



TENNESSEE BOARD OF MEDICAL EXAMINERS

Telemedicine Rulemaking Workgroup Session

Monday, November 17, 2014

MINUTES

The meeting of the Board of Medical Examiners' Telemedicine Workgroup was called to order at 8:46 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 Michael Baron, MD Neal Beckford, MD Reeves Johnson, MD C. Allen Musil, MD Pat Eller, Consumer Member
Board member(s) absent:	Subhi Ali, MD Jeff Lawrence, MD Keith Lovelady, MD Nina Yeiser, Consumer Member Barbara Outhier, Consumer Member
Staff present:	Maegan Carr Martin, BME Executive Director Andrea Huddleston, Deputy General Counsel Angela Lawrence, BME Administrator Jennifer Shell, MD XRay Administrator

Dr. Zanolli provided participants with an overview of the rulemaking process to date. He also stated that all comments submitted to date and all meeting materials prepared are available through the Board's Administrative Office.

Dr. Higdon determined that a quorum was present. Dr. Zanolli made reference to the materials which were prepared to guide the discussion during this meeting: minutes from the September 15th

meeting, a table containing proposed and amended language, and the text of the rule color-coded to indicate whether consensus has been met with respect to a particular provision or additional discussion needs to occur.

Adoption of September 15th Telemedicine Workgroup Session Minutes:

The Board considered the September 15th Telemedicine Workgroup Session Minutes. Ms. Eller made a motion to accept the minutes. The motion was seconded by Dr. Johnson. The Board unanimously approved the minutes.

Discussion of Proposed Telemedicine Rule:

Dr. Zanolli suggested that the Board work primarily from the “alternative language table” which contains alternate versions of the individual provisions of the rule which were compiled during the Board’s previous discussions.

Definition of Telemedicine

The Board began its discussion at 0880-02-.16(1)(b) with the definition of “telemedicine.” Dr. Zanolli read the revised definition into the record. The Board began its discussion with the definition of telemedicine. At the September meeting, the Board decided that telemedicine is not just a telephone call or text message. The Board considered Option 2 and 3 from the Language Table prepared for this meeting. Dr. Baron questioned whether the language “with or without an intervening healthcare provider” is necessary. Dr. Beckford and the rest of the Board agreed that the language should be stricken. Dr. Higdon expressed a preference for the intent of Option 3, but offered new language.

Dr. Zanolli questioned whether it is ever possible to have an encounter that is superior to a face-to-face encounter. Dr. Johnson requested that the language “or superior to” be stricken. Dr. Baron expressed some concern over the language “equal to.” He would prefer something more general that requires that an adequate and appropriate examination takes place. Dr. Johnson suggested that the word “evaluation” should be used in lieu of “examination.” Dr. Beckford suggested that the term “in-person” be eliminated. Dr. Zanolli agreed. Dr. Higdon specified that his proposed language could be abandoned in light of the modifications. Dr. Zanolli read the revised language into the record:

Electronically-Mediated Practice of Medicine or “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 healthcare provider.~~ Telemedicine is not an audio only telephone conversation, email/instant messaging conversation or fax. It typically involves the application of secure video conferencing or store-and-forward to provide or support healthcare delivery by replicating the interaction of a traditional encounter ~~in-person~~ between a provider and a patient.

Dr. Baron restated his concerns regarding the language “replicating the interaction of a traditional encounter.” The Board discussed the possibility of a verb other than “replicating” but ultimately agreed on the definition provided above.

Definition of Physician/Patient Relationship

The Board returned to the proposed definition of physician/patient relationship. Dr. Musil sought confirmation from Counsel that an encounter would have to occur – an appointment

on the schedule would not be sufficient to establish a relationship under this definition. Ms. Huddleston confirmed. Ms. Huddleston added that perhaps diagnosis and treatment should be amended to diagnosis *or* treatment. Dr. Baron read the AMA Code of Ethics definition to the Board, which the Board initially declined to adopt. Dr. Zanolli expressed some concern that this definition might allow a physician patient relationship to be established between a consultant and patient. Dr. Johnson suggested that diagnosis and/or treatment be eliminated and “evaluation” be used instead. Ms. Huddleston endorsed this approach. The Board agreed.

Dr. Musil stated his preference for the AMA’s definition. Dr. Zanolli suggested that the existing language beginning, “whether...” be included. There were no objections to the AMA’s definition revised as suggested:

Physician/Patient Relationship – A physician/patient relationship is established when a physician serves a patient’s medical needs whether or not there has been an encounter in person between the physician and patient.

Definitions Surrounding the Patient Encounter

Dr. Zanolli again proposed eliminating the distinction between initial and subsequent encounters, an approach which was captured in Option 2. There were no objections to proceeding with Option 2.

Role of Facilitators

The Board turned its focus to the use of facilitators. The term is defined in the existing proposed rule. Dr. Zanolli suggested that the Board strike medical assistants from the definition. Dr. Beckford asked that the Board consider the role of a facilitator before it says who can serve in the role and further took the position that the facilitator as defined, is essentially clerical and that medical assistants and other unlicensed healthcare workers should be able to serve in this role. Dr. Zanolli suggested that perhaps medical assistants should be certified. They are not licensed in the state of Tennessee. The Board agreed to return to this topic later.

Consideration of Provision 0880-08-.16(6)(a)-(b)The Board resumed its ongoing discussion of Section 6 regarding pathways to a telemedicine encounter. Dr. Baron asked whether the initial encounter can properly occur through electronic means. Dr. Zanolli answered that his understanding is that an initial encounter to establish the physician/patient relationship could be conducted electronically. Dr. Higdon agreed. Dr. Beckford requested that the last sentence of that subparagraph (b) be amended. Ms. Martin specified that 6(b) may be confusing because it is a remnant of the original proposed rule. The Board considered several revisions to 6(b) and ultimately decided to eliminate the subparagraph altogether.

The Board engaged in a lengthy discussion of what technology is proper when a facilitator is present. There was general agreement that the minimum technology is the same, regardless of whether there is a facilitator. Secure video or store and forward is required in every encounter; however, when a facilitator is present, he or she has a specific role in the encounter, which is included in the definition. The Board agreed that it is considering amending the definition of telemedicine to specify that telephone conversations and other forms of technologically enabled communication that occur within the parameters of an existing physician/patient relationship are not telemedicine and are not permitted by these

rules. Dr. Johnson requested that the term “secure video” be used instead of “real time interaction.”

Ms. Huddleston requested that the term telemedicine or phrase electronically mediated practice of medicine be included in Section 6. Ms. Huddleston and Ms. Martin offered to work on some language that reflects the will of the Board regarding Section 6. Language will be prepared for the next meeting.

Pathologists and Radiologists who seek to Practice Telemedicine

The Board resumed its discussion of whether a pathologist or radiologist should have to be board-certified to interpret images and tissue samples via telemedicine. Dr. Zanolli proposed that an interpretation that occurs intrastate would have to be completed by a provider who has hospital privileges while an interpretation that crosses state lines would have to be completed by a provider who is ABMS certified. Dr. Johnson pointed out that neurologists also interpret images and questioned whether they too should be included in this category of providers. The Board also discussed the certification qualifications, if any, of those providers engaged in interstate telemedicine consultation or referrals. The Board did not agree on this item. Dr. Higdon requested that the Board reconsider at its next meeting.

Prescribing through Telemedicine

Ms. Huddleston circulated a document prepared for the purpose of the meeting which contained the following proposed language:

- (9) A physician may not prescribe controlled substances to a patient where the physician has not personally and concurrently performed and documented a physical examination of the patient except under the following circumstances:
 - (a) In admission orders for a newly hospitalized patient;
 - (b) For treatment of pediatric ADHD by a board-certified psychiatrist;
 - (c) For psychiatric treatment provided by a board-certified physician for a patient in a clinic or facility operated by the State of Tennessee or a behavioral health center operated by the Tennessee Department of Health or a local governmental entity; or
 - (d) For refills of controlled substances other than those in Schedule II for established patients who have been physically examined by the physician in the last six (6) months and for whom, based on sound medical practices, the physician feels a new physical examination before refilling the prescription is unnecessary.

Dr. Baron shared the following: Stimulants should not be prescribed using telemedicine unless a physician patient relationship exists or unless the patient is already being treated in the health care system, and there has been at least one prior face-to-face visit. If one is satisfied, then stimulants can be prescribed on follow-up visits when both parties are in an office that is managed by the healthcare system such as a mental health clinic or a private practice satellite office. Dr. Baron does not think that opioids should be prescribed at all via telemedicine.

Dr. Musil asked the Board whether members are comfortable allowing ADHD to be treated by telemedicine providers. Dr. Musil agrees with Ms. Huddleston, that adult ADHD should

not be treated by telemedicine. He also agrees with Dr. Baron, that there should be carve-outs. Many states that have revised or are revising their telemedicine rules have specified that no controlled substances may be prescribed through telemedicine. Dr. Baron would not object to this approach. Ms. Huddleston wouldn't either, but has drafted a provision that would allow for more flexibility. Dr. Baron thinks it's acceptable to have a carve-out to allow behavioral health clinics to prescribe stimulants. The Board seemed to agree that Ms. Huddleston's provision should be amended so that organizations other than those operated by the state of Tennessee could be permitted. Dr. Musil asked that the Board be given an opportunity to revisit this topic and report back with a final version at the next meeting. The panel will consider what schedules if any, should be permitted.

Dr. Zanolli queried the Board regarding whether most members would be available for another meeting at the conclusion of the Board's regularly scheduled meeting. Ms. Martin stated that the rooms are currently booked, but that she and administrative staff would determine where a meeting might take place.

Adjourned 5:05pm