Tennessee Board of Medical Examiners

Telemedicine Rulemaking Hearing
Monday, March 16, 2015

MINUTES

The meeting of the Board of Medical Examiners' Telemedicine Workgroup was called to order at 9:08 a.m. in the Iris Room, Ground Floor, Metro Center Complex, 665 Mainstream Drive, Nashville, Tennessee 37243. Board of Medical Examiners President, Michael Zanolli, MD, presided over the meeting.

Board members present:	Michael Zanolli, MD, Chair Dennis Higdon, MD Reeves Johnson, MD Keith Lovelady, MD Neal Beckford, MD Barbara Outhier, Consumer Member Pat Eller, Consumer Member Nina Yeiser, Consumer Member
Board member(s) absent:	Subhi Ali, MD C. Allen Musil, MD Michael Baron, MD
Staff present:	Maegan Carr Martin, Executive Director Andrea Huddleston, Deputy General Counsel Rene Saunders, MD, Medical Consultant Stacy Tarr, Administrative Director Angela Lawrence, BME Administrator

Dr. Higdon, Secretary for the Board, determined that a quorum was present. Dr. Zanolli made opening remarks and conveyed the Board's interest in increasing access to medical expertise, medical testing and having the citizens have access to additional medical care using telemedicine. Dr. Zanolli stated that the Board is not here representing physicians or private enterprises; it is here for the citizens of Tennessee. Dr. Zanolli asked all those who are here today to speak before the Board to be sure to sign in.

Ms. Andrea Huddleston, Chief Deputy General Counsel, called the rulemaking hearing to order on Monday, March 16, 2015 at 9:15 a.m. This rulemaking hearing took place pursuant to TENN. CODE ANN. § 4-5-204. The purpose of this rulemaking hearing is to solicit comments on rule amendments

proposed by the Tennessee Board of Medical Examiners' Rule 0880-02-.16. A rule is defined as an agency statement of general applicability that implements or prescribes law or policy or describes the procedures or practice requirements of the agency. A proposed rule is filed with the Secretary of State, notice is given to the public for comment and a rulemaking hearing is held. Upon conclusion of the hearing, the proposed rules are forwarded to the Attorney General's Office for review of legality. If approved, they are filed with the Secretary of State, which is responsible for publication, and the Government Operations Committee of the General Assembly. The Rules must stay in the Secretary of State's Office for ninety (90) days at the end of which time will be the effective date. Copies of the proposed rules were published on the Tennessee administrator website.

Adoption of January 14, 2015 Workgroup Session Minutes:

The Board considered the minutes from the January 14, 2015 Telemedicine Workgroup Session, which were made available to the Board in advance of this meeting. Dr. Lovelady made a motion to accept the minutes as amended. The motion was seconded by Ms. Yeiser. The Board unanimously approved the minutes.

Telemedicine Commenters

Ms. Huddleston read the list of public attendees who wish to speak before the Board:

Rebecca Hafner-Fogerty, MD – Zipnosis
Howard Kirshner, MD and Allen Kaiser, MD – Vanderbilt Neurology
Yarnell Beatty, TMA
Dr. Gregg Perry, Cherokee Health Systems
Kathy Steuer, St. Jude
Clisby Hall, Senior Advisor of Health Policy for Vanderbilt
Julie Loomis, SVMIC
Donna Tidwell, TDH EMS Division

Rebecca Hafner-Fogerty, MD, commended the Board on their commitment on regulating professionals and not trying to regulate technology. One specific comment is on the definition of "store-and-forward." Dr. Hafner-Fogerty gave her suggestions on how to change the definition to allow greater flexibility as new technologies are developed. She agreed that it's not appropriate to prescribe DEA scheduled drugs, specifically using asynchronous communications. Dr. Hafner-Fogerty stated the citizens from Tennessee are well-served by this Board with all the work that has been put into these rules by this Board.

Howard Kirshner, MD, stated the proposed changes to the telemedicine rules mean that their teleneurology program may continue. Dr. Kirshner gave the Board statistical information on their teleneurology consults as well as their telestroke consults. Vanderbilt is very supportive of the telemedicine rules and wanted to direct the Board's attention to the definition of facilitator. Vanderbilt believes the "facilitator" role is not necessary and should be eliminated, but if the Board were to decide otherwise, Vanderbilt urges the Board to expand the definition of "facilitator" to include other individuals.

Dr. Johnson expressed his support for the expansion of teleneurology.

Yarnell Beatty, JD, commended the Board on the elimination of the requirement that a facilitator be present and a face-to-face encounter occur. Mr. Beatty directed the Board's attention to 6(b), and

suggested that the Board consider explaining what is meant by the term "accessible?" He also addressed subsection (8) of the rules and advocated against a blanket prohibition of controlled substance prescribing. Mr. Beatty referenced (6)(a)(iii)(1-3) where the term "remote provider" is used. The TMA feels that this could be clarified somewhat and offered the following language: "seeking services via telemedicine must utilize adequate sophisticated technology in order for his/her identity to be verified with a reasonable degree of confidence." The second request is with the word "patient," the TMA believes an improvement would be: "persons seeking services via telemedicine." Mr. Beatty spoke in favor of amending Subsection (7) to state "licensees" retain their telemedicine license to provide services described in sub section (2)(c).

Mr. Beatty spoke in favor of carving out prohibitions against specific types of prescribing rather than permissible prescribing.

Dr. Johnson spoke against passing a broad rule that will have to be revisited frequently. Dr. Beckford agreed. Given the current state issues in Tennessee regarding overprescribing, he is in favor of a more conservative approach.

Gregg Perry, MD, expressed his gratitude to the Board regarding their work on the telemedicine rules. He stated that the rule as proposed will make psychiatric services possible to more than 7,000 adults, thousands of children, and teachers and staff in Sevier County schools. Dr. Perry had one suggestion which centered on Cherokee Health Systems experience with its psychiatric patients. He stated that very few psychiatric patients are able to make a quick change without a schedule IV sedative. Cherokee Health Systems would recommend allowing a schedule IV drug to be prescribed for thirty (30) days for a maximum of once or twice a calendar year.

Dr. Zanolli asked Dr. Perry how often Cherokee uses a facilitator. Dr. Perry stated that they use a facilitator 100% of the time. They feel it is extremely important to have someone on the other end that is properly trained.

Dr. Lovelady asked if there are certain benzodiazepines you would use. Dr. Perry responded that they need something long lasting that will leave the patient's system gently so they typically prescribe diazepam or clonazepam.

Dr. Johnson asked where the thirty (30) day request came from. Dr. Perry stated that it was offered as a compromise.

Kathy Steuer, JD, appeared on behalf of St. Jude Children's Research Hospital. Ms. Steuer commended the Board on their work on the rule. She was present to offer some comments and suggestions. According to Ms. Steuer, St. Jude sometimes needs the expertise of those out of state, and sometimes needs a more formal second opinion, especially with pathology materials. There are occasions in which St. Jude finds that there is no laboratory in Tennessee that does the type of testing which is needed. To address these needs, Ms. Steuer provided some recommendations to be considered by the Board so that St. Jude can continue doing what they do. Ms. Steuer directed the Board's attention to (1)(b) and (7) which defines medical interpretation. St. Jude is currently getting expert consultations and they're doing so under exceptions which were eliminated from the rule. Ms. Steur also spoke in favor of maintaining the telemedicine license.

Dr. Zanolli directed Ms. Steuer to the preamble which states that the rule won't supersede state or federal law, so it won't alter rules contained elsewhere in the code.

Clisby Hall, appeared on behalf of Vanderbilt University. Ms. Hall stated that Vanderbilt is in support of amending the definition of facilitator so that additional individuals would qualify. One such class of professionals that should be considered is EMT paramedics. In a psychiatry televisit, they would like to see licensed behavioral health practitioners serve as facilitators. Ms. Hall stated that that the current definition of "physician/patient relationship" may be a bit loose and could be improved.

Dr. Johnson responded that under the current proposal, a facilitator is only required in a pediatric ADHD encounter. Ms. Hall stated she read it and didn't interpret it that way. She hopes the Board can make that clear.

Julie Loomis, JD, appeared on behalf of SVMIC. Ms. Loomis echoed Ms. Hall's concerns regarding the definition of physician/patient relationship. She also spoke in support of broadening the class of individuals who can serve as facilitators. She is concerned that to do otherwise would restrict access to care.

Donna Tidwell, spoke on behalf of the Tennessee Department of Health's EMS Division. The EMS Division is developing a mobile, integrated health care community paramedicine project which allows paramedics to be trained to work in the community to help improve patient care for those who don't qualify for home health care.

Ms. Tidwell stated there are five (5) different levels of EMS Professionals. The level that would be a facilitator would be a paramedic. The term that we would use for a facilitator is "Community Paramedic."

The Board discussed letters received for which there was no testimony.

Discussion of Telemedicine Rules

Dr. Zanolli stated many individuals today have relayed issues regarding the definition of facilitator. His understanding was that the only time a facilitator would be *required* is when prescribing medications for pediatric ADHD; however, a facilitator *could* be used at any time.

The Board began discussion on the definition of a facilitator. Dr. Zanolli stated he thinks there are other situations in which you need a facilitator, for example, when the patient is a minor.

Upon discussion, the Board decided on the following language regarding a facilitator. The provision would read:

> "*The facilitator is an individual often affiliated with a local system of care or a parent or legal guardian of the patient. The facilitator must be physically present with a patient and is responsible for verifying the identity and location of the patient and for the origination, collection, and transmission of data in the form of images or clinical data to the physician performing the evaluation remotely."*

The Board decided to add a new provision 9 that would read:

"No patient seeking care via telemedicine (who is under the age of XX) can be treated unless there is a facilitator present."

Dr. Higdon suggested under (6)(a)(i)1 we add the following language:

"…to verify the patient's identity and location with an appropriate level of confidence."

The Board went on to review and discuss paragraph 8 and the possibility of making special carve-outs in the rule. Upon discussion, the Board came up with the following language:

"A physician may not prescribe via telemedicine any controlled substance (Schedules II, III, IV or V) for any reason except that a board-certified psychiatrist, a board-certified developmental-behavioral pediatrician or a board-certified child neurologist may prescribe to treat ADHD in children less than eighteen (18) years of age when a facilitator is physically present. In the specific case of prescribing for pediatric ADHD, the facilitator must be a medical doctor, osteopathic physician, physician assistant, advanced practice nurse, registered nurse or licensed practical nurse."

The Board reviewed and discussed section 6(b) and decided on the following language, the provision would read:

"For patient encounters conducted via telemedicine, the physician should have appropriate patient record(s) or be able to obtain such information during the telemedicine encounter."

The Board reviewed and discussed section 1(e) regarding the definition of store and forward. Upon discussion, the Board came up with the following definition:

"Store-and-forward – means the use of asynchronous electronic communications between a patient and healthcare services provider at a distant site for the purpose of diagnostic and therapeutic assistance in the care of patients and includes the use of a device that records or stores images or other medical information that is sent or forwarded via telecommunication to another site for consultation."

The Board reviewed and discussed section 1(b) regarding the definition of medical interpretation. Upon discussion, the Board came up with the following definition:

"Medical interpretation – The performance of a medical interpretation by a physician is the rendering of a diagnosis regarding a particular patient by examination of radiologic images, tissue samples or bodily fluid specimens (including but not limited to, urine, blood and cerebrospinal fluid) requested by another physician or licensed health care provider."

The Board reviewed and discussed section 7 and decided on the following language, the provision would read:

A physician fully-licensed by the Board may, if requested to do so by another physician licensed by the Board, engage in the medical interpretation of imaging studies, medical records, bodily fluids specimens, (including but not limited to, urine, blood and cerebrospinal fluid)or tissue samples and render an opinion…"

The Board reviewed and discussed paragraph 4 and decided to amend the language and add a section 4(d). The provision would read:

> *Exempted from the provisions of these rules and not constituting the practice of medicine are the following:*
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> *(4)(d) NEW PROVISION: A recognized, highly specialized, licensed physician from another state or country who specializes in the diagnosis of and or treatment of rare or orphan diseases and who provides consultation to research hospitals, with or without compensation or the expectation of compensation. This physician will provide such consultations less than once a month and involving fewer that ten (10) patients on an annual basis and these consultations shall comprise less than one percent (1%) of the physician's diagnostic or therapeutic practice.*

Dr. Zanolli requested administrative staff compile this information in preparation for the next meeting. At the next meeting we will be able to vote on these rules.

The meeting adjourned at 5:01.