Vermont Board of Medical Practice

March 1, 2023

Remote Via Microsoft Teams

Dial: (802) 828-7667 Conference ID: 275 905 444 #

10:30 AM Licensing Committee

12:00 PM Vermont Board of Medical Practice

- **Call to Order; Roll Call; Acknowledge Guests:**
- **Public Comment:**
- **Approval of Minutes of the January 18, 2023, February 1, 2023, and February 15, 2023, Board Meetings**
- **Board Issues (Dr. Hildebrant):**
- **Administrative Update (David Herlihy):**
- **Presentation of Applications**
- **Other Business:**
  - **Telemedicine Policy Revision – discussion of proposed revision to the Board's Telemedicine Policy continued from the February meeting. A revised version for consideration is attached. See Attachment A.**
  - **Staff proposal for rules implementing Telehealth Registration and Telehealth License options – recommendations will be presented regarding the licensing process for these new forms of credential to practice via telehealth that will be available for health professions in Vermont on July 1, 2023. A copy of Chapter 56 of Title 26, which creates the new credentials and sets forth their limits, is attached. See Attachment B.**
  - **FSMB request for comments on a draft document called *Strategies for Prescribing Opioids for the Management of Pain* that has been drafted to replace the current FSMB policy document *Guidelines for the Chronic Use of Opioid Analgesics.* Members will have the opportunity to discuss comments to be submitted by the Board.**
  - **Legislative update on bills of interest to the Board.**
    - **S.37 and H.89 – Each of these define "legally-protected health care activity" and create protections for such activities. The most recent versions being discussed as of preparation of the agenda are at: https://legislature.vermont.gov/Documents/2024/WorkGroups/Senate%20Health%20and%20Welfare/Bills/S.37/Drafts,%20Amendments,%2**

0and%20Legal%20Documents/S.37~Amerin%20Aborjaily~Draft%202.1~2-21-2023.pdf ; and

https://legislature.vermont.gov/Documents/2024/WorkGroups/Senate%20Health%20and%20Welfare/Bills/H.89/Drafts,%20amendments,%20and%20legal%20documents/H.89~Michele%20Childs~As%20Passed%20by%20the%20House~2-15-2023.pdf

- **COVID-19 Flexibilities Extension – This is a committee bill and does not have a bill number. The most recent draft as of preparation of the agenda is at:**

  https://legislature.vermont.gov/Documents/2024/WorkGroups/House%20Health%20Care/Bills/23-0859/Drafts,%20Amendments,%20and%20Legal%20Documents/W~Jennifer%20Carbee~DR%2023-0859,%20Draft%203.4,%202-22-2023~2-22-2023.pdf

- **Recognition of Departing Members – Discussion of how members would like to recognize member service when they leave the Board.**
- **Reconvene meeting; Executive Session to discuss:**
  - **Investigative cases recommended for closure**
  - **Other matters that are confidential by law; if any**
- **Return to Open Session; Board Actions on matters discussed in Executive Session:**
- **Board Actions on Committee recommendations regarding any non-confidential matters:**
- **Upcoming Board meetings, Committee meetings, hearings, etc.: Locations are subject to change. A notification will be provided if a change takes place.**
  - **March 9, 2023, North Investigative Committee Meeting, 9:00 AM. Remote via Teams.**
  - **March 10, 2023, Central Investigative Committee Meeting, 9:00 AM. Remote via Teams.**
  - **March 15, 2023, Board Meeting mid-month on pending applications, 12:10 PM. Remote via Teams.**
  - **March 15, 2023, South Investigative Committee Meeting, 12:15 PM. 4th Floor Conference Room, Bloomer State Office Building, Rutland, VT and remote via Teams.**
  - **April 5, 2023, Licensing Committee Meeting, 11:00 AM. Remote via Teams.**

- **April 5, 2023, Board Meeting, 11:00 AM. Remote via Teams.**

- **Open Forum:**
- **Adjourn:**

Non-Board Members / General Public
Remote via Microsoft Teams
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If you join the meeting during the time the Board is in Executive Session, the line will be open and monitored by staff. You are welcome to remain on the line until the Board returns to Open Session.

If you have any questions about this meeting, contact phone: (802) 657-4220 or email: AHS.VDHMedicalBoard@vermont.gov

Attachment A

Background and Introduction

This is an update to the Vermont Board of Medical Practice initial Policy on the Appropriate Use of Telemedicine Technologies in the Practice of Medicine, which was adopted by the Board on May 6, 2015. The Board's two goals when that first policy was adopted have not changed. They remain:

- Promoting safe, high-quality care for patients.
- Supporting licensees in their efforts to meet standards of care.

The Board is grateful to the many individuals who have put in much work with the Federation of State Medical Boards over the years creating the 2022 FSMB Model Policy on the Appropriate Use of Telemedicine Technologies in the Practice of Medicine, the 2014 FSMB Model Policy, and the original document on telemedicine issued in 2002. As with the earlier FSMB statements on telemedicine, the most recent Model Policy on telemedicine offers thoroughly-researched, clear, and useful guidance for medical boards, physicians, and health care professionals[1] licensed and regulated by state medical boards. For that reason, and because consistency among states is desirable with a subject such as telemedicine that inherently features interstate practice issues, we have tried to minimize the changes made to this latest FSMB Model Policy on telemedicine in adapting it to be a policy of this Board.

Section One. Preamble

The advancements and continued development of medical and communications technology have had a profound impact on the practice of medicine in the United States and offer opportunities for improving the delivery and accessibility of health care, particularly through telemedicine. Telemedicine continues to be best defined as the practice of medicine using electronic communication, information technology or other means of interaction between a licensee in one location and a patient in another location, with or without an intervening healthcare provider. This Board, like all state medical boards, in fulfilling the duty to protect the public must consider complex regulatory challenges and patient safety concerns in adapting regulations and standards historically intended for the in-person provision of medical care to new delivery models involving telemedicine technologies, including but not limited to: 1) determining when a physician-patient relationship is established; 2) assuring privacy of patient data; 3) guaranteeing proper evaluation and treatment of the patient consistent with the single standard of care that applies regardless of the circumstances of delivery ; and 4) limiting the inappropriate prescribing and dispensing of certain medications.

[1] The Board licenses members of a number of health care professions, including allopathic physicians (MDs). In many instances the term "physician" is used. That is not intended to exclude application of the guidelines described herein to those other professions, such as physician assistant.

Policy on the Appropriate Use of Telemedicine Technologies in the Practice of Medicine

The Board recognizes the potential benefits of the use of telemedicine technologies to deliver medical care. When utilized appropriately, telemedicine technologies can enhance connection between patients and physicians, and reduce inequities in the delivery of care. Telemedicine technology can facilitate patient examinations and permit diagnosis, if acceptable under the standard of care. Telemedicine technologies also enable remote patient monitoring and permit physicians to obtain medical histories, give medical advice and counseling, and prescribe medication and other treatments.

This policy should not be construed to alter the scope of practice of any health care provider or to authorize the delivery of health care services in a setting, or in a manner, not otherwise authorized by law. This policy assumes a consistent standard of care and scope of practice notwithstanding the delivery tool or business method used to enable physician-to-patient communications. Telemedicine is one component of the practice of medicine. A physician using telemedicine technologies in the provision of medical services to a patient (whether existing or new) must take appropriate steps to establish the physician-patient relationship and conduct all appropriate evaluations and history taking of the patient consistent with established, evidence-based standards of care for the particular patient presentation. Vermont law must also be followed, as provided by 26 V.S.A. § 1354(a)33 and elsewhere as detailed later in this document. 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.

The Board has developed these guidelines to educate licensees and the public as to the appropriate use of telemedicine technologies in the practice of medicine. The Board is committed to assuring patient access to the convenience and benefits afforded by telemedicine technologies, while promoting the responsible and safe practice of medicine by physicians.

It is the expectation of the Board that physicians who provide medical care, electronically or otherwise, maintain the highest degree of professionalism and should:

• Place the welfare of patients first;

• Maintain acceptable and appropriate standards of practice;

• Adhere to recognized ethical codes governing the medical profession;

• Properly supervise non-physician clinicians; and

• Protect patient confidentiality.

Attention to and compliance with nationally recognized health standards and codes of ethics will help physicians identify practice circumstances that present risk of unprofessional conduct.

Policy on the Appropriate Use of Telemedicine Technologies in the Practice of Medicine

Physicians should be conscious of the fact that one effect of telemedicine has been to increase entrepreneurship related to delivery of consumer services that constitute medical practice, even though they are elective and usually not covered by health insurance. Attentiveness to ethical obligations will help physicians to make good choices where the structure of a telemedicine delivery system might pose a risk of unduly influencing a physician's medical decision making.

Section Two. Licensure

The State of Vermont and the Board follow the rule on medical licensure recognized across the United States. A physician must be licensed, or appropriately authorized, by the medical board of the state where the patient is located. The practice of medicine occurs where the patient is located at the time that telemedicine technologies are used. Physicians who diagnose, treat, or prescribe using online service sites are engaging in the practice medicine and must possess appropriate licensure in the jurisdiction where the patient receives care.

[The two following paragraphs are effective only through June 30, 2023.] Vermont law was temporarily amended to create special exceptions to health care professional licensing requirements during the public health emergency associated with COVID-19. Some of those exceptions have expired. With regard to telemedicine practice, health care professionals not licensed or certified to practice in Vermont may provide health care services to patients located in Vermont using telehealth during the period from April 1, 2022 to June 30, 2023, if they obtain a temporary telehealth registration. To do so, they must apply through the Board's online system. There is no fee for the temporary telehealth registration during the period from April 1, 2022 to June 30, 2023. More information about qualification for temporary telehealth registration and the how to apply are on the Board's website, https://www.healthvermont.gov/systems/medical-practice-board.

Vermont has enacted two new options for health care professionals who will be practicing with patients who are located in Vermont only through the use of telehealth technologies. The new options, effective on July 1, 2023, will be to obtain a telehealth registration or a telehealth license. The telehealth registration will be for health care professionals whose practice with Vermont patients will be very limited in both the number of patients and the length of time over which it will occur. A telehealth registration will be limited to a total of 10 unique patients, valid for only 120 consecutive days, and will not be renewable for three years after the date when issued. The second option, a telehealth license, will allow only telehealth practice and will be limited to a total of 20 unique patients during the term of the license. Telehealth licenses will be renewable. The fee for telehealth registration will be 50 percent of a full license and the telehealth license will be 75 percent of the full-license fee. More information about the qualifications required and the process to obtain a telehealth registration or telehealth license will

be available on the Board's website after administrative rules for the new credentials are published.

[Additional version to replace the foregoing effective July 1, 2023 will be revised to (1) remove the part about the temporary registration that will sunset (2) and describe the telehealth licensing options using present tense.]

Section Three. Standard of Care

A practitioner who uses telemedicine must meet the same standard of care and professional ethics as a practitioner using a traditional in-person encounter with a patient. The failure to follow the appropriate standard of care or professional ethics while using telemedicine may subject the practitioner to discipline by the Board.

Scope of Practice

A practitioner who uses telemedicine should ensure that the services provided are consistent with the practitioner's scope of practice, including the practitioner's education, training, experience and ability. Physicians may supervise and delegate tasks via telemedicine technologies so long as doing so is consistent with applicable laws. Non-physician licensees may delegate tasks in a telemedicine setting to the same extent that they may do so when practicing in person so long as not prohibited by law, regulation, or workplace standards.

Establishment of a Physician-Patient Relationship

The health and well-being of patients depends upon a collaborative effort between the physician and patient.[2] The relationship between the physician and patient is complex and is based on the mutual understanding of the shared responsibility for the patient's health care. Although it may be difficult in some circumstances to precisely define the beginning of the physician-patient relationship, particularly when the physician and patient are in separate locations, it tends to begin when an individual with a health-related matter seeks care from a physician. The relationship is clearly established when the physician 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 physician (or other appropriately supervised health care practitioner) and patient. A physician-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.

[2] American Medical Association, Council on Ethical and Judicial Affairs, Fundamental Elements of the Patient-Physician Relationship (1990), available athttp://www.ama-assn.org/resources/doc/code-medical- ethics/1001a.pdf.

Policy on the Appropriate Use of Telemedicine Technologies in the Practice of Medicine

The physician-patient relationship is fundamental to the provision of acceptable medical care. It is the expectation that physicians recognize the obligations, responsibilities, and patient rights associated with establishing and maintaining a physician-patient relationship. A physician is discouraged from rendering medical advice and/or care using telemedicine technologies without (1) fully verifying and authenticating the location and, to the extent possible, identifying the requesting patient; (2) disclosing and validating the provider's identity, location, and applicable credential(s); and (3) obtaining appropriate consents from requesting patients after disclosures regarding the delivery models and treatment methods or limitations, including any special informed consents regarding the use of telemedicine technologies. An appropriate physician-patient relationship has not been established when the identity of the physician may be unknown to the patient. If available, a patient should be able to select an identified physician for telemedicine services, not be assigned to a physician at random, and have access to follow-up care.

Evaluation and Treatment of the Patient

A documented medical evaluation and collection of relevant clinical history commensurate with the presentation of the patient to establish diagnoses and identify underlying conditions and/or contra-indications to the treatment recommended/provided must be obtained prior to providing treatment, including issuing prescriptions, electronically or otherwise. Gathering clinical history to make a diagnosis is often an iterative process and physicians need to have the opportunity and ability to ask iterative follow-up questions. If an evaluation requires additional ancillary diagnostic testing under the standard of care, the physician must complete such diagnostics, arrange for the patient to obtain the needed testing, or refer the patient to another provider. Additionally, as part of meeting the standard of care, physicians must 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. Evaluation of a patient done solely by means of completion of an online questionnaire does not meet any acceptable standard care, including when the only service provided is issuance of a prescription.

The foregoing statements on establishment of the physician-patient relationship and minimum requirements for evaluation and treatment reflect nationally-applicable concepts for appropriate practice using telemedicine technologies that enable virtual encounters, and the Board endorses these concepts, which will guide its decision-making on these issues. Vermont law also speaks to these concepts. The law sets forth specific minimum requirements regarding the establishment of a physician-patient relationship and required minimum actions that the physician must undertake

to render care in an acceptable manner. 26 V.S.A. § 1354(a)(33)(A) includes in the definition of unprofessional conduct the following:

> *(33)(A) providing, prescribing, dispensing, or furnishing medical services or prescription medication or prescription-only devices to a person in response to any communication transmitted or received by computer or other electronic means, when the licensee fails to take the following actions to establish and maintain a proper physician-patient relationship:*
>
> *(i) a reasonable effort to verify that the person requesting medication is in fact the patient, and is in fact who the person claims to be;*
>
> *(ii) establishment of documented diagnosis through the use of accepted medical practices; and*
>
> *(iii) maintenance of a current medical record;*

Vermont law also specifies that in circumstances covered in 26 V.S.A. § 1354(a)(33), which is to say when practicing by telemedicine, an *electronic, on-line, or telephonic evaluation by questionnaire is inadequate for the initial evaluation of the patient.* 26 V.S.A. § 1354(a)(33)(B).

The minimum requirements for practice in the preceding paragraphs apply to telemedicine practice generally. Practice using telemedicine to issue patients prescriptions presents some challenges that physicians should consider when establishing systems of practice and protocols for issuing prescriptions. As suggested above, remote encounters can make it more difficult to reliably identify patients, communicate with patients, and reestablish contact between the physician and the patient (whether it is the physician or patient who seeks to reconnect). In other words, it can be more difficult to ensure that the need for the prescription is legitimate, that the information regarding facts supporting the prescription has been accurately communicated, and that when an error is made, it can be corrected. Thus, measures should be implemented to promote patient safety and mitigate any additional risks arising from the virtual circumstances. Use of e-prescribing systems that use technology to identify errors and formularies that exclude drugs that present greater risks are two examples.

Prescribing medications via telemedicine, as is the case during in-person care, is at the professional discretion of the physician. The indication, appropriateness, and safety considerations for each prescription issued during a telemedicine encounter must be evaluated by the physician 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, physicians may exercise their judgment and prescribe medications as part of telemedicine encounters.

Informed Consent, Disclosure, and Functionality of Online Service Making Available Telemedicine Technologies

Evidence documenting appropriate patient informed consent for the use of telemedicine technologies must be obtained and maintained. Appropriate informed consent should, as a baseline, include the following:

- Identification of the patient and the patient's location;
- Identification of the physician, the physician's credentials, and the physician's state or territory of practice;
- Identification of the patient's primary care physician, if available;
- Types of transmissions permitted using telemedicine technologies (e.g., prescription refills, patient education, etc.);
- The patient's agreement that the physician determines, consistent with applicable laws, whether or not the condition being diagnosed and/or treated is appropriate for a telemedicine encounter;
- Details about the security measures taken for the telemedicine technologies in use, such as encryption of data, password protection of data files, and use of other reliable authentication techniques, along with potential risks to privacy notwithstanding the security measures;
- A warning to the patient of the risk of loss of information due to technical failure; and
- Requirement for express patient consent to forward patient-identifiable information to a third party, and limited to only if allowed under all applicable state and federal laws.

Physicians providing medical services using telemedicine technologies should clearly disclose:

- Specific services provided;
- Contact information for the physician;
- Licensure and qualifications of the physician(s) and associated healthcare providers;
- Fees for services and how payment is to be made;
- Financial interests, other than fees charged, in any information, products, or services provided by a physician;

- Appropriate uses and limitations of the site, including emergency health situations;
- Uses and response times for e-mails, electronic messages, and other communications transmitted via telemedicine technologies;
- To whom patient information may be disclosed and for what purposes;
- Rights of patients with respect to patient health information; and,
- Information collected and any passive tracking mechanisms utilized.

Physicians providing medical services using telemedicine technologies should provide patients a clear mechanism to:

- Access, supplement, and amend patient-provided personal health information;
- Provide feedback regarding the online platform and the quality of information and services; and,
- Register complaints, including information about filing a complaint with this Board.

Online services must have accurate and transparent information about the online platform owner/operator, location, and contact information, including a domain name that accurately reflects the identity of the responsible party.

Physicians 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. Physicians who choose to make goods available to patients must be mindful of the inherent power differential that characterizes the physician-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, physicians should offer patients freedom of choice in filling any prescriptions and must therefore allow prescriptions to be filled elsewhere.[3]

Continuity of Care and Referral for Emergent Situations

Patients should be able to seek, with relative ease, follow-up care or information from the physician [or physician's designee] who conducts an encounter using telemedicine technologies. Physicians solely providing services using telemedicine technologies with no existing physician-

[3] FSMB. *Position Statement on Sale of Goods by Physicians and Physician Advertising.* April 2016, available at: https://www.fsmb.org/siteassets/advocacy/policies/position-statement-on-sale-of-goods-by-physicians-and- physician-advertising.pdf

patient relationship prior to the encounter must make documentation of the encounter using telemedicine technologies easily available to the patient and, subject to the patient's consent, any identified care provider of the patient immediately after the encounter. Physicians 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.

There may be situations in which a physician interacting with a patient using telemedicine technology discovers that the patient is inappropriate for care via telemedicine technologies or the patient experiences an emergent situation, complication, or side effects after an encounter using telemedicine technologies. Physicians who practice using telemedicine should have a standing plan in place for such situations. The physician has the responsibility to refer the patient to appropriate care (e.g. acute care, emergency room, or another provider) to ensure patient safety. It is insufficient for physicians to simply refer all patients to the emergency department; each situation should be evaluated on an individual basis and referred based on its severity and urgency.

Physicians have an obligation to support continuity of care for their patients. 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. The Board has a longstanding position regarding termination of the physician-patient relationship.[4] A physician may not delegate responsibility for a patient's care to another person if the physician knows, or has reason to know, that the person is not qualified to undertake responsibility for the patient's care.

Medical Records

Detailed requirements for documentation of informed consent for remote treatment using interactive audio and video, store & forward, and audio-only are set forth in Vermont law at 26 V.S.A. § 9361 and 9362. The law also sets forth certain exceptions to the requirement for informed consent. In addition to the informed consent documentation required by statute, the medical record should include copies of all patient-related electronic communications, including patient-physician communication, prescriptions, laboratory and test results, evaluations and consultations, records of past care, and instructions obtained or produced in connection with the utilization of telemedicine technologies. The patient record established during the use of telemedicine technologies must be accessible and documented

[4] https://www.healthvermont.gov/sites/default/files/documents/2016/12/BMP_Policies_Termination%20of%20Relationship.pdf

for both the physician and the patient, consistent with all established laws and regulations governing patient healthcare records. Records should be in a format that is easily transferable to the patient. If requested by the patient, physicians must share the medical record with the patient's primary care physician and other relevant members of the patient's existing care team.

Privacy and Security of Patient Records & Exchange of Information

Physicians should meet or exceed applicable federal and state legal requirements of medical/health information privacy, including compliance with the Health Insurance Portability and Accountability Act (HIPAA) and state privacy, confidentiality, security, and medical retention rules. Physicians are referred to "Standards for Privacy of Individually Identifiable Health Information" and "Confidentiality of Substance Use Disorder Patient Records," issued by the Department of Health and Human Services (HHS).[5] Guidance documents are available on the HHS Office for Civil Rights Web site at: www.hhs.gov/ocr/hipaa.

Written policies and procedures should be maintained at the same standard as traditional in-person encounters for documentation, maintenance, and transmission of the records of the encounter using telemedicine technologies. Such policies and procedures should address (1) privacy, (2) healthcare personnel (in addition to the physician addressee) who will process messages, (3) hours of operation, (4) types of transactions that will be permitted electronically, (5) required patient information to be included in the communication, such as patient name, identification number, and type of transaction, (6) archival and retrieval, and (7) quality oversight mechanisms. Policies and procedures should be periodically evaluated for currency and be maintained in an accessible and readily available manner for review.

Sufficient privacy and security measures must be in place and documented to assure confidentiality and integrity of patient-identifiable information. Transmissions, including patient e-mail, prescriptions, and laboratory results must be secure within existing technology (i.e., password protected, encrypted electronic prescriptions, or other reliable authentication techniques). All patient-physician email, as well as other patient-related electronic communications, should be stored and filed in the patient's medical record, consistent with traditional record-keeping policies and procedures.

[5] Standards for Privacy are found in 45 C.F.R. § 160 and 45 C.F.R. § 164. Special standards applicable to records of substance use disorder treatment are at 42 C.F.R. Part 2.

Section Four Definitions

For the purpose of these guidelines, the following definitions apply:

"Telemedicine" means the practice of medicine using electronic communications, information technology or other means between a licensee in one location, and a patient in another location with or without an intervening healthcare provider. It typically involves the application of secure videoconferencing or store and forward[6] technology to provide or support healthcare delivery by replicating the interaction of a traditional, encounter in person between a provider and a patient.[7]

"Telemedicine Technologies" means technologies and devices enabling secure electronic communications and information exchange between a licensee in one location and a patient in another location with or without an intervening healthcare provider.

Approved by the Board of Medical Practice on _____ 2023

ADDITIONAL REFERENCES

45 C.F.R. § 160, 164 (2000)

AMA. Council on Ethical and Judicial Affairs. Code of Medical Ethics.

AMA. Report of the Council on Medical Service. Addressing Equity in Telehealth. 7-CMS-21. (June 2021).

AMA. Report of the Council on Medical Service. Licensure and Telehealth. 8-CMS-21. (June 2021).

[6] "Store and forward" is defined in a Vermont law covering health insurance and telemedicine as: "an asynchronous transmission of medical information to be reviewed at a later date by a health care provider at a distant site who is trained in the relevant specialty and by which the health care provider at the distant site reviews the medical information without the patient present in real time." 8 V.S.A. § 4100k(g)(3).
[7] *See* Ctel.

AOA. Policy Statement – Telemedicine. H601-A/17. (July 2017)

Center for Connected Health Policy. Impact of Audio-only Telephone in Delivering Health Services During COVID-19 and Prospects for Future Payment Policies & Medical Board Regulations. August 25, 2021.

Center for Connected Health Policy. State Telehealth Laws and Reimbursement Polices Report, Fall 2021. October 2021.

The Department of Health and Human Services, HIPAA Standards for Privacy of Individually Identifiable Health Information. August 14, 2002.

FSMB. Model Guidelines for the Appropriate Use of the Internet in Medical Practice. April 2002.

FSMB. Model Policy for the Appropriate Use of Telemedicine Technologies in the Practice of Medicine. April 2014.

Medicare Program: CY 2022 Payment Policies under the Physician Fee Schedule and Other Changes to Part B Payment Policies; Medicare Shared Savings Program Requirements; Provider Enrollment Regulation Updates; and Provider and Supplier Prepayment and Post-payment Medical Review Requirements., 86 FR 64996 (Nov. 19, 2021)(revising 42 C.F.R. § 403, 405, 410, 411, 414, 415, 423, and 425).

The Vermont Statutes Online

Title 26: Professions And Occupations

Chapter 56: Out-of-state Telehealth Licensure & Registration

[Effective July 1, 2023.]

§ 3051. Scope

(a) This chapter shall apply to the following health care professions regulated by the Office of Professional Regulation:

(1) alcohol and drug abuse counseling;

(2) allied mental health professions, including mental health counseling, marriage and family therapy, and services provided by nonlicensed and noncertified psychotherapists;

(3) applied behavior analysis;

(4) athletic training;

(5) audiology;

(6) chiropractic;

(7) dentistry;

(8) dietetics;

(9) midwifery;

(10) naturopathy;

(11) nursing;

(12) nursing home administration;

(13) occupational therapy;

(14) optometry;

(15) osteopathy;

(16) pharmacy;

(17) physical therapy;

(18) psychoanalysis;

(19) psychology;

(20) respiratory care;

(21) social work;

(22) speech language pathology; and

(23) veterinary medicine.

(b) This chapter shall apply to the following health care professions regulated by the Board of Medical Practice:

(1) physicians;

(2) physician assistants; and

(3) podiatrists. (Added 2021, No. 107 (Adj. Sess.), § 1, eff. July 1, 2023.)

[Effective July 1, 2023.]

§ 3052. Definitions

As used in this chapter:

(1) “Board” means the Board of Medical Practice.

(2) “Health care professional” means an individual who holds a valid license, certificate, or registration to provide health care services in any other U.S. jurisdiction in a health care profession listed in section 3051 of this chapter.

(3) “Health care services” means services for the diagnosis, prevention, treatment, cure, or relief of a health condition, illness, injury, or disease.

(4) “In good standing” means that a health care professional holds an active license, certificate, or registration from another U.S. jurisdiction; the health care professional is not subject to a disciplinary order that conditions, suspends, or otherwise restricts the professional’s practice in any other U.S. jurisdiction; and the health care professional is not affirmatively barred from practice in Vermont for any reason, including reasons of fraud or abuse, patient care, or public safety.

(5) “Mandatory disclosure” means the information that the health care professional must disclose to the patient at the initial telehealth visit or consultation, as determined by the relevant regulatory body by rule.

(6) “Office” means the Office of Professional Regulation.

(7) “Store and forward” means an asynchronous transmission of medical information, such as one or more video clips, audio clips, still images, x-rays, magnetic resonance imaging scans, electrocardiograms, electroencephalograms, or laboratory results, sent over a secure connection that complies with the requirements of the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191 to be reviewed at a later date by a health care provider at a distant site who is trained in the relevant specialty. In store and forward, the health care provider at the distant site reviews the medical information without the patient present in real time and communicates a care plan or treatment recommendation back to the patient or referring provider, or both.

(8) “Telehealth” means health care services delivered by telemedicine, store and forward, or audio-only telephone.

(9) “Telemedicine” means the delivery of health care services, such as diagnosis, consultation, or treatment, through the use of live interactive audio and video over a secure connection that complies with the requirements of the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191. (Added 2021, No. 107 (Adj. Sess.), § 1, eff. July 1, 2023.)

[Effective July 1, 2023.]

§ 3053. Telehealth licensure or telehealth registration required

(a) A health care professional who is not otherwise licensed, certified, or registered to practice in Vermont but is licensed, certified, or registered in good standing in all other U.S. jurisdictions in which the health care professional is or has been licensed, certified, or registered and who wishes to provide health care services to a patient or client located in Vermont using telehealth shall obtain a telehealth license or telehealth registration from the Office or the Board in accordance with this chapter.

(b) A telehealth license or telehealth registration issued pursuant to this chapter shall authorize a health care professional to provide services to a patient or client located in Vermont using telehealth only. Telehealth licensure or telehealth registration does not authorize the health care professional to open an office in Vermont or to provide in-person health care services to patients or clients located in Vermont.

(c) A health care professional who is not otherwise licensed, certified, or registered to practice in Vermont and provides health care services in Vermont using telehealth without a telehealth registration or telehealth license, or provides services beyond the limitations of the telehealth registration or telehealth license, is engaged in unauthorized practice as defined in 3 V.S.A. § 127 and section 1314 of this title and is subject to the penalties set forth in those sections. (Added 2021, No. 107 (Adj. Sess.), § 1, eff. July 1, 2023.)

[Effective July 1, 2023.]

§ 3054. Scope of telehealth license and telehealth registration

(a) Telehealth license.

(1) A health care professional who is not otherwise licensed, certified, or registered to practice in Vermont may obtain a telehealth license to provide health care services using telehealth to a total of not more than 20 unique patients or clients located in Vermont during the two-year license term.

(2) To be eligible to obtain a telehealth license under this chapter, a health care professional shall:

(A) complete an application in a format and with such content as prescribed by the Office or the Board;

(B) hold an active, unencumbered license, certificate, or registration in good standing in any other U.S. jurisdiction to practice the health care profession that the professional seeks to practice in Vermont using telehealth and provide verification of the license, registration, or certificate to the Office or the Board if required by the profession;

(C) if required by the rules adopted by the Office or the Board pursuant to section 3061 of this chapter, submit a copy of a mandatory disclosure that conforms to the requirements established by rule;

(D) if required by the rules adopted by the Office or the Board pursuant section 3061 of this chapter, provide documentation of professional liability coverage or financial responsibility that includes coverage or financial responsibility for services provided by telehealth to patients or clients not located in the health care professional's home state in an amount established by rule;

(E) provide any other information and documentation of qualifications required by the Office or the Board by rule; and

(F) pay the required telehealth licensure fee, which shall be 75 percent of the renewal fee for the profession as set forth in 3 V.S.A. § 125 or in the applicable chapter of this title.

(3) A health care professional may renew a telehealth license every two years upon application and payment of the required fee. A license that has expired shall be reinstated upon payment of the biennial renewal fee and the late renewal penalty, which shall be 75 percent of the late renewal penalty established in 3 V.S.A. § 127 or in section 1401a of this title, as applicable.

(b) Telehealth registration.

(1) A health care professional who is not otherwise licensed, certified, or registered to practice in Vermont may obtain a telehealth registration to provide health care services using telehealth:

(A) for a period of not more than 120 consecutive days from the date the registration was issued; and

(B) to a total of not more than 10 unique patients or clients over the 120-day period that the registration is in effect.

(2) To be eligible to obtain a telehealth registration under this chapter, a health care professional shall:

(A) complete an application in a format and with such content as prescribed by the Office or the Board;

(B) hold an active, unencumbered license, certificate, or registration in good standing in any other U.S. jurisdiction to practice the health care profession that the professional seeks to practice in Vermont using telehealth and provide verification of the license, registration, or certificate to the Office or the Board if required by the profession;

(C) if required by the rules adopted by the Office or the Board pursuant to section 3061 of this chapter, submit a copy of a mandatory disclosure that conforms to the requirements established by rule; and

(D) pay the required telehealth registration fee, which shall be the lesser of:

(i) 50 percent of the renewal fee for the profession as set forth in 3 V.S.A. § 125 or in the applicable chapter of this title; or

(ii) the application fee for a full license for the profession as set forth in 3 V.S.A. § 125 or in the applicable chapter of this title.

(3) A health care professional may only reactivate a telehealth registration once every three years. A telehealth registration shall not be renewed or reactivated upon expiration.

(c) Other license or registration. A health care professional seeking to provide health care services to a patient or client located in Vermont using telehealth may register or apply for a full license to practice the profession in this State in accordance with the applicable provisions of this title. Nothing in this section shall be construed to prohibit a qualified health care professional from registering or obtaining a full license to practice in Vermont in accordance with relevant laws.

(d) Transition to licensure; fee credit.

(1) If a health care professional holding a telehealth registration issued pursuant to this chapter elects to apply for a telehealth license or a full license while the professional's telehealth registration is in effect or within three years following the effective date of the professional's telehealth registration, the amount of the fee paid by the health care professional for the telehealth registration pursuant to subdivision (b)(2)(D) of this section shall be credited and applied toward the amount of the relevant telehealth license under subdivision (a)(2)(F) of this section if the professional is seeking a telehealth license or the application fee for a full license for the profession as set forth in 3 V.S.A. § 125 or in the applicable chapter of this title.

(2) If a health care professional holding a telehealth license issued pursuant to this chapter elects to apply for a full license while the professional's telehealth license is in effect, the amount of the fee paid by the health care professional for the telehealth license pursuant to subdivision (a)(2)(F) of this section shall be credited and applied toward the amount of the application fee for a full license for the profession as set forth in 3 V.S.A. § 125 or in the applicable chapter of this title. (Added 2021, No. 107 (Adj. Sess.), § 1, eff. July 1, 2023.)

[Effective July 1, 2023.]

§ 3055. Scope of practice; standard of practice

(a) In order to be eligible for a telehealth license or telehealth registration under this chapter, a health care professional shall hold a license, certificate, or registration in another U.S. jurisdiction that authorizes the provider to engage in the same or a broader scope of

practice as health care professionals in the same field are authorized to engage pursuant to a license, certificate, or registration issued in accordance with the relevant provisions of this title.

(b) While practicing in Vermont using telehealth, a health care professional holding a telehealth license or telehealth registration issued pursuant to this chapter shall:

(1) practice within the scope of practice established in this title for that profession; and

(2) practice in a manner consistent with the prevailing and acceptable professional standard of practice for a health care professional who is licensed, certified, or registered in Vermont to provide in-person health care services in that health care profession. (Added 2021, No. 107 (Adj. Sess.), § 1, eff. July 1, 2023.)

[Effective July 1, 2023.]

§ 3056. Records

A health care professional holding a telehealth license or telehealth registration issued pursuant to this chapter shall document in a patient's or client's medical record the health care services delivered using telehealth in accordance with the same standard used for in-person services and shall comply with the requirements of 18 V.S.A. §§ 9361 and 9362 to the extent applicable to the profession. Records, including video, audio, electronic, or other records generated as a result of delivering health care services using telehealth, are subject to all federal and Vermont laws regarding protected health information. (Added 2021, No. 107 (Adj. Sess.), § 1, eff. July 1, 2023.)

[Effective July 1, 2023.]

§ 3057. Effect of disciplinary action on out-of-state license, certificate, or registration

(a) A health care professional shall not obtain a telehealth license or telehealth registration under this chapter if the health care professional's license, certificate, or registration to provide health care services has been revoked or is subject to a pending disciplinary investigation or action in any other U.S. jurisdiction.

(b) A health care professional holding a telehealth license or telehealth registration under this chapter shall notify the Office or the Board, as applicable, within five business days following a disciplinary action that places a warning, reprimand, condition, restriction, suspension, or any other disciplinary action on the professional's license, certificate, or registration in any other U.S. jurisdiction or of any other disciplinary action taken or pending against the health care professional in any other U.S. jurisdiction. (Added 2021, No. 107 (Adj. Sess.), § 1, eff. July 1, 2023.)

[Effective July 1, 2023.]

§ 3058. Jurisdiction; application of Vermont laws

A health care professional holding a telehealth license or telehealth registration in accordance with this chapter is subject to the laws and jurisdiction of the State of Vermont, including 18 V.S.A. §§ 9361 and 9362 and laws regarding prescribing, health information sharing, informed consent, supervision and collaboration requirements, and unprofessional conduct. (Added 2021, No. 107 (Adj. Sess.), § 1, eff. July 1, 2023.)

[Effective July 1, 2023.]

§ 3059. Exemptions from registration and licensure requirements

A health care professional is not required to obtain a telehealth registration or licensure solely to provide consultation services to another health care professional regarding care for a patient or client located in Vermont, provided the consulting health care professional holds a license, certificate, or registration to practice the profession in one or more U.S. jurisdictions and the consultation is based on a review of records without in-person or remote contact between the consulting health care professional and the patient or client. (Added 2021, No. 107 (Adj. Sess.), § 1, eff. July 1, 2023.)

[Effective July 1, 2023.]

§ 3060. Venue

Venue for a civil action initiated by the Office, the Board, or a patient or client who has received telehealth services in Vermont from an out-of-state health care professional holding a telehealth license or telehealth registration shall be in the patient's or client's county of residence or in Washington County. (Added 2021, No. 107 (Adj. Sess.), § 1, eff. July 1, 2023.)

[Effective July 1, 2023.]

§ 3061. Rulemaking

The Office or the Board may adopt rules in accordance with 3 V.S.A. chapter 25 to carry out the purposes of this chapter, including, in consultation with the appropriate boards and advisor appointees for professions regulated by the Office, rules regarding any profession-specific requirements related to telehealth licenses and telehealth registrations. (Added 2021, No. 107 (Adj. Sess.), § 1, eff. July 1, 2023.)