

### **5.1.4: Telemedicine**

“Telemedicine” is the practice of medicine using electronic communication, information technology, or other means between a licensee in one location and a patient in another location with or without an intervening health care provider. The term telemedicine incorporates the practices of telehealth. It is one component of the delivery of healthcare.

The Board recognizes that technological advances have made it possible for licensees to provide medical care to patients who are separated by some geographical distance. As a result, telemedicine can be a useful practice model that, if employed appropriately, can provide important benefits to patients, including: increased access to health care, expanded utilization of specialty expertise, rapid availability of patient records, and the potential of reduced healthcare costs, increased efficiency, and improved overall healthcare outcomes. The call for ongoing research and formal training in the care models and technologies associated with telemedicine reflects the evolving nature of telemedicine practice.

#### **Standard of Care**

The Board cautions that licensees providing care to North Carolina patients via telemedicine will be held to the same established standard of care as those practicing in traditional in-person medical settings. The Board does not endorse a separate standard of care for telemedicine.

Licensees utilizing telemedicine in the provision of medical services to a patient (whether existing or new) are encouraged to take appropriate steps to establish the licensee-patient relationship, conduct all appropriate evaluations consistent with established evidenced based standards of care for the particular patient presentation, and protect and maintain patient confidentiality. When the standard of care that is ordinarily applied to an in-person encounter cannot be met by virtual means, the use of telemedicine technologies is not appropriate. Licensees, who fail to conform to the North Carolina statewide standard of care, may be subject to discipline by this Board.

The Board provides the following considerations to licensees as guidance in providing medical services via telemedicine:

#### **Licensure**

The Board deems the practice of medicine to occur in the state where the patient is located. Therefore, any licensee using telemedicine to regularly provide medical services to patients located in North Carolina should be licensed to practice medicine in North Carolina. Licensees need not reside in North Carolina if they have a valid, current license with the Board.

North Carolina licensees intending to practice medicine via telemedicine technology to treat or diagnose patients outside of North Carolina should check with other state

licensing boards. Most states require medical providers to be licensed in the state where the patient is located, and some have enacted limitations on telemedicine practice or require or offer a special registration. A directory of all U.S. medical boards may be accessed at the [Federation of State Medical Boards' website](#).

There are exceptions to the requirement for possessing licensure in the same state where the patient is located. Those exceptions include: (1) provider-to-provider consultations or screenings across state lines where one provider remains responsible for the care of the patient in the state where the patient is located; (2) episodic follow-up care in which the patient has an established relationship with the provider and the patient is temporarily located outside the jurisdiction of the provider; (3) follow-up care where the patient has travelled to another jurisdiction for surgical or specialty care; and (4) inclusion in clinical trials of patients from jurisdictions where the provider is not licensed.

### **Scope of Practice**

A licensee who uses telemedicine should ensure that the services provided are consistent with the licensee's scope of practice, including the licensee's education, training, experience, and ability.

### **Training of Staff**

Staff involved in the telemedicine visit should be trained in the appropriate use of the technology being used to deliver care and competent in its operation. Such training includes applicable federal and state legal requirements of medical/health information privacy, including compliance with Health Insurance Portability and Accountability Act ("HIPAA") and state privacy, confidentiality, security, and medical retention rules. Licensees may supervise and delegate tasks to qualified individuals via telemedicine technologies so long as doing is permitted by law or established by custom.

### **Licensee-Patient Relationship**

The Board stresses the importance of proper patient identification prior to any telemedicine encounter. Failure to verify the patient's identity may lead to fraudulent activity or the improper disclosure of confidential patient information. The licensee using telemedicine should verify the identity and location of the patient. Furthermore, the licensee's name, location, and professional credentials should be provided to the patient. Licensees using telemedicine should also ensure the availability for appropriate follow-up care and maintain a complete medical record that is available to the patient and other treating health care providers.

Although it may be difficult in some circumstances to precisely define the beginning of the licensee-patient relationship, particularly when the licensee and patient are in separate locations, it tends to begin when an individual with a health-related matter seeks care from a licensee. The relationship is clearly established when the licensee agrees to undertake diagnosis and treatment of the patient, and the patient agrees to be

treated, whether or not there has been an in-person encounter between the licensee and patient. A licensee-patient relationship may be established via either synchronous or asynchronous telemedicine technologies without any requirement of a prior in-person meeting, so long as the standard of care is met.

### **Evaluations and Examinations**

Licensees using telemedicine technologies to provide care to patients located in North Carolina are encouraged to provide, or rely upon, an appropriate evaluation prior to diagnosing and/or treating the patient. This evaluation need not be in-person if the licensee employs technology sufficient to accurately diagnose and treat the patient in conformity with the applicable standard of care. There are situations, however, (*see below under Prescribing and the Board's Position Statement "[4.1.1. Contact with Patients Before Prescribing](#)"*) where an initial in-person evaluation is necessary. A diagnosis should be established using accepted medical practices, i.e., a patient history, mental status evaluation, physical examination, and appropriate diagnostic and laboratory testing.

Evaluations may also be considered appropriate if a licensed health care professional is able to facilitate aspects of the patient assessment needed to render reasonable diagnostic possibilities and care plans.

As part of meeting the standard of care, licensees should use digital images, live video, or other modalities as needed to make a diagnosis if the standard of care in-person would have required physical examination. Treatment and consultation recommendations made in a virtual setting, including issuing a prescription via electronic means, will be held to the same standards of appropriate practice as those in in-person settings. If the standard of care requires an evaluation utilizing additional ancillary diagnostic testing under the standard of care, the licensee is encouraged to complete such diagnostics, arrange for the patient to obtain the needed testing, or refer the patient to another provider.

In those instances when images are being transmitted for diagnostic interpretation purposes, it is incumbent on the licensee to assure that all necessary information is obtained for review. If not, then the diagnosis provided should reflect the incomplete nature of the material and be deemed preliminary until such time as the study can be reviewed in its entirety.

Diagnosis, prescribing, or other treatment based solely on static online questionnaires, or those that do not obtain all of the information necessary to meet applicable standards of care, are not acceptable. Licensees practicing telemedicine utilizing questionnaires should have the ability to ask follow-up questions or obtain further history, especially when doing so is required to collect adequate information to appropriately diagnosis or treat.

## **Prescribing**

Licensees are expected to practice in accordance with the Board's Position Statement "[4.1.1. Contact with Patients Before Prescribing](#)." It is the position of the Board that the current standard of care to prescribe controlled substances for the treatment of pain is not met when the only patient encounter is by means of telemedicine. Telemedicine providers may prescribe controlled substances by telemedicine when the initial evaluation has been performed by a licensed healthcare provider trained in the care of patients requiring controlled substances for pain management. Licensees prescribing controlled substances by means of telemedicine for other conditions should comply with all relevant federal and state laws and are expected to participate in the Controlled Substances Reporting System.

Prescribing medications via telemedicine, as is the case during in-person care, is at the professional discretion of the licensee. The indication, appropriateness, and safety considerations for each prescription issued during a telemedicine encounter should be evaluated by the licensee in accordance with state and federal laws, as well as current standards of practice, and consequently carry the same professional accountability as prescriptions delivered during an encounter in person. However, where such measures are upheld, and the appropriate clinical consideration is carried out and documented, licensees may exercise their judgment and prescribe medications as part of telemedicine encounters.

## **Medical Records**

The licensee treating a patient via telemedicine should maintain a complete record of the telemedicine patient's care consistent with the prevailing medical record standards. The medical record should clearly document all aspects of care including email, text, photos, phone contact, and other forms of communication. HIPAA and related privacy and security documents should be present and signed where appropriate. Appropriate informed consent documents acknowledging the risks, limitations, alternatives, and benefits of the telemedicine encounter should be included.

The licensee should maintain the medical record's confidentiality and provide a copy of the medical record to the patient in a manner consistent with state and federal law. Licensees practicing via telemedicine will be held to the same standards of professionalism concerning the transfer of medical records and communications with the patient's primary care provider and medical home as those licensees practicing via traditional means.

## **Continuity of Care and Referral for Emergent Situations**

Patients should be able to seek, with relative ease, follow-up care or information from the licensee [or licensee's designee] who conducts an encounter using telemedicine technologies. Licensees solely providing services using telemedicine technologies with no existing licensee-patient relationship prior to the encounter should document the encounter using telemedicine technologies that are easily available to the patient and,

subject to the patient’s consent, any identified care provider of the patient immediately after the encounter. Licensees have the responsibility to refer patients for in-person follow-up care when a patient’s medical issue requires an additional in-person physical exam, diagnostic procedure, ancillary lab, or radiologic test.

If a patient is not an appropriate candidate for care via telemedicine technologies or experiences an emergent situation, complication, or side effects after an encounter using telemedicine technologies, licensees should have a standing plan in place and have the responsibility to refer the patient to appropriate in-person care (e.g., acute care, emergency room, or another provider) to ensure patient safety. It is insufficient for licensees to simply refer all patients to the emergency department; each situation should be evaluated on an individual basis and an appropriate referral should be made based on the severity and urgency of the situation. Licensees have an obligation to support continuity of care for their patients. Appropriate facilitation of the referral process and hand-off to the 'receiving' provider—particularly in the case of an emergent situation—includes providing necessary medical records and is the responsibility of the referring licensee.

A licensee may not delegate responsibility for a patient’s care to another person if the licensee knows, or has reason to believe, that the person is not qualified to undertake responsibility for the patient’s care.

Terminating the medical care of a patient without adequate notice or without making other arrangements for the continued care of the patient may be considered patient abandonment and may result in discipline by the Board. Subsection B: Termination of the Licensee-Patient Relationship of the Board’s Position Statement titled “2.1.1: The Licensee-Patient Relationship” is applicable in the context of telemedicine/telehealth provider including the written notice, timeline, and provision of continuity of care in the interim of transfer of care to a new provider.

### **Disclaimers**

Providers of telemedicine should consider providing a statement identifying any unique limitations of the electronic model by which care is being provided. Such patient notification can be distributed prior to providing services and included in all direct advertising to the public.

### **Additional Considerations**

Licensees may choose to make health-related and non-health-related goods or products available to patients to meet a legitimate patient need in instances where the goods are medically necessary for patients and not immediately or reliably available to patients by other means. Licensees who choose to make goods available to patients should be mindful of the inherent power differential that characterizes the licensee-patient relationship and therefore the significant potential for exploitation of patients. The principle of non-exploitation of patients also applies to scenarios involving physician-owned pharmacies located in practice offices. In such instances, licensees should offer

patients freedom of choice in filling any prescriptions and allow prescriptions to be filled elsewhere.

A licensee who incorporates artificial intelligence (“AI”) tools as part of telemedicine to diagnose or treat a patient in North Carolina should (a) understand that the use of an AI tool and acceptance of suggested diagnosis or related treatment plan is at the discretion of the treating practitioner; and (b) understand the limitations of using an AI tool, including the potential bias against populations that were not adequately represented in original testing of the tool.

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