

NOTE:

This Annotated Version Shows the Proposed Changes to the Board's
Current Telemedicine Rules, Published in the Notice of Intent on
Oct. 20, 2014, LR (40:2066-2069)

Title 46
PROFESSIONAL AND OCCUPATIONAL
STANDARDS

Part XLV. Medical Professions

Subpart 2. Licensure and Certification

Chapter 3. Physicians

Subchapter H. Restricted Licensure,
Permits

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

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

1. possess the qualifications for licensing prescribed by §311 of these rules;

2. possess an unrestricted license to practice medicine issued by the medical licensing authority of a state other than Louisiana (whether allopathic or osteopathic);

~~3. not be enrolled in a medical residency or other post graduate medical training program. The board may, in its discretion, grant an exception to this requirement on a case-by-case basis where the applicant is enrolled in fellowship or other advanced training and it has been shown to the board's satisfaction that the applicant has completed all training relevant to his or her designated area of practice;~~

~~4. have attended the board's physician orientation program described in §449 of these rules or completed it online; and~~

~~5. have completed a board-approved application and satisfied the applicable fee.~~

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

1. who does not satisfy the qualifications prescribed by this Chapter;

2. for any of the causes enumerated by R.S. 37:1285(A), or violation of any other provision of the Louisiana Medical Practice Act, R.S. 37:1261 et seq.;

3. who has been the subject of previous disciplinary action by the medical licensing authority of any state;

4. who is the subject of a pending investigation by the board, the medical licensing authority of another state or a federal agency;

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

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

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

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

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

1. proof documented in a form satisfactory to the board that the applicant possesses the qualifications set forth in this Subchapter;

~~2. certification of the truthfulness and authenticity of all information, representations and/or documents contained in or submitted with the completed application;~~

~~3. a description of how telemedicine will be used the manner of and and the primary practice site location(s) from which telemedicine is to be utilized by the applicant;~~

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43. an affirmation acceptable to the board, in a format prescribed by the board, that the applicant has an arrangement with one or more physicians, who maintain a physical practice location in this state, to accept patients on referral and for follow-up care. To be acceptable to the board the:

a. affirmation must be endorsed by the physicians subject to the arrangement and contain such contact and other information as the board may prescribe;

b. physician(s) with whom such arrangement is made shall:

i. possess an unrestricted license to practice medicine issued by the board;

ii. not be the subject of any cause, action or investigation identified §408.B, which may provide the board cause to deny or refuse to issue a telemedicine permit; and

4. acknowledgment that the applicant shall only utilize telemedicine in accordance with the telemedicine rules promulgated by the board in Chapter 75 of these rules and shall retain professional responsibility for the services provided to any patient by telemedicine;

5. criminal history record information;

6. a copy of the required disclosures to patients, identified in §7507 of these rules and such other information, acknowledgments and documentation as the board may require; and

7. a fee of ~~\$150~~300. The board may waive such fee in favor of an applicant who advises the board in writing that his or her use of telemedicine in this state shall be limited to the provision of voluntary, gratuitous medical services.

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

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

1. submit to the jurisdiction of the board in all matters set forth in the Act or any other

applicable Louisiana law, as well as the board's rules;

2. produce medical or other documents, records, or materials and appear before the board upon written request; and

3. report to the board in writing within 30 days of any disciplinary action against the applicant's:

a. license to practice medicine in another state; or

b. federal or state registration or permit to prescribe, dispense or administer controlled substances or the voluntary surrender thereof while under investigation by the issuing authorities.

G. Permit Expiration, Renewal. A telemedicine permit shall expire annually on the expiration date stated thereon or the ~~first~~ last day of the month in which the licensee was born, whichever is the later, unless renewed by the submission of a renewal application containing such information as the board may require, together with a renewal fee of ~~\$100~~200.

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

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

-TITLE 46

**PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

Part XLV. Medical Professions

Subpart 3. Practice

Chapter 75. Telemedicine

Subchapter A. General Provisions

§7501. Scope of Subchapter

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

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

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

§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.

In-Person Visit—a face-to-face evaluation conducted by a physician who is at the same physical location as the patient.

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

Physical Practice Location in this State—a clinic, facility, office or other location physically located in this state, where the physician spends the majority of his or her time practicing medicine.

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

Physician-Patient Relationship—physicians utilizing telemedicine shall establish a proper physician-patient relationship by:

a. verifying the identity of the individual requesting treatment. Appropriate contact and identifying information shall be made part of the medical record;

b. conducting an appropriate examination. The examination does not require an in-person visit if the technology is sufficient to provide the physician the pertinent clinical

information reasonably necessary to practice at an acceptable level of skill and safety;

c. establishing a diagnoses through the use of accepted medical practices e.g., history, mental status, appropriate diagnostic and laboratory testing;

d. discussing the diagnoses and risks and benefits of various treatment options;

e. insuring the availability for appropriate follow-up care; and

f. creating and/or maintaining a medical record.

~~*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~~§408 of these 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), amended, LR-

§7505. ~~General Uses, Limitations~~ Physician-Patient Relationship; Standard of Care; Location of Participants

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

B. Standard of care. The practice of medicine by telemedicine, including the issuance of any

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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.

C. Location of participants. A physician using telemedicine may be at any location at the time the services are provided. A patient receiving medical services by telemedicine may be in any location in this state at the time that the services are received.

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), amended, LR-

§7507. Prerequisite Conditions; Disclosures

A. The practice of medicine is deemed to occur at the location of the patient. Therefore, no physician shall utilize telemedicine to provide medical services to patients located in this state unless the physician:

1. holds an unrestricted Louisiana medical license and maintains a physical practice location within this state; or

2. holds a telemedicine permit and executes an affirmation, as describe in §408 of these rules, that he or she has an arrangement with one or more other physicians who maintain a physical practice location in this state to provide for referrals and follow-up care;

B. A physician utilizing telemedicine with respect to patients located in this state shall have:

1. access to the patient's medical record;

2. if required by the standard of care applicable to the diagnosis or treatment of the patient's complaints in a traditional (face-to-face) setting, the ability:

a. to utilize peripherals (such as otoscope and stethoscope);

b. to obtain diagnostic testing;

c. if necessary in the physician's judgment, to access a patient presenter to assist with the telemedicine encounter; and

d. to conduct an in-person visit, or refer the patient to another physician for that purpose.

C. Disclosures. Prior to utilizing telemedicine a physician shall insure that the following disclosures have been made to the patient and documented in the medical record. Such disclosures need not be made or documented more than once, except to update the information provided:

1. the name, Louisiana medical license number and contact information (address, telephone number(s) and e-mail address) of the physician;

2. the physician's specialty or area of practice;

3. how to receive follow-up and emergency care;

4. how to obtain copies of medical records and/or insure transmission to another medical provider;

5. how to receive care in the event of a technology or equipment failure; and

6. notification of privacy practices concerning individually identifiable health information, consistent with state and federal laws and regulations.

~~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~~

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~~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), amended. LR-

§7509. Patient 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.~~

~~AB. Patient records shall be: 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.~~

1. created and maintained for every telemedicine visit document a telemedicine visit

~~in a patient's medical record according to the same standards of care as in an in-person visit;.~~

~~2. Medical records shall be confidential and subject to all applicable state and federal laws and regulations relative to privacy and security of health information;.~~

~~3. Medical records shall be accessible by a patient and the physician consistent with all state and federal laws and regulations; and~~

4. made immediately available to the patient or a physician to whom the patient may be referred.

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), amended. LR-

§7510. Privacy and Security

A. Only secure communication technology shall be used for telemedicine. At a minimum, telemedicine technology shall comply with all state and federal laws and regulations for medical/health information privacy and security.

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

HISTORICAL NOTE: Promulgated Medical Examiners, LR

§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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§7513. Prohibitions

A. No physician shall authorize or order the prescription, dispensation or administration of any controlled substance or other drug by Telemedicine shall not be utilized to provide medical services to patients located in this state in the absence of medical licensure or a current telemedicine permit issued by the board and other than in compliance with the rules of this Chapter and all state and federal laws and regulations unless the physician:

B. No physician shall utilize telemedicine:

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

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

3. to authorize or order the prescription, dispensation or administration of any medication classified as a Schedule II controlled substance or an amphetamine or narcotic/ opioid of any schedule;

4. to authorize or order the prescription, dispensation or administration of any controlled substance (other than a Schedule II controlled substance or an amphetamine or opioid) unless the physician has had at least one in-person visit with the patient at a physical practice location in this state within the past year.

C. Exceptions. The following exceptions are recognized to the prohibitions set forth in §7513B.3 and/or §7513B.4:

1. Amphetamines. The prohibition against the prescription of an amphetamine and the requirement for an in-person visit within the past year, provided, however, that this limitation shall not apply to a physician who is currently certificated by a specialty board of the American Board of Medical Specialties or the American Osteopathic Association:

a. ~~in the specialty of psychiatry from psychiatrist who prescribes using amphetamines in the treatment of his or her patients suffering from attention deficit hyperactivity disorder (ADHD); or~~

b. ~~the American Society of Addiction Medicine in the subspecialty of addictive medicine from using narcotics in the treatment of~~

~~an addictive disorder, provided all of the following conditions are satisfied:~~

a. the patient is under the age of eighteen;

b. the patient is being treated at a clinic or facility operated by the state of Louisiana or a behavioral health center operated by the department or a local governmental entity;

c. there is a policy in place for referral for an in-person visit with a primary care physician in this state if deemed necessary by the psychiatrist; and

d. such is permitted by and in conformity with all applicable state and federal and state laws and regulations; or including, but not limited to, the Ryan Haight Online Pharmacy Consumer Protection Act of 2008 (Pub. L. 110-425) and any corresponding regulations that may be adopted by the United States Drug Enforcement Administration.;

2. Buprenorphine-Naloxone Preparations. The prohibition against the prescription of an opioid shall not apply to a psychiatrist who is board certified in the subspecialty of addictive medicine from using buprenorphine-naloxone preparations in the treatment of an addictive disorder, provided all of the following conditions are satisfied:

a. the patient is being treated at a physician's office or addiction treatment center within this state;

b. the patient has had at least one in-person visit with the addiction medicine specialist within the past six months;

c. there is a policy in place for referral for an in-person visit with a physician in this state if deemed necessary by the addiction medicine specialist; and

d. such is permitted by and in conformity with all applicable state and federal laws and regulations.

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

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

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

1. open an office in this state;
2. meet with patients in this state;
3. receive telephone calls in this state from patients; or
4. engage in the practice of medicine in this state beyond the limited authority conferred by his or her telemedicine permit.

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

F. No physician shall utilize telemedicine to provide care to a patient who is physically located outside of this state, unless the physician possesses lawful authority to do so by the licensing authority of the state in which the patient is located.

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), amended, LR-

§7515. Exceptions

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

1. furnishing medical assistance in case of a declared emergency or disaster, as defined by the Louisiana Health Emergency Powers Act, R.S. 29:760 et seq., or as otherwise provided in Title 29 of the Louisiana Revised Statutes of 1950, or the board's rules;
2. issuance of emergency certificates in accordance with the provisions of R.S. 28:53; and
3. a true consultation, e.g., an informal consultation or second opinion, provided by an individual licensed to practice medicine in a state

other than Louisiana, provided that the Louisiana physician receiving the opinion is personally responsible to the patient for the primary diagnosis and any testing and treatment provided.

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

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

§7517. Action against Medical License

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

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

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

§7519. Action against Permit

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

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

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

§7521. Unauthorized Practice

A. Any individual who utilizes telemedicine to practice medicine in this state in the absence

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of a medical license or a telemedicine permit duly issued by the board, shall be deemed to be engaged in the unauthorized practice of medicine and subject to the civil, injunctive and criminal penalties prescribed by the Act.

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

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

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