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Department of Health and Hospitals Board of Medical Examiners

Public Hearing—Substantive Changes to
Proposed Rule Amendments—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;

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, Louisiana 70130. Interested persons may contact Rita Arceneaux, Confidential Executive Assistant, Louisiana State Board of Medical Examiners, 630 Camp Street, New Orleans, Louisiana, 70130, (504) 568-6820, Ex. 242. She is responsible for responding to inquiries.

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Executive Director