

Dennis E. Smith, Esq.

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Board of Licensure in Medicine

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Re; Proposed Chapter 6 Telemedicine Standards of Practice: 02-373 Board of Licensure in Medicine; 02-383 Board of Osteopathic Licensure

Dear Mr. Smith;

I am pleased to submit the following comments on the above referenced proposed rule on behalf of the members of the Maine Medical Association. As you know, the Maine Medical Association is the state's largest physician organization with approximately 4000 members (physicians, medical students and residents). We have appreciated the opportunity to provide professional input into this proposed rule, both previously and at this point. The Association is generally supportive of the proposed rule and believes that it provides an appropriate balance between the significant potential telemedicine has to benefit patients through improved access to care and the potential new risks to quality, safety, continuity of care and the patient-physician relationship.

What follows are a relatively few comments we have on the proposal.

Title: Telemedicine Standards of Practice. We suggest that the term Telehealth may be more appropriate as it applies to a broader type of functionality. Many other states, we are told, have modified their language to recognize this.

Section 1.2 Regarding the reference to telemedicine offering the availability of records, we recommend removing that phrase as we do not see how the use of telemedicine is dependent upon such records.

Section 2(7) We advise against adopting the AMA Code's 2014-2015 definition of the patient-physician relationship. For one thing, Opinion 10.015 does not address when that relationship begins, which is a key issue when applying the patient-physician relationship to telemedicine laws and regulations. More importantly, the reference conflicts with Section 6, which defines the patient-physician relationship in a way more common to other telemedicine laws and regulations. Generally, the AMA Council on Ethics and Judicial Affairs does not advise that states adopt the Code as law.

At the recent AMA House of Delegate's meeting in June, the House approved ethics policy on telemedicine (E-5.025) which I call to your attention and which I will send via separate e-mail. I found the ethics policy to be of great interest and largely consistent with the proposed rule.

Section 2(8) We have some misgivings as to whether the phrase "interactive audio" in connection with asynchronous store-and-forward technology is a term that is worthy of its own definition. It is presumably referencing the ability of a patient to self-report their medical history into an on-line form that the physician reviews and calls back the patient. We prefer the description in Section 15.

Section 3.9 INFORMED CONSENT. We assume that a verbal consent would be sufficient, so long as it is referenced in the medical record.

Section 3.12 Please consider adding a requirement that the licensee obtain emergency contact information and/or telephone contact information of the patient receiving the telemedicine service, as is required in the VA system.

Section 3.13 MEDICAL RECORDS How is the licensee to ensure that records of past care are available if they are providing care remotely and may not have access to the full medical record? Such access to past records is not always available or required in a face to face encounter with a patient, and should not always be necessary with telemedicine. Perhaps this problem is taken care of by the use of the phrase "when appropriate".

Section 3.16 DISCLOSURE AND FUNCTIONALITY OF TELEMEDICINE SERVICES This extensive list of requirements exceeds what is required in a face to face visit and may be more burdensome than necessary.

Section 3.17 PATIENT ACCESS AND FEEDBACK We question whether these requirements are appropriately within the scope of this rule. They are not always required in a face to face visit.

Thank you for the opportunity to provide these comments. We appreciate the effort by Board staff and Board members to draft a state of the art rule for telemedicine services, which are growing in popularity in the state.

Gordon Smith, Esq.

Executive Vice President

Maine Medical Association

