.

Section 607(j)(1) of such Act substituted para. (26) for one which read: "(26) The term 'State' means any state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, and the Canal Zone."

Section 607(j)(2) of such Act purported to redesignate para. [(44)](43) as para. (44); however, because of a prior amendment, this amendment could not be executed. This amendment was repealed by Act Nov. 2, 2002, effective Oct. 11, 1996.

1997. Act Nov. 21, 1997 (effective 90 days after enactment, as provided by § 501 of such Act, which appears as 21 USCS § 321 note), in para. (9)(A), deleted "(i)" following "quantity of" and deleted cl. (ii), which read: "(ii) any derivative of barbituric acid which has been designated by the Secretary as habit forming under section 502(d) of the Federal Food, Drug, and Cosmetic Act (21 U. S. C. 352(d)); or", following "acid; or".

2000. Act Feb. 18, 2000, in para. (32), in subpara. (A), in the introductory matter, substituted "subparagraph (C)" for "subparagraph (B)", redesignated subpara. (B) as subpara. (C), and added new subpara. (B), and, in para. (34), redesignated subpara. (X) as subpara. (Y), and added new subpara. (X).

Act Oct. 17, 2000 (effective 1 year after enactment, as provided by § 3622(b) of such Act, which appears as a note to this section), in para. (39)(A)(iv)(II), substituted "9 grams" for "24 grams" in two places, and inserted "and sold in package sizes of not more than 3 grams of pseudoephedrine base or 3 grams of phenylpropanolamine base".

2002. Act Nov. 2, 2002 (effective 10/11/1996, pursuant to § 4002(c)(1) of such Act), amended Act Oct. 11, 1996 by repealing certain amendments which could not be executed.

2004. Act Oct. 22, 2004 (effective 90 days after enactment, as provided by § 2(d) of such Act, which appears as a note to this section), in para. (41), substituted subpara. (A) for one which read:

"(A) The term 'anabolic steroid' means any drug or hormonal substance, chemically and pharmacologically related to testosterone (other than estrogens, progestins, and corticosteroids) that promotes muscle growth, and includes--

- "(i) boldenone,
- "(ii) chlorotestosterone,
- "(iii) clostebol,
- "(iv) dehydrochlormethyltestosterone,
- "(v) dihydrotestosterone,
- "(vi) drostanolone,
- "(vii) ethylestrenol,
- "(viii) fluoxymesterone,

"(ix) formebulone,  
"(x) mesterolone,  
"(xi) methandienone,  
"(xii) methandranone,  
"(xiii) methandriol,  
"(xiv) methandrostenolone,  
"(xv) methenolone,  
"(xvi) methyltestosterone,  
"(xvii) mibolerone,  
"(xviii) nandrolone,  
"(xix) norethandrolone,  
"(xx) oxandrolone,  
"(xxi) oxymesterone,  
"(xxii) oxymetholone,  
"(xxiii) stanolone,  
"(xxiv) stanozolol,  
"(xxv) testolactone,  
"(xxvi) testosterone,  
"(xxvii) trenbolone, and  
"(xxviii) any salt, ester, or isomer of a drug or substance described or listed in this paragraph, if that salt, ester, or isomer promotes muscle growth.",  
and, in para. (44), inserted "anabolic steroids,".

2006. Act Jan. 5, 2006, in para. (41)(A), substituted cl. (xvii) for one which read: "(xvii) 13 $\beta$ ; -ethyl-17 $\alpha$ ; -hydroxygon-4-en-3-one;", and substituted cl. (xliv) for one which read: "(xliv) stanozolol (17 $\alpha$ ; -methyl-17 $\alpha$ ; -hydroxy-[5 $\alpha$ ; ] -androst-2-eno [3,2-c]-pyrazole);".

Act March. 9, 2006, in para. (39)(A), substituted cl. (iv) for one which read:

"(iv) any transaction in a listed chemical that is contained in a drug that may be marketed or distributed lawfully in the United States under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) unless--

"(I)

(aa) the drug contains ephedrine or its salts, optical isomers, or salts of optical isomers, pseudoephedrine or its salts, optical isomers, or salts of optical isomers, or phenylpropanolamine or its salts, optical isomers, or salts of optical isomers unless otherwise provided by regulation of the Attorney General issued pursuant to section 204(e) of this title, except that any sale of ordinary over-the-counter pseudoephedrine or phenylpropanolamine products by retail distributors shall not be a regulated transaction (except as provided in section 401(d) of the Comprehensive Methamphetamine Control Act of 1996); or

"(bb) the Attorney General has determined under section 204 that the drug or group of drugs is being diverted to obtain the listed chemical for use in the illicit production of a controlled substance; and

"(II) the quantity of ephedrine, pseudoephedrine, phenylpropanolamine, or other listed chemical contained in the drug included in the transaction or multiple transactions equals or exceeds the threshold established for that chemical by the Attorney General, except that the threshold for any sale of products containing pseudoephedrine or phenylpropanolamine products by retail distributors or by distributors required to submit reports by section 310(b)(3) of this title shall be 9 grams of pseudoephedrine or 9 grams of phenylpropanolamine in a single transaction and sold in package sizes of not more than 3 grams of

pseudoephedrine base or 3 grams of phenylpropanolamine base; or",

redesignated cl. (v) as cl. (vi). and inserted a new cl. (v), deleted para. (45) which read:

"(45) The term 'ordinary over-the-counter pseudoephedrine or phenylpropanolamine product' means any product containing pseudoephedrine or phenylpropanolamine that is--

"(A) regulated pursuant to this title; and

"(B)

(i) except for liquids, sold in package sizes of not more than 3.0 grams of pseudoephedrine base or 3.0 grams of phenylpropanolamine base, and that is packaged in blister packs, each blister containing not more than two dosage units, or where the use of blister packs is technically infeasible, that is packaged in unit dose packets or pouches; and

"(ii) for liquids, sold in package sizes of not more than 3.0 grams of pseudoephedrine base or 3.0 grams of phenylpropanolamine base.",

redesignated para. (46) as para. (49), inserted paras. (45)-(48), and, in para. (49) as redesignated, in subpara. (A), substituted "ephedrine, pseudoephedrine, or" for "pseudoephedrine or", deleted subpara. (B) which read: "(B) For purposes of this paragraph, sale for personal use means the sale of below-threshold quantities in a single transaction to an individual for legitimate medical use.", and redesignated subpara. (C) as subpara. (B).

2008. Act Oct. 15, 2008 (effective 180 days after enactment, as provided by § 3(j) of such Act, which appears as a note to this section), added paras. (50)-(56).

Other provisions:

**Promulgation of regulations; report of findings.** Act Oct. 19, 1984, P.L. 98-509, Title III, § 301(b), 98 Stat. 2364, provides: "The Secretary of Health and Human Services shall, within ninety days of the date of the enactment of this Act [enacted Oct. 19, 1984], promulgate regulations for the administration of section 102(28) of the Controlled Substances Act as amended by subsection (a) [para. (28) of this section] and shall include in the first report submitted under section 505(b) of the Public Health Service Act [42 USCS § 223(b)] after the expiration of such ninety days the findings of the Secretary with respect to the effect of the amendment made by subsection (a) [amending para. (28) of this section]."

**Effective date of amendments made by §§ 6051-6060 of Act Nov. 18, 1988.** Act Nov. 18, 1988, P.L. 100-690, Title VI, Subtitle A, § 6061, 102 Stat. 4320, provides:

"Except as otherwise provided in this subtitle, this subtitle [adding 21 USCS § 971 and note and notes to § 801, and amending this section and 21 USCS §§ 830, 841, 842, 872, 876, 881, 960, 961] shall take effect 120 days after the enactment of this Act."

**Effective date of amendments made by § 1902 of Act Nov. 29, 1990.** Act Nov. 29, 1990, P.L. 101-647, Title XIX, § 1902(d), 104 Stat. 4852, provides: "This section and the amendment made by this section [amending this section and 21 USCS § 812; 21 USCS § 829 note] shall take effect 90 days after the date of enactment of this Act."

**Regulations by Attorney General.** Act Nov. 29, 1990, P.L. 101-647, Title XIX, § 1903, 104 Stat. 4853; Oct. 22, 2004, P.L. 108-358, § 2(c), 118 Stat. 1663 (effective 90 days after enactment, as provided by § 2(d) of such Act, which appears as a note to this section), provides:

"(a) Drugs for treatment of rare diseases. If the Attorney General finds that a drug listed in paragraph (41) of section 102 of the Controlled Substances Act [para. (41) of this section] (as added by section 2 [1902(b)] of this

Act) is--

"(1) approved by the Food and Drug Administration as an accepted treatment for a rare disease or condition, as defined in section 526 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360bb); and

"(2) does not have a significant potential for abuse, the Attorney General may exempt such drug from any production regulations otherwise issued under the Controlled Substances Act [21 USCS §§ 801 et seq. generally; for full classification, consult USCS Tables volumes] as may be necessary to ensure adequate supplies of such drug for medical purposes.

"(b) Date of issuance of regulations. The Attorney General shall issue regulations implementing this section not later than 45 days after the date of enactment of this Act, except that the regulations required under section 3(a) [1903(a)] shall be issued not later than 180 days after the date of enactment of this Act."

**Effective date of Dec. 17, 1993 amendments.** Act Dec. 17, 1993, P.L. 103-200, § 11, 107 Stat. 2341, provides: "This Act and the amendments made by this Act [for full classification, consult USCS Tables volumes] shall take effect on the date that is 120 days after the date of enactment of this Act."

**Effective date of Sept. 13, 1994 amendments.** Act Sept. 13, 1994, P.L. 103-322, Title XXXIII, § 330024(f), 108 Stat. 2151, provides: "The amendments made by this section [amending this section, and 21 USCS §§ 824(g), 960(d), and 971(b)] shall take effect as of the date that is 120 days after the date of enactment of the Domestic Chemical Diversion Control Act of 1993 [enacted Dec. 17, 1993]."

**Repeal of provisions relating to regulation of retail sales of pseudoephedrine and phenylpropanolamine.** Act Oct. 3, 1996, P.L. 104-237, Title IV, § 401(d)-(f), 110 Stat. 3108, which formerly appeared as a note to this section, were repealed by Act March 9, 2006, P.L. 109-177, Title VII, Subtitle A, § 712(b), 120 Stat. 264. Such note provided for regulation of retail sales of pseudoephedrine and phenylpropanolamine, effect on thresholds, and combination ephedrine products.

**Applicability of § 401 of Act Oct. 3, 1996.** Act Oct. 3, 1996, P.L. 104-237, Title IV, § 401(g), 110 Stat. 3110, provides: "Notwithstanding any other provision of this Act, this section [amending 21 USCS §§ 802 and 814 and appearing as a note to this section] shall not apply to the sale of any pseudoephedrine or phenylpropanolamine product prior to 12 months after the date of enactment of this Act, except that, on application of a manufacturer of a particular pseudoephedrine or phenylpropanolamine drug product, the Attorney General may, in her sole discretion, extend such effective date up to an additional six months. Notwithstanding any other provision of law, the decision of the Attorney General on such an application shall not be subject to judicial review."

**Effective date of Oct. 17, 2000 amendments.** Act Oct. 17, 2000, P.L. 106-310, Div B, Title XXXVI, Subtitle A, Part II, § 3622(b), 114 Stat. 1231, provides: "The amendments made by subsection (a) [amending para. (39)(A)(iv)(II) of this section] shall take effect 1 year after the date of the enactment of this Act."

**Report on diversion of ordinary, over-the-counter pseudoephedrine and phenylpropanolamine products.** Act Oct. 17, 2000, P.L. 106-310, Div B, Title XXXVI, Subtitle A, Part IV, § 3642, 114 Stat. 1237, provides:

"(a) Study. The Attorney General shall conduct a study of the use of ordinary, over-the-counter pseudoephedrine and phenylpropanolamine products in the clandestine production of illicit drugs. Sources of data for the study shall include the following:

"(1) Information from Federal, State, and local clandestine laboratory seizures and related investigations identifying the source, type, or brand of drug products being utilized and how they were obtained for the illicit production of methamphetamine and amphetamine.

"(2) Information submitted voluntarily from the pharmaceutical and retail industries involved in the manufacture, distribution, and sale of drug products containing ephedrine, pseudoephedrine, and phenylpropanolamine, including information on changes in the pattern, volume, or both, of sales of ordinary,

over-the-counter pseudoephedrine and phenylpropanolamine products.

"(b) Report.

(1) Requirement. Not later than 1 year after the date of the enactment of this Act, the Attorney General shall submit to Congress a report on the study conducted under subsection (a).

"(2) Elements. The report shall include--

"(A) the findings of the Attorney General as a result of the study; and

"(B) such recommendations on the need to establish additional measures to prevent diversion of ordinary, over-the-counter pseudoephedrine and phenylpropanolamine (such as a threshold on ordinary, over-the-counter pseudoephedrine and phenylpropanolamine products) as the Attorney General considers appropriate.

"(3) Matters considered. In preparing the report, the Attorney General shall consider the comments and recommendations including the comments on the Attorney General's proposed findings and recommendations, of State and local law enforcement and regulatory officials and of representatives of the industry described in subsection (a)(2).

"(c) Regulation of retail sales.

(1) In general. Notwithstanding section 401(d) of the Comprehensive Methamphetamine Control Act of 1996 (21 U.S.C. 802 note) and subject to paragraph (2), the Attorney General shall establish by regulation a single-transaction limit of not less than 24 grams of ordinary, over-the-counter pseudoephedrine or phenylpropanolamine (as the case may be) for retail distributors, if the Attorney General finds, in the report under subsection (b), that--

"(A) there is a significant number of instances (as set forth in paragraph (3)(A) of such section 401(d) for purposes of such section) where ordinary, over-the-counter pseudoephedrine products, phenylpropanolamine products, or both such products that were purchased from retail distributors were widely used in the clandestine production of illicit drugs; and

"(B) the best practical method of preventing such use is the establishment of single-transaction limits for retail distributors of either or both of such products.

"(2) Due process. The Attorney General shall establish the single-transaction limit under paragraph (1) only after notice, comment, and an informal hearing."

**Effective date of Oct. 22, 2004 amendments.** Act Oct. 22, 2004, P.L. 108-358, § 2(d), 118 Stat. 1664, provides: "The amendments made by this section [amending 21 USCS §§ 802, 802 note, and 811] shall take effect 90 days after the date of enactment of this Act."

**Preservation of State authority to regulate scheduled listed chemicals.** Act March 9, 2006, P.L. 109-177, Title VII, Subtitle A, § 711(g), 120 Stat. 263, provides: "This section and the amendments made by this section [amending 21 USCS §§ 802, 830, 841, 842, and 844, and appearing as notes to 21 USCS §§ 830 and 844] may not be construed as having any legal effect on section 708 of the Controlled Substances Act [21 USCS § 903] as applied to the regulation of scheduled listed chemicals (as defined in section 102(45) of such Act [para. (45) of this section])."

**Effective date of Oct. 15, 2008 amendments.** Act Oct. 15, 2008, P.L. 110-425, § 3(j), 122 Stat. 4832, provides:

"(1) In general. Except as provided in paragraph (2), the amendments made by this Act shall take effect 180 days after the date of enactment of this Act.

"(2) Definition of practice of telemedicine.

(A) In general. Until the earlier of 3 months after the date on which regulations are promulgated to carry out section 311(h) of the Controlled Substances Act, as amended by this Act, or 15 months after the date of enactment of this Act--

"(i) the definition of the term 'practice of telemedicine' in subparagraph (B) of this paragraph shall apply

for purposes of the Controlled Substances Act; and

"(ii) the definition of the term 'practice of telemedicine' in section 102(54) of the Controlled Substances Act, as amended by this Act, shall not apply.

"(B) Temporary phase-in of telemedicine regulation. During the period specified in subparagraph (A), the term 'practice of telemedicine' means the practice of medicine in accordance with applicable Federal and State laws by a practitioner (as that term is defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)) (other than a pharmacist) who is at a location remote from the patient and is communicating with the patient, or health care professional who is treating the patient, using a telecommunications system referred to in section 1834(m) of the Social Security Act (42 U.S.C. 1395m(m)), if the practitioner is using an interactive telecommunications system that satisfies the requirements of section 410.78(a)(3) of title 42, Code of Federal Regulations.

"(C) Rule of construction. Nothing in this subsection may be construed to create a precedent that any specific course of conduct constitutes the 'practice of telemedicine' (as that term is defined in section 102(54) of the Controlled Substances Act, as amended by this Act) after the end of the period specified in subparagraph (A).".

**Regulations.** Act Oct. 15, 2008, P.L. 110-425, § 3(k)(1), 122 Stat. 4833, provides: "The Attorney General may promulgate and enforce any rules, regulations, and procedures which may be necessary and appropriate for the efficient execution of functions under this Act or the amendments made by this Act [for full classification, consult USCS Tables volumes], and, with the concurrence of the Secretary of Health and Human Services where this Act or the amendments made by this Act so provide, promulgate any interim rules necessary for the implementation of this Act or the amendments made by this Act, prior to its effective date.".

**Rule of construction.** Act Oct. 15, 2008, P.L. 110-425, § 4, 122 Stat. 4834, provides: "Nothing in this Act or the amendments made by this Act [for full classification, consult USCS Tables volumes] shall be construed as authorizing, prohibiting, or limiting the use of electronic prescriptions for controlled substances.".

CHAPTER 71. PUBLIC HEALTH AND WELFARE  
ARTICLE 85. TELEHEALTH SERVICES  
(a) NEBRASKA TELEHEALTH ACT

R.R.S. Neb. § 71-8502 (2013)

§ 71-8502. Legislative findings

The Legislature finds that:

- (1) Access to health care facilities and health care practitioners is critically important to the citizens of Nebraska;
- (2) Access to a continuum of health care services is restricted in some medically underserved areas of Nebraska, and many health care practitioners in such areas are isolated from mentors, colleagues, and information resources necessary to support them personally and professionally;
- (3) The use of telecommunications technology to deliver health care services can reduce health care costs, improve health care quality, improve access to health care, and enhance the economic health of communities in medically underserved areas of Nebraska; and
- (4) The full potential of delivering health care services through telehealth cannot be realized without the assurance of payment for such services and the resolution of existing legal and policy barriers to such payment.

**HISTORY:** [Laws 1999, LB 559, § 2.](#)

USER NOTE: For more generally applicable notes, see notes under the first section of this heading.

*R.R.S. Neb. § 71-8503*

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CHAPTER 71. PUBLIC HEALTH AND WELFARE  
ARTICLE 85. TELEHEALTH SERVICES  
(a) NEBRASKA **TELEHEALTH ACT**

R.R.S. Neb. § 71-8503 (2013)

**Legislative Alert:**

LEXSEE 2014 Neb. ALS 1076 -- See sections 1 and 4.

§ 71-8503. Terms, defined.

For purposes of the Nebraska **Telehealth Act**:

- (1) Department means the Department of Health and Human Services;
- (2) Health care practitioner means a Nebraska medicaid-enrolled provider who is licensed, registered, or certified to practice in this state by the department;
- (3) Telehealth means the use of telecommunications technology by a health care practitioner to deliver health care services within his or her scope of practice at a site other than the site where the patient is located; and
- (4) Telehealth consultation means any contact between a patient and a health care practitioner relating to the health care diagnosis or treatment of such patient through telehealth but does not include a telephone conversation, electronic mail message, or facsimile transmission between a health care practitioner and a patient or a consultation between two health care practitioners.

Utah Telehealth Study - Phase 2 Report

Prepared by Pilot Healthcare Strategies for the Utah Division of Occupational and Professional Licensing

May 2, 2014

**HISTORY:** Laws 1999, LB 559, § 3; Laws 2007, LB 296, § 695.

**NOTES: EFFECT OF AMENDMENTS.**

Laws 2007, LB 296, effective and operative July 1, 2007, deleted "Finance and Support" following "Human Services" in (1); and substituted "department" for "Department of Health and Human Services Regulation and Licensure" in (2).

USER NOTE: For more generally applicable notes, see notes under the first section of this heading.

*R.R.S. Neb. § 71-8504*

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CHAPTER 71. PUBLIC HEALTH AND WELFARE  
ARTICLE 85. TELEHEALTH SERVICES  
(a) NEBRASKA TELEHEALTH ACT

R.R.S. Neb. § 71-8504 (2013)

§ 71-8504. Act; how construed

The Nebraska Telehealth Act does not: (1) Alter the scope of practice of any health care practitioner; (2) authorize the delivery of health care services in a setting or manner not otherwise authorized by law; or (3) limit a patient's right to choose in-person contact with a health care practitioner for the delivery of health care services for which telehealth is available.

**HISTORY:** [Laws 1999, LB 559, § 4.](#)

USER NOTE: For more generally applicable notes, see notes under the first section of this heading.

*R.R.S. Neb. § 71-8505*

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CHAPTER 71. PUBLIC HEALTH AND WELFARE  
ARTICLE 85. **TELEHEALTH SERVICES**  
(a) **NEBRASKA TELEHEALTH ACT**

R.R.S. Neb. § 71-8505 (2013)

§ 71-8505. Written statement; requirements

(1) Prior to an initial **telehealth** consultation under section 71-8506, a health care practitioner who delivers a health care service to a patient through **telehealth** shall ensure that the following written information is provided to the patient:

(a) A statement that the patient retains the option to refuse the **telehealth** consultation at any time without affecting the patient's right to future care or treatment and without risking the loss or withdrawal of any program benefits to which the patient would otherwise be entitled;

(b) A statement that all existing confidentiality protections shall apply to the **telehealth** consultation;

(c) A statement that the patient shall have access to all medical information resulting from the **telehealth** consultation as provided by law for patient access to his or her medical records; and

(d) A statement that dissemination of any patient identifiable images or information from the **telehealth** consultation to researchers or other entities shall not occur without the written consent of the patient.

(2) The patient shall sign a written statement prior to an initial **telehealth** consultation, indicating that the

patient understands the written information provided pursuant to subsection (1) of this section and that this information has been discussed with the health care practitioner or his or her designee. Such signed statement shall become a part of the patient's medical record.

(3) If the patient is a minor or is incapacitated or mentally incompetent such that he or she is unable to sign the written statement required by subsection (2) of this section, such statement shall be signed by the patient's legally authorized representative.

(4) This section shall not apply in an emergency situation in which the patient is unable to sign the written statement required by subsection (2) of this section and the patient's legally authorized representative is unavailable.

**HISTORY:** Laws 1999, LB 559, § 5.

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CHAPTER 71. PUBLIC HEALTH AND WELFARE  
ARTICLE 85. TELEHEALTH SERVICES  
(a) NEBRASKA TELEHEALTH ACT

R.R.S. Neb. § 71-8508 (2013)

**Legislative Alert:**

[LEXSEE 2014 Neb. ALS 1076](#) -- See sections 3 and 4.

§ 71-8508. Rules and regulations

By July 1, 2000, the department shall adopt and promulgate rules and regulations to carry out the Nebraska Telehealth Act, including, but not limited to, rules and regulations to: (1) Ensure the provision of appropriate care to patients; (2) prevent fraud and abuse; and (3) establish methods and procedures necessary to safeguard against unnecessary utilization of telehealth consultations.

**HISTORY:** [Laws 1999, LB 559, § 8.](#)

*014 Neb. ALS 1076, \*; 2014 Neb. Laws 1076;  
2013 Neb. LB 1076*

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NEBRASKA 103RD LEGISLATURE - SECOND REGULAR SESSION

LEGISLATIVE BILL 1076

2014 Neb. ALS 1076; 2014 Neb. Laws 1076; 2013 Neb. LB 1076

**BILL TRACKING SUMMARY FOR THIS DOCUMENT**

**SYNOPSIS:** AN ACT FOR AN ACT relating to public health and welfare; to amend sections 71-8503 and 71-8508, Reissue Revised Statutes of Nebraska, and section 71-8506, Revised Statutes Supplement, 2013; to change provisions relating to the Nebraska Telehealth Act; to define and redefine terms; to change provisions relating to reimbursement rates and rules and regulations; and to repeal the original sections.

**NOTICE:**

[A> Text within these symbols is added <A]

[D> Text within these symbols is deleted <D]

Be it enacted by the people of the State of Nebraska,

[\*1] Section 1. Section 71-8503, Reissue Revised Statutes of Nebraska, is amended to read:

71-8503 For purposes of the Nebraska Telehealth Act:

(1) Department means the Department of Health and Human Services;

(2) Health care practitioner means a Nebraska medicaid-enrolled provider who is licensed, registered, or certified to practice in this state by the department;

(3) Telehealth means the use of [D> telecommunications technology by a health care practitioner to deliver

Utah Telehealth Study - Phase 2 Report

Prepared by Pilot Healthcare Strategies for the Utah Division of Occupational and Professional Licensing

May 2, 2014

health care services within his or her scope of practice at a site other than the site where the patient is located; and <D] [A> medical information electronically exchanged from one site to another, whether synchronously or asynchronously, to aid a health care practitioner in the diagnosis or treatment of a patient. Telehealth includes services originating from a patient's home or any other location where such patient is located, asynchronous services involving the acquisition and storage of medical information at one site that is then forwarded to or retrieved by a health care practitioner at another site for medical evaluation, and telemonitoring; <A]

(4) Telehealth consultation means any contact between a patient and a health care practitioner relating to the health care diagnosis or treatment of such patient through telehealth [A> ; and <A] [D> but does not include a telephone conversation, electronic mail message, or facsimile transmission between a health care practitioner and a patient or a consultation between two health care practitioners. <D]

[A> (5) Telemonitoring means the remote monitoring of a patient's vital signs, biometric data, or subjective data by a monitoring device which transmits such data electronically to a health care practitioner for analysis and storage. <A]

[\*2] Sec. 2. Section 71-8506, Revised Statutes Supplement, 2013, is amended to read:

71-8506 (1) In-person contact between a health care practitioner and a patient shall not be required under the medical assistance program established pursuant to the Medical Assistance Act and Title XXI of the federal Social Security Act, as amended, for health care services delivered through telehealth that are otherwise eligible for reimbursement under such program and federal act. Such services shall be subject to reimbursement policies developed pursuant to such program and federal act. This section also applies to managed care plans which contract with the department pursuant to the Medical Assistance Act only to the extent that:

(a) Health care services delivered through telehealth are covered by and reimbursed under the medicaid fee-for-service program; and

(b) Managed care contracts with managed care plans are amended to add coverage of health care services delivered through telehealth and any appropriate capitation rate adjustments are incorporated.

(2) The reimbursement rate for a telehealth consultation shall, as a minimum, be set at the same rate as the medical assistance program rate for a comparable in-person consultation [A> , and the rate shall not depend on the distance between the health care practitioner and the patient <A] .

(3) The department shall establish rates for transmission cost reimbursement for telehealth consultations, considering, to the extent applicable, reductions in travel costs by health care practitioners and patients to deliver or to access health care services and such other factors as the department deems relevant. Such rates shall include reimbursement for all two-way, real-time, interactive communications, unless provided by an

Internet service provider, between the patient and the physician or health care practitioner at the distant site which comply with the federal Health Insurance Portability and Accountability Act of 1996 and rules and regulations adopted thereunder and with regulations relating to encryption adopted by the federal Centers for Medicare and Medicaid Services and which satisfy federal requirements relating to efficiency, economy, and quality of care.

[\*3] Sec. 3. Section 71-8508, Reissue Revised Statutes of Nebraska, is amended to read:

71-8508 [D] By July 1, 2000, the <D] [A] The <A] department shall adopt and promulgate rules and regulations to carry out the Nebraska Telehealth Act, including, but not limited to, rules and regulations to: (1) Ensure the provision of appropriate care to patients; (2) prevent fraud and abuse; and (3) establish [A] necessary <A] methods and procedures [A] . <A] [D] necessary to safeguard against unnecessary utilization of telehealth consultations. <D]

[\*4] Sec. 4. Original sections 71-8503 and 71-8508, Reissue Revised Statutes of Nebraska, and section 71-8506, Revised Statutes Supplement, 2013, are repealed.

**HISTORY:**

**Approved by the Governor April 16, 2014**

*RSA 329-B:10*

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Title XXX Occupations and Professions  
Chapter 329-B Psychologists

RSA 329-B:10 (2014)

**329-B:10. Board; Responsibilities and Rulemaking Authority.**

The board shall adopt rules, pursuant to RSA 541-A, relative to:

- I.** The application procedure for any license issued under this chapter.
- II.** Procedures for expedited licensure for applicants from other states who qualify under RSA 329-B:20.
- III.** The qualifications of applicants in addition to those required by statute.
- IV.** The design and content of all forms required under this chapter.
- V.** How an applicant shall be examined, including:
  - (a)** Time and place of examination.
  - (b)** The subjects to be tested.
  - (c)** Passing grade.
  - (d)** Disposition of examination papers.

**VI.** How a license shall be renewed, reinstated, or placed on inactive status.

**VII.** Ethical standards, as promulgated by the American Psychological Association, required to be met by each psychologist licensed under this chapter, and how a license may be revoked for violation of these standards.

**VIII.** Procedures, standards, and supervision requirements for candidates for licensure, consistent with the standards established by the advisory committee and the board. All candidates for licensure shall be documented with the board.

**IX.** Establishment of the scope of practice for psychologists.

**X.** Procedures for assuring the continuing competence of psychologists licensed under this chapter including, but not limited to, continuing education requirements, and the professional's health program.

**XI.** How licensees shall provide evidence of good professional character and reliability to satisfy the board that they shall faithfully and conscientiously avoid professional misconduct and otherwise adhere to the requirements of this chapter.

**XII.** Procedures for accepting and responding to written complaints, publicizing the complaint procedure, standards of and procedures for conducting investigations, investigator training requirements, and procedures for conducting disciplinary hearings and alternative dispute resolution under this chapter.

**XIII.** The content of the materials and information to be distributed under RSA 329-B:14.

**XIV.** Requirements to be met by licensees relative to the disclosure of information to patients and the general public concerning the nature of psychological services and the responsibilities of psychologists to clients or patients in RSA 329-B:32.

**XV.** Procedures for receiving and addressing complaints against licensees who have had a personal or professional relationship with a board member.

**XVI.** Procedures relative to the disclosure to the public of final disciplinary actions by the board, including those actions that occur without holding a public hearing. Dismissed complaints shall not be made public.

**XVII.** Standards of care for the practice of **telemedicine** or tele-health.

**XVIII.** Guidance for providing informed consent under RSA 329-B:32.

**HISTORY:** 2012, 233:1, eff. July 1, 2013.

*RSA 329-B:16*

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Title XXX Occupations and Professions  
Chapter 329-B Psychologists  
RSA 329-B:16 (2014)

**329-B:16. Electronic Practice of Psychology, Tele-health, Telemedicine.**

Persons licensed by the board who practice electronically shall be subject to standards of care for the practice of **telemedicine** and tele-health for psychology established by the board pursuant to rules adopted under RSA 541-A.

**HISTORY:** 2012, 233:1, eff. July 1, 2013.

Title XXXVII Insurance  
Chapter 415-J New Hampshire Telemedicine Act

RSA 415-J:1 (2014)

**415-J:1. New Hampshire Telemedicine Act.**

This chapter shall be known and may be cited as the New Hampshire telemedicine act.

**HISTORY:** [2009, 259:1](#), eff. October 14, 2009.

*RSA 415-J:2*

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Title XXXVII Insurance  
Chapter 415-J New Hampshire **Telemedicine** Act

RSA 415-J:2 (2014)

**415-J:2. Definitions.**

In this chapter:

**I.** "Health benefit policy" means any individual or group plan, policy, or contract for health care services issued, delivered, issued for delivery, executed, or renewed in this state, including, but not limited to, those contracts executed by the state of New Hampshire on behalf of state employees under RSA 21-I, by an insurer.

**II.** "Insurer" means an accident and sickness insurer, fraternal benefit society, hospital service corporation, medical service corporation, health care corporation, health maintenance organization, preferred provider organization, provider sponsored health care corporation, managed care entity, or any similar entity authorized

to issue contracts under this title or to provide health benefit policies.

**III. "Telemedicine,"** as it pertains to the delivery of health care services, means the use of audio, video, or other electronic media for the purpose of diagnosis, consultation, or treatment. **Telemedicine** does not include the use of audio-only telephone or facsimile.

**HISTORY:** 2009, 259:1, eff. October 14, 2009.

*N.M. Stat. Ann. § 24-25-2*

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CHAPTER 24. HEALTH AND SAFETY  
ARTICLE 25. NEW MEXICO **TELEHEALTH** ACT

N.M. Stat. Ann. § 24-25-2 (2013)

§ 24-25-2. Findings and purpose

A. The legislature finds that:

- (1) lack of primary care, specialty providers and transportation continue to be significant barriers to access to health services in medically underserved rural areas;
- (2) there are parts of this state where it is difficult to attract and retain health professionals, as well as to support local health facilities in providing a continuum of health care;
- (3) many health care providers in medically underserved areas are isolated from mentors and colleagues and from the information resources necessary to support them personally and professionally;
- (4) using information technology to deliver medical services and information from one location to another is part of a multifaceted approach to address the problems of provider distribution and the development of health systems in medically underserved areas by improving communication capabilities and providing convenient access to up-to-date information, consultations and other forms of support;
- (5) the use of telecommunications to deliver health services has the potential to reduce costs, improve quality, change the conditions of practice and improve access to health care in rural, medically underserved areas; and
- (6) **telehealth** will assist in maintaining or improving the physical and economic health of medically underserved communities by keeping the source of general health, behavioral health and oral health care in the local area, strengthening the health infrastructure and preserving health-care-related jobs.

B. The purpose of the New Mexico **Telehealth** Act [24-25-1 NMSA 1978] is to provide a framework for health care providers to follow in providing **telehealth** services to New Mexico citizens in a manner that provides efficient and effective access to quality health services. **Telehealth** services include consultations, direct patient care and education for health care professionals, support personnel, students, families, patients and other consumers of health care services.

**HISTORY:** Laws 2004, ch. 48, § 2; 2007, ch. 203, § 2.

**NOTES:** STATUTORY NOTES

THE 2007 AMENDMENT, effective June 15, 2007, in Subsection A(6), substituted "general health, behavioral health and oral health care" for "medical care"; and in Subsection B, in the first sentence, inserted the first occurrence of "services", and substituted "in a manner that provides efficient and effective access to quality health services" for "when it is impractical for those citizens to receive health care consultations face-to-face with health care providers", and added the last sentence.

EFFECTIVE DATES. --Laws 2004, ch. 48 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 19, 2004, 90 days after adjournment of the legislature.

*N.M. Stat. Ann. § 24-25-3*

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CHAPTER 24. HEALTH AND SAFETY  
ARTICLE 25. NEW MEXICO **TELEHEALTH** ACT

N.M. Stat. Ann. § 24-25-3 (2013)

§ 24-25-3. Definitions

As used in the New Mexico **Telehealth** Act [24-25-1 NMSA 1978]:

A. "health care provider" means a person licensed to provide health care to patients in New Mexico, including:

- (1) an optometrist;
- (2) a chiropractic physician;
- (3) a dentist;
- (4) a physician;
- (5) a podiatrist;
- (6) an osteopathic physician;
- (7) a physician assistant;
- (8) a certified nurse practitioner;
- (9) a physical therapist;
- (10) an occupational therapist;
- (11) a speech-language pathologist;

- (12) a doctor of oriental medicine;
- (13) a nutritionist;
- (14) a psychologist;
- (15) a certified nurse-midwife;
- (16) a clinical nurse specialist;
- (17) a registered nurse;
- (18) a dental hygienist;
- (19) a pharmacist;
- (20) a licensed independent social worker;
- (21) a licensed counselor;
- (22) a community health representative; or
- (23) a licensed athletic trainer;

B. "originating site" means a place where a patient may receive health care via **telehealth**. An originating site may include:

- (1) a licensed inpatient center;
- (2) an ambulatory surgical or treatment center;
- (3) a skilled nursing center;
- (4) a residential treatment center;
- (5) a home health agency;
- (6) a diagnostic laboratory or imaging center;
- (7) an assisted living center;
- (8) a school-based health program;
- (9) a mobile clinic;

- (10) a mental health clinic;
- (11) a rehabilitation or other therapeutic health setting;
- (12) the patient's residence;
- (13) a federally qualified health center; or
- (14) a community health center; and

C. "**telehealth**" means the use of electronic information, imaging and communication technologies, including interactive audio, video, data communications as well as store-and-forward technologies, to provide and support health care delivery, diagnosis, consultation, treatment, transfer of medical data and education.

**HISTORY:** Laws 2004, ch. 48, § 3; 2007, ch. 203, § 3.

**NOTES:** STATUTORY NOTES

THE 2007 AMENDMENT, effective June 15, 2007, added Subsections A(20) through A(23); added Subsections B(13) and B(14); and in Subsection C, deleted "when distance separates the patient and the health care provider" from the end.

EFFECTIVE DATES. --Laws 2004, ch. 48 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 19, 2004, 90 days after adjournment of the legislature.

*N.M. Stat. Ann. § 24-25-4*

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CHAPTER 24. HEALTH AND SAFETY  
ARTICLE 25. NEW MEXICO **TELEHEALTH** ACT

N.M. Stat. Ann. § 24-25-4 (2013)

§ 24-25-4. **Telehealth** authorized; procedure

The delivery of health care via **telehealth** is recognized and encouraged as a safe, practical and necessary practice in New Mexico. No health care provider or operator of an originating site shall be disciplined for or discouraged from participating in **telehealth** pursuant to the New Mexico **Telehealth** Act [24-25-1 NMSA 1978]. In using **telehealth** procedures, health care providers and operators of originating sites shall comply with all applicable federal and state guidelines and shall follow established federal and state rules regarding security, confidentiality and privacy protections for health care information.

**HISTORY:** Laws 2004, ch. 48, § 4.

**NOTES:** STATUTORY NOTES

**EFFECTIVE DATES.** --Laws 2004, ch. 48 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 19, 2004, 90 days after adjournment of the legislature.

*N.M. Stat. Ann. § 24-25-5*

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CHAPTER 24. HEALTH AND SAFETY  
ARTICLE 25. NEW MEXICO TELEHEALTH ACT

N.M. Stat. Ann. § 24-25-5 (2013)

§ 24-25-5. Scope of act

A. The New Mexico Telehealth Act [[24-25-1 NMSA](#) 1978] does not alter the scope of practice of any health care provider or authorize the delivery of health care services in a setting, or in a manner, not otherwise authorized by law.

B. Because the use of telehealth improves access to quality health care and will generally benefit the citizens of New Mexico, health insurers, health maintenance organizations, managed care organizations and third-party payors offering services to the citizens of New Mexico are encouraged to use and provide coverage for telehealth within the scope of their plans or policies. The state's medical assistance program is also encouraged to include telehealth within the scope of its plan or policy.

**HISTORY:** [Laws 2004, ch. 48, § 5](#); [2007, ch. 203, § 4](#).

*16.10.8.8 NMAC*

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TITLE 16. OCCUPATIONAL AND PROFESSIONAL LICENSING  
CHAPTER 10. MEDICINE AND SURGERY PRACTITIONERS  
PART 8. MEDICAL ETHICS

16.10.8.8 NMAC (2014)

§ 16.10.8.8 UNPROFESSIONAL OR DISHONORABLE CONDUCT

As defined in the Medical Practice Act, Section 61-6-15,D,(29), "unprofessional or dishonorable conduct" includes, but is not limited to, the following:

- A. practicing medicine without an active license;
- B. sexual misconduct, including sexual contact with patient surrogates, such as parents and legal guardians, that occurs concurrently with the physician-patient relationship;
- C. violating a narcotic or drug law;
- D. excessive prescribing or administering of drugs;
- E. excessive treatment of patients;
- F. impersonating an applicant in an examination or at a board interview;
- G. making or signing false documents;
- H. dishonesty;
- I. deceptive or anonymous advertising;
- J. improper use of a fictitious name;
- K. violation of a term of a stipulation; or

L. prescribing, dispensing or administering drugs or medical supplies to a patient when there is no established physician-patient relationship, including prescribing over the internet or via other electronic means that is based solely on an on-line questionnaire; except for:

- (1) physicians and physician assistants on call for another practitioner, or responsible for another practitioner's patients in an established clinic or office, or acting as locum tenens where a physician-patient relationship has previously been established and documented in the practitioner's or clinic's record;
- (2) physicians and physician assistants in emergency room or urgent care settings;
- (3) prescriptions written to prepare a patient for special examination(s) or laboratory testing;
- (4) prescribing or dispensing for immunization programs;
- (5) the provision of treatment for partners of patients with sexually transmitted diseases when this treatment is conducted in accordance with the expedited partner therapy guidelines and protocol published by the New Mexico department of health; and
- (6) the provision of consultation, recommendation, or treatment during a face-to-face **telehealth** encounter online, using standard videoconferencing technology, where a medical history and informed consent are obtained and a medical record generated by the practitioner, and a physical examination is:
  - (a) recorded as appropriate by the practitioner, or a practitioner such as a physician, a physician or anesthesiologist assistant, or an advanced practice nurse, with the results communicated to the **telehealth** practitioner; or
  - (b) waived when a physical examination would not normally be part of a typical physical face-to-face encounter with the patient for the specific services being provided.

[16.10.8.8 NMAC - Rp 16 NMAC 10.8.8, 7/15/01; A, 1/10/07; A, 9/27/07; A, 9/21/09]

*Nev. Rev. Stat. Ann. § 633.165*

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TITLE 54. Professions, Occupations And Businesses.  
CHAPTER 633. Osteopathic Medicine.  
General Provisions

*Nev. Rev. Stat. Ann. § 633.165 (2013)*

**633.165. Telemedicine: Requirements for practice; exceptions; scope.**

**1.** An osteopathic physician may engage in **telemedicine** from within or outside this State or the United States if he or she possesses an unrestricted license to practice osteopathic medicine in this State pursuant to this chapter. An osteopathic physician who engages in **telemedicine**:

**(a)** Except as otherwise provided by specific statute or regulation, shall comply with the provisions of this chapter and the regulations of the Board; and

**(b)** To the extent not inconsistent with the Nevada Constitution or the United States Constitution, is subject to the jurisdiction of the courts of this State.

**2.** If an osteopathic physician engages in **telemedicine** with a patient who is physically located in another state or territory of the United States, the osteopathic physician shall, before engaging in **telemedicine** with the patient, take any steps necessary to be authorized or licensed to practice osteopathic medicine in the other state or territory of the United States in which the patient is physically located.

**3.** Except as otherwise provided in subsections 4 and 5, before an osteopathic physician may engage in **telemedicine** pursuant to this section:

**(a)** A bona fide relationship between the osteopathic physician and the patient must exist which must include, without limitation, a history and an examination or consultation which occurred in person or through the use of

**telemedicine** and which was sufficient to establish a diagnosis and identify any underlying medical conditions of the patient.

(b) The osteopathic physician must obtain informed consent from the patient or the legal representative of the patient to engage in **telemedicine** with the patient. The osteopathic physician shall document the consent as part of the permanent medical record of the patient.

(c) The osteopathic physician must inform the patient:

(1) That the patient or the legal representative of the patient may withdraw the consent provided pursuant to paragraph (b) at any time;

(2) Of the potential risks, consequences and benefits of **telemedicine**;

(3) Whether the osteopathic physician has a financial interest in the Internet website used to engage in **telemedicine** or in the products or services provided to the patient via **telemedicine**; and

(4) That the transmission of any confidential medical information while engaged in **telemedicine** is subject to all applicable federal and state laws with respect to the protection of and access to confidential medical information.

4. An osteopathic physician is not required to comply with the provisions of paragraph (a) of subsection 3 if the osteopathic physician engages in **telemedicine** for the purposes of making a diagnostic interpretation of a medical examination, study or test of the patient.

5. An osteopathic physician is not required to comply with the provisions of paragraph (a) or (c) of subsection 3 in an emergency medical situation.

6. The provisions of this section must not be interpreted or construed to:

(a) Modify, expand or alter the scope of practice of an osteopathic physician pursuant to this chapter; or

(b) Authorize the practice of osteopathic medicine or delivery of care by an osteopathic physician in a setting that is not authorized by law or in a manner that violates the standard of care required of an osteopathic physician pursuant to this chapter.

7. As used in this section, "**telemedicine**" means the practice of osteopathic medicine by using equipment that transfers information concerning the medical condition of a patient electronically, telephonically or by fiber optics.

**HISTORY:** 2011, ch. 243, § 2, p. 1032; 2013, ch. 378, § 10, p. 2017.

**NOTES: Effect of amendment.**

The 2013 amendment, effective June 2, 2013, in the introductory language of (1), substituted "from within or

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outside this State or the United States" for "in this State" in the first sentence and added the second sentence; added (1)(a) and (1)(b); added the (2) designation; redesignated former (2) through (6) as (3) through (7); in (3)(a), substituted "an examination" for "physical examination" and added "or through the use of **telemedicine**"; in (3)(b), deleted "written" following "obtain informed" in the first sentence and substituted "document the consent" for "maintain the consent form" in the second sentence; deleted both orally and in writing" at the end of (3)(c); deleted (3)(c)(5); substituted "by using equipment that transfers information concerning the medical condition of a patient electronically, telephonically or by fiber optics" for "through the synchronous or asynchronous transfer of medical data or information using interactive audio, video or data communication, other than through a standard telephone, facsimile transmission or electronic mail message"; updated the internal references; and made related changes.

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TITLE 54. Professions, Occupations And Businesses.  
CHAPTER 633. Osteopathic Medicine.  
Injunctive Relief; Prosecution; Penalties

Nev. Rev. Stat. Ann. § 633.711 (2013)

**633.711. Injunctive relief against person practicing without license.**

**1.** The Board, through an officer of the Board or the Attorney General, may maintain in any court of competent jurisdiction a suit for an injunction against any person:

(a) Practicing osteopathic medicine or practicing as a physician assistant without a valid license to practice osteopathic medicine or to practice as a physician assistant; or

(b) Engaging in telemedicine without a valid license pursuant to an injunction issued pursuant NRS 633.165.

**2.** An injunction issued pursuant to subsection 1:

(a) May be issued without proof of actual damage sustained by any person, this provision being a preventive as well as a punitive measure.

(b) Must not relieve such person from criminal prosecution for practicing without such a license.

**HISTORY:** 1977, p. 953; 2007, ch. 413, § 56, p. 1842; 2011, ch. 243, § 34, p. 1049.

**NOTES: Effect of amendment.**

The 2007 amendment, effective June 13, 2007 for the purpose of adopting regulations and performing any other preparatory administrative tasks necessary to carry out the provisions of the act; and on January 1, 2008, for all other purposes, inserted "to practice osteopathic medicine" in subsection 1, and made a stylistic change.

The 2011 amendment, effective October 1, 2011, in (1), substituted "an officer of the Board" for "its President or Secretary", added the (1)(a) designation, rewrote (1)(a), which formerly read "osteopathic medicine without a license to practice osteopathic medicine valid under this chapter" and added (1)(b); in the introductory language in (2), deleted "Such" at the beginning and added "issued pursuant to subsection 1"; and made stylistic changes.

*Nev. Rev. Stat. Ann. § 630.020*

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TITLE 54. Professions, Occupations And Businesses.

CHAPTER 630. Physicians, Physician Assistants, Medical Assistants, Perfusionists, and Practitioners of Respiratory Care.  
General Provisions

Nev. Rev. Stat. Ann. § **630.020** (2013)

**630.020. "Practice of medicine" defined.**

"Practice of medicine" means:

**1.** To diagnose, treat, correct, prevent or prescribe for any human disease, ailment, injury, infirmity, deformity or other condition, physical or mental, by any means or instrumentality, including, but not limited to, the performance of an autopsy.

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2. To apply principles or techniques of medical science in the diagnosis or the prevention of any such conditions.

3. To perform any of the acts described in subsections 1 and 2 by using equipment that transfers information concerning the medical condition of the patient electronically, telephonically or by fiber optics from within or outside this State or the United States.

4. To offer, undertake, attempt to do or hold oneself out as able to do any of the acts described in subsections 1 and 2.

**HISTORY:** 1949, p. 353; CL 1929 (1949 Supp.), § 4107.17; 1973, p. 504; 1975, p. 415; 1985, pp. 1036, 2225; 1995, ch. 520, § 2, p. 1734; 2003, ch. 62, § 1, p. 438; 2003, ch. 334, § 9, p. 1886; 2003, ch. 508, § 43, p. 3430; 2009, ch. 494, § 17, p. 2946; 2013, ch. 378, § 1, p. 2011.

**NOTES: Effect of amendment.**

The 2009 amendment, effective October 1, 2009, added "including, but not limited to, the performance of an autopsy" in (1).

The 2013 amendment, effective June 2, 2013, added "from within or outside this State or the United States" in (3).

**OPINIONS OF ATTORNEY GENERAL**

**Term "practice of medicine" as defined by this section includes the practice of naturopathy.** The imposition of the requirements of this chapter on naturopathic physicians did not violate the constitutional rights of due process and equal protection of laws. AGO 195 (11-5-1975).

**No general corporation may engage in the practice of medicine.**

No corporation organized under the state's general corporation law, NRS Chapter 78, may lawfully engage in the practice of medicine as defined in this section, but one or more licensed physicians may practice medicine in corporate form if they are incorporated under the Professional Corporations and Associations Act, NRS Chapter 89, and strictly comply with its provisions. AGO 219 (10-3-1977).

**Effect of regulation.**

The Board of Medical Examiners may regulate the practice of its licensees even where that regulation may adversely affect the practice of licensees who are also licensed by the Board of Homeopathic Examiners. AGO 98-01 (1-13-1998).

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TITLE 54. Professions, Occupations And Businesses.  
CHAPTER 630. Physicians, Physician Assistants, Medical Assistants, Perfusionists, and Practitioners of Respiratory Care.  
Physician Assistants

Nev. Rev. Stat. Ann. § **630.275** (2013)

**630.275. Board to adopt regulations concerning licensure.**

The Board shall adopt regulations regarding the licensure of a physician assistant, including, but not limited to:

1. The educational and other qualifications of applicants.
2. The required academic program for applicants.
3. The procedures for applications for and the issuance of licenses.
4. The tests or examinations of applicants by the Board.
5. The medical services which a physician assistant may perform, except that a physician assistant may not perform those specific functions and duties delegated or restricted by law to persons licensed as dentists, chiropractors, podiatric physicians and optometrists under chapters 631, 634, 635 and 636, respectively, of NRS, or as hearing aid specialists.
6. The duration, renewal and termination of licenses.
7. The grounds and procedures respecting disciplinary actions against physician assistants.
8. The supervision of medical services of a physician assistant by a supervising physician, including, without limitation, supervision that is performed electronically, telephonically or by fiber optics from within or outside this State or the United States.

**9.** A physician assistant's use of equipment that transfers information concerning the medical condition of a patient in this State electronically, telephonically or by fiber optics from within or outside this State or the United States.

**HISTORY:** 1973, p. 512; 1985, p. 2233; 1993, ch. 533, § 2, p. 2217; 1997, ch. 207, § 14, p. 683; 2001, ch. 152, § 25, p. 765; 2013, ch. 378, § 6, p. 2015.

**NOTES: Effect of amendment.**

The 2013 amendment, effective June 2, 2013, added "including, without limitation, supervision that is performed electronically, telephonically or by fiber optics from within or outside this State or the United States" in (8); and added (9).

*OAC Ann. 4753-2-01*

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4753 Board of Speech Language Pathology and Audiology  
Chapter 4753-2 **Telehealth** communication

OAC Ann. 4753-2-01 (2014)

## **4753-2-01. Telehealth Services.**

### **(A) Definitions**

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

(1) "Asynchronous" means recorded therapy sessions submitted for later review.

(2) "Board" means the Ohio board of speech-language pathology and audiology.

(3) "Facilitator" means the individual at the client site who facilitates the **telehealth** service delivery at the direction of the audiologist or speech language pathologist. For purposes of fulfilling their role, as defined under this chapter, an individual may serve as a facilitator, at the direction of the audiologist or speech language pathologist, without becoming licensed as an aide under section 4753.072 of the Revised Code.

(4) "Patient" means a consumer of **telehealth** services.

(5) "Provider" means an audiologist or speech-language pathologist who provides **telehealth** services.

(6) "Service delivery model" means the method of providing **telehealth** services.

(7) "Site" means the client/patient location for receiving **telehealth** services.

(8) "Stored clinical data" means video clips, sound/audio files, photo images, electronic records, and written records that may be available for transmission via **telehealth** communications.

(9) "Synchronous" means therapy sessions occurring via telepractice applications using real time, encrypted videoconferencing.

(10) "**Telehealth**" means the use of telecommunications and information technologies for the exchange of information from one site to another for the provision of audiology or speech-language pathology services to an individual from a provider through hardware or internet connection.

(11) "Telepractice" means the practice of **telehealth**.

**(B) Service delivery models** (1) **Telehealth** may be delivered in a variety of ways, including but not limited to, those models listed this paragraph.

(2) Store-and-forward model/electronic transmission is an asynchronous electronic transmission of stored clinical data from one location to another usually by the internet via email and fax.

(3) Synchronous clinician interactive model is a real time interaction between the provider and patient that may occur via encrypted audio and video transmission over telecommunication links including, but not limited to, videoconferencing.

(4) Live versus stored data refers to the actual data transmitted during the telepractice. Both live, real-time and stored clinical data may be included during the telepractice.

**(C) Guidelines for the use of telehealth** (1) A provider shall be accountable for any ethical and scope of practice requirements when providing **telehealth** services.

(2) The scope, nature, and quality of services provided via telepractice are the same as that provided during in-person sessions by the provider.

(3) The quality of electronic transmissions shall be appropriate for the provision of **telehealth** services as if those services were provided in person.

(4) A provider shall only utilize technology with which they are competent to use as part of their telepractice services.

(5) Equipment used for **telehealth** services shall be maintained in appropriate operational status to provide appropriate quality of services.

(6) Equipment used at the site at which the patient is present shall be in appropriate working condition and deemed appropriate by the provider.

(7) The provider shall be responsible for assessing the client's candidacy for **telehealth**, including behavioral, physical, and cognitive abilities to participate in services provided via telecommunications.

(8) A provider shall be aware of the patient's level of comfort with the technology being used as part of the

**telehealth** services and only accept for treatment via telecommunications patients who can reasonably be expected to benefit from a service delivery model in paragraph (B) of this rule and continue with such treatment when there is reasonable expectation of further benefit.

(9) As pertaining to liability and malpractice issues, a provider shall be held to the same standards of practice as if the telepractice services were provided in person.

(10) A provider shall be sensitive to cultural and linguistic variables that affect the identification, assessment, treatment, and management of the clients.

(11) **Telehealth** providers shall comply with all laws, rules, and regulations governing the maintenance of client records, including client confidentiality requirements, regardless of the state where the records of any client within this state are maintained.

(12) Notification of **telehealth** services should be provided to the client, the guardian, the caregiver, and the multi-disciplinary team, if appropriate. The notification shall include, but not be limited to: the right to refuse **telehealth** services, options for service delivery, and instructions on filing and resolving complaints.

#### **(D) Limitations of telehealth services**

A provider of **telehealth** services shall inform the patient as to the limitations of providing these services, including, but not limited to, the following:

(1) The inability to have direct, physical contact with the patient is a primary difference between **telehealth** and direct in-person service delivery; and

(2) The quality of transmitted data may affect the quality of services provided by the provider.

**(E) Requirements of personnel providing telehealth services** (1) A provider of **telehealth** services who practices in the state shall be licensed by the board.

(2) A provider of **telehealth** services shall be competent in both the type of services provided and the methodology and equipment used to provide the service.

(3) A provider of **telehealth** services who resides out of state and who provides services to Ohio residents shall be licensed by the board.

**History:**Effective: 07/01/2013.

R.C. 119.032 review dates: 07/01/2018.

Promulgated Under: 119.03.

Statutory Authority: 4753.05.

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Rule Amplifies: 4753.02, 4753.06.

*OAC Ann. 4755-27-01*

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4755 Ohio Occupational Therapy, Physical Therapy Board, and Athletic Trainers Board  
Chapter 4755-27 Conduct of Licensees

OAC Ann. 4755-27-01 (2014)

**4755-27-01. Physical therapy practice defined.**

(A) In accordance with section 4755.48 of the Revised Code, only individuals licensed by the physical therapy section of the board may imply or claim to be able to practice physical therapy or provide physical therapy services.

(1) Only individuals licensed by the physical therapy section may use the words physical therapist, physical therapy, physical therapy services, physiotherapist, physiotherapy, physiotherapy services, physical therapy assistant, physical therapist assistant, physical therapy technician, or other words or insignia indicating or implying that the person is a physical therapist or physical therapist assistant.

(2) Only individuals licensed by the physical therapy section may use the letters PT, PhT, PTT, RPT, LPT, MPT, DPT, MSPT, CPT, cPT, PTA, or any other letters or insignia to indicate or imply that the person is licensed to practice as a physical therapist or physical therapist assistant.

(B) The practice of physical therapy, as used in Chapter 4755. of the Revised Code, means engaging in physical therapy, as defined in division (A) of section 4755.40 of the Revised Code, including providing consultative services.

(C) For the purpose of Chapters 4755-21 to 4755-29 of the Administrative Code, the following definitions shall apply:

(1) "Physical therapist" means an individual who performs the initial examination unless that physical therapist has transferred the responsibility for the management of the patient's care to another physical therapist and that physical therapist agrees to the transfer.

(2) "Physical therapist assistant" means an individual holding a valid license under sections 4755.40 to

4755.56 to assist in the provision of physical therapy treatments, including the provision of patient education and instruction under the supervision of a physical therapist.

(3) "Other licensed personnel" means any person holding an Ohio license to practice as a health care practitioner in a profession other than physical therapy, and not holding a valid license under sections 4755.40 to 4755.56 of the Revised Code, who is working under the direct supervision of a physical therapist or physical therapist assistant, as delegated by the physical therapist, and is performing tasks and duties related to the delivery of physical therapy.

(4) "Unlicensed personnel" means any person who is on the job trained and supports the delivery of physical therapy services by personally assisting the physical therapist, physical therapist assistant, student physical therapist and/or student physical therapist assistant while the physical therapist, physical therapist assistant, student physical therapist, and/or student physical therapist assistant is concurrently providing services to the same patient.

(5) "Student physical therapist" means a student enrolled in an accredited or candidacy status entry level physical therapist education program who is completing a required clinical education course.

(6) "Student physical therapist assistant" means a student enrolled in an accredited or candidacy status entry level physical therapist assistant education program who is completing a required clinical education course.

(7) "Supervising physical therapist" means the physical therapist who is available to supervise the physical therapist assistant, the student physical therapist or student physical therapist assistant, other licensed personnel, or unlicensed personnel. The supervising physical therapist may be the physical therapist who performed the initial examination or another physical therapist with whom that physical therapist has a formal or informal agreement.

(8) "Supervising physical therapist assistant" means the physical therapist assistant who is appropriately available to supervise the student physical therapist assistant, other licensed personnel, or unlicensed personnel.

(9) "Direct supervision" means the physical therapist or physical therapist assistant is in the same building and available to immediately respond to the needs of the patient. The physical therapist or physical therapist assistant shall have direct contact with the patient during each visit.

(10) "**Telehealth**" means the use of electronic communications to provide and deliver a host of health-related information and healthcare services, including, but not limited to physical therapy related information and services, over large and small distances.

(a) **Telehealth** encompasses a variety of healthcare and health promotion activities, including, but not limited to, education, advice, reminders, interventions, and monitoring of interventions.

(b) If a physical therapy patient is located in Ohio, the physical therapist or physical therapist assistant providing physical therapy services via **telehealth** must hold a valid license under sections 4755.40 to 4755.56 of the Revised Code.

**History:**R.C. 119.032 review dates: 02/04/2014 and 02/04/2019.

Promulgated Under: 119.03.

Statutory Authority: 4755.411.

Rule Amplifies: 4755.40, 4755.48.

Prior Effective Dates: 5/26/78, 8/14/00, 5/1/08, 5/1/13.

**NOTES:**

*36 Okl. St. § 6802*

OKLAHOMA STATUTES, ANNOTATED BY LEXISNEXIS (R)

\*\*\* Current through Chapter 23(End) of the First Extraordinary Session of the 54th Legislature (2013) \*\*\*  
\*\*\* Annotations current through December 30, 2013 \*\*\*

TITLE 36. INSURANCE  
CHAPTER 2. MISCELLANEOUS PROVISIONS  
OKLAHOMA **TELEMEDICINE** ACT

36 Okl. St. § 6802 (2013)

§ 6802. **Telemedicine** defined

As used in this act, "**telemedicine**" means the practice of health care delivery, diagnosis, consultation, treatment, including but not limited to, the treatment and prevention of strokes, 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.

**HISTORY:** Laws 2009, ch. 148 (HB 1569), § 6, eff. Nov. 1, 2009.

OKLAHOMA STATUTES, ANNOTATED BY LEXISNEXIS (R)

\*\*\* Current through Chapter 23(End) of the First Extraordinary Session of the 54th Legislature (2013) \*\*\*  
\*\*\* Annotations current through December 30, 2013 \*\*\*

TITLE 36. INSURANCE  
CHAPTER 2. MISCELLANEOUS PROVISIONS  
OKLAHOMA **TELEMEDICINE** ACT

**Go to the Oklahoma Code Archive Directory**

36 Okl. St. § 6804 (2013)

§ 6804. Informed consent

A. Prior to the delivery of health care via **telemedicine**, the health care practitioner who is in physical contact with the patient shall have the ultimate authority over the care of the patient and shall obtain informed consent from the patient. The informed consent procedure shall ensure that, at least, all the following information is given to the patient:

1. A statement that the individual retains the option to withhold or withdraw consent at any time without affecting the right to future care or treatment or risking the loss or withdrawal of any program benefits to which the individual would otherwise be entitled;
2. A description of the potential risks, consequences, and benefits of **telemedicine**;
3. A statement that all existing confidentiality protections apply;
4. A statement that patient access to all medical information transmitted during a **telemedicine** interaction is guaranteed, and that copies of this information are available at stated costs, which shall not exceed the direct cost of providing the copies; and
5. A statement that dissemination to researchers or other entities or persons external to the patient-practitioner relationship of any patient-identifiable images or other patient-identifiable information from the **telemedicine** interaction shall not occur without the written consent of the patient.

B. The patient shall sign a written statement prior to the delivery of health care via **telemedicine** indicating that the patient understands the written information provided pursuant to subsection A of this section and that this information has been discussed with the health care practitioner or the practitioner's designee.

C. If the patient is a minor or is incapacitated or mentally incompetent such that the patient is unable to give informed consent, the consent provisions of this section shall apply to the patient's representative. The consent provisions of this section shall not apply in an emergency situation in which a patient is unable to give informed consent and the patient's representative is unavailable.

D. The failure of a health care practitioner to comply with the provisions of this section shall constitute unprofessional conduct.

E. The written consent statement signed by the patient shall become part of the patient's medical record.

F. The consent provisions of this section shall not apply to consultations among or between health care practitioners or to other **telemedicine** interactions in which the patient is not directly involved.

G. The consent provisions of this section shall not apply to consultations among or between health care practitioners and inmates in the custody of the Department of Corrections.

H. For purposes of the delivery of mental health care via **telemedicine**, the use of **telemedicine** shall be considered a face-to-face, physical contact and in-person encounter between the health care provider and the patient, including the initial visit.

**HISTORY:** Laws 2008, ch. 432 (SB 1719), § 2, eff. Nov. 1, 2008.

*43A Okl. St. § 1-103*

OKLAHOMA STATUTES, ANNOTATED BY LEXISNEXIS (R)

\*\*\* Current through Chapter 23(End) of the First Extraordinary Session of the 54th Legislature (2013) \*\*\*  
\*\*\* Annotations current through December 30, 2013 \*\*\*

TITLE 43A. MENTAL HEALTH  
CHAPTER 1. MENTAL HEALTH LAW OF 1986  
TITLE, PURPOSE AND DEFINITIONS

43A Okl. St. § 1-103 (2013)

§ 1-103. Definitions

When used in this title, unless otherwise expressly stated, or unless the context or subject matter otherwise requires:

1. "Department" means the Department of Mental Health and Substance Abuse Services;
2. "Chair" means the chair of the Board of Mental Health and Substance Abuse Services;
3. "Mental illness" means a substantial disorder of thought, mood, perception, psychological orientation or memory that significantly impairs judgment, behavior, capacity to recognize reality or ability to meet the ordinary demands of life;
4. "Board" means the "Board of Mental Health and Substance Abuse Services" as established by the Mental Health Law;
5. "Commissioner" means the individual selected and appointed by the Board to serve as Commissioner of Mental Health and Substance Abuse Services;
6. "Indigent person" means a person who has not sufficient assets or resources to support the person and to support members of the family of the person lawfully dependent on the person for support;
7. "Facility" means any hospital, school, building, house or retreat, authorized by law to have the care, treatment or custody of an individual with mental illness, or drug or alcohol dependency, gambling addiction, eating disorders, an opioid substitution treatment program, including, but not limited to, public or private hospitals, community mental health centers, clinics, satellites or facilities; provided that facility shall not mean a child guidance center operated by the State Department of Health;
8. "Consumer" means a person under care or treatment in a facility pursuant to the Mental Health Law, or in an outpatient status;
9. "Care and treatment" means medical care and behavioral health services, as well as food, clothing and maintenance, furnished to a person;
10. Whenever in this law or in any other law, or in any rule or order made or promulgated pursuant to this law or to any other law, or in the printed forms prepared for the admission of consumers or for statistical reports, the words "insane", "insanity", "lunacy", "mentally sick", "mental disease" or "mental disorder" are used, such terms shall have equal significance to the words "mental illness";
11. "Licensed mental health professional" means:
  - a. a psychiatrist who is a diplomate of the American Board of Psychiatry and Neurology,
  - b. a physician licensed pursuant to the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act or the Oklahoma Osteopathic Medicine Act,
  - c. a clinical psychologist who is duly licensed to practice by the

State Board of Examiners of Psychologists,

d. a professional counselor licensed pursuant to the Licensed Professional Counselors Act,

e. a person licensed as a clinical social worker pursuant to the provisions of the Social Worker's Licensing Act,

f. a licensed marital and family therapist as defined in the Marital and Family Therapist Licensure Act,

g. a licensed behavioral practitioner as defined in the Licensed Behavioral Practitioner Act,

h. an advanced practice nurse as defined in the Oklahoma Nursing Practice Act specializing in mental health,

i. a physician's assistant who is licensed in good standing in this state and has received specific training for and is experienced in performing mental health therapeutic, diagnostic, or counseling functions, or

j. a licensed drug and alcohol counselor/mental health ("LADC/MH") as defined in the Licensed Alcohol and Drug Counselors Act;

12. "Mentally incompetent person" means any person who has been adjudicated mentally or legally incompetent by an appropriate district court;

13. a. "Person requiring treatment" means a person who because of his or her mental illness or drug or alcohol dependency:

(1) poses a substantial risk of immediate physical harm to self as manifested by evidence or serious threats of or attempts at suicide or other significant self-inflicted bodily harm,

(2) poses a substantial risk of immediate physical harm to another person or persons as manifested by evidence of violent behavior directed toward another person or persons,

(3) has placed another person or persons in a reasonable fear of violent behavior directed towards such person or persons or serious physical harm to them as manifested by serious and immediate threats,

(4) is in a condition of severe deterioration such that, without

immediate intervention, there exists a substantial risk that severe impairment or injury will result to the person, or

(5) poses a substantial risk of immediate serious physical injury to self or death as manifested by evidence that the person is unable to provide for and is not providing for his or her basic physical needs.

b. The mental health or substance abuse history of the person may be used as part of the evidence to determine whether the person is a person requiring treatment. The mental health or substance abuse history of the person shall not be the sole basis for this determination.

c. Unless a person also meets the criteria established in subparagraph a of this paragraph, person requiring treatment shall not mean:

(1) a person whose mental processes have been weakened or impaired by reason of advanced years, dementia, or Alzheimer's disease,

(2) a mentally retarded or developmentally disabled person as defined in Title 10 of the Oklahoma Statutes,

(3) a person with seizure disorder,

(4) a person with a traumatic brain injury, or

(5) a person who is homeless.

d. A person who meets the criteria established in this section, but who is medically unstable, or the facility holding the person is unable to treat the additional medical conditions of that person should be discharged and transported in accordance with Section 1-110 of this title;

14. "Petitioner" means a person who files a petition alleging that an individual is a person requiring treatment;

15. "Executive director" means the person in charge of a facility as defined in this section;

16. "Private hospital or facility" means any general hospital maintaining a neuro-psychiatric unit or ward, or any private hospital or facility for care and treatment of a person having a mental illness, which is not supported by the state or federal government. The term "private hospital" or "facility" shall not include nursing homes or other facilities maintained primarily for the care of elderly and disabled persons;

17. "Individualized treatment plan" means a proposal developed during the stay of an individual in a facility, under the provisions of this title, which is specifically tailored to the treatment needs of the individual. Each plan shall clearly include the following:

- a. a statement of treatment goals or objectives, based upon and related to a clinical evaluation, which can be reasonably achieved within a designated time interval,
- b. treatment methods and procedures to be used to obtain these goals, which methods and procedures are related to each of these goals and which include specific prognosis for achieving each of these goals,
- c. identification of the types of professional personnel who will carry out the treatment procedures, including appropriate medical or other professional involvement by a physician or other health professional properly qualified to fulfill legal requirements mandated under state and federal law,
- d. documentation of involvement by the individual receiving treatment and, if applicable, the accordence of the individual with the treatment plan, and
- e. a statement attesting that the executive director of the facility or clinical director has made a reasonable effort to meet the plan's individualized treatment goals in the least restrictive environment possible closest to the home community of the individual;

18. "**Telemedicine**" means the practice of health care delivery, diagnosis, consultation, evaluation, treatment, transfer of medical data, or exchange of medical education information by means of audio, video, or data communications. **Telemedicine** uses audio and video multimedia telecommunication equipment which permits two-way real-time communication between a health care practitioner and a patient who are not in the same physical location. **Telemedicine** shall not include consultation provided by telephone or facsimile machine; and

19. "Recovery and recovery support" means nonclinical services that assist individuals and families to recover from alcohol or drug problems. They include social support, linkage to and coordination among allied service providers, including but not limited to transportation to and from treatment or employment, employment services and job training, case management and individual services coordination, life skills education, relapse prevention, housing assistance, child care, and substance abuse education.

**HISTORY:** Laws 2005, ch. 150 (HB 1845), § 1, eff. May 9, 2005; Laws 2005, ch. 195 (SB 561), § 1, eff. Nov. 1, 2005; Laws 2006, ch. 16 (HB 3139), § 18, eff. Mar. 29, 2006; Laws 2006, ch. 97 (HB 2865), § 1, eff. Nov. 1, 2006; Laws 2008, ch. 401 (SB 2076), § 1, eff. Nov. 1, 2008; Laws 2010, ch. 287 (SB 1772), § 1, eff. Nov. 1,

2010; Laws 2011, ch. 294 (HB 1271), § 1, eff. Nov. 1, 2011; Laws 2013, ch. 37 (SB 725), § 1, eff. Nov. 1, 2013; Laws 2013, ch. 213 (SB 295), § 1, eff. Nov. 1, 2013.

LexisNexis (R) Notes:

*59 Okl. St. § 633*

OKLAHOMA STATUTES, ANNOTATED BY LEXISNEXIS (R)

\*\*\* Current through Chapter 23(End) of the First Extraordinary Session of the 54th Legislature (2013) \*\*\*  
\*\*\* Annotations current through December 30, 2013 \*\*\*

TITLE 59. PROFESSIONS AND OCCUPATIONS  
CHAPTER 14. OSTEOPATHIC MEDICINE ACT  
REGULATION AND LICENSING

59 Okl. St. § 633 (2013)

§ 633. Licensure

Each applicant who has met all requirements for licensure shall be issued a license to practice as an osteopathic physician and surgeon. Upon application, the State Board of Osteopathic Examiners may also issue special licenses, including a Temporary License, a Resident Training License, a Telemedicine License or a Military Spouse License.

**HISTORY:** [Laws 2013, ch. 226](#) (HB 1235), § 1, eff. Nov. 1, 2013.

LexisNexis (R) Notes:

CASE NOTES

Healthcare Law

[link](#)  [...Licenses > General Overview](#)

Utah Telehealth Study - Phase 2 Report  
Prepared by Pilot Healthcare Strategies for the Utah Division of Occupational and Professional Licensing  
May 2, 2014

1. Board order conditioning reinstatement of osteopath who had surrendered his license on proof of a license from another state or passing the required examination did not deprive him of a license without a hearing and was within Board's authority under [Okla. Stat. tit. 59, §§ 633 and 634](#). [Gaddy v. Oklahoma State Board of Osteopathy, 1976 OK 125, 554 P.2d 1375, 1976 Okla. LEXIS 572 \(Okla. Sept. 28 1976\)](#).

## *S.D. Codified Laws § 36-37-1*

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\*\*\* This document is current through all 2013 legislation passed at the \*\*\*  
88th Regular Session, including Supreme Court Rule 14-10,  
and November 2012 ballot measures  
Annotations current through February 19, 2014

### TITLE 36. PROFESSIONS AND OCCUPATIONS CHAPTER 36-37. SPEECH-LANGUAGE PATHOLOGISTS

S.D. Codified Laws § 36-37-1 (2014)

#### § 36-37-1. Definitions

Terms used in §§ 36-37-1 to 36-37-25 mean:

- (1) "Board," the Board of Examiners for Speech-Language Pathology;
- (2) "Department," the Department of Health;
- (3) "Endoscopy," an imaging procedure included within the scope of practice for speech-language pathologists in which a speech-language pathologist uses a flexible/nasal endoscopy, rigid/oral endoscopy, or stroboscopy for the purpose of evaluating and treating disorders of speech, voice, resonance, and swallowing function;
- (4) "Mentorship," the direct on-site supervision and monitoring of a speech-language pathologist with a provisional license by a licensed speech-language pathologist;
- (5) "Provisional license," the license issued to an applicant who is practicing speech-language pathology while completing the supervised postgraduate professional experience following completion of master's degree in speech-language pathology;
- (6) "Speech-language pathologist," any person who engages in the practice of speech-language pathology and who meets the qualifications set forth in §§ 36-37-1 to 36-37-25;

(7) "Speech-language pathology assistant," any person who assists in the practice of speech-language pathology and who meets the qualifications set forth in §§ 36-37-1 to 36-37-25; and

(8) "Telepractice," "telespeech," "telespeech-language pathology," or "**telehealth**," whether used separately or together. Telepractice service means the application of telecommunication technology to deliver speech-language pathology at a distance for assessment, intervention, or consultation.

**HISTORY:** Source: SL 2012, ch 196, § 1, eff. July 1, 2012.

TITLE 22. EXAMINING BOARDS  
PART 9. TEXAS MEDICAL BOARD  
CHAPTER 174. **TELEMEDICINE**

22 TAC § 174.2 (2014)

§ 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 a defined physician-patient relationship. A patient's private home is not considered an established medical site.
- (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.

SOURCE: The provisions of this § 174.2 adopted to be effective July 4, 2004, 29 TexReg 6088; amended to be effective June 29, 2006, 31 TexReg 5104; amended to be effective October 17, 2010, 35 TexReg 9085

**NOTES:**

CROSS-REFERENCES: This Section cited in 22 TAC § 174.3, (relating to Qualifications for Special Purpose License for Practice of Medicine Across State Lines); 22 TAC § 174.4, (relating to Limits on Special Purpose License To Practice Medicine Across State Lines).

OCCUPATIONS CODE  
TITLE 3. HEALTH PROFESSIONS  
SUBTITLE A. PROVISIONS APPLYING TO HEALTH PROFESSIONS GENERALLY  
CHAPTER 111. **TELEMEDICINE AND TELEHEALTH**

Tex. Occ. Code § 111.003 (2013)

§ 111.003. Confidentiality

A treating physician or health professional who provides or facilitates the use of **telemedicine** medical services or **telehealth** services shall ensure that the confidentiality of the patient's medical information is maintained as required by Chapter 159 or other applicable law.

**HISTORY:** Enacted by Acts 2003, 78th Leg., ch. 1274 (H.B. 2922), § 22, effective April 1, 2005; am. Acts 2005, 79th Leg., ch. 728 (H.B. 2018), § 23.001(69), effective September 1, 2005 (renumbered from Sec. 107.003).

OCCUPATIONS CODE  
TITLE 3. HEALTH PROFESSIONS  
SUBTITLE A. PROVISIONS APPLYING TO HEALTH PROFESSIONS GENERALLY  
CHAPTER 111. TELEMEDICINE AND TELEHEALTH

Tex. Occ. Code § 111.002 (2013)

§ 111.002. Informed Consent

A treating physician or health professional who provides or facilitates the use of telemedicine medical services or telehealth services shall ensure that the informed consent of the patient, or another appropriate individual authorized to make health care treatment decisions for the patient, is obtained before telemedicine medical services or telehealth services are provided.

**HISTORY:** Enacted by [Acts 2003, 78th Leg., ch. 1274 \(H.B. 2922\)](#), § 22, effective April 1, 2005; am. [Acts 2005, 79th Leg., ch. 728 \(H.B. 2018\)](#), § 23.001(69), effective September 1, 2005 (renumbered from Sec. 107.002).

*22 TAC § 174.3*

TEXAS ADMINISTRATIVE CODE

\*\*\* This document reflects all regulations in effect as of March 31, 2014 \*\*\*

TITLE 22. EXAMINING BOARDS  
PART 9. TEXAS MEDICAL BOARD  
CHAPTER 174. **TELEMEDICINE**

22 TAC § 174.3 (2014)

§ 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.

**SOURCE:** The provisions of this § 174.3 adopted to be effective July 4, 2004, 29 TexReg 6088; amended to be effective October 17, 2010, 35 TexReg 9085

**NOTES:**

**CROSS-REFERENCES:** This Section cited in 22 TAC § 174.4, (relating to Limits on Special Purpose License To Practice Medicine Across State Lines); 22 TAC § 174.6, (relating to Revocation and Limitation of Special Purpose License); 22 TAC § 174.15, (relating to Fees and Failure To Submit Fees).

22 TAC § 174.5

TEXAS ADMINISTRATIVE CODE

\*\*\* This document reflects all regulations in effect as of March 31, 2014 \*\*\*

TITLE 22. EXAMINING BOARDS  
PART 9. TEXAS MEDICAL BOARD  
CHAPTER 174. **TELEMEDICINE**

22 TAC § 174.5 (2014)

§ 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 and counsel 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).

SOURCE: The provisions of this § 174.5 adopted to be effective July 4, 2004, 29 TexReg 6088; amended to be effective October 17, 2010, 35 TexReg 9085

**NOTES:**

CROSS-REFERENCES: This Section cited in 22 TAC § 174.3, (relating to Qualifications for Special Purpose License for Practice of Medicine Across State Lines).

*22 TAC § 174.6*

TEXAS ADMINISTRATIVE CODE

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TITLE 22. EXAMINING BOARDS  
PART 9. TEXAS MEDICAL BOARD  
CHAPTER 174. **TELEMEDICINE**

22 TAC § 174.6 (2014)

§ 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 proper 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, a patient site presenter is not required except in cases where the patient may be a danger to themselves or others.

SOURCE: The provisions of this § 174.6 adopted to be effective October 17, 2010, 35 TexReg 9085

**NOTES:**

CROSS-REFERENCES: This Section cited in 22 TAC § 174.7, (relating to Cooperation); 22 TAC § 174.8, (relating to Appearances); 22 TAC § 174.9, (relating to Patient Medical Records); 22 TAC § 174.10, (relating to Informed Consent); 22 TAC § 174.11, (relating to Address Changes); 22 TAC § 174.12, (relating to Delegation and Supervision)

*22 TAC § 174.7*

TEXAS ADMINISTRATIVE CODE

\*\*\* This document reflects all regulations in effect as of March 31, 2014 \*\*\*

TITLE 22. EXAMINING BOARDS  
PART 9. TEXAS MEDICAL BOARD  
CHAPTER 174. TELEMEDICINE

22 TAC § 174.7 (2014)

§ 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.

SOURCE: The provisions of this § 174.7 adopted to be effective October 17, 2010, [35 TexReg 9085](#)

*22 TAC § 174.8*

TEXAS ADMINISTRATIVE CODE

\*\*\* This document reflects all regulations in effect as of March 31, 2014 \*\*\*

TITLE 22. EXAMINING BOARDS  
PART 9. TEXAS MEDICAL BOARD  
CHAPTER 174. TELEMEDICINE

22 TAC § 174.8 (2014)

§ 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 proper physician-patient relationship is established which at a minimum includes:

- (1) establishing that the person requesting the treatment is in fact whom he/she claims to be;
- (2) establishing a diagnosis through the use of acceptable medical practices, including patient history, mental status examination, physical examination (unless not warranted by the patient's mental condition), 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 appropriate practice as those in traditional in-person clinical settings.

(c) An online or telephonic evaluation solely by questionnaire does not constitute an acceptable standard of care.

SOURCE: The provisions of this § 174.8 adopted to be effective October 17, 2010, [35 TexReg 9085](#)

**NOTES:**

CROSS-REFERENCES: This Section cited in [22 TAC § 174.6](#), (relating to Revocation and Limitation of Special Purpose License).

*22 TAC § 174.9*

TEXAS ADMINISTRATIVE CODE

\*\*\* This document reflects all regulations in effect as of March 31, 2014 \*\*\*

TITLE 22. EXAMINING BOARDS  
PART 9. TEXAS MEDICAL BOARD  
CHAPTER 174. **TELEMEDICINE**

22 TAC § 174.9 (2014)

§ 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.

SOURCE: The provisions of this § 174.9 adopted to be effective October 17, 2010, 35 TexReg 9085

**NOTES:**

CROSS-REFERENCES: This Section cited in 22 TAC § 174.6, (relating to Revocation and Limitation of Special Purpose License).

22 TAC § 174.10

TEXAS ADMINISTRATIVE CODE

\*\*\* This document reflects all regulations in effect as of March 31, 2014 \*\*\*

TITLE 22. EXAMINING BOARDS  
PART 9. TEXAS MEDICAL BOARD  
CHAPTER 174. TELEMEDICINE

22 TAC § 174.10 (2014)

§ 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.

SOURCE: The provisions of this § 174.10 adopted to be effective October 17, 2010, [35 TexReg 9085](#)

**NOTES:**

CROSS-REFERENCES: This Section cited in [22 TAC § 174.6](#), (relating to Revocation and Limitation of Special Purpose License).

22 TAC § 174.11

TEXAS ADMINISTRATIVE CODE

\*\*\* This document reflects all regulations in effect as of March 31, 2014 \*\*\*

TITLE 22. EXAMINING BOARDS  
PART 9. TEXAS MEDICAL BOARD  
CHAPTER 174. TELEMEDICINE

22 TAC § 174.11 (2014)

§ 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.

SOURCE: The provisions of this § 174.11 adopted to be effective October 17, 2010, [35 TexReg 9085](#)

22 TAC § 279.16

TEXAS ADMINISTRATIVE CODE

\*\*\* This document reflects all regulations in effect as of March 31, 2014 \*\*\*

TITLE 22. EXAMINING BOARDS  
PART 14. TEXAS OPTOMETRY BOARD  
CHAPTER 279. INTERPRETATIONS

22 TAC § 279.16 (2014)

§ 279.16. **Telehealth** Services

(a) Definitions. The following words and terms, when used in this section shall have the following meanings unless the context indicates otherwise.

(1) Established treatment site--A location where a patient will present to seek optometric care where there is an optometrist, therapeutic optometrist or physician present and sufficient technology and equipment to allow for an adequate physical evaluation as appropriate for the patient's presenting complaint. It requires an optometrist-patient relationship. A patient's private home is not considered an established medical site.

(2) 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.

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

(4) Provider--An optometrist or therapeutic optometrist holding an active Texas license.

(5) Distant sight provider--The provider providing the **telehealth** service from a site other than the patient's current location.

(6) **Telehealth** service--A health service, other than a **telemedicine** service, that is delivered by a licensed optometrist or therapeutic optometrist acting within the scope of his or her license, and that requires the use of advanced telecommunications technology, other than telephone or facsimile technology, including:

(A) compressed digital interactive video, audio, or data transmission;

(B) clinical data transmission using computer imaging by way of still-image capture and store and forward; and

(C) other technology that facilitates access to health care services or optometric specialty expertise.

(b) Fraud and Abuse Prevention.

(1) All optometrist or therapeutic optometrists that use **telehealth** services in their practices shall adopt protocols to prevent fraud and abuse through the use of **telehealth** services. These standards shall be consistent with those established by the Texas Health and Human Services Commission pursuant to § 531.02161 of the Government Code.

(2) In order to establish that an optometrist or therapeutic optometrist has made a good faith effort in the licensee's practice to prevent fraud and abuse through the use of **telehealth** services, the optometrist or therapeutic optometrist must implement written protocols that address the following:

(A) authentication and authorization of users;

(B) authentication of the origin of information;

(C) the prevention of unauthorized access to the system or information;

(D) system security, including the integrity of information that is collected, program integrity, and system integrity;

(E) maintenance of documentation about system and information usage;

(F) information storage, maintenance, and transmission; and

(G) synchronization and verification of patient profile data.

(c) Notice.

(1) Privacy Practices.

(A) Providers that communicate with patients by electronic communications other than telephone or facsimile must provide patients with written notification of the providers' 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.

(B) 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.

(2) Limitations of **Telehealth**. Providers who use **telehealth** services must, prior to providing services, give their patients notice regarding **telehealth** services, including the risks and benefits of being treated via **telehealth**, 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.

(3) Necessity of In-Person Evaluation. When, for whatever reason, the **telehealth** 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 optometry or therapeutic optometry at an acceptable level of safety and quality in the context of that particular encounter, then the distant site provider must make this known to the patient and advise and counsel the patient regarding the need for the patient to obtain an additional in-person evaluation reasonably able to meet the patient's needs.

(4) Complaints to the Board. Optometrists or therapeutic optometrists that use **telehealth** services must provide notice of how patients may file a complaint with the Board on the optometrist's or therapeutic optometrist's website or with informed consent materials provided to patients prior to rendering **telehealth** services.

(d) Services Provided at an Established Medical Site. **Telehealth** services provided at an established medical site may be used for all patient visits, including initial evaluations to establish a proper doctor-patient relationship between a distant site provider and a patient.

(1) a provider or licensed physician must be reasonably available onsite at the established medical site to assist with the provision of care.

(2) A distant site provider may authorize an assistant at the established medical site to perform the procedures authorized by § 279.1 and § 279.3 of this title (relating to Contact Lens Examination and Spectacle Examination), subject to the same requirements as provided in those sections.

(e) Evaluation and Treatment of the Patient.

(1) Distant site providers who utilize **telehealth** services must ensure that a proper provider-patient relationship is established which at a minimum includes:

(A) establishing that the person requesting the treatment is in fact whom he/she claims to be;

(B) establishing a diagnosis through the use of acceptable medical practices, including patient history, mental status examination, physical examination (unless not warranted by the patient's mental condition), 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;

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

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

(2) 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 appropriate practice as those in traditional in-person clinical settings.

(f) Technology and Security Requirements.

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

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

(3) Electronic Communications.

(A) Written policies and procedures must be maintained when using electronic mail for provider-patient communications. Policies must be evaluated periodically to make sure they are up to date. Such policies and procedures must address: (i) privacy to assure confidentiality and integrity of patient-identifiable information; (ii) health care personnel, in addition to the provider, who will process messages; (iii) hours of operation and availability; (iv) types of transactions that will be permitted electronically; (v) required patient information to be included in the communication, such as patient name, identification number and type of transaction; (vi) archival and retrieval; and (vii) quality oversight mechanisms.

(B) All relevant provider-patient e-mail, as well as other patient-related electronic communications, must be stored and filed in the patient record.

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

(g) Patient Records for **Telehealth** Services.

(1) Patient records must be maintained for all **telehealth** services. Both the distant site provider and the provider or physician at the established medical site must maintain the records created at each site unless the distant site provider maintains the records in an electronic health record format.

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

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

SOURCE: The provisions of this § 279.16 adopted to be effective March 4, 2013, 38 TexReg 1362

22 TAC § 741.1

TEXAS ADMINISTRATIVE CODE

\*\*\* This document reflects all regulations in effect as of March 31, 2014 \*\*\*

TITLE 22. EXAMINING BOARDS  
PART 32. STATE BOARD OF EXAMINERS FOR SPEECH-LANGUAGE PATHOLOGY AND  
AUDIOLOGY  
CHAPTER 741. SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS  
SUBCHAPTER A. DEFINITIONS

22 TAC § 741.1 (2014)

§ 741.1. Definitions

Unless the context clearly indicates otherwise, the following words and terms shall have the following meanings. Refer to Texas Occupations Code, § 401.001, for definitions of additional words and terms.

- (1) ABA--The American Board of Audiology.
- (2) Act--Texas Occupations Code, Chapter 401, relating to speech-language pathologists and audiologists.
- (3) ASHA--The American Speech-Language-Hearing Association.
- (4) Ear specialist--A licensed physician who specializes in diseases of the ear and is medically trained to identify the symptoms of deafness in the context of the total health of the client, and is qualified by special training to diagnose and treat hearing loss. Such physicians are also known as otolaryngologists, otologists, neurotologists, otorhinolaryngologists, and ear, nose, and throat specialists.
- (5) Department--Department of State Health Services.
- (6) Extended absence--More than two consecutive working days for any single continuing education experience.
- (7) Extended recheck--Starting at 40 dB and going down by 10 dB until no response is obtained or until 20 dB is reached and then up by 5 dB until a response is obtained. The frequencies to be evaluated are 1,000, 2,000, and 4,000 hertz (Hz).
- (8) Fitting and dispensing hearing instruments--The measurement of human hearing using professionally accepted practices to select, adapt, or sell a hearing instrument.
- (9) Health care professional--An individual required to be licensed under Texas Occupations Code, Chapter

401, or any person licensed, certified, or registered by the state in a health-related profession.

(10) **Hearing instrument**--Any wearable instrument or device designed for, or represented as; aiding, improving or correcting defective human hearing. This includes the instrument's parts and any attachment, including an earmold, or accessory to the instrument. The term does not include a battery or cord.

(11) **Hearing screening**--A test administered with pass/fail results for the purpose of rapidly identifying those persons with possible hearing impairment which has the potential of interfering with communication.

(12) **Licensed Assistant in Speech-Language Pathology**--An individual who provides speech language pathology support services under supervision of a licensed speech-language pathologist.

(13) **Licensed Assistant in Audiology**--An individual who provides audiological support to clinical programs under supervision of a licensed audiologist.

(14) **Sale or purchase**--Includes the sale, lease or rental of a hearing instrument or augmentative communication device to a member of the consuming public who is a user or prospective user of a hearing instrument or augmentative communication device.

(15) **Telehealth**--The use of telecommunications and information technologies for the exchange of information from one site to another for the provision of speech-language pathology or audiology services to an individual from a provider through hardwire or internet connection.

(16) **Telepractice**--The practice of **telehealth**.

(17) **Under the direction of**--The licensed speech-language pathologist or audiologist directly oversees the services provided and accepts professional responsibility for the actions of the personnel he or she agrees to direct.

**SOURCE:** The provisions of this § 741.1 adopted to be effective March 22, 2006, 31 TexReg 2160; amended to be effective May 18, 2008, 33 TexReg 3742; amended to be effective January 16, 2011, 36 TexReg 43; amended to be effective March 18, 2012, 37 TexReg 1706

**NOTES:**

**CROSS-REFERENCES:** This Section cited in 22 TAC § 741.32, (relating to Hearing Screening).

22 TAC § 741.211

TEXAS ADMINISTRATIVE CODE

\*\*\* This document reflects all regulations in effect as of March 31, 2014 \*\*\*

TITLE 22. EXAMINING BOARDS  
PART 32. STATE BOARD OF EXAMINERS FOR SPEECH-LANGUAGE PATHOLOGY AND  
AUDIOLOGY  
CHAPTER 741. SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS  
SUBCHAPTER O. **TELEHEALTH**

22 TAC § 741.211 (2014)

§ 741.211. Definitions

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

- (1) Board--The Texas State Board of Examiners for Speech-Language Pathology and Audiology.
- (2) Client--A consumer of **telehealth** services.
- (3) Client/Patient Site--Location of the patient or client at the time the service is being furnished via telecommunications.
- (4) Consultant--Any professional who collaborates with a provider of **telehealth** services to provide services to clients.
- (5) Facilitator--Individual at the client site who facilitates the **telehealth** service delivery at the direction of the audiologist or speech language pathologist.
- (6) Provider--A speech-language pathologist or audiologist fully licensed by the board who provides **telehealth** services.
- (7) Provider Site--Site at which the speech-language pathologist or audiologist delivering the service is located at the time the service is provided via telecommunications.
- (8) **Telehealth**--The use of telecommunications and information technologies for the exchange of information from one site to another for the provision of speech-language pathology or audiology services to a client from a provider.
- (9) **Telehealth Service**--The application of telecommunication technology to deliver speech-language pathology and/or audiology services at a distance for assessment, intervention, and/or consultation.

(10) Telepractice--The practice of **telehealth**.

SOURCE: The provisions of this § 741.211 adopted to be effective January 16, 2011, 36 TexReg 43

*22 TAC § 741.212*

TEXAS ADMINISTRATIVE CODE

\*\*\* This document reflects all regulations in effect as of March 31, 2014 \*\*\*

TITLE 22. EXAMINING BOARDS  
PART 32. STATE BOARD OF EXAMINERS FOR SPEECH-LANGUAGE PATHOLOGY AND  
AUDIOLOGY  
CHAPTER 741. SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS  
SUBCHAPTER O. TELEHEALTH

22 TAC § 741.212 (2014)

§ 741.212. Service Delivery Models

- (a) Telehealth may be delivered in a variety of ways, including, but not limited to those set out in this section.
- (1) Store-and-forward model/electronic transmission is an asynchronous electronic transmission of stored clinical data from one location to another.
- (2) Clinician interactive model is a synchronous, real time interaction between the provider and client or consultant that may occur via telecommunication links.
- (b) Self-monitoring/testing model refers to when the client or consultant receiving the services provides data to the provider without a facilitator present at the site of the client or consultant.

(c) Live versus stored data refers to the actual data transmitted during the telepractice. Both live, real-time and stored clinical data may be included during the telepractice.

SOURCE: The provisions of this § 741.212 adopted to be effective January 16, 2011, [36 TexReg 43](#)

22 TAC § 741.213

TEXAS ADMINISTRATIVE CODE

\*\*\* This document reflects all regulations in effect as of March 31, 2014 \*\*\*

TITLE 22. EXAMINING BOARDS  
PART 32. STATE BOARD OF EXAMINERS FOR SPEECH-LANGUAGE PATHOLOGY AND  
AUDIOLOGY  
CHAPTER 741. SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS  
SUBCHAPTER O. **TELEHEALTH**

22 TAC § 741.213 (2014)

§ 741.213. Guidelines for the Use of **Telehealth**

- (a) A provider shall comply with the board's Code of Ethics and Scope of Practice requirements when providing **telehealth** services.
- (b) The scope, nature, and quality of services provided via **telehealth** are the same as that provided during in-person sessions by the provider.
- (c) The quality of electronic transmissions shall be equally appropriate for the provision of **telehealth** services as if those services were provided in person.
- (d) A provider shall only utilize technology which they are competent to use as part of their **telehealth** services.
- (e) Equipment used for **telehealth** services at the clinician site shall be maintained in appropriate operational status to provide appropriate quality of services.
- (f) Equipment used at the client/patient site at which the client or consultant is present shall be in appropriate working condition and deemed appropriate by the provider.
- (g) The initial contact between the provider and client shall be at the same physical location to assess the client's

candidacy for **telehealth**, including behavioral, physical, and cognitive abilities to participate in services provided via telecommunications.

(h) A provider shall be aware of the client or consultant level of comfort with the technology being used as part of the **telehealth** services and adjust their practice to maximize the client or consultant level of comfort.

(i) When a provider collaborates with a consultant from another state in which the telepractice services are delivered, the consultant in the state in which the client receives services shall be the primary care provider for the client.

(j) As pertaining to liability and malpractice issues, a provider shall be held to the same standards of practice as if the **telehealth** services were provided in person.

(k) A provider shall be sensitive to cultural and linguistic variables that affect the identification, assessment, treatment, and management of the clients.

(l) Upon request, a provider shall submit to the board data which evaluates effectiveness of services provided via **telehealth** including, but not limited to, outcome measures.

(m) **Telehealth** providers shall comply with all laws, rules, and regulations governing the maintenance of client records, including client confidentiality requirements, regardless of the state where the records of any client within this state are maintained.

(n) Notification of **telehealth** services should be provided to the client, the guardian, the caregiver, and the multi-disciplinary team, if appropriate. The notification shall include, but not be limited to: the right to refuse **telehealth** services, options for service delivery, and instructions on filing and resolving complaints.

SOURCE: The provisions of this § 741.213 adopted to be effective January 16, 2011, 36 TexReg 43

22 TAC § 741.214

TEXAS ADMINISTRATIVE CODE

\*\*\* This document reflects all regulations in effect as of March 31, 2014 \*\*\*

TITLE 22. EXAMINING BOARDS  
PART 32. STATE BOARD OF EXAMINERS FOR SPEECH-LANGUAGE PATHOLOGY AND  
AUDIOLOGY  
CHAPTER 741. SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS  
SUBCHAPTER O. TELEHEALTH

22 TAC § 741.214 (2014)

§ 741.214. Limitations of Telehealth Services

Telehealth services may not be provided by correspondence only, e.g., mail, email, faxes, although they may be adjuncts to telepractice.

SOURCE: The provisions of this § 741.214 adopted to be effective January 16, 2011, [36 TexReg 43](#)

*Va. Code Ann. § 54.1-2957*

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\*\*\* Current through the 2013 Regular Sessions \*\*\*  
\*\*\* of the General Assembly and Acts 2014, c. 1. \*\*\*  
\*\*\* Annotations current through April 3, 2014. \*\*\*

TITLE 54.1. PROFESSIONS AND OCCUPATIONS  
SUBTITLE III. PROFESSIONS AND OCCUPATIONS REGULATED BY BOARDS WITHIN THE  
DEPARTMENT OF HEALTH PROFESSIONS  
CHAPTER 29. MEDICINE AND OTHER HEALING ARTS  
ARTICLE 4. LICENSURE AND CERTIFICATION OF OTHER PRACTITIONERS OF THE HEALING  
ARTS

*Va. Code Ann. § 54.1-2957 (2014)*

§ 54.1-2957. Licensure and practice of nurse practitioners; practice agreements

A. The Board of Medicine and the Board of Nursing shall jointly prescribe the regulations governing the licensure of nurse practitioners. It shall be unlawful for a person to practice as a nurse practitioner in the Commonwealth unless he holds such a joint license.

B. A nurse practitioner shall only practice as part of a patient care team. Each member of a patient care team shall have specific responsibilities related to the care of the patient or patients and shall provide health care services within the scope of his usual professional activities. Nurse practitioners practicing as part of a patient care team shall maintain appropriate collaboration and consultation, as evidenced in a written or electronic practice agreement, with at least one patient care team physician. Nurse practitioners who are certified registered nurse anesthetists shall practice under the supervision of a licensed doctor of medicine, osteopathy, podiatry, or dentistry. Collaboration and consultation among nurse practitioners and patient care team physicians may be provided through **telemedicine** as described in § 38.2-3418.16. Practice of patient care teams in all settings shall include the periodic review of patient charts or electronic health records and may include visits to the site where health care is delivered in the manner and at the frequency determined by the patient care team.

Physicians on patient care teams may require that a nurse practitioner be covered by a professional liability insurance policy with limits equal to the current limitation on damages set forth in § 8.01-581.15.

Service on a patient care team by a patient care team member shall not, by the existence of such service alone, establish or create liability for the actions or inactions of other team members.

C. The Board of Medicine and the Board of Nursing shall jointly promulgate regulations specifying collaboration and consultation among physicians and nurse practitioners working as part of patient care teams that shall include the development of, and periodic review and revision of, a written or electronic practice agreement; guidelines for availability and ongoing communications that define consultation among the collaborating parties and the patient; and periodic joint evaluation of the services delivered. Practice agreements shall include a provision for appropriate physician input in complex clinical cases and patient emergencies and for referrals. Evidence of a practice agreement shall be maintained by a nurse practitioner and provided to the Boards upon request. For nurse practitioners providing care to patients within a hospital or health care system, the practice agreement may be included as part of documents delineating the nurse practitioner's clinical privileges or the electronic or written delineation of duties and responsibilities in collaboration and consultation with a patient care team physician.

D. The Boards may issue a license by endorsement to an applicant to practice as a nurse practitioner if the applicant has been licensed as a nurse practitioner under the laws of another state and, in the opinion of the Boards, the applicant meets the qualifications for licensure required of nurse practitioners in the Commonwealth.

E. Pending the outcome of the next National Specialty Examination, the Boards may jointly grant temporary licensure to nurse practitioners.

F. As used in this section:

*"Collaboration"* means the communication and decision-making process among members of a patient care team related to the treatment and care of a patient and includes (i) communication of data and information about the treatment and care of a patient, including exchange of clinical observations and assessments; and (ii) development of an appropriate plan of care, including decisions regarding the health care provided, accessing and assessment of appropriate additional resources or expertise, and arrangement of appropriate referrals, testing, or studies.

*"Consultation"* means the communicating of data and information, exchanging of clinical observations and assessments, accessing and assessing of additional resources and expertise, problem-solving, and arranging for referrals, testing, or studies.

**HISTORY:** Code 1950, § 54-274; 1950, p. 98; 1958, c. 161; 1962, c. 127; 1966, c. 657; 1970, c. 69; 1973, cc. 105, 514, 529; 1975, c. 508; 1976, c. 15; 1980, c. 157; 1982, c. 220; 1985, cc. 303, 347; 1986, c. 377; 1988, c. 765; 2006, c. 750; 2012, c. 213.

**NOTES:** EDITOR'S NOTE. --Acts 2006, c. 750, cl. 2 provides: "That the Boards of Medicine and Nursing shall promulgate regulations to implement the provisions of this act to be effective within 280 days of its

enactment."

Acts 2012, c. 213, cl. 2 provides: "That the Board of Medicine and the Board of Nursing shall promulgate regulations to implement the provisions of this act to be effective within 280 days of its enactment."

THE 2006 AMENDMENTS. --The 2006 amendment by c. 750 inserted the A and C designations at the beginning of the first and second paragraphs and added subsection B.

THE 2012 AMENDMENTS. --The 2012 amendment by c. 213 added subsections B and F; redesignated former subsections B and C as subsections C through E; in subsection C, in the first sentence, substituted "nurse practitioners working as part of patient care teams" for "certified nurse midwives" and "a written or electronic practice agreement" for "a written protocol" and added the last three sentences; and made minor stylistic changes.

LAW REVIEW. --For 2006 survey article, "Health Care Law," see 41 U. Rich. L. Rev. 179 (2006).

MICHIE'S JURISPRUDENCE REFERENCES. --For related discussion, see 14B M.J. Physicians and Surgeons, § 9.

*Va. Code Ann. § 38.2-3418.16*

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\*\*\* Current through the 2013 Regular Sessions \*\*\*  
\*\*\* of the General Assembly and Acts 2014, c. 1. \*\*\*  
\*\*\* Annotations current through April 3, 2014. \*\*\*

TITLE 38.2. INSURANCE  
CHAPTER 34. PROVISIONS RELATING TO ACCIDENT AND SICKNESS INSURANCE  
ARTICLE 2. MANDATED BENEFITS

Va. Code Ann. § **38.2-3418.16** (2014)

§ **38.2-3418.16**. Coverage for telemedicine services

A. Notwithstanding the provisions of § 38.2-3419, each insurer proposing to issue individual or group accident and sickness insurance policies providing hospital, medical and surgical, or major medical coverage on an expense-incurred basis; each corporation providing individual or group accident and sickness subscription

contracts; and each health maintenance organization providing a health care plan for health care services shall provide coverage for the cost of such health care services provided through telemedicine services, as provided in this section.

B. As used in this section, "telemedicine services," as it pertains to the delivery of health care services, means the use of interactive audio, video, or other electronic media used for the purpose of diagnosis, consultation, or treatment. "Telemedicine services" do not include an audio-only telephone, electronic mail message, or facsimile transmission.

C. An insurer, corporation, or health maintenance organization shall not exclude a service for coverage solely because the service is provided through telemedicine services and is not provided through face-to-face consultation or contact between a health care provider and a patient for services appropriately provided through telemedicine services.

D. An insurer, corporation, or health maintenance organization shall not be required to reimburse the treating provider or the consulting provider for technical fees or costs for the provision of telemedicine services; however, such insurer, corporation, or health maintenance organization shall reimburse the treating provider or the consulting provider for the diagnosis, consultation, or treatment of the insured delivered through telemedicine services on the same basis that the insurer, corporation, or health maintenance organization is responsible for coverage for the provision of the same service through face-to-face consultation or contact.

E. Nothing shall preclude the insurer, corporation, or health maintenance organization from undertaking utilization review to determine the appropriateness of telemedicine services, provided that such appropriateness is made in the same manner as those determinations are made for the treatment of any other illness, condition, or disorder covered by such policy, contract, or plan. Any such utilization review shall not require pre-authorization of emergent telemedicine services.

F. An insurer, corporation, or health maintenance organization may offer a health plan containing a deductible, copayment, or coinsurance requirement for a health care service provided through telemedicine services, provided that the deductible, copayment, or coinsurance does not exceed the deductible, copayment, or coinsurance applicable if the same services were provided through face-to-face diagnosis, consultation, or treatment.

G. No insurer, corporation, or health maintenance organization shall impose any annual or lifetime dollar maximum on coverage for telemedicine services other than an annual or lifetime dollar maximum that applies in the aggregate to all items and services covered under the policy, or impose upon any person receiving benefits pursuant to this section any copayment, coinsurance, or deductible amounts, or any policy year, calendar year, lifetime, or other durational benefit limitation or maximum for benefits or services, that is not equally imposed upon all terms and services covered under the policy, contract, or plan.

H. The requirements of this section shall apply to all insurance policies, contracts, and plans delivered, issued for delivery, reissued, or extended in the Commonwealth on and after January 1, 2011, or at any time thereafter when any term of the policy, contract, or plan is changed or any premium adjustment is made.

I. This section shall not apply to short-term travel, accident-only, limited or specified disease, or individual

conversion policies or contracts, nor to policies or contracts designed for issuance to persons eligible for coverage under Title XVIII of the Social Security Act, known as Medicare, or any other similar coverage under state or federal governmental plans.

**HISTORY:** 2010, c. 222.

18 V.S.A. § 9361

VERMONT STATUTES ANNOTATED

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\*\*\* Statutes current through the 2013 Session \*\*\*  
\*\*\* Annotations current through December 6, 2013 \*\*\*

TITLE EIGHTEEN. HEALTH  
PART 9. UNIFIED HEALTH CARE SYSTEM  
CHAPTER 219. HEALTH INFORMATION TECHNOLOGY AND **TELEMEDICINE**  
SUBCHAPTER 2. **TELEMEDICINE**

18 V.S.A. § 9361 (2013)

§ 9361. Health care providers providing **telemedicine** or store and forward services

(a) Subject to the limitations of the license under which the individual is practicing, a health care provider licensed in this state may prescribe, dispense, or administer drugs or medical supplies, or otherwise provide treatment recommendations to a patient after having performed an appropriate examination of the patient either in person or by the use of instrumentation and diagnostic equipment through which images and medical records may be transmitted electronically. Treatment recommendations made via electronic means, including issuing a prescription via electronic means, shall be held to the same standards of appropriate practice as those in traditional provider-patient settings. For purposes of this subchapter, "**telemedicine**" shall have the same meaning as in 8 V.S.A. § 4100k.

(b) A patient receiving teleophthalmology or teledermatology by store and forward means shall be informed of the right to receive a consultation with the distant site health care provider and shall receive a consultation with the distant site health care provider upon request. If requested, the consultation with the distant site health care provider may occur either at the time of the initial consultation or within a reasonable time of the patient's notification of the results of the initial consultation. Receiving teledermatology or teleophthalmology by store and forward means shall not preclude a patient from receiving real time **telemedicine** or face-to-face services with the distant site health care provider at a future date. Originating site health care providers involved in the store and forward process shall ensure informed consent from the patient. For purposes of this subchapter, "store and forward" shall have the same meaning as in 8 V.S.A. § 4100k.

**HISTORY:** Added 2011, No. 107 (Adj. Sess.), § 4, eff. May 8, 2012.

## NOTES APPLICABLE TO ENTIRE TITLE

### HISTORY

REGULATION OF LEAD; CONSTRUCTION. 2007, No. 176 (Adj. Sess.), § 36 provides: "Nothing in Secs. 25 through 35 of this act, relating to the regulation of lead, shall be construed to regulate firearms, ammunition, or shooting ranges or circumstances resulting from shooting, handling, storing, or casting and reloading ammunition."

## NOTES APPLICABLE TO ENTIRE CHAPTER

### HISTORY

#### REVISION NOTE.

--REVISION NOTE--2013. Chapter 219 was redesignated to be located within Part 9.

AMENDMENTS--2011 (ADJ. SESS.). Catchline: Inserted "and **Telemedicine**" following "Technology".

VERMONT STATUTES ANNOTATED  
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\*\*\* Statutes current through the 2013 Session \*\*\*  
\*\*\* Annotations current through December 6, 2013 \*\*\*

TITLE EIGHT. BANKING AND INSURANCE  
PART 3. INSURANCE  
CHAPTER 107. HEALTH INSURANCE  
SUBCHAPTER 14. TELEMEDICINE

**8 V.S.A. § 4100k (2013)**

§ 4100k. Coverage of telemedicine services

(a) All health insurance plans in this State shall provide coverage for telemedicine services delivered to a patient in a health care facility to the same extent that the services would be covered if they were provided through in-person consultation.

(b) A health insurance plan may charge a deductible, co-payment, or coinsurance for a health care service provided through telemedicine so long as it does not exceed the deductible, co-payment, or coinsurance applicable to an in-person consultation.

(c) A health insurance plan may limit coverage to health care providers in the plan's network and may require originating site health care providers to document the reason the services are being provided by telemedicine rather than in person.

(d) Nothing in this section shall be construed to prohibit a health insurance plan from providing coverage for only those services that are medically necessary, subject to the terms and conditions of the covered person's policy.

(e) A health insurance plan may reimburse for teleophthalmology or teledermatology provided by store and forward means and may require the distant site health care provider to document the reason the services are being provided by store and forward means.

(f) Nothing in this section shall be construed to require a health insurance plan to reimburse the distant site health care provider if the distant site health care provider has insufficient information to render an opinion.

(g) As used in this subchapter:

(1) "Health insurance plan" means any health insurance policy or health benefit plan offered by a health insurer, as defined in 18 V.S.A. § 9402, as well as Medicaid and any other public health care assistance program offered or administered by the State or by any subdivision or instrumentality of the State. The term does not include policies or plans providing coverage for specified disease or other limited benefit coverage.

(2) "Health care facility" shall have the same meaning as in 18 V.S.A. § 9402.

(3) "Store and forward" means an asynchronous transmission of medical information to be reviewed at a later date by a health care provider at a distant site who is trained in the relevant specialty and by which the health care provider at the distant site reviews the medical information without the patient present in real time.

(4) "Telemedicine" means the delivery of health care services such as diagnosis, consultation, or treatment through the use of live interactive audio and video over a secure connection that complies with the requirements of the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191. Telemedicine does not include the use of audio-only telephone, e-mail, or facsimile.

**HISTORY:** Added 2011, No. 107 (Adj. Sess.), § 1, eff. Oct. 1, 2012; amended 2013, No. 79, § 15, eff. Jan. 1, 2014.

#### **NOTES: HISTORY**

AMENDMENTS--2013. Subdivision (g)(1): Deleted ", the Vermont health access plan," following "Medicaid".

EFFECTIVE DATE AND APPLICABILITY OF ENACTMENT. 2011, No. 107 (Adj. Sess.), § 7(a) provides: "Sec. 1 of this act [which enacted this section] shall take effect on October 1, 2012 and shall apply to all health insurance plans on and after October 1, 2012 on such date as a health insurer offers, issues, or renews the health insurance plan, but in no event no later than October 1, 2013."

TELEMEDICINE PILOT PROJECTS. 2013, No. 40, § 1, provides: "Notwithstanding 8 V.S.A. chapter 107, subchapter 14, the Department of Vermont Health Access and the Green Mountain Care Board shall consider implementation of one or more pilot projects using telemedicine in order to expand access to health care services in a cost-efficient manner as part of payment and delivery system reform. In designing pilot projects, the Department and Board shall consider the appropriate scope of services that should be provided through telemedicine outside of a health care facility, the potential costs and changes in access to those services relative to current service delivery, the possibility of equipping home health agency nurses with the tools needed to provide telemedicine services during home health visits, and safeguards to ensure quality of care, patient confidentiality, and information security needed for the pilot projects."

#### **NOTES APPLICABLE TO ENTIRE TITLE**

#### **HISTORY**

PRIOR LAW. Portions of Title 8 were repealed and replaced by 1969, No. 64, § 1, eff. Jan 1, 1970. The subject matter and derivation of the provisions repealed by 1969, No. 64 were as follows:

Chapter 1, consisting of §§ 1-3, related to the commissioner of banking and insurance, and was derived from

1965, No. 42. 1959, No. 211, §§ 1, 3. 1959, No. 223. 1959, No. 329 (Adj. Sess.), § 15. 1949, No. 202. V.S. 1947, §§ 8617-8623, 8625-8630. 1947, No. 202, §§ 8774, 8779, 8783. 1945, No. 150, § 1. 1939, No. 187, § 1. P.L. §§ 6634-6645. 1933, No. 157, §§ 6308, 6309, 6311-6313, 6317, 6318, 6319. 1929, No. 18. 1923, No. 7, § 3. 1923, No. 8, § 3. 1919, No. 21, § 3. 1919, No. 153. G.L. §§ 566, 569, 570, 5504-5506, 5509, 5510, 5512, 5513, 5577, 5619. 1917, No. 160, §§ 1-3, 6-8. 1917, No. 166. 1915, No. 1, § 49. 1915, No. 160. 1912, No. 172, § 2. 1908, No. 21, § 1. 1908, No. 113. P.S. §§ 397, 402, 403, 4750, 4752, 4753, 4820. 1906, No. 130, § 4. 1906, No. 203, § 1. 1906, No. 214, § 3. 1904, No. 20, § 2. 1904, No. 101, § 1. 1900, No. 9, § 1. 1898, No. 138, § 12. V.S. §§ 291, 296, 297, 4171, 4219, 4220. 1886, No. 105, § 3. 1884, No. 44, § 11. R.L. §§ 210, 211, 3606, 3629, 3630. 1878, No. 1, § 2. 1876, No. 101, § 3. 1874, No. 1, §§ 6, 18, 20. 1874, No. 87, § 4. G.S. 87, § 15. G.S. 8, § 66. 1860, No. 53, § 18. 1852, No. 46, § 16.

Chapter 3, consisting of §§ 71-73, related to the advisory banking board, and was derived from V.S. 1947, §§ 8631-8633. 1939, No. 188. P.L. §§ 6646-6648. 1933, No. 124, §§ 1-3.

Chapter 5, consisting of § 131, related to mortgage loans to minors by banks or insurance companies, and was derived from 1955, No. 212.

Chapter 21, consisting of §§ 331-340, 381-392, related to formation, merger and consolidation of savings banks and trust companies, and was derived from 1963, No. 174, §§ 1, 2, 4. 1959, No. 167. 1951, No. 184. 1949, No. 203. V.S. 1947, §§ 8650-8661. 1974, No. 202, §§ 8803, 8805-8809, 8812. 1943, No. 133, §§ 1, 27. 1935, No. 166, § 1. 1935, No. 175, §§ 1-5, 7. P.L. §§ 6649-6654, 6658-6662. 1933, No. 123, § 6. 1919, No. 134, § 1. G.L. §§ 5341-5345, 5349-5353. 1917, No. 254, § 5228. 1915, No. 150, §§ 1, 4-8.

Chapter 23, consisting of §§ 451-461, 501-506, 551-555, 601-615, 651-666, 711-717, 751-771, 801-818, 851-863, 901-908, 941, 942, 981, 982, 1021-1024, 1061-1064, 1101-1111, 1141-1152, 1191-1205, 1241-1250, 1291-1298, related to powers, duties and liabilities of banking institutions, and was derived from 1965, No. 18. 1965, No. 161, §§ 1, 2. 1965, No. 181, §§ 1-4. 1964, No. 13 (Sp. Sess.), §§ 1, 2. 1964, No. 35 (Sp. Sess.), § 31. 1963, No. 75. 1963, No. 13 (Sp. Sess.), §§ 1, 2. 1964, No. 35 (Sp. Sess.), § 31. 1963, No. 75. 1963, No. 82. 1963, No. 94. 1963, No. 174, § 3. 1963, No. 174, § 3. 1963, No. 202. 1963, No. 208. 1961, No. 63. 1961, No. 82, § 1. 1961, No. 117. 1961, No. 121. 1961, No. 224, §§ 1, 2. 1959, No. 54. 1959, No. 140. 1959, No. 262, § 37. 1957, No. 22. 1957, No. 30. 1957, No. 34. 1957, No. 76. 1957, No. 123. 1955, No. 38. 1953, No. 113. 1953, No. 120. 1953, No. 120. 1953, No. 126, §§ 1, 2. 1953, No. 140. 1953, No. 151, §§ 2, 3. 1953, No. 189. 1951, No. 186, §§ 1, 2. 1951, No. 186, §§ 1, 2. 1951, No. 187. 1951, No. 188. 1949, No. 204. 1949, No. 205. 1949, No. 206, §§ 1-4. 1949, No. 207. 1949, No. 208. 1949, No. 209. 1949, No. 210, §§ 1, 2. 1949, No. 211. V.S. 1947, §§ 5522, 5532, 5533, 8640-8649, 8709-8720, 8722-8767, 8772-8834, 8836-8877. 1947, No. 164, § 1. 1947, No. 54, § 2. 1945, No. 153, §§ 1-14. 1945, No. 154, §§ 1-3, 6. 1943, No. 133, §§ 2-24, 26. 1939, No. 192. 1939, No. 193, §§ 1-3. 1939, No. 194, §§ 1, 2. 1937, No. 175, §§ 1-3. 1937, No. 178, § 1. 1935, No. 167, §§ 1, 2, 4. 1935, No. 169, § 1. 1935, No. 171, §§ 2, 3. 1935, No. 172, § 1. 1935, No. 173, §§ 1-5. 1935, No. 174, § 1. 1935, No. 175, §§ 6, 8. P.L. §§ 6655-6657, 6664-6685, 6687-6698, 6700-6705, 6708-6736, 6738-6741, 6743-6783, 6785-6791, 6793, 6795, 6799-6804, 6806, 6809-6812, 6814-6820. 7214-7224, 7225. 1935 S., No. 14, § 1. 1933, No. 120, §§ 1-9. 1933, No. 121, §§ 1-8. 1933, No. 122, § 1. 1933, No. 123, §§ 1, 2, 4. 1933, No. 124, §§ 4-10, 22, 23, 25, 36. 1933, No. 125, §§ 1-7. 1933, No. 157, §§ 6350, 6399a, 6836. 1933, S., No. 7, §§ 1, 2. 1931, No. 108, § 1. 1931, No. 109, § 1. 1929, No. 89, §§ 1, 2. 1929, No. 91. 1929, No. 92, § 1. 1927, No. 91. 1927, No. 92, § 13. 1925, No. 94. 1923, No. 7, § 46. 1923, No. 49. 1923, No. 50. No. 97. 1923, No. 99. 1921, No. 76. 1921, No. 153. 1919, No. 141, §§ 1-4. 1919, No. 143, §§ 1-5. 1919, No. 144, § 1. G.L. §§ 2854, 5346-5348, 5355, 5357-5362, 5365-5382, 5385, 5392-5394, 5396-5413, 5415-5419, 5421-5429, 5432, 5437, 5439-5442, 5444-5446. 1917, No. 158, §§ 4, 40. 1917, No. 254, §§ 5222, 5268. 1915, No. 150, §§ 2, 3. 1915, No. 151. 1915, No. 154. 1915, No. 156. 1912, No. 169. 1910, No. 35, § 8. 1910, No. 157. 1910, No. 158, §§ 1-7, 9-21, 24-29, 31-61, 64, 69, 71-74, 76-78. 1910, No. 159, § 1. 1908, No. 21, § 2. 1908, No. 32. 1908, No. 109, §§

1, 2. 1908, No. 111, § 1. P.S. §§ 400, 2687, 4615-4643, 4646, 4647, 4656-4659, 4661, 4662, 4673-4685, 4687-4692. 1906, No. 28, § 8. 1906, No. 127, § 1. 1906, No. 129, § 1. 1904, No. 30, § 63. 1904, No. 99, § 1. 1904, No. 100, §§ 1-3. 1902, No. 20, § 72. 1902, No. 72, §§ 1-5. 1900, No. 52, § 1. 1900, No. 54, § 1. 1898, No. 53, § 1. V.S. §§ 294, 2312, 4066-4091, 4094, 4095, 4103-4106, 4108, 4109, 4111, 4113, 4120-4130. 1894, No. 92. 1894, No. 95. 1894, No. 96. 1892, No. 70, §§ 1-4. 1892, No. 71. 1888, No. 14. 1888, No. 143. 1884, No. 41, §§ 1-22, 29-32, 34, 35, 38-45. 1882, No. 73. R.L. §§ 3558-3578, 3588, 3590, 3591, 3599-3605. 1880, No. 56. 1880, No. 56. 1880, No. 121, §§ 1-3. 1878, No. 1, §§ 1, 4-14, 16, 19, 21, 22. 1878, No. 3. 1874, No. 81, §§ 1, 5. 1872, No. 22. G.S. 86, §§ 26, 28-30, 34-39. 1859, No. 29. 1858, No. 26, §§ 1, 2. 1857, No. 42, § 1. 1854, No. 27. 1851, No. 59, §§ 1-3, 7. 1847, No. 18, § 3.

Chapter 25, consisting of §§ 1381-1384, related to national banks, and was derived from 1957, No. 189. V.S. 1947, §§ 8878-8881. 1947, No. 202, § 9030. 1943, No. 133, § 25. P.L. §§ 6822. 6823, 6825, 6826. 1919, No. 145, § 1. G.L. §§ 5447-5450. 1915, No. 157, §§ 1-3. 1908, No. 32.

Chapter 27, consisting of §§ 1441-1444, related to development credit corporations, and was derived from 1953, No. 151, § 1(I)-(IV).

## NOTES APPLICABLE TO ENTIRE PART

### CROSS REFERENCES

State's insurance generally, see § 1401 et seq. of Title 29.

### ANNOTATIONS

CITED. Cited in *Vermont Development Credit Corp. v. Kitchel* (1988) 149 Vt. 421, 544 A.2d 1165.

## NOTES APPLICABLE TO ENTIRE CHAPTER

### HISTORY

INSURANCE REGULATION; LEGISLATIVE INTENT. 2009, No. 128 (Adj. Sess.), § 26 provides: "It is the intent of the general assembly that the commissioner of banking, insurance, securities, and health care administration use the existing insurance rate review and approval authority to control the costs of health insurance unrelated to the cost of medical care where consistent with other statutory obligations, such as ensuring solvency. Rate review and approval authority may include imposing limits on:

- "(1) administrative costs as a percentage of the premium;
- "(2) contributions to reserves;
- "(3) producer commissions in specified markets;
- "(4) medical trends;
- "(5) pharmacy trends; and
- "(6) such other areas as the commissioner deems appropriate."

### CROSS REFERENCES

Health insurance coverage, mental health and substance abuse, see § 4089b of this title.

Long-term care insurance, see § 8051 et seq. of this title.

Transfer and assumption of insurance contracts, see § 8201 et seq. of this title.

## WAC § 246-915-187

Washington Administrative Code  
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TITLE 246. HEALTH, DEPARTMENT OF  
PROFESSIONAL STANDARDS AND LICENSING  
CHAPTER 915. PHYSICAL THERAPISTS AND PHYSICAL THERAPIST ASSISTANTS

### WAC § 246-915-187 (2014)

WAC 246-915-187. Use of **telehealth** in the practice of physical therapy.

(1) Licensed physical therapists and physical therapist assistants may provide physical therapy via **telehealth** following all requirements for standard of care, including those defined in chapters 18.74 RCW and 246-915 WAC.

(2) The physical therapist or physical therapist assistant must identify in the clinical record that the physical therapy occurred via **telehealth**.

(3) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise:

(a) "**Telehealth**" means providing physical therapy via electronic communication where the physical therapist or physical therapist assistant and the patient are not at the same physical location.

(b) "Electronic communication" means the use of interactive, secure multimedia equipment that includes, at a minimum, audio and video equipment permitting two-way, real time interactive communication between the physical therapist or the physical therapist assistant and the patient.

Statutory Authority: RCW 18.74.023 and 18.74.025. 11-05-026, § 246-915-187, filed 2/7/11, effective 3/10/11

*W. Va. Code § 30-5-4*

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\*\*\* Text Current Through The 2013 Regular And First Extraordinary Sessions \*\*\*  
\*\*\* Annotations Current Through February 1, 2014 \*\*\*

Chapter 30. Professions and Occupations.  
Article 5. Pharmacists, Pharmacy Technicians, Pharmacy Interns and Pharmacies.

W. Va. Code § 30-5-4 (2014)

**§ 30-5-4. Definitions.**

As used in this article:

(1) "Ambulatory health care facility" includes any facility defined in section one [§ 16-5B-1], article five-b, chapter sixteen of this code, that also has a pharmacy, offers pharmacist care, or is otherwise engaged in the practice of pharmacist care.

(2) "Active Ingredients" means chemicals, substances, or other components of articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of diseases in humans or animals or for use as nutritional supplements.

(3) "Administer" means the direct application of a drug to the body of a patient or research subject by injection, inhalation, ingestion or any other means.

(4) "Board" means the West Virginia Board of Pharmacy.

(5) "Board authorization" means a license, registration or permit issued under this article.

(6) "Chain Pharmacy Warehouse" means a permanent physical location for drugs and/or devices that acts as a central warehouse and performs intracompany sales and transfers of prescription drugs or devices to chain pharmacies, which are members of the same affiliated group, under common ownership and control.

(7) "Charitable clinic pharmacy" means a clinic or facility organized as a not-for-profit corporation that has a pharmacy, offers pharmacist care, or is otherwise engaged in the practice of pharmacist care and dispenses its prescriptions free of charge to appropriately screened and qualified indigent patients.

**(8)** "Collaborative pharmacy practice" is that practice of pharmacist care where one or more pharmacists have jointly agreed, on a voluntary basis, to work in conjunction with one or more physicians under written protocol where the pharmacist or pharmacists may perform certain patient care functions authorized by the physician or physicians under certain specified conditions and limitations.

**(9)** "Collaborative pharmacy practice agreement" is a written and signed agreement, which is a physician directed approach, that is entered into between an individual physician or physician group, an individual pharmacist or pharmacists and an individual patient or the patient's authorized representative who has given informed consent that provides for collaborative pharmacy practice for the purpose of drug therapy management of a patient, which has been approved by the board, the Board of Medicine in the case of an allopathic physician or the West Virginia Board of Osteopathic Medicine in the case of an osteopathic physician.

**(10)** "Common Carrier" means any person or entity who undertakes, whether directly or by any other arrangement, to transport property including prescription drugs for compensation.

**(11)** "Component" means any active ingredient or added substance intended for use in the compounding of a drug product, including those that may not appear in such product.

**(12)** "Compounding" means:

**(A)** The preparation, mixing, assembling, packaging or labeling of a drug or device:

**(i)** As the result of a practitioner's prescription drug order or initiative based on the practitioner/patient/pharmacist relationship in the course of professional practice for sale or dispensing; or

**(ii)** For the purpose of, or as an incident to, research, teaching or chemical analysis and not for sale or dispensing; and

**(B)** The preparation of drugs or devices in anticipation of prescription drug orders based on routine, regularly observed prescribing patterns.

**(13)** "Deliver" or "delivery" means the actual, constructive or attempted transfer of a drug or device from one person to another, whether or not for a consideration.

**(14)** "Device" means an instrument, apparatus, implement or machine, contrivance, implant or other similar or related article, including any component part or accessory, which is required under federal law to bear the label, "Caution: Federal or state law requires dispensing by or on the order of a physician."

**(15)** "Digital Signature" means an electronic signature based upon cryptographic methods of originator authentication, and computed by using a set of rules and a set of parameters so that the identity of the signer and the integrity of the data can be verified.

**(16)** "Dispense" or "dispensing" means the interpretation, evaluation, and implementation of a prescription drug order, including the preparation, verification and delivery of a drug or device to a patient or patient's agent

in a suitable container appropriately labeled for subsequent administration to, or use by, a patient.

**(17)** "Distribute" or "Distribution" means to sell, offer to sell, deliver, offer to deliver, broker, give away, or transfer a drug, whether by passage of title, physical movement, or both. The term does not include:

**(A)** To dispense or administer;

**(B) (i)** Delivering or offering to deliver a drug by a common carrier in the usual course of business as a common carrier; or providing a drug sample to a patient by a practitioner licensed to prescribe such drug;

**(ii)** A health care professional acting at the direction and under the supervision of a practitioner; or the pharmacy of a hospital or of another health care entity that is acting at the direction of such a practitioner and that received such sample in accordance with the Prescription Drug Marketing Act and regulations to administer or dispense;

**(iii)** Intracompany sales.

**(18)** "Drop shipment" means the sale of a prescription drug to a wholesale distributor by the manufacturer of the prescription drug or by that manufacturer's colicensed product partner, that manufacturer's third party logistics provider, that manufacturer's exclusive distributor, or by an authorized distributor of record that purchased the product directly from the manufacturer or from one of these entities whereby:

**(A)** The wholesale distributor takes title to but not physical possession of such prescription drug;

**(B)** The wholesale distributor invoices the pharmacy, pharmacy warehouse, or other person authorized by law to dispense or administer such drug; and

**(C)** The pharmacy, pharmacy warehouse or other person authorized by law to dispense or administer such drug receives delivery of the prescription drug directly from the manufacturer or from that manufacturer's colicensed product partner, that manufacturer's third party logistics provider, that manufacturer's exclusive distributor, or from an authorized distributor of record that purchased the product directly from the manufacturer or from one of these entities.

**(19)** "Drug" means:

**(A)** Articles recognized as drugs by the United States Food and Drug Administration, or in any official compendium, or supplement;

**(B)** An article, designated by the board, for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other animals;

**(C)** Articles, other than food, intended to affect the structure or any function of the body of human or other animals; and

**(D)** Articles intended for use as a component of any articles specified in paragraph (A), (B) or (C) of

this subdivision.

**(20)** "Drug regimen review" includes, but is not limited to, the following activities:

**(A)** Evaluation of the prescription drug orders and if available, patient records for:

- (i)** Known allergies;
- (ii)** Rational therapy-contraindications;
- (iii)** Reasonable dose and route of administration; and
- (iv)** Reasonable directions for use.

**(B)** Evaluation of the prescription drug orders and patient records for duplication of therapy.

**(C)** Evaluation of the prescription drug for interactions and/or adverse effects which may include, but are not limited to, any of the following:

- (i)** Drug-drug;
- (ii)** Drug-food;
- (iii)** Drug-disease; and
- (iv)** Adverse drug reactions.

**(D)** Evaluation of the prescription drug orders and if available, patient records for proper use, including overuse and underuse and optimum therapeutic outcomes.

**(21)** "Drug therapy management" means the review of drug therapy regimens of patients by a pharmacist for the purpose of evaluating and rendering advice to a physician regarding adjustment of the regimen in accordance with the collaborative pharmacy practice agreement. Decisions involving drug therapy management shall be made in the best interest of the patient. Drug therapy management is limited to:

**(A)** Implementing, modifying and managing drug therapy according to the terms of the collaborative pharmacy practice agreement;

**(B)** Collecting and reviewing patient histories;

**(C)** Obtaining and checking vital signs, including pulse, temperature, blood pressure and respiration;

**(D)** Ordering screening laboratory tests that are dose related and specific to the patient's medication or are protocol driven and are also specifically set out in the collaborative pharmacy practice agreement between the pharmacist and physician.

(22) "Electronic data intermediary" means an entity that provides the infrastructure to connect a computer system, hand-held electronic device or other electronic device used by a prescribing practitioner with a computer system or other electronic device used by a pharmacy to facilitate the secure transmission of:

- (A) An electronic prescription order;
- (B) A refill authorization request;
- (C) A communication; or
- (D) Other patient care information.

(23) "E-prescribing" means the transmission, using electronic media, of prescription or prescription-related information between a practitioner, pharmacist, pharmacy benefit manager or health plan as defined in 45 CFR § 160.103, either directly or through an electronic data intermediary. E-prescribing includes, but is not limited to, two-way transmissions between the point of care and the pharmacist. E-prescribing may also be referenced by the terms "electronic prescription" or "electronic order".

(24) "Electronic Signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

(25) "Electronic transmission" means transmission of information in electronic form or the transmission of the exact visual image of a document by way of electronic equipment.

(26) "Emergency medical reasons" include, but are not limited to, transfers of a prescription drug by one pharmacy to another pharmacy to alleviate a temporary shortage of a prescription drug; sales to nearby emergency medical services, i. e., ambulance companies and firefighting organizations in the same state or same marketing or service area, or nearby licensed practitioners of prescription drugs for use in the treatment of acutely ill or injured persons; and provision of minimal emergency supplies of prescription drugs to nearby nursing homes for use in emergencies or during hours of the day when necessary prescription drugs cannot be obtained.

(27) "Exclusive distributor" means an entity that:

(A) Contracts with a manufacturer to provide or coordinate warehousing, wholesale distribution, or other services on behalf of a manufacturer and who takes title to that manufacturer's prescription drug, but who does not have general responsibility to direct the sale or disposition of the manufacturer's prescription drug; and

(B) Is licensed as a wholesale distributor under this article.

(28) "FDA" means the Food and Drug Administration, a federal agency within the United States Department of Health and Human Services.

(29) "Health care entity" means a person that provides diagnostic, medical, pharmacist care, surgical,

dental treatment, or rehabilitative care but does not include a wholesale distributor.

**(30)** "Health information" means any information, whether oral or recorded in a form or medium, that:

**(A)** Is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse, and

**(B)** Relates to the past, present, or future physical or mental health or condition of an individual; or the past, present, or future payment for the provision of health care to an individual.

**(31)** "HIPAA" is the federal Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191).

**(32)** "Immediate container" means a container and does not include package liners.

**(33)** "Individually identifiable health information" is information that is a subset of health information, including demographic information collected from an individual and is created or received by a health care provider, health plan, employer, or health care clearinghouse; and relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and that identifies the individual; or with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

**(34)** "Intracompany sales" means any transaction between a division, subsidiary, parent, and/or affiliated or related company under the common ownership and control of a corporate or other legal business entity.

**(35)** "Label" means a display of written, printed, or graphic matter upon the immediate container of any drug or device.

**(36)** "Labeling" means the process of preparing and affixing a label to a drug container exclusive, however, of a labeling by a manufacturer, packer or distributor of a nonprescription drug or commercially packaged prescription drug or device.

**(37)** "Long-Term care facility" means a nursing home, retirement care, mental care, or other facility or institution that provides extended health care to resident patients.

**(38)** "Mail-order pharmacy" means a pharmacy, regardless of its location, which dispenses greater than twenty-five percent prescription drugs via the mail or other delivery services.

**(39)** "Manufacturer" means any person who is engaged in manufacturing, preparing, propagating, processing, packaging, repackaging or labeling of a prescription drug, whether within or outside this state.

**(40)** "Manufacturing" means the production, preparation, propagation or processing of a drug or device, either directly or indirectly, by extraction from substances of natural origin or independently by means of chemical or biological synthesis and includes any packaging or repackaging of the substance or substances or labeling or relabeling of its contents and the promotion and marketing of the drugs or devices. Manufacturing

also includes the preparation and promotion of commercially available products from bulk compounds for resale by pharmacies, practitioners or other persons.

**(41)** "Medical order" means a lawful order of a practitioner that may or may not include a prescription drug order.

**(42)** "Medication therapy management" is a distinct service or group of services that optimize medication therapeutic outcomes for individual patients. Medication therapy management services are independent of, but can occur in conjunction with, the provision of a medication or a medical device. Medication therapy management encompasses a broad range of professional activities and responsibilities within the licensed pharmacist's scope of practice.

These services may include the following, according to the individual needs of the patient:

**(A)** Performing or obtaining necessary assessments of the patient's health status pertinent to medication therapy management;

**(B)** Optimize medication use, performing medication therapy, and formulating recommendations for patient medication care plans;

**(C)** Developing therapeutic recommendations, to resolve medication related problems;

**(D)** Monitoring and evaluating the patient's response to medication therapy, including safety and effectiveness;

**(E)** Performing a comprehensive medication review to identify, resolve, and prevent medication-related problems, including adverse drug events;

**(F)** Documenting the care delivered and communicating essential information to the patient's primary care providers;

**(G)** Providing verbal education and training designed to enhance patient understanding and appropriate use of his or her medications;

**(H)** Providing information, support services and resources designed to enhance patient adherence with his or her medication therapeutic regimens;

**(I)** Coordinating and integrating medication therapy management services within the broader health care management services being provided to the patient; and

**(J)** Such other patient care services as may be allowed by law.

**(43)** "Misbranded" means a drug or device that has a label that is false or misleading in any particular; or the label does not bear the name and address of the manufacturer, packer, or distributor and does not have an accurate statement of the quantities of the active ingredients in the case of a drug; or the label does not show an

accurate monograph for prescription drugs.

**(44)** "Nonprescription drug" means a drug which may be sold without a prescription and which is labeled for use by the consumer in accordance with the requirements of the laws and rules of this state and the federal government.

**(45)** "Normal distribution channel" means a chain of custody for a prescription drug that goes directly or by drop shipment, from a manufacturer of the prescription drug, the manufacturer's third-party logistics provider, or the manufacturer's exclusive distributor to:

**(A)** A wholesale distributor to a pharmacy to a patient or other designated persons authorized by law to dispense or administer such prescription drug to a patient;

**(B)** A wholesale distributor to a chain pharmacy warehouse to that chain pharmacy warehouse's intracompany pharmacy to a patient or other designated persons authorized by law to dispense or administer such prescription drug to a patient;

**(C)** A chain pharmacy warehouse to that chain pharmacy warehouse's intracompany pharmacy to a patient or other designated persons authorized by law to dispense or administer such prescription drug to a patient;

**(D)** A pharmacy or to other designated persons authorized by law to dispense or administer such prescription drug to a patient; or

**(E)** As prescribed by the board's legislative rules.

**(46)** "Patient counseling" means the communication by the pharmacist of information, as prescribed further in the rules of the board, to the patient to improve therapy by aiding in the proper use of drugs and devices.

**(47)** "Pedigree" means a statement or record in a written form or electronic form, approved by the board, that records each wholesale distribution of any given prescription drug (excluding veterinary prescription drugs), which leaves the normal distribution channel.

**(48)** "Person" means an individual, corporation, partnership, association or any other legal entity, including government.

**(49)** "Pharmacist" means an individual currently licensed by this state to engage in the practice of pharmacist care.

**(50)** "Pharmacist Care" means the provision by a pharmacist of patient care activities, with or without the dispensing of drugs or devices, intended to achieve outcomes related to the cure or prevention of a disease, elimination or reduction of a patient's symptoms, or arresting or slowing of a disease process and as provided for in section ten.

(51) "Pharmacist-in-charge" means a pharmacist currently licensed in this state who accepts responsibility for the operation of a pharmacy in conformance with all laws and legislative rules pertinent to the practice of pharmacist care and the distribution of drugs and who is personally in full charge of the pharmacy and pharmacy personnel.

(52) "Pharmacist's scope of practice pursuant to the collaborative pharmacy practice agreement" means those duties and limitations of duties placed upon the pharmacist by the collaborating physician, as jointly approved by the board and the Board of Medicine or the West Virginia Board of Osteopathic Medicine.

(53) "Pharmacy" means any place within this state where drugs are dispensed and pharmacist care is provided and any place outside of this state where drugs are dispensed and pharmacist care is provided to residents of this state.

(54) "Pharmacy Intern" or "Intern" means an individual who is currently licensed to engage in the practice of pharmacist care while under the supervision of a pharmacist.

(55) "Pharmacy related primary care" means the pharmacist's activities in patient education, health promotion, selection and use of over the counter drugs and appliances and referral or assistance with the prevention and treatment of health related issues and diseases.

(56) "Pharmacy Technician" means a person registered with the board to practice certain tasks related to the practice of pharmacist care as permitted by the board.

(57) "Physician" means an individual currently licensed, in good standing and without restrictions, as an allopathic physician by the West Virginia Board of Medicine or an osteopathic physician by the West Virginia Board of Osteopathic Medicine.

(58) "Practice of telepharmacy" means the provision of pharmacist care by properly licensed pharmacists located within United States jurisdictions through the use of telecommunications or other technologies to patients or their agents at a different location that are located within United States jurisdictions.

(59) "Practitioner" means an individual authorized by a jurisdiction of the United States to prescribe drugs in the course of professional practices, as allowed by law.

(60) "Prescription drug" means any human drug required by federal law or regulation to be dispensed only by prescription, including finished dosage forms and active ingredients subject to section 503(b) of the federal food, drug and cosmetic act.

(61) "Prescription or prescription drug order" means a lawful order from a practitioner for a drug or device for a specific patient, including orders derived from collaborative pharmacy practice, where a valid patient-practitioner relationship exists, that is communicated to a pharmacist in a pharmacy.

(62) "Product Labeling" means all labels and other written, printed, or graphic matter upon any article or any of its containers or wrappers, or accompanying such article.

(63) "Repackage" means changing the container, wrapper, quantity, or product labeling of a drug or device to further the distribution of the drug or device.

(64) "Repackager" means a person who repackages.

(65) "Therapeutic equivalence" mean drug products classified as therapeutically equivalent can be substituted with the full expectation that the substituted product will produce the same clinical effect and safety profile as the prescribed product which contain the same active ingredient(s); dosage form and route of administration; and strength.

(66) "Third-party logistics provider" means a person who contracts with a prescription drug manufacturer to provide or coordinate warehousing, distribution or other services on behalf of a manufacturer, but does not take title to the prescription drug or have general responsibility to direct the prescription drug's sale or disposition. A third-party logistics provider shall be licensed as a wholesale distributor under this article and, in order to be considered part of the normal distribution channel, shall also be an authorized distributor of record.

(67) "Valid patient-practitioner relationship" means the following have been established:

(A) A patient has a medical complaint;

(B) A medical history has been taken;

(C) A face-to-face physical examination adequate to establish the medical complaint has been performed by the prescribing practitioner or in the instances of **telemedicine** through **telemedicine** practice approved by the appropriate practitioner board; and

(D) Some logical connection exists between the medical complaint, the medical history, and the physical examination and the drug prescribed.

(68) "Wholesale distribution" and "wholesale distributions" mean distribution of prescription drugs, including directly or through the use of a third-party logistics provider or any other situation in which title, ownership or control over the prescription drug remains with one person or entity but the prescription drug is brought into this state by another person or entity on his, her or its behalf, to persons other than a consumer or patient, but does not include:

(A) Intracompany sales, as defined in subdivision thirty-four of this subsection;

(B) The purchase or other acquisition by a hospital or other health care entity that is a member of a group purchasing organization of a drug for its own use from the group purchasing organization or from other hospitals or health care entities that are members of such organizations;

(C) The sale, purchase or trade of a drug or an offer to sell, purchase or trade a drug by a charitable organization described in section 501(c)(3) of the United States Internal Revenue Code of 1986 to a nonprofit affiliate of the organization to the extent otherwise permitted by law;

(D) The sale, purchase or trade of a drug or an offer to sell, purchase or trade a drug among hospitals or other health care entities that are under common control. For purposes of this article, "common control" means the power to direct or cause the direction of the management and policies of a person or an organization, whether by ownership of stock, voting rights, by contract, or otherwise;

(E) The sale, purchase or trade of a drug or an offer to sell, purchase or trade a drug for "emergency medical reasons" for purposes of this article includes transfers of prescription drugs by a retail pharmacy to another retail pharmacy to alleviate a temporary shortage, except that the gross dollar value of such transfers shall not exceed five percent of the total prescription drug sales revenue of either the transferor or transferee pharmacy during any twelve consecutive month period;

(F) The sale, purchase or trade of a drug, an offer to sell, purchase, or trade a drug or the dispensing of a drug pursuant to a prescription;

(G) The distribution of drug samples by manufacturers' representatives or distributors' representatives, if the distribution is permitted under federal law [21 U. S. C. 353(d)];

(H) Drug returns by a pharmacy or chain drug warehouse to wholesale drug distributor or the drug's manufacturer; or

(J) The sale, purchase or trade of blood and blood components intended for transfusion.

(69) "Wholesale drug distributor" or "wholesale distributor" means any person or entity engaged in wholesale distribution of prescription drugs, including, but not limited to, manufacturers, repackers, own-label distributors, jobbers, private-label distributors, brokers, warehouses, including manufacturers' and distributors' warehouses, chain drug warehouses and wholesale drug warehouses, independent wholesale drug traders, prescription drug repackagers, physicians, dentists, veterinarians, birth control and other clinics, individuals, hospitals, nursing homes and/or their providers, health maintenance organizations and other health care providers, and retail and hospital pharmacies that conduct wholesale distributions, including, but not limited to, any pharmacy distributor as defined in this section. A wholesale drug distributor shall not include any for hire carrier or person or entity hired solely to transport prescription drugs.

**HISTORY:** 1881, c. 52, § 10; 1882, c. 112, § 10; 1907, Ex. Sess., c. 12, § 19; Code 1923, c. 150, § 29b(19); 1925, c. 21, § 19; 1951, c. 148; 1995, c. 193; 2013, c. 148.

WCWR 006-062-001

CODE OF WYOMING RULES  
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AGENCY 006. DEPARTMENT OF ADMINISTRATION AND INFORMATION  
SUB-AGENCY 062. BOARD OF PHYSICAL THERAPY  
CHAPTERS 001. - 010. PHYSICAL THERAPY RULES AND REGULATIONS  
CHAPTER 1. GENERAL PROVISIONS

WCWR 006-062-001 (2014)

## CHAPTER 1. GENERAL PROVISIONS

### Section 1. Statement of Purpose.

The Wyoming State Board of Physical Therapy Rules and Regulations are set forth and promulgated for the purpose of interpreting and implementing W. S. 33-25-101 through 33-25-116 et seq.

### Section 2. Severability.

If any provisions of these rules or the application thereof to any license or certificate holder or circumstance is determined to be invalid, such invalidity shall not affect other provisions or application of these rules which can be given effect without the invalid provision or application, and to this end the provisions of these rules are declared to be severable.

### Section 3. Terms Defined by Statute.

Terms defined in W. S. 33-25-101 through 33-25-116 shall have the same meaning when used in these rules unless the context or subject matter clearly requires a different interpretation.

### Section 4. Definitions.

Unless specifically stated otherwise, the following definitions are applicable throughout this title:

(a) "Approved program" means a school of physical therapy or a program of physical therapist assistant training

which is nationally accredited and approved by the Board.

(b) "Board" means the Wyoming State Board of Physical Therapy.

(c) "CAPTE" means Commission on Accreditation in Physical Therapy Education.

(d) "Consultation by means of telecommunications" means that a physical therapist renders professional or expert opinion or advice to another physical therapist or health care provider via telecommunications or computer technology from a distant location. It includes the transfer of data or exchange of educational or related information by means of audio, video, or data communications. The physical therapist may use **telehealth** technology as a vehicle for providing only services that are legally or professionally authorized. The patient's written or verbal consent will be obtained and documented prior to such consultation. All records used or resulting from a consultation by means of telecommunications are part of a patient's record and are subject to applicable confidentiality requirements.

(e) "Direct supervision" means the physical therapist is physically present on the premises and immediately available for direction and supervision. The physical therapist will have direct contact with the patient during each visit. Telecommunications does not meet the requirement for direct supervision.

(f) "Examination" means a national examination approved by the Board for the license of a physical therapist or a physical therapist assistant.

(g) "FCCPT" means Foreign Credentialing Commission on Physical Therapy.

(h) "FSBPT" means the Federation of State Boards of Physical Therapy.

(i) "ICD" means the International Consultants of Delaware.

(j) "IERF" means the International Education Research Foundation.

(k) "NPTE" means the National Physical Therapy Examination.

(l) "Restricted" for a physical therapist or physical therapist assistant means a license or certificate on which the Board places restrictions or conditions, or both, as to scope of practice, place of practice, supervision of practice, duration of licensed status, or type or condition of patient or client to whom the license may provide services.

(m) "Student" is an individual who is currently engaged in the fulfillment of a physical therapy or physical therapist assistant educational program approved by the Board.

(n) "Supportive personnel" are persons other than licensed physical therapists who function in a physical therapy setting and assist with physical therapy care.

(o) "Testing" means standard methods and techniques used to gather data about the patient.

STATUTORY AUTHORITY: W.S. §§ 33-25-101 to -116 et seq.

EFFECTIVE DATE: April 7, 1995

AMENDED: April 3, 1996 (Chapters 2, 5, 6); January 12, 1998 (Chapters 2, 5, 6); May 14, 2004 Secretary of State Document #5494, (Chapter 1), #5495 (Chapter 2), #5496 (Chapter 3), #5497 (Chapter 4), #5498 (Chapter 5), #5499 (Chapter 6), #5500 (Chapter 7), #5501 (Chapter 8), #5502 (Chapter 9), #5503 (Chapter 10) (renumbered, formerly rule number 024 062 001-010); April 6, 2010 Secretary of State Document #7785 (Chapter 1), #7786 (Chapter 2), #7787 (Chapter 3), #7788 (Chapter 4), #7789 (Chapter 5), #7790 (Chapter 6), #7791 (Chapter 7), #7792 (Chapter 8), #7793 (Chapter 9), #7794 (Chapter 10); August 30, 2010 Secretary of State Document #7944 (Chapter 6)

*Wyo. Stat. § 33-26-102*

Wyoming Statutes Annotated  
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\*\*\* THIS DOCUMENT IS CURRENT THROUGH THE 2013 REGULAR SESSION OF THE  
LEGISLATURE \*\*\*

\*\*\* ANNOTATIONS CURRENT THROUGH APRIL 15, 2013 \*\*\*

Title 33 Professions and Occupations  
Chapter 26 Physicians and Surgeons  
Article 1. General Provisions

Wyo. Stat. § 33-26-102 (2013)

**§ 33-26-102. Definitions.**

(a) As used in this chapter:

(i) Repealed by Laws 1991, ch. 143, § 2.

(ii) "A.O.A." means the American Osteopathic Association;

(iii) "Board" means the Wyoming state board of medicine;

(iv) "Errant conduct" means conduct by a licensee which may constitute grounds for discipline as set forth in this act;

(v) "Repealed by Laws 1991, ch. 143, § 2.

(vi) "Health care entity" means any hospital, clinic, training program, professional society or committee of physicians or other licensed health care practitioners that follows a peer review process for the purpose of furthering quality health care;

(vii) "Impaired" means a person who is unable to practice medicine with reasonable skill and safety to patients by reason of one (1) or more of the following:

(A) Medical incompetence;

(B) Mental illness;

(C) Physical illness, including but not limited to deterioration through the aging process or loss of motor skill;

(D) Chemical or alcohol impairment, addiction, dependence or abuse.

(viii) "Lapsed" means the status of a license when the licensee fails to renew the license by July 1 of any year or when the holder of a temporary license fails to appear for an interview at the next board meeting following the date of issuance or fails to submit a written request for extension of a temporary license or when a written request for extension is not approved by the board;

(ix) "License" means a license to practice medicine in this state issued by the board pursuant to this chapter;

(x) "Licensee" means any person licensed by the board under this chapter;

(xi) "Practicing medicine" means any person who in any manner:

(A) Advertises, holds out, or represents to the public that he is authorized to practice medicine in this state; or

**(B)** Offers or undertakes to prevent, diagnose, correct or treat, in any manner, by any means, method or device, any human disease, illness, pain, wound, fracture, infirmity, defect or abnormal physical or mental condition, injury, deformity or ailment, including the management of pregnancy and parturition; or

**(C)** Attaches the title of M.D., D.O., physician, surgeon, osteopathic physician or osteopathic surgeon, doctor, or any other words, letters or abbreviations or any combination thereof when used in the conduct of any occupation or profession pertaining to the prevention, diagnosis or treatment of human disease or condition unless the designation additionally contains the description of another branch of the healing arts for which one holds a valid license in this state; or

**(D)** Practices osteopathy; or

**(E)** Offers or undertakes to prescribe, order, give or administer drugs which can only be obtained by prescription according to law; or

**(F)** Renders a determination of medical necessity or appropriateness of proposed treatment.

**(xii)** "Reactivation" after a license has lapsed means the completion of all requirements set forth in W.S. 33-26-305(c);

**(xiii)** "Sexual misconduct" means:

**(A)** Any behavior by a licensee which involves offers of exchange of medical services for some form of sexual gratification;

**(B)** Sexual contact that occurs concurrent with the physician-patient relationship; or

**(C)** Any behavior by a licensee toward a patient, former patient, another licensee, an employee of a health care facility, an employee of the licensee or a relative or guardian of a patient that exploits the position of trust, knowledge, emotions or influence of the licensee.

**(xiv)** "USMLE" means the United States medical licensing examination;

**(xv)** "L.C.M.E." means the liaison committee on medical education;

**(xvi)** "A.C.G.M.E." means accreditation council for graduate medical education;

**(xvii)** "Fifth pathway" means an academic year of supervised clinical education provided by an L.C.M.E. accredited medical school to students who have:

(A) Repealed by Laws 2003, ch. 190, § 3.

(B) Studied at a medical school outside of the United States, Puerto Rico or Canada;

(C) Completed all of the formal requirements of the foreign medical school, except internship or social service;

(D) Attained a score satisfactory to the sponsoring medical school on a screening examination; and

(E) Passed the foreign medical graduate examination in the medical sciences, parts I and II of the examination of the national board of medical examiners, or steps 1 and 2 of the USMLE.

(xviii) "FLEX examination" means the federation of state medical boards licensing examination;

(xix) "R.C.P.S.C." means the royal college of physicians and surgeons of Canada;

(xx) "Physician-patient relationship" means a relationship between a licensee and any person formed for the purpose of the licensee providing medical diagnosis or treatment to the person, whether or not for compensation;

(xxi) "This act" means the Medical Practice Act;

(xxii) "Board counsel" means an attorney designated by the board to provide legal counsel to the board and its staff in the conduct of the board's business;

(xxiii) "Board prosecutor" means an attorney designated by the board to prosecute, and to provide legal counsel to interviewers and petitioners in, disciplinary cases pending before the board pursuant to this act and the Wyoming Administrative Procedure Act;

(xxiv) "COMLEX" means the comprehensive osteopathic medical licensing examination, administered by the national board of osteopathic medical examiners;

(xxv) "Condition" means a specific requirement or prohibition imposed by any medical licensing board of any jurisdiction, or by any health care facility on an applicant's or licensee's clinical privileges at that facility, that shall be fulfilled by an applicant or licensee in order to obtain or continue to hold a license in that jurisdiction, or clinical privileges at that facility;

(xxvi) "E.C.F.M.G." means the educational commission for foreign medical graduates;

(xxvii) "Restriction" means a limitation placed by any medical licensing board of any jurisdiction on an applicant's or licensee's scope of practice in that jurisdiction, or by any health care facility on an applicant's or licensee's clinical privileges at that facility;

(xxviii) "SPEX examination" means the federation of state medical boards special purpose post-licensure competency examination;

(xxix) "**Telemedicine**" means the practice of medicine by electronic communication or other means from a physician in a location to a patient in another location, with or without an intervening health care provider.

**HISTORY:** Laws 1905, ch. 45, § 7; C.S. 1910, § 2871; C.S. 1920, § 3519; R.S. 1931, § 86-107; C.S. 1945, § 37-2007; W.S. 1957, § 33-327; W.S. 1977, § 33-26-101; Laws 1987, ch. 79, § 1; 1991, ch. 143, §§ 1, 2; 1995, ch. 129, § 1; 2003, ch. 190, §§ 2, 3; 2009, ch. 201, § 1.

**NOTES:** **The 2009 amendment**, substituted "who is unable to" for "who cannot" in (a)(vii); rewrote (a)(vii)(D) which read "Chemical impairment"; substituted "licensing examination" for "post-licensure competency examination" at the end of (a)(xviii); added (a)(xxii) through (a)(xxix); and made stylistic changes.

Laws 2009, ch. 201, § 3, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved March 12, 2009.

**Editor's notes. --**

There is no subsection (b) in this section as it appears in the printed acts.

**Naturopathy is simply one of the methods of practicing medicine. --**

The practice of what is now called naturopathy has from time immemorial, at least to the extent then known, been considered simply as an integral part of the practice of medicine. *Hahn v. State*, 78 Wyo. 258, 322 P.2d 896, 1958 Wyo. LEXIS 13 (1958).

**It cannot be regarded as a separate and distinct profession. --**

Our statute is clear, that the practice of naturopathy cannot be regarded as a separate and distinct profession like that of dentistry for instance, nor can any good reason be given why the legislature may not for the benefit of society require that those who practice the healing art should know and keep up with the improvements and advanced learning in that art. *Hahn v. State*, 78 Wyo. 258, 322 P.2d 896, 1958 Wyo. LEXIS 13 (1958).

### **And legislature had perfect right to refuse to make special regulations. --**

It is true that the legislature has licensed dentists and chiropractors and other persons who in some manner attempt to exercise part of the healing art, but simply because the legislature made special regulations for these groups did not require it to make similar regulations concerning naturopaths. It had a perfect right to refuse to provide such regulations relating to them. *Hahn v. State*, 78 Wyo. 258, 322 P.2d 896, 1958 Wyo. LEXIS 13 (1958).

### **And require practitioner to have been admitted to practice as a physician or surgeon. --**

The health and well-being of the members of society is too important to justify the failure to make requirements commensurate with the advancement of civilization. There is nothing to prohibit the practice of naturopathy provided that under our statute the practitioner has the learning of a physician and surgeon and has been admitted to practice as such in this state. Such a requirement is valid. *Hahn v. State*, 78 Wyo. 258, 322 P.2d 896, 1958 Wyo. LEXIS 13 (1958).

**Chiropractor's use of clinical nutrition methods.** A licensed chiropractor does not violate the Medical Practice Act by diagnosing a disease and by then treating the patient by the application of clinical nutritional methods; such practices constitute the practice of "chiropractic" under § 33-10-101. *Johnson v. State ex rel. Wyoming Bd. of Medicine*, 986 P.2d 157, 1999 Wyo. LEXIS 127 (Wyo. 1999).

Chiropractor who diagnosed and treated his grandson's strep throat with nutritional supplements was not "practicing medicine". *Johnson v. State ex rel. Wyoming Bd. of Medicine*, 986 P.2d 157, 1999 Wyo. LEXIS 127 (Wyo. 1999).

### **Dentist unauthorized to practice general nondental anesthesiology. --**

A person licensed to practice dentistry in Wyoming who has special training and experience in the field of general anesthesia, but is not a licensed physician in Wyoming, is not authorized to practice general anesthesiology for nondental purposes. The restrictive language as used by the legislature in the Wyoming Dental Practice Act limits those licensed by that act to the practice of anesthesiology solely for purposes in connection with the oral cavity region. Also, the practice of general nondental anesthesiology is considered the "practice of medicine" as defined by the *Paravecchio v. Memorial Hosp.*, 742 P.2d 1276, 1987 Wyo. LEXIS 507 (Wyo. 1987), reh'g denied, 1987 Wyo. LEXIS 523 (Wyo. Oct. 7, 1987), overruled in part on other grounds, *Torres v. State ex rel. Wyo. Workers' Safety & Comp. Div.*, 2004 WY 92, 95 P.3d 794, 2004 Wyo. LEXIS 119 (Wyo. 2004).

### **Scope of license to practice medicine or surgery. --**

The practice of medicine, in its broadest sense, is the art of healing disease and preserving health, and the license to practice medicine or surgery generally entitles the licensee to practice medicine or surgery in all the various branches and to use any method for treatment and healing human ailments, although others may be authorized to practice in limited fields of the general practice. *State v. Catellier*, 63 Wyo. 123, 179 P.2d 203, 1947 Wyo. LEXIS 8 (1947).

**Exceeding scope of license as violation. --**

A person licensed as a chiropractor who administered a general anesthetic and set a dislocated shoulder was held to have violated this section, defining the practice of medicine. *State v. Catellier*, 63 Wyo. 123, 179 P.2d 203, 1947 Wyo. LEXIS 8 (1947).

**Authorized use of term. --**

A licensed chiropractor's use of the term "chiropractic physician" does not violate the Medical Practice Act. *Johnson v. State ex rel. Wyoming Bd. of Medicine*, 986 P.2d 157, 1999 Wyo. LEXIS 127 (Wyo. 1999).

**Prohibited practices. --**

Practicing medicine and receiving compensation therefor and practicing medicine without a license are separate offenses under this section. *Hahn v. State*, 78 Wyo. 258, 322 P.2d 896, 1958 Wyo. LEXIS 13 (1958).

**Matter of sentence in discretion of trial court. --**

Matter of sentence in a prosecution under this section for practicing without a license is addressed to the sound discretion of trial court. *Hahn v. State*, 78 Wyo. 258, 322 P.2d 896, 1958 Wyo. LEXIS 13 (1958).

**Stated in**

*Kirbens v. Wyoming State Bd. of Med.*, 992 P.2d 1056, 1999 Wyo. LEXIS 209 (Wyo. 1999).

**Law reviews. --**

See note, "What Constitutes the Practice of Medicine in Wyoming," 13 Wyo. L.J. 259.

**Am. Jur. 2d, ALR and C.J.S. references. --**

Constitutionality and construction of statutes or regulations prohibiting one who has no license to practice medicine from owning, maintaining, or operating an office therefor, 20 ALR2d 808.

Illegal practice of medicine under statute, ordinance, or other measure involving chemical treatment of public water supply, 43 ALR2d 453.

Hypnotism as illegal practice of medicine, 85 ALR2d 1128.

Single or isolated transaction as falling within provisions of licensing requirements, 93 ALR2d 90.

Practicing medicine, surgery, dentistry, optometry, podiatry, or other healing arts without license as a separate or continuing offense, 99 ALR2d 654.

Acupuncture as illegal practice of medicine, 72 ALR3d 1257.

Right of medical patient to obtain, or physician to prescribe, Laetrile for treatment of illness, 5 ALR4th 219.

Regulation of practice of acupuncture, 17 ALR4th 964.

Standard of care owed to patient by medical specialist as determined by local, "like community," state, national, or other standards, 18 ALR4th 603.

*Wyo. Stat. § 33-26-202*

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LEGISLATURE \*\*\*

\*\*\* ANNOTATIONS CURRENT THROUGH APRIL 15, 2013 \*\*\*

Title 33 Professions and Occupations  
Chapter 26 Physicians and Surgeons  
Article 2. Wyoming State Board of Medicine

Wyo. Stat. § 33-26-202 (2013)

**§ 33-26-202. Board; duties; general powers.**

(a) The board shall pass upon the qualifications and determine the fitness of all persons desiring to practice medicine in this state.

**(b)** The board is empowered and directed to:

**(i)** Grant, refuse to grant, suspend, restrict, revoke, reinstate or renew licenses to practice medicine;

**(ii)** Investigate allegations and take disciplinary action on the following grounds:

**(A)** A licensee is impaired or has engaged in errant conduct;

**(B)** A person has violated an applicable provision of this chapter or the board's regulations.

**(iii)** Conduct informal interviews and contested case proceedings;

**(iv)** Adopt a seal;

**(v)** Adopt, amend, repeal, enforce and promulgate reasonable rules and regulations necessary to implement the provisions of this chapter;

**(vi)** Develop standards governing the delegation of a licensee's medical responsibilities to nonphysicians;

**(vii)** Publish annually and submit to the governor a report which includes the following information:

**(A)** A summary of the kind and number of action taken by the board including dates, types and origin of oral or written complaints received and case summaries of physicians whose licenses have been suspended or revoked and any other disciplinary actions;

**(B)** Board fiscal transactions for the preceding year, the amount of its accumulated cash and securities and a balance sheet showing its financial condition by means of an actuarial valuation of board assets and liabilities.

**(viii)** Publicize information regarding the filing of complaints;

**(ix)** Comply with all applicable federal law;

**(x)** Verify the status of licenses and privileges held by licensees and applicants for licensure with the federation of state medical boards, medical licensing boards in other jurisdictions and federal data banks, and to provide verification of the status of licenses held in this state by licensees to the entities specified in this paragraph;

**(xi)** Annually review any licensee whose license is restricted or is issued subject to any condition;

**(xii)** Participate in and contract with a program or programs to assist in the return to practice of licensees who have exhibited disruptive behaviors, substance dependence or abuse or are suffering from physical or mental impairment;

**(xiii)** Take all reasonable action, including the promulgation of rules and regulations, necessary to enforce

this chapter;

(xiv) Adopt, amend, repeal, enforce and promulgate reasonable rules and regulations necessary to implement and administer continuing medical education requirements of its licensees;

(xv) Publish nonbinding advisory opinions or other guidance on the application and interpretation of this act and the rules and regulations promulgated pursuant to this act;

(xvi) Request criminal history background information for purposes of licensure and discipline, as authorized under W.S. 7-19-106(a);

(xvii) Use, retain or employ investigators, the offices of the attorney general, the state division of criminal investigation, any other investigatory or fact finding agency and medical specialty consultants, as necessary, to investigate and evaluate complaints against licensees and possible violations of this act and the board's rules;

(xviii) Adopt rules and regulations for the practice of medicine in Wyoming by physicians and physician assistants not otherwise licensed in Wyoming in the event of a public health emergency or pandemic;

(xix) Adopt rules and regulations for the practice of **telemedicine**.

**HISTORY:** Laws 1899, ch. 18, § 3; R.S. 1899, § 2194; Laws 1905, ch. 45, § 3; C.S. 1910, § 2867; C.S. 1920, § 3515; R.S. 1931, § 86-103; C.S. 1945, § 37-2003; W.S. 1957, § 33-330; W.S. 1977, § 33-26-104; Laws 1987, ch. 79, § 1; 1991, ch. 143, § 1; 1995, ch. 129, § 1; 2003, ch. 190, § 2; 2009, ch. 201, § 1.

**NOTES:** The 2009 amendment, rewrote (b)(x) which read: "Verify the status of licenses and privileges held by licensees with the federation of state licensing boards and federal data banks, and," in (b)(xii), substituted "contract with" for "contribute to" and inserted "or abuse," and added (b)(xv) through (b)(xix).

Laws 2009, ch. 201, § 3, makes the act effective immediately upon completion of all acts necessary for a bill to become law as provided by art. 4, § 8, Wyo. Const. Approved March 12, 2009.

### **Meaning of "this act." --**

For the definition of "this act," referred to in this section, see § 33-26-102(a)(xxi).

### **Quoted in**

Kirbens v. Wyoming State Bd. of Med., 992 P.2d 1056, 1999 Wyo. LEXIS 209 (Wyo. 1999).

Wyo. Stat. § 33-26-202

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  - (iii) Conduct informal interviews and contested case proceedings;
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