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September 8, 2015

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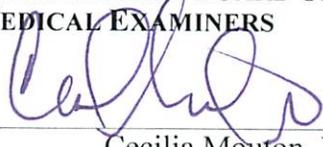
RE: Final Report Relative to Proposed Amendments
To Rules Governing Physician Licensure and Practice;
Telemedicine— La. Rev. Stat. § 49:968(CD)

Dear Sirs:

Pursuant to La. Rev. Stat. §49:968(D), the Louisiana State Board of Medical Examiners is submitting the enclosed report on the final adoption of rule amendments governing telemedicine. Notice was previously published in the October 2014 edition of the *Louisiana Register*, Vol. 40, No. 10, pp. 2065-2069. Substantive amendments were published in the Potpourri Section of the July 2015 edition of the *Louisiana Register*, Vol. 41, No. 7, pp. 1415-1416. The Board plans to adopt the amendments upon publication in the October 20, 2015, edition of the *Louisiana Register*.

Very truly yours,

**LOUISIANA STATE BOARD OF
MEDICAL EXAMINERS**

By: 
Cecilia Mouton, M.D.
Executive Director

Enclosure

**FINAL REPORT RELATIVE TO PROPOSED
AMENDMENT OF ADMINISTRATIVE RULES
GOVERNING PHYSICIAN LICENSURE AND
PRACTICE—TELEMEDICINE**

(La. Rev. Stat. § 49:968(D))

By The
LOUISIANA STATE
BOARD OF MEDICAL EXAMINERS

Submitted To The
COMMITTEE ON HEALTH AND WELFARE,
LOUISIANA SENATE,

COMMITTEE ON HEALTH AND WELFARE,
LOUISIANA HOUSE OF REPRESENTATIVES,

PRESIDENT OF THE SENATE

And

SPEAKER OF THE HOUSE OF REPRESENTATIVES

September 8, 2015

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This Report is respectfully submitted by the Louisiana State Board of Medical Examiners (the “Board”), within the Department of Health and Hospitals, pursuant to La. Rev. Stat. §49:968(D).

By Notice of Intent published in the October 20, 2014, edition of the *Louisiana Register*, Vol. 40, No. 10, pp. 2065-2069, the Board proposed to amend its rules governing the practice of medicine by telemedicine. Concurrently with submission of the Notice of Intent, in accordance with La. Rev. Stat. §40:968, the Board submitted a Report to the Senate and House Committees on Health and Welfare, the President of the Senate and the Speaker of the House of Representatives.¹ The Board did not receive a request for public hearing; however, it did receive written comments and subsequently elected to make substantive changes to the proposed amendments. These appeared in Potpourri Section of the January 20, 2015 edition of the *Register* (LR 41:293-294) and a public hearing was scheduled but subsequently postponed.

Further consideration of the comments and options were discussed by the Board at its meetings over a number of months to address the concerns expressed, principally with regard to proposed amendments to Section 7513 *e.g.*, relative to the prescription of controlled dangerous substances (CDS), as well as the views expressed in HCR 4 of the 2015 Session of the Louisiana Legislature. Ultimately, the Board decided to make a number of substantive changes to the proposed rules, appearing in Sections 408, 7507, 7509 and 7513. Notice of the proposed changes (including any substantive changes from the January 2015 Potpourri Notice that the Board wanted to include in this rule effort) was published in the Potpourri Section of the July 20, 2015 edition of the *Register*, (LR 41:1415-1416) and a public hearing was held on August 20, 2015 to receive comments on the proposed substantive changes. Three (3) individuals appeared at hearing to present oral comments and two (2) additional written comments were received.

This Report, submitted by the Board pursuant to and as prescribed by La. Rev. Stat. §49:968(D), sets forth a summary of the comments received by the Board on the subject administrative rule amendments, and a statement of the Board's response to each comment, including a concise statement of the principal reasons for and against adoption of any modifications or changes suggested. A copy of the Notice of Intent published in the October 20, 2014 edition of the *Register*, as substantively amended by the Notice that appeared in the Potpourri Section of the July 20, 2015 edition of the *Register*, along with

¹*Electronic Mail*, Cecilia Mouton, M.D., Exec. Dir., La. State Bd. Med. Exam., RE: Report Relative to Proposed Amendment of Administrative Rules Governing Physician Licensure and Practice; Telemedicine (Oct. 9, 2014).

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an annotated draft that reflects how the proposed rules would appear if such changes are adopted, accompanies this Report as Appendix A, which the Board intends to adopt as final amendments and formally promulgate by and upon publication in the October 20, 2015 edition of the *Register*.

I. Background—The history of this rule effort is detailed on page 1 of this Report. In sum, the Board proposes to amend its telemedicine rules to update the rules generally, make substantive and technical modifications consistent with or made necessary by the passage of time, and reflect certain changes in the controlling law resulting from Act 442 of the 2014 regular session of the Louisiana Legislature, which amended the Louisiana Medical Practice Act, La. Rev. Stat. §37:1271B(2), governing the practice of medicine by telemedicine in this state. The proposed changes appear at LAC 46:XLV, Subpart 2, §408 and Subpart 3, §§7501, 7503, 7505, 7507, 7509, 7510, and 7513.

II. Summary of Proposed Rules—The amendments, as originally proposed in the October 20, 2014 edition of the *Register*, and as substantively modified by the Notice that appeared in the Potpourri Section of the July 20, 2015 edition of the *Register*, (LAC 46:XLV.408 and Chapter 75) provide for the licensure and practice of medicine by telemedicine in this state. In Subpart 2, the proposed amendments incorporate certain revised definitions, update the rules generally as made necessary by the passage of time and make other substantive and technical modifications consistent with the law. Among other items, the proposed amendments: remove certain telemedicine permit requirements (e.g., that the applicant: not be in a medical residency program and attend the Board's Physician Orientation Program (existing 408A.3 and A.4)); provide for the submission of an affirmation confirming an arrangement with another physician(s) who maintains a physical practice location in Louisiana to accept patients for referral and follow up care (408D.3); and increase the permit issuance fee from \$150 to \$300 and renewal fee from \$100 to \$200 respectively (408D.6, 408G). Among other items in Subpart 3 the proposed changes: modify certain definitions (7503A); make clear that telemedicine may only be practiced: within a physician-patient relationship using the same standard of care as if the services were provided in a face-to-face setting; and that physicians providing and the patients receiving telemedicine services may be at any location at the time the services are rendered (7505). The changes also: remove the current requirements for support staff and the presence of a licensed health care professional with the patient during all telemedicine encounters (existing 7507); provide that those who perform telemedicine must either possess a full and unrestricted license or a telemedicine permit (7507A); address the need for peripheral equipment, diagnostic testing, a patient presenter to assist with the encounter if deemed necessary by the physician, and in-person visit or referral to

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another physician, if required by the standard of care applicable in a face-to-face visit, (7507B); and provide for certain patient disclosures (7507C). The changes specify that physicians who use telemedicine must comply with all state and federal laws and regulations for medical/health information privacy and security (7510); amend Section 7513 to provide a preamble (7513B), delete all specific references to amphetamines and narcotics in the existing rules (7513B) (as well as references to Schedule II, amphetamines, opioids and buprenorphine-naloxone preparations in the amendments originally noticed in October 2014), and provide for exceptions concerning the prescription of controlled dangerous substance (CDS) by telemedicine (7513C.4), which are consistent with state and federal law and regulation.

III. Summary of the Comments and Board Response—The Board received fifteen (15) written comments over the entire span of the rule-making effort, several of which were submitted by some of the same commenters, questioning the need for or suggesting substantive changes to various provisions. The vast majority of these comments related to the prescription of CDS by way of telemedicine (7513). Summaries of all comments, as well as the Board’s responses to each, are set forth below.

Comments/Responses to (October 2014 Notice of Intent, January 2015 Potpourri)

408

Comment 1. (408). One commenter questioned/another objected,² to the proposed increase in fees expressing the view that it did not appear that there would be a substantial increase in the administrative burdens placed on the Board by telemedicine to warrant the increase.

Response. While the Board believes that it could absorb the thirty or so new applications for telemedicine permits that are anticipated annually over next several years with existing personnel and resources, it disagrees with the notion that there will be no increase in the administrative burdens placed on the agency attributable to permitting, inquiries, dealing with complaints, conducting investigations, etc. The projected three year increase in revenues attributable to the fee increase (seven, ten and thirteen thousand dollars) will be utilized to off-set the Board’s general operating expenses attributable to any such administrative burdens occasioned by the proposed amendments.

²Comment, Louisiana Hospital Association (LHA), Paul Salles (Nov. 19, 2014); Comment, LHA, Paul Salles (Feb. 5, 2015);/Louisiana State Medical Society (LSMS), Roberto Quintal, M.D. (Nov. 19, 2014); Comment, LSMS, Dolleen Licciardi, M.D. (Feb. 19, 2015).

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Comment 2. (408). Another commenter³ questioned whether the arrangement required by 408D.3. could be made with the Chief Medical Officer or Medical Director on behalf of an institution.

Response. Yes, provided Chief Medical Officer or Medical Director meets the criteria set forth in 408 to accept patients on referral or for follow up care.

Comment 3. (408) One commenter⁴ objected to the provision that a physician applying for a telemedicine permit have an arrangement with a physician who maintains a physical practice location in this state to accept patients on referral and for follow up care 408D.3., especially for patients needing medical experts outside the borders of Louisiana or in instances of a natural disaster.

Response. First, the existing rules (7515A.1) make clear that they are inapplicable in instances of natural disasters or declared emergencies. Second, the existing rules also exempt consultations provided by physicians licensed elsewhere (medical experts) who are engaged for consults or second opinions on patients located in Louisiana by way of telemedicine *e.g.*, a true consultation (7515A.3). Finally, the rationale for the provision subject of the comment - which is included in the law (La. Rev. Stat. §37:1271B(2)(b)(iii)) - is stated in the proposed rule itself *e.g.*, to insure that patients receiving medical care by telemedicine have physician coverage available in Louisiana to address any health care needs that may require in person referral, follow up care, hospitalization, etc., which could not be provided by a telemedicine provider physically located out of state. The rationale is neither sinister nor promoted for reasons other than patient safety and consistency with state law. For these reasons, the Board declines to change the proposed amendment.

7303.

Comment 4. (7503). Two commenters⁵ suggested that the definition of “telemedicine” be amended to include the definition of “telehealth,” to allow providers the ability to use store-and-forward telephonic consultations.

Response. Initially, we note that the definition of *telemedicine* included in the 7503A of the existing rules is not being altered by the proposed amendments. The

³Comment, Specialists on Call, Alex Nason (Nov. 12, 2014).

⁴Comment, American Telemedicine Association, Jonathan Linkous (Nov. 19, 2014).

⁵Comment, Teladoc, Inc., Thomas Seaman (Nov. 19, 2014); Comment, Teladoc, Inc., Claudia Tucker, (Feb. 17, 2015); Louisiana Association of Health Plans, Jeff Drozda (Feb. 16, 2015).

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current definition mirrors the one in state law, La. Rev. Stat. §37:1262(4). To the extent authorized by law (La. Rev. Stat. §40:1300.381), the definition does not impede providers from utilizing telehealth. The Board anticipates a subsequent rule effort to address telehealth.

7507

Comment 5. (7507B.1). One commenter⁶ asserted that the need to have access to the patient's medical record may be beyond the ability of providers in all situations and not consistent with in-person encounters applicable to the delivery of urgent care and emergency services. This commenter, and another,⁷ recommended consistency with the same requirements applicable to all licensees regardless of their method of providing care.

Response. Initially, we do not believe that patient encounters at urgent care or walk-in clinics are representative of the majority of physician-patient interactions. Indeed, the Board believes that availability of a patient's medical record does, in fact, represent best practices, is consistent with the standard of care applicable to most physician-patient encounters, and is the standard to which physicians should seek to attain in all settings. It is also consistent with the recommendations of national medical organizations and the Federation of State Boards of Medical Examiners of the United States (FSMB). That said, the Board recognizes that in the examples provided by commenters, and other instances where the record would typically not be immediately available if the encounter occurred in-person, the ability to obtain the record at the time of the visit may be beyond the physician's control. In such instances, provided the physician has the ability to access the record subsequently with the patient's consent, we will consider the rule to have been met for purposes of complying with 7507B.1. At the next occasion the Board may have to amend the rules, a clarifying amendment will be included. In the interim, this response shall reflect the interpretation to be given by the Board to the proposed rule.

Comment 6. (7507B.2). One commenter⁸ claimed that the wording is unclear and suggested that as currently drafted 7507B.2 appears to require a physician (if necessary in the physician's judgment) to access a patient presenter to assist with the telemedicine encounter *and* to conduct an in-person visit with the patient. The

⁶American Telemedicine Association, *Infra*.

⁷Comment, John Wells, M.D. (Nov. 19, 2014).

⁸Comment, Teladoc, Inc., *Infra*.

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commenter suggested a clarifying amendment. Another commenter⁹ suggested that 7507B.2.a.-c. be deleted altogether due to costs, the potential of limiting access to telemedicine and on competition and innovation.

Response. The language is sufficiently clear in our view that both use of a patient presenter *and* an in-person physician visit are not required. The provision (7507B.2) merely requires the ability to utilize the options listed in 7507B.2.a.-c. (*e.g.*, peripherals, diagnostic testing, if necessary in the physician’s judgment a patient presenter to assist with the encounter, an in-person visit or referral to another physician) *if* such would be required by the standard of care. The second commenter’s suggested deletion of 7507B.2.a.-c. would allow the practice of medicine by telemedicine under circumstances that do not comply with the standard of care and remove the availability of tools that may be needed if indicated in the judgement of the treating physician. We are unwilling to do either. For these reasons, the Board declines the suggested amendments.

Comment 7. (7507C.1). Among the information to be disclosed in 7507C.1., several commenters¹⁰ questioned the need to require physicians to provide their email address. They suggested email disclosure be optional rather than mandatory.

Response. The Board believes the totality of the information to be disclosed, minus the physician’s email address, is sufficient and in a substantive amendment previously published in the July 2015 edition of the *Register* to 7507C.1., reference to an email address has been deleted. If a physician customarily provides patients his or her email address, or would like to make it available to patients, certainly he or she could voluntarily do so.

Comment 8. (7507C). One commenter¹¹ suggested that the disclosure requirement “seems a bit broad” and questioned whether it had to be made if already provided (by a hospital where the physician is privileged).

Response. The disclosures represent those items typically available to patients in a face-to-face encounter. We do not see them as overly broad. As long as the physician insures that such have been previously provided by any means (*e.g.*, the physician, group practice, covering physician, hospital service, telemedicine service provider, etc.) the disclosures need not be repeated except to be updated if necessary.

⁹Comment, Louisiana Association of Health Plans, *Infra*.

¹⁰Comment, LHA, LSMS, John Wells, M.D., *Infra*.

¹¹Comment, Specialists on Call, *Infra*.

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7509

Comment 9. (7509A.4). One commenter¹² questioned whether the requirement that patient records be “made immediately available to the patient or a physician to whom the patient may be referred” is a requirement for non-telemedicine care. Another commenter¹³ noted the requirement may not be practicable and suggested removing the word “immediately.” It also suggested that patient records be made available to the physician only with the patient’s consent.

Response. The Board does not disagree with the comments and in a substantive amendment previously published in the July 2015 edition of the *Register* to 7509A.4., the word *immediate* has been deleted and “within a reasonable period of time” has been added. The commenter’s suggestion concerning obtaining patient records with patient consent are adequately addressed by 7509A.2. and 7510.

7513

Comment 10. (7513B.3). Two commenters¹⁴ expressed opposition to the prohibition of prescribing Schedule II controlled substances or an amphetamine or opioid of any schedule in the amendments originally proposed. Because the rule states that the standard of care for telemedicine shall be held to the same prevailing and usually accepted standards of medical practice as those in traditional face-to-face settings, the commenters expressed the view that such would seem to negate the need to further prohibit the prescribing of controlled substances.

Response. In response to the comments to 7513 as originally proposed, the Board discussed the prohibitions contained in this Section over the course of a number of meetings. Ultimately, the Board decided to make a number of substantive changes to accommodate the comments and better insure that physician prescribing practices are consistent with state and federal requirements. These are described in the July 20, 2015 Potpourri Notice (LR 41: 1415-1416). Among others, the Board decided to provide a preamble (7513B), delete the prohibitions/limitations on the prescription of Schedule II CDS, opioids, amphetamines, and buprenorphine-naloxone preparations in the amendments originally noticed (7513B.3.-4.; 7513C.1.-2), and provide for exceptions to the remaining proposed requirements for the prescribing of CDS by telemedicine as reflected in the July 2015 Potpourri Notice (see: 7513C.1.-4).

¹²Comment, Specialists on Call, *Infra*.

¹³Comment, Teladoc, Inc., *Infra*.

¹⁴Comment, LHA. LSMS, *infra*.

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The proposed requirements more clearly align telemedicine prescribing practices with respect to CDS with those provided by state and federal regulation, are consistent with the standard of care applicable to the prescription of CDS (*e.g.*, an in-person visit before prescribing a CDS) and are necessary to protect the public. For these reasons, and those expressed in the Board's response to Comment 11 below, we believe that the proposed changes adequately accommodate the commenters' comments. To the extent that they do not, we are not inclined to make further changes.

Comment 11. (7513B.4). One commenter¹⁵ suggested that requiring an in-person visit prior to the prescription of CDS by an addiction medicine specialist will negatively impact the care provided to those suffering from opioid dependence. The commenter suggested that an exception was needed to accommodate such care and offered that requiring an in-person visit after initiation of treatment would be more reasonable.

Response. (7513). A number of commenters noted herein expressed opposition to the various changes originally proposed to 7513, which includes limitations on the prescribing of CDS by telemedicine. Many of the concerns expressed have been, we believe, addressed by substantive amendments to 7513 set forth in the Potpourri Section of the July 2015 edition of the *Register*. In response to those that remain, particularly the requirement for at least one in-person visit prior to prescribing a CDS by telemedicine, the Board is compelled to note that federal regulation provides that no CDS may be prescribed (delivered, distributed, or dispensed) without a *valid prescription*. 21 USC §829(e).

In order to be a *valid prescription* the prescribing physician must have conducted at least one in-person evaluation of the patient.¹⁶ A similar requirement is included in state law.¹⁷ Federal regulations exempt physicians engaged in the *practice of telemedicine* (as defined by 21 USC 802(54)) from performing an in-person evaluation before prescribing a CDS *provided that*: the patient is being treated by and

¹⁵Comment, Townsend, Howard Wetsman, M.D. (Nov. 6, 2014).

¹⁶21 USC §829(e)(2).

¹⁷La. Rev. Stat. §37:1271B(3) provides that 'Except as authorized by rule promulgated by the board, no physician practicing telemedicine shall prescribe any controlled dangerous substance prior to conducting an in-person patient history or physician examination of the patient as determined by the board.' La. Rev. Stat. §37:1271B(3).

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physically located in a hospital or clinic,¹⁸ which has its own valid DEA registration; the physician is treating the patient in the usual course of professional practice; in accordance with state law; and the physician also has a valid DEA registration.¹⁹

While the existing rules and proposed changes make clear that physicians must act in conformity with all applicable state and federal laws and regulations, certain exceptions to the in-person visit originally proposed *e.g.*, prescription of amphetamines for ADHD and buprenorphine-naloxone preparations for the treatment of addiction, are not. While federal regulations may be expanded in the future to implement further exceptions, *e.g.*, an Attorney General special registration²⁰ or identifying circumstances determined by the U.S. Attorney General and the Secretary of DHHS to be consistent with the public health, until that time the Board does not believe that would it appropriate to expand on or create additional exceptions. Thus, as evidenced by the substantive changes in the July 2015 Potpourri, the current exceptions and those proposed in the original Notice (October 2014 Register) have been deleted from the form of the amendments in 7513 to be promulgated. Also see the Board's response to Comment 10 above. While the Board is not unsympathetic to the commenter's request, it does not believe a further exception would be consistent with state and federal regulation and declines the commenter's suggestion to do so.

¹⁸According to the DEA, a *Hospital/clinic* registration is NOT for an individual but, rather, for a physical location at which any combination of inpatient, outpatient, or emergency services is provided. It includes any school which provides medical services to human patients in the practice of teaching medicine. The definition does not include individual practitioners, incorporated or otherwise, licensed to practice medicine in a State. *See*: U.S. Drug Enforcement Administration, <http://www.deadiversion.usdoj.gov/drugreg/>

¹⁹*See*: 21 USC §802(54). The other exceptions to the federal requirement for an in-person evaluation prior to prescribing a CDS by telemedicine include individuals being treated: by and in the physical presence of a practitioner who has a valid DEA; by employees or contractors of the Department of Veteran Affairs or the Indian Health Service acting in the scope of employment or contract; during a public health emergency declared by the Secretary of the U.S. Department of Health and Human Services; if the services are being conducted by a practitioner who has obtained an Attorney General special registration under Section 831(h) of the federal Controlled Substances Act; in a medical emergency situation; if the services are being conducted under any other circumstances that the U.S. 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.

²⁰To our knowledge, federal regulations have not been promulgated further identifying what services may represent a legitimate need for a special registration under 21 USC 831(h) of the Controlled Substances Act. Pursuant to the proposed change to 7513C.4, in the event a special registration was obtained under 831(h) or another federal exception was applicable, the Board could consider an exception to the requirements of 7513C.3.a.

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Comment 12. (7513B.4). One commenter²¹ expressed the view that while Schedule II CDS may not generally be available without a face-to-face interaction in psychiatric telemedicine, that such may be needed in unique situations for stable transition and quality of care and suggested an exception to that effect from the need to conduct an in-person visit prior to the prescription of a CDS.

Response. The Board's response to the commenter is the same as its response to Comment 11 above.

Comment 13. (7513B.4). Two commenters²² opposed the prohibition in the amendments originally proposed on the prescription of CDS by telemedicine 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. They suggested rewording or striking the provision.

Response. As to the need for the in-person visit, see the response to Comment 11 above. The need for a visit to be conducted at a physical practice location in this state (7513C.3.a) reflects the Board's concern relative to the potential adverse impact that removing the proposed change could have on the proliferation of CDS prescriptions in this state, which is already at an unacceptable level. This is made crystal clear by several reports submitted to the Louisiana Legislature in 2015, which reveal that CDS prescribing rates per capita in Louisiana are already among the highest in the country and clearly on the rise. One of these reports, *e.g.*, *Over-Prescribing of Pain Medication by Physicians* (the "Report") was submitted by the Board to the President of the Senate, Speaker of the House, and the Senate and House Committees on Health and Welfare, as requested by House Concurrent Resolution HCR 99 (La. Leg. 2014). This Report reveals that prescription overdose deaths have progressively increased since 1992 to become the leading cause of injury and death in the United States, with Louisiana ranking 7th in the nation among states that prescribe the most opioids and benzodiazepines per capita. Unfortunately, because overdose death correlate directly with the number of CDS prescriptions written, our state also has one of the highest overdose death rates in the country. The other Report submitted by the Louisiana Department of Health and Hospitals in response to SCR 39 (La. Leg. 2014), reveals that Louisiana ranks at the top of the list in the amount of amphetamines prescribed.

²¹Comment, Tulane University, Stephen Wright, John Thompson, M.D., Charles Zeanah, Jr., M.D., Patrick O'Neill, M.D. (Nov. 17, 2014).

²²Comment, LHA, LSMS, *infra*.

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Moreover, it would be nearly impossible for the Board (and pharmacists) to determine whether a CDS prescription from an out-of-state physician practicing on a telemedicine permit was preceded by an in-person evaluation of the patient. For these reasons, the Board does not believe further amendment is in order. However, to the extent that a situation might exist that warrants relief from the application of this provision, the proposed rules would allow the Board to consider an exception (7513C.4).

Comment 14. (7513B.3, 4). One commenter²³ questioned whether 7513B.3 and B.4. as originally proposed contradict each other.

Response. No. As originally proposed 7513B.3 related to Schedule II CDS while 7513B.4 related to any CDS other than a Schedule II or an amphetamine or opioid. Otherwise, the Board's response to the commenter is the same as its response to Comment 10 above.

Comment 15. (7513C.1). One commenter²⁴ applauded 7513C of the amendments as originally proposed respecting psychiatric telemedicine and the incorporation of exemptions for the treatment of ADHA, especially in adolescents. It strongly agreed with the exemptions and requested they remain in the final rule. The same commenter also suggested that the proposed wording be expanded so that other Schedule II CDS could be prescribed by telemedicine for the treatment of ADHD. The commenter suggested substituting the words "stimulate medication" for "amphetamines."

Response. The Board's response to the commenter is the same as its response to Comment 10 above. There is no further need to consider expanding exceptions that have been removed from the final form of the rule amendments to be promulgated.

Comment 16. (7513C.1.a). Two commenters²⁵ opposed an exception in the amendments originally proposed that limited the prescription of amphetamines by telemedicine for the treatment of ADHD to those under the age of 18 being treated in a clinic or facility operated by the State, DHH or a local governmental entity. They opposed limiting access for adults, noted that the limits are not contained in the current rules, and suggested that meeting the statutory requirement that the patient must have been seen within the prior year before a CDS is prescribed would seem

²³Comment, Specialists on Call, *Infra*.

²⁴Comment, Tulane University, *infra*.

²⁵Comment, LSMS, LHA, *infra*.

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sufficient.

Response. The Board's response to the commenters is the same as its response to Comment 10 above. There is no further need to consider expanding exceptions that have been removed from the final form of the rule amendments to be promulgated.

Comment 17. (7513C.1.b). Two commenters²⁶ expressed concern that there is a lack of state-operated facilities and suggested an amendment to expand the exception set out in the amendments originally proposed for prescribing amphetamines for the treatment of ADHA by telemedicine to any state licensed facility. Another commenter²⁷ suggested expanding it to include locations operated by or in contractual agreements with academic medical centers or medical schools.

Response. The Board's response to the commenters is the same as its response to Comment 10 above. There is no further need to consider expanding exceptions that have been removed from the final form of the rule amendments to be promulgated.

Comment 18. (7513C.1.d.). Two commenters²⁸ suggested deleting reference to the Ryan Haight Act and rely instead on the need for compliance with all state and federal laws already cited in the rules.

Response. Among the substantive amendments previously published in the July 2015 edition of the *Register to 7509A.4.*, the reference has been deleted. *See* the Board's response to Comment 10 above.

Comment 19. (7513C.2). Several commenters²⁹ expressed the view that the changes originally proposed for treatment of addictive disorders *e.g.*, a psychiatrist who is board certified in the subspecialty of addictive medicine, would prohibit addiction medicine specialists *e.g.*, those certified by the American Society of Addiction Medicine or those certified by the American Board of Addiction Medicine from prescribing CDS for the treatment of addictive disorders by telemedicine. They suggested an amendment that would include these providers in the exception. Another commenter³⁰ expressed the same concerns and suggested an amendment that would

²⁶Comment, LHA, LSMS, *infra*.

²⁷Comment, Tulane University, *infra*.

²⁸Comment, LHA, LSMS, *infra*.

²⁹Comment, American Society of Addiction Medicine, Stuart Gitlow, M.D./Louisiana Society of Addiction Medicine, John Epling, Jr., M.D. (Nov. 19, 2014);

³⁰Comment, Townsend, *infra*.

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allow psychiatrists boarded by the American Board of Psychiatry and Neurology and addiction medicine specialists certified by the American Board of Addiction Medicine to prescribe buprenorphine/naloxone without first having to see the patient in person. The commenters also suggested a change in the wording from “addictive medicine” to “addiction medicine.” Finally, two other commenters³¹ suggested that only eight psychiatrists licensed in Louisiana are currently board certified in the subspecialty of addictive medicine. While they agree with the rule’s existing prohibitions on prescribing of CDS for the treatment of non-cancer related chronic pain and obesity, they contend that the proposed criteria for the treatment of CDS for ADHD and prescriptions for buprenorphine-naloxone preparations is too narrow and recommended that as long as a physician has a DEA there should be no further restrictions for the prescribing of CDS.

Response. The Board’s response to the commenters is the same as its responses to Comment 10 and 11. There is no further need to consider expanding exceptions that have been removed from the final form of the rule amendments to be promulgated.

Comments offered at Potpourri public hearing held August 20, 2015.

Three (3) commenters appeared and provided oral comments at this hearing.

Comment 20. (7513). Several commenters³² advised that they are planning to or have expanded their telemedicine services to provide coverage for in-patient hospital medical services. They requested clarification as to whether the proposed changes 7513, requiring an in-person evaluation prior to prescribing a CDS by telemedicine, would prevent a physician providing care by telemedicine from ordering CDS to treat a patient receiving care in-hospital patient care *e.g.*, morphine sulfate to address a myocardial infarction or congestive heart failure. If so, the commenters inquired as to whether or not it would be possible to grant an exception programmatically to exempt the need for an in-person evaluation by the physician prior to prescribing/ordering CDS for a patient currently receiving in-patient care.

Response. The Board’s answers to the commenters’ inquiry and request are both affirmative. Given that the situation described by the commenter would be in conformity with federal regulation, and considering the many safeguards attendant to

³¹Comment, LHA, LSMS, *infra*.

³²Comment, Schumacher Group, Randy Pilgrim, M.D.; Heather Harper, Acadia General Hospital (Aug. 20, 2015).

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the administering or dispensation of CDS to patients undergoing in-hospital care in an acute care facility, the Board would consider this one instance intended to be address by reference in the proposed Preamble (7513B) “While in *most instances* the board believes that an in-person visit is required prior to the issuance of a prescription for any controlled substance . . . (Emphasis supplied),” and for which an exception may be applicable under the proposed exemption provided in 7513C.4. Thus, for physicians who meet the requirements of the federal exemption (*e.g.*, the physician is treating the patient in the usual course of professional practice, in accordance with state law, has a valid DEA registration *and* the patient is receiving in-hospital care at a hospital which also has a valid DEA registration) the Board will not require an in-patient evaluation prior to the prescription, dispensation or administration of CDS by telemedicine. At the next occasion the Board may have to change the rules, a clarifying amendment will be included. In the interim, this response will reflect the application to be given by the Board to the proposed rule (7513C.3.a).

Comment 21. (7513, 7503). Another commenter³³ noted that he is providing psychiatric consultations by telemedicine to various clinics and requested an exception to the in-person evaluation prior to prescribing CDS in such instances. He also suggested that the same standard of care applicable to the practice of medicine should be applicable to telemedicine encounters, without any further conditions (*e.g.*, on prescribing and elsewhere). Finally, he also requested that the definition of telemedicine be broader than in the current rules.

Response. Again, while not unsympathetic to the commenter’s request, for the reasons set forth in response to Comment 11 above, the Board does not believe it appropriate to extend the exception for an in-person evaluation prerequisite to prescribing CDS by telepsychiatry at various clinics, given that such would be inconsistent with federal regulation. Next, the Board has responded to the commenter’s specific comments concerning application of the standard of care in its responses to Comments 5 and 7 above. As to commenter’s non-specific comments, further response is not required. Finally, the amendments proposed for adoption do not change the definition of *telemedicine* in the existing rules (7503A), which mirrors the definition set forth in the law (La. Rev. Stat. §37:1262(4)). Thus, Board declines the requested change. Also see the Board’s response to Comment 4 above.

Comments in reply to Potpourri Notice in July 20, 2015 Register (LR: 41:1416).

The Board received two (2) additional written comments in response to this Notice.

³³Comment, John Wells, M.D., *Infra*.

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Comment 22. (7507C). One commenter³⁴ urged the Board to support and endorse the Federation of State Medical Board's Interstate Medical Licensure Compact, to simplify the licensure process. The commenter also expressed the view that the proposed rules contained some higher standards for telemedicine than in-person care e.g.: a physician covering call for another physician would not be required to confirm the patient's identity and make the required disclosures; and the provision requiring the holder of a telemedicine permit to have an arrangement with a physician who maintains a physical practice in this state to provide for referrals and follow up care might create an unnecessary entanglement for patient care.

Response. The Board offers the same responses to the several points made by the commenter as set forth in its above responses to Comments 8 and 3. Whether or not Louisiana becomes a member the Interstate Medical Licensure Compact is not part of this rule effort. Further reply is not required.

One commenter,³⁵ encouraged by the substantial changes made by the Board to the amendments originally proposed remained concerned as to the potential impact of the proposed changes on hospital telemedicine programs. The same commenter offered the following five (5) comments:

Comment 23. 7507B(2). The commenter noted that the changes require a physician to have access to the patient's medical record. While this requirement could be accomplished for patients already established with hospital-based providers, it claims that such is not practical for patients who have not already been seen by a health system. It asserted that if access to patient's medical record is not required for all in-person visits, it should not be required for all telemedicine visits.

Response. The Board's response to the commenter is the same as its response to Comment 5 above, which should address the commenter's concern.

Comment 24. (7513). The commenter also suggested that the requirement of a face-to-face encounter to prescribe Schedule II CDS by telemedicine and establish a physician-patient relationship may interfere with hospitals utilizing and expanding telemedicine in both ambulatory and acute care settings.

Response. First, all references to Schedule II have been removed from the proposed rules. *See* the Board's response to Comment 10 above. Second, there is no

³⁴Comment, Christus Health, John Gillean, M.D., Peter Plantes, M.D. (Aug. 19, 2015).

³⁵Comment, LHA, Paul Salles (Aug. 20, 2015).

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requirement for a face-to-face encounter to establish a physician-patient relationship generally (7503A definition, *physician patient relationship*, 7507B). As to patients receiving in-hospital care, see the Board's response to Comment 20 above, which should address the commenter's concern. As to those receiving care in an ambulatory settings we note that the proposed changes do not require an in-person visit except prior to the prescription of CDS. Therefore, the provision would have no application to what we suspect are the vast majority of telemedicine encounters in ambulatory settings. In the event that an ambulatory setting was able to meet the federal exemption for telemedicine services described in response to Comment 11 above (e.g., including registration with the DEA under 21 USC 823(f)), the Board could consider a physician's request for an exemption under 7513C.4.

Comment 25. (7513). The commenter also expressed the view that the proposed rule does not allow for patients to use on-call or covering providers if a physician is on a different service or off for one reason or another.

Response. We do not believe that the proposed rule impacts on-call or covering providers generally, perhaps other than the need for an in-person evaluation prior to prescribing CDS by telemedicine. Also see the Board's response to Comments 11 and 24 above.

Comment 26. 7513C(3). The commenter expressed concern that requiring a physician to have had at least one in-person visit with the patient at a physical practice location in this state within the past year to authorize or order the prescription dispensation or administration of CDS would impact hospitals that utilize tele-ICU programs which allow patients to be monitored and cared by physician intensivists that they would otherwise not have access to in their local facility.

Response. The Board's response to the commenter is the same as its response to Comment 20 above, which should address the commenter's concern.

Comment 27. 7513C(3). Finally, the commenter observed that the rules currently allow the prescribing of CDS by psychiatrists without a prior in-person visit. The commenter asserted that removing this allowance will be detrimental to expanding tele-psychiatry services and suggested that the Texas Board made allowance in their most recent rules for virtual visits to be considered face-to-face to address this issue.

Response. The Board's response to the commenter is the same as its response to Comments 10, 11 and 21 above. Because no such exemption is permitted by federal exemption we are, for purposes of clarity, deleting the exemptions from the final form

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of the rules to be adopted. While we share the commenter's concern and trust that in due course accommodations will be made to federal regulations that will address the situation. Until then, prescribing a CDS by telemedicine in the absence of a prior in-person evaluation, in a setting or circumstance that is not exempted by the state and federal requirements identified hereinabove is not permissible. Thus, the Board does not believe it appropriate to amend the proposed rules as suggested.

* * *

Poverty Statement

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the impact of the proposed amendments on those that may be living at or below one hundred percent of the federal poverty line has been considered. It is not anticipated that the proposed amendments will have any impact on child, individual or family poverty in relation to individual or community asset development, as described in R.S. 49:973.

Provider Statement

In compliance with HCR 170 of the 2014 Regular Session of the Louisiana Legislature, the impact of the proposed amendments on organizations that provide services for individuals with development disabilities has been considered. It is not anticipated that the proposed amendments will have any impact on the staffing, costs or overall ability of such organizations to provide the same level of services, as described in HCR 170.

Public Comments

Interested persons may submit written data, views, arguments, information or comments on the proposed amendments to Rita Arceneaux, Confidential Executive Assistant, Louisiana State Board of Medical Examiners, 630 Camp Street, New Orleans, LA 70130, (504) 568-6820, Ex. 242. She is responsible for responding to inquiries. Written comments will be accepted until 4:00 p.m., November 19, 2014.

Public Hearing

A request pursuant to R.S. 49:953(A)(2) for a public hearing must be made in writing and received by the board within 20 days of the date of this notice. If a public hearing is requested to provide data, views, arguments, information or comments orally in accordance with the Louisiana Administrative Procedure Act, the hearing will be held on November 24, 2014, at 11:00 o'clock a.m. at the office of the Louisiana State Board of Medical Examiners, 630 Camp Street, New Orleans, LA 70130. Any person wishing to attend should call to confirm that a hearing is being held.

Cecilia Mouton, M.D.
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Licensure, Certification and Practice; Occupational Therapists and Occupational Therapy Assistants

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

Other than one-time costs for notice and Rule publication estimated at a total of \$2,578 in FY 15, it is not anticipated that the proposed Rule changes will result in any additional costs or savings to the board or other state or local governmental units. The Board of Medical Examiners proposes to amend its Rules governing the licensure, certification and practice of occupational therapists and occupational therapy assistants (LAC 46:XLV.Chapters 19 and 49), to update the Rules to reflect current board and professional practices, and to codify the rules to conform to policies and practices currently administered by the board.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There are no estimated effects on the board's revenue collections or that of any other state or local governmental unit anticipated from the proposed amendments.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed Rule changes update definitions and practice standards, insert additional language provided in the law, and make technical changes to reflect current board and professional practices. The board does not anticipate that implementation of the proposed changes will result in any adverse costs and/or economic impact to occupational therapists, occupational therapy assistants, licensure applicants or any other non-governmental group. Consistent with national certification renewal cycle requirements, the proposed changes reduce the continuing professional education requirement from 15 to 12 hours for annual license renewal (§1965) and make the same change for license reinstatement (§1975). Due to the varying costs for obtaining continuing education program credits, the board is not in a position to estimate the cost-savings attributable to these proposed changes.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is not anticipated that the proposed changes will have any material impact on competition or employment in either the public or private sector.

Celia Mouton, M.D.
Executive Director
1410#046

John D. Carpenter
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health and Hospitals Board of Medical Examiners

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

Notice is hereby given that in accordance with the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., and pursuant to the authority vested in the Louisiana state Board of Medical Examiners (board) by the Louisiana Medical Practice Act, R.S. 37:1270, as amended by Act 442 of the 2014 Regular Session of the Louisiana Legislature, the board intends to amend its rules governing the use of telemedicine as to patients who are located in this state, LAC 46:XLV.408 and 7501 et seq. The proposed changes make substantive and technical modifications and update the rules generally as made necessary by the passage of time. Among other items, the proposed changes: address the need and requirements for obtaining a telemedicine permit (§408); revise the scope of the Subchapter (§7501); incorporate certain revised definitions (§7503); identify: the need for a physician-patient relationship; the applicable standard of care; and location of the participants to telemedicine services (§7505); identify conditions prerequisite to practicing telemedicine and required disclosures (§7507); revise the requirements for patient records (§7509); provide only secure communication technology shall be used for telemedicine (§7510); impose certain requirements and limitations on the prescription of controlled substances by telemedicine, and provide for certain exceptions (§7513).

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 shall not engage in the practice of medicine 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. - 2. ...

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

B. - C. ...

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

1. ...

2. a description of how telemedicine will be used and the primary location(s) from which it will be utilized by the applicant;

3. 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. - 5. ...

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 \$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. - F.3.b. ...

G. Permit Expiration, Renewal. A telemedicine permit shall expire annually on the expiration date stated thereon or the 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 \$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 41:

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 in this state via telemedicine.

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), amended LR 41:

§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.

* * *

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

* * *

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.

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 §408 of these 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 41:

§7505. Patient Relationship; Standard of Care;

Location of Participants

A. **Physician-Patient Relationship.** Telemedicine shall not be utilized by a physician with respect to any individual located in this state in the absence of a physician-patient relationship.

B. **Standard of Care.** 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.

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 41:

§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.

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 41:

§7509. Patient Records

A. Patient records shall be:

1. created and maintained for every telemedicine visit according to the same standards of care as in an in-person visit;
2. confidential and subject to all applicable state and federal laws and regulations relative to privacy and security of health information;
3. 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 41:

§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 by the Department of Health and Hospitals, Board of Medical Examiners, LR 41:

§7513. Prohibitions

A. No physician shall authorize or order the prescription, dispensation or administration of any controlled substance or other drug by telemedicine other than in compliance with the rules of this Chapter and all state and federal laws and regulations.

B. No physician shall utilize telemedicine:

1. - 2. ...
3. to authorize or order the prescription, dispensation or administration of any medication classified as a Schedule II controlled substance or an amphetamine or 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 §7513.B.3 and/or §7513.B.4.

1. Amphetamines. The prohibition against the prescription of an amphetamine and the requirement for an in-person visit within the past year, shall not apply to a psychiatrist who prescribes amphetamines in the treatment of his or her patients suffering from attention deficit hyperactivity disorder (ADHD), provided all of the following conditions are satisfied:

- a. the patient is under the age of 18;
- 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 laws and regulations 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.

D. A physician who practices telemedicine by virtue of a telemedicine permit issued by the board shall not:

D.1. - E.

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 41:

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of the proposed amendments on the family has been considered. It is not anticipated that the proposed amendments will have any impact on family, formation, stability or autonomy, as described in R.S. 49:972.

Poverty Impact Statement

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the impact of the proposed amendments on those that may be living at or below 100 percent of the federal poverty line has been considered. It is not anticipated that the proposed amendments will have any impact on child, individual or family poverty in relation to individual or community asset development, as described in R.S. 49:973.

Provider Impact Statement

In compliance with HCR 170 of the 2014 Regular Session of the Louisiana Legislature, the impact of the proposed amendments on organizations that provide services for individuals with development disabilities has been considered. It is not anticipated that the proposed amendments will have any impact on the staffing, costs or overall ability of such organizations to provide the same level of services, as described in HCR 170.

Public Comments

Interested persons may submit written data, views, arguments, information or comments on the proposed amendment to Rita Arceneaux, Confidential Executive Assistant, Louisiana State Board of Medical Examiners, 630 Camp Street, New Orleans, LA 70130, (504) 568-6820, ex. 242. She is responsible for responding to inquiries. Written comments will be accepted until 4 p.m., November 19, 2014.

Public Hearing

If a public hearing is requested to provide data, views, arguments, information or comments orally in accordance with the Louisiana Administrative Procedure Act, the hearing will be held on November 24, 2014, at 9 a.m. at the office of the Louisiana State Board of Medical Examiners, 630 Camp Street, New Orleans, LA 70130. Any person wishing to attend should call to confirm that a hearing is being held. A request pursuant to R.S. 49:953(A)(2) for a public hearing must be made in writing and received by the board within 20 days of the date of this notice.

Cecilia Mouton, M.D.
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Physician Licensure and Practice; Telemedicine

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

Other than one-time costs for notice and rule publication estimated at a total of \$1,156 in FY 15, it is not anticipated that the proposed rule changes will result in any additional costs or savings to the board or other state or local governmental units. The board anticipates devoting some existing administrative staff resources to processing portions of telemedicine permit applications/renewals (for physicians who do not maintain a physical practice location in this state); affirming an arrangement with another physician(s) who maintains a physical practice location in Louisiana to accept patients for referral/follow-up care; and requiring a copy of the physician's written disclosures to patients. Because the number of current permit holders is small, and the anticipated total of those who

may seek a permit is believed to be relatively modest, these portions of the applications will be processed within existing systems for permit issuance/renewal. The board anticipates it can absorb the projected modest increase in administrative workload with existing personnel and resources. The proposed Rule changes are necessary to conform the board's existing telemedicine Rules to Act 442 of the 2014 Regular Session of the Louisiana Legislature, to update the Rules generally and incorporate substantive and technical changes made necessary by the passage of time.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Implementation of the proposed changes will generate additional fees of \$150 for issuance of an initial telemedicine permit and \$100 for permit renewal. Twenty-five physicians currently hold telemedicine permits. The board anticipates these permits will be renewed in the current fiscal year. While the board has no reliable data, 30 new applicants for a telemedicine permit are projected in the current fiscal year and for each of the next several years. It is estimated that additional agency revenue from initial/renewal telemedicine permits will total: \$7,000 for FY 2015 (30 new permits x \$150 = \$4,500, 25 renewal permits x \$100 = \$2,500. Total additional revenues = \$7,000); \$10,000 in FY 16 (30 new permits x \$150 = \$4,500, 55 renewal permits x \$100 = \$5,500. Total additional revenues = \$10,000); and \$13,000 in FY 17 (30 new permits x \$150 = \$4,500, 85 renewal permits x \$100 = \$8,500. Total additional revenues = \$13,000). The board does not anticipate an appreciable increase in the number of new applicants in forthcoming years. Additional annual revenues will be utilized to off-set the board's general operating expenses.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed changes will affect: out-of-state physicians who already possess a telemedicine permit to the extent that any do not already have a referral arrangement with a physician who maintains a physical practice location in this state; all physicians who use telemedicine technology which does not comply with state and federal laws and regulations for medical/health information privacy and security; and, potentially those that prescribe certain types of controlled substances by telemedicine. The current fees for permit issuance/renewal are \$150/\$100, respectively. The proposed changes will increase fees to \$300 at issuance and \$200 at renewal. The proposed changes remove the requirements for support staff and the presence of a licensed health care professional with the patient during all telemedicine encounters.

Because there is no information or data available either as to the number of physicians who utilize telemedicine in their practice or the extent to which those that may/may not already comply with the proposed changes, it is not possible to estimate the proposed changes' impact in these respects. To an extent not quantifiable, the public will receive an economic benefit by enhanced access to medical services via telemedicine from both Louisiana-licensed physicians and out-of-state physicians possessing a telemedicine permit. The proposed changes may also, to an extent not quantifiable, increase receipts and/or income of physicians who utilize telemedicine.

The proposed rules also require physicians to disclose privacy and other practices to new patients in a format specified by the board. It is believed that most physicians already use some form of disclosure that would substantially satisfy most if not all of the required information. Therefore, the board does not anticipate that this requirement will have a material effect on paperwork or workload on affected physicians.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Implementation of the proposed changes may, to an extent not quantifiable, have a positive impact on competition or employment in either the public or private sector.

Celia Mouton, M.D.
Executive Director
1410#048

John D. Carpenter
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

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

**Physician Practice; Unprofessional Conduct
(LAC 46:XLV.7603)**

Notice is hereby given that in accordance with the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., and pursuant to the authority vested in the Louisiana State Board of Medical Examiners (board) by the Louisiana Medical Practice Act, R.S. 37:1270, the board intends to amend its rules governing unprofessional conduct of physicians, LAC 46:XLV.7603. The proposed changes require that any physician holding herself or himself out as a specialist have completed accredited residency or fellowship training in the claimed area of specialization, and limit self-treatment and treatment of immediate family members with controlled substances to cases of an emergency.

Title 46

**PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

**Part XLV. Medical Professions
Subpart 3. Practice**

**Chapter 76. Definition of Enforcement Terms
Subchapter B. Unprofessional Conduct
§7603. Unprofessional Conduct**

A. - A.8.b. ...

9. *Failing to Adhere to Accepted Practices; Misleading Practices*—a physician shall:

a. practice within the scope of his or her education, training and experience; and

b. not hold himself or herself out as a specialist in an area of medical practice unless the physician has successfully completed a residency or fellowship training program, which is accredited by the American Council on Graduate Medical Education of the American Medical Association, the American Osteopathic Association, or the Royal College of Physicians and Surgeons of Canada.

10.a. - 10.f. ...

11. *Self-Treatment; Treatment of Immediate Family Members*—except in cases of emergency, physicians shall not prescribe controlled substances for themselves or their immediate family members. As respects a physician, *immediate family members* include the physician's spouse, children, parents, and siblings.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1261-1292, 37:1270, 37:1285.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 37:336 (January 2011), amended LR 41:

Potpourri

POTPOURRI

Department of Health and Hospitals Board of Medical Examiners

Public Hearing—Substantive Changes to Proposed Rule—Physician Practice; Telemedicine (LAC 46:XLV.408, 7507, 7509 and 7513)

The Louisiana State Board of Medical Examiners (the “board”) published Notice of Intent to amend its rules in the October 20, 2014 edition of the *Louisiana Register* (LR 40:2065 -2069). The notice solicited comments. As a result of the board’s consideration of the comments it proposed substantive changes. Pursuant to R.S. 49:968H(2) a public hearing was scheduled (LR 41:293-294) but subsequently cancelled to consider additional changes. After further review the board proposes the following substantive changes to the amendments original proposed: (i) in 408D. to: delete the words *To be acceptable to the board the:* in 408D.3 and delete 408D.3a.-D.4.; renumber 408D.5 as D.4; renumber 408D.6 as D.5 and delete the words *a copy of the required disclosures to patients, identified in §7507 of these rules and;* and renumber 408D.7 as D.6; (ii) in 7507C.1. to delete the words *and e-mail address;* (iii) in 7509A.4. to delete the word *immediately* and add the words “within a reasonable period of time;” (iv) in 7513 to: amend 7513A. to read *The following prohibitions apply to physicians who practice medicine in this state via telemedicine.*; add a preamble in 7513B.; (v) delete 7513C.-C.2.d.; and (vi) amend and renumber existing 7513B.1-2. to 7513C.1-C.2.; delete 7513B.3; renumber 7513B.4 as 7513C.3 and amend it by deleting the words *(other than a Schedule II controlled substance or an amphetamine or opioid);* and add 7513C.3.b.-C.4. No fiscal or economic impact will result from the amendments proposed in this notice. As substantively amended, these provisions will read as set forth below.

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. - C. ...

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

1. - 2.

3. 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.

4. criminal history record information;
5. such other information, acknowledgments and documentation as the board may require; and
6. a fee of \$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. - G. ...

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 41:

Subpart 3. Practice

Chapter 75. Telemedicine

Subchapter A. General Provisions

§7507. Prerequisite Conditions; Disclosures

A. - B.2.d. ...

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)) of the physician;

2. - 6. ...

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 41:

§7509. Patient Records

A. Patient records shall be:

1. - 3. ...

4. made available to the patient or a physician to whom the patient may be referred within a reasonable period of 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 35:1533 (August 2009), amended LR 41:

§7513. Prohibitions

A. The following prohibitions apply to physicians who practice medicine in this state via telemedicine.

B. Preamble—Controlled Substances. While in most instances the board believes that an in-person visit is required prior to the issuance of a prescription for any controlled substance, provided the physician can examine the patient *via* telemedicine technologies sufficient to make a diagnosis, controlled substances may be prescribed by telemedicine within the limitations of Subsection 7513C.

C. 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;

Appendix A

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 controlled substance unless;

a. 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;

b. the prescription is issued for a legitimate medical purpose;

c. the prescription is in conformity with the same standard of care applicable to an in-person visit; and

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

4. Exceptions. The board may grant an exception to the limitations of Subsection 7513C in an individual case that is supported by a physician's written application stating how and why he or she proposes to deviate from 7513C. If an exception is granted by the Board it shall be stated in writing and specify the manner and extent to which the physician shall be authorized to depart from 7513C.

D. - F. ...

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 41:

Public Hearing

In accordance with R.S. 49:968(H)(2), the board gives notice that a public hearing to receive comments and testimony on these substantive amendments to the Rule amendments original proposed will be held August 20, 2015, at 9:30 a.m. in the office of the Louisiana State Board of Medical Examiners, 630 Camp Street, New Orleans, LA 70130. Interested persons may contact Rita Arceneaux, Confidential Executive Assistant, Louisiana State Board of Medical Examiners, 630 Camp Street, New Orleans, LA 70130, (504) 568-6820, Ex. 242. She is responsible for responding to inquiries.

Cecilia Mouton, M.D.
Executive Director

1507#055

POTPOURRI

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

Public Hearing—Substantive Changes to Proposed Rule—Physician Practice; Unprofessional Conduct (LAC 46:XLV.7603)

The board published a Notice of Intent to amend its rules in the October 20, 2014 edition of the *Louisiana Register* (LR 40:2069-2070). The notice solicited comments. As a result of the board's consideration of the comments it proposed substantive changes. Pursuant to R.S. 49:968H(2) a public hearing was scheduled (LR 41:294-295) but subsequently cancelled to consider additional changes. After further review the board has decided to defer proceeding at this time on the amendments original proposed in §7603A.9 (e.g., holding one's self out as a *specialist*) and proceed only with the proposed amendments to §7603A.11. No fiscal or economic impact will result from the amendments proposed

in this notice. As substantively amended, this provision will read as set forth below.

**Title 46
PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

**Part XLV. Medical Professions
Subpart 3. Practice**

**Chapter 76. Definition of Enforcement Terms
Subchapter B. Unprofessional Conduct**

§7603. Unprofessional Conduct

A. - A.10.f. ...

11. *Self-Treatment; Treatment of Immediate Family Members*—except in cases of emergency, physicians shall not prescribe controlled substances for themselves or their immediate family members. As respects a physician, *immediate family members* include the physician's spouse, children, parents, and siblings.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1261-1292, 37:1270, 37:1285.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Medical Examiners, LR 37:336 (January 2011), amended LR 41:

Public Hearing

In accordance with R.S. 49:968(H)(2), the board gives notice that a public hearing to receive comments and testimony on these substantive changes to the Rule amendments original proposed will be held August 20, 2015, at 10:30 a.m. in the office of the Louisiana State Board of Medical Examiners, 630 Camp Street, New Orleans, LA 70130. Interested persons may contact Rita Arceneaux, Confidential Executive Assistant, Louisiana State Board of Medical Examiners, 630 Camp Street, New Orleans, LA, 70130 (504) 568-6820, Ex. 242. She is responsible for responding to inquiries.

Cecilia Mouton, M.D.
Executive Director

1507#054

POTPOURRI

**Department of Natural Resources
Office of Conservation**

Orphaned Oilfield Sites

Office of Conservation records indicate that the oilfield sites listed in the table below have met the requirements as set forth by section 91 of Act 404, R.S. 30:80 et seq., and as such are being declared orphaned oilfield sites.

Operator	Field	District	Well Name	Well Number	Serial Number
Carl B. Morgan	Converse	S	Dorothy Morgan	001	150616
Goodrich Oil Company	Opelousas	L	BIHM	001	212106 (30)
Madlyn Harris Muench	Benson	S	Harris Estate	Appendix A 001	155204

**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. – C. ...

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

1. - 2. ...

3. 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;~~

~~54. criminal history record information;~~

~~65. 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~~

~~76. a fee of \$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. – G. ...

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 41:

Subpart 3. Practice

Chapter 75. Telemedicine

Subchapter A. General Provisions

§7507. Prerequisite Conditions; Disclosures

A. – B.2.d. ...

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. – 6. ...

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 41:

§7509. Patient Records

A. Patient records shall be:

1. – 3. ...

4. made ~~immediately~~ available to the patient or a physician to whom the patient may be referred within a reasonable period of 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 35:1533 (August 2009), amended LR 41:

§7513. Prohibitions

~~A. No physician shall authorize or order the prescription, dispensation or administration of any controlled substance or other drug by telemedicine other than in compliance with the rules of this Chapter and all state and federal laws and regulations. The following prohibitions apply to physicians who practice medicine in this state via telemedicine.~~

~~B. Preamble—Controlled Substances. While in most instances the board believes that an in-person visit is required prior to the issuance of a prescription for any controlled substance, provided the physician can examine the patient via telemedicine technologies sufficient to make a diagnosis, controlled substances may be prescribed by telemedicine within the limitations of Subsection 7513C.~~

~~BC. 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 opioid of any schedule;~~

34. 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;

a. 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;

b. the prescription is issued for a legitimate medical purpose;

c. the prescription is in conformity with the same standard of care applicable to an in-person visit; and

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

4. Exceptions. The board may grant an exception to the limitations of Subsection 7513C in an individual case that is supported by a physician's written application stating how and why he or she proposes to deviate from 7513C. If an exception is granted by the Board it shall be stated in writing and specify the manner and extent to which the physician shall be authorized to depart from 7513C.

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

1. ~~Amphetamines. The prohibition against the prescription of an amphetamine and the requirement for an in-person visit within the past year, shall not apply to a psychiatrist the prescription, dispensation or administration of a controlled substance for an in-patient of a Louisiana licensed hospital, clinic or nursing home provided such is permitted by and in conformity with all applicable state and federal laws and regulations prescribes amphetamines/stimulants in the treatment of his or her patients suffering from attention deficit hyperactivity disorder (ADHD), provided all of the following conditions are satisfied:~~

a. ~~the patient is under the age of 18;~~

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;~~

e. ~~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 laws and regulations.~~

2. ~~Buprenorphine Naloxone Preparations. The prohibition against the prescription of an opioid and the requirement for an in-person visit within the past year, shall not apply to a psychiatrist who is board certified in the subspecialty of addiction medicine or a physician who is certified by the American Society of Addiction Medicine, or its successors, from prescribing buprenorphine naloxone preparations in the treatment of his or her patients suffering from 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;~~

e. ~~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.~~

D. - F. ...

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 41:

* * *