



TENNESSEE BOARD OF MEDICAL EXAMINERS

Telemedicine Rulemaking Workgroup Session

Monday, September 15, 2014

MINUTES

The meeting of the Board of Medical Examiners' Telemedicine Workgroup was called to order at 2:08 p.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
Subhi Ali, MD
Dennis Higdon, MD
C. Allen Musil, MD
Reeves Johnson, MD
Michael Baron, MD
Jeff Lawrence, MD
Neal Beckford, MD
Nina Yeiser, Consumer Member
Pat Eller, Consumer Member
Barbara Outhier, Consumer Member

Board member(s) absent: Keith Lovelady, MD

Staff present: Rosemarie Otto, Director Health Related Boards
Maegan Carr Martin, BME Executive Director
Andrea Huddleston, Deputy General Counsel
Stacy Tarr, Administrative Manager
Angela Lawrence, BME Administrator
Jennifer Shell, MD XRay Administrator

Dr. Zanolli began the hearing with a roll call of the board members followed by an overview of the day's session. This meeting was convened to continue the Board's review and revision of the

proposed telemedicine rules while taking into consideration input received to date and developments which have occurred over the course of the Board's deliberations.

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 July 21, 2014 meeting, a table containing proposed 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.

Discussion of Proposed Telemedicine Rule:

Dr. Zanolli suggested that the Board work primarily from the "alternative language table" which contains alternative 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. Dr. Beckford conveyed his approval of the revised language, but suggested that the rule describe what telemedicine *is* before it describes what telemedicine *isn't*. He proposed that the second and third sentences of this particular provision be transpositioned to accomplish this.

Dr. Johnson stated that he did not want the rule to overreach and inadvertently prohibit practices that are currently occurring and which constitute an acceptable standard of care. For instance, physicians regularly communicate with existing patients by phone, email—even text messaging. These rules should not prohibit that practice. Dr. Zanolli concurred, pointing out the Board will be examining whether the definition of telemedicine should include these routine practices.

Dr. Baron joined the group at 2:26 pm.

Dr. Musil stated that he agreed that the language "for the purpose of [establishing] the initial patient encounter" should be removed and stated his support for Option 3.

Dr. Johnson expressed concern that by listing what telemedicine is and isn't, the Board may be limiting its ability to apply the rule to existing practice as well as emerging technology. He referenced Public Chapter 675 which uses the term "telehealth". Dr. Zanolli responded that there may be some helpful language in the Georgia telemedicine rule which was recently adopted and included in the Board's materials. Dr. Zanolli read the following language into the record:

“(b) This rule should not be interpreted to interfere with care and treatment by telephonic communication in an established physician-patient relationship, call coverage for established physician-patient relationships, or telephone or internet

consultations between physicians, nurse practitioners, physician assistants, other healthcare providers or child protection agencies.”

Dr. Johnson asked counsel, Ms. Andrea Huddleston, what the word “typically” does to the rule. Ms. Huddleston answered that while it’s not the word she would choose, it does give the Board some flexibility. Dr. Johnson asked whether a video conference without audio would be acceptable. Ms. Huddleston responded that the word “secure video conferences” infers the ability to conference which requires audio.

Dr. Musil asked whether Skype would qualify as “secure video conferencing.” Ms. Huddleston responded that there was a recent decision in Oklahoma holding that Skype was not secure. She added that like EHR programs, it is likely that the practitioner will personally have to make a determination as to whether the technology was sufficient. The Board discussed whether HIPAA compliant would be a useful qualifier and determined that it would not.

Definition of Physician/Patient Relationship

Dr. Zanolli read the proposed definition into the record. The definition was taken from the FSMB’s “Model Policy for the Appropriate Use of Telemedicine Technologies in the Practice of Medicine.” Dr. Musil expressed surprise that the physician/patient relationship is not defined in the existing regulatory framework. There were no objections to the adoption of this definition. Ms. Martin asked Ms. Huddleston where this definition should be included in the rules. Ms. Huddleston responded that the definition would work better in .14, but it could be added in the telemedicine section and moved later. Dr. Musil stated that he treats many patients that do not consent to be treated. Dr. Zanolli does not think that that particular treatment scenario needs to be covered and asked for the advice of counsel. Ms. Huddleston said the clarification was probably not needed.

Definitions Surrounding the Patient Encounter

Dr. Zanolli proposed eliminating the distinction between initial and subsequent encounters. Dr. Johnson agreed. No one voiced any opposition to the notion of eliminating the definitions for initial and established patient encounters. Dr. Zanolli then queried the Board regarding whether the definition of “patient encounter” could or should be abandoned in lieu of adding a physician/patient relationship. He then took the position that if the term “patient encounter” remained, it would make sense to add a definition of physician/patient relationship in .14. There were no additional comments. Dr. Zanolli stated that they would return to this question later in the deliberations.

Qualifications for Current Holders of Telemedicine License

Dr. Johnson asked whether due process rights of these licensees would be violated by modifying the conditions, for instance, by requiring a board-certified physician with a telemedicine license who is grandfathered in, to engage in maintenance of certification. Ms. Huddleston responded that it is a bit of a concern. Dr. Baron added that under the original rule there is no mention of ABMS. Ms. Huddleston acknowledged that there is no mention of ABMS in the rule; however, board-certification is a term of art, that, as she

understands it, was intended to refer to ABMS certification and has likely been interpreted accordingly. She is more worried about adding the maintenance of certification (MOC) requirement.

Dr. Beckford asked what is it about a board-certified physician that makes him or her more qualified to practice telemedicine. Dr. Johnson responded that it's about competency. Dr. Beckford reminded the Board that board-certification is not a requirement to practice in-person medicine and asked, why is telemedicine so different? Dr. Zanolli stated his belief that it is easier to make an accurate diagnosis in-person than through electronic means. Dr. Beckford disagreed.

Dr. Baron conveyed his concern that the Board is developing two separate standards: the standard that applies to telemedicine physicians and the standard that applies to physicians who will practice traditional, in-person medicine. Ms. Huddleston pointed out that telemedicine physicians currently do not have to meet many requirements that physicians who practice traditional medicine do, but they do have to be board-certified. Additionally, current telemedicine license holders can "upgrade" to full licensure. Dr. Zanolli restated the question before the Board: whether MOC should be required. Ms. Eller requested that the word "telemedicine" be added in. There was no opposition to moving forward with the language that was initially proposed (i.e., not requiring MOC).

Revised Language of 0880-08-.16(5)

Alternate language was offered for this provision to clarify to whom the exemption applies. Dr. Johnson stated that the language below was much easier to understand. Dr. Ali and Ms. Eller and Ms. Outhier agreed. The Board agreed to adopt the language.

Consideration of Provision 0880-08-.16(6)(a)-(b)

Dr. Zanolli emphasized the importance of this provision as it spells out the circumstances in which telemedicine may properly occur. He expressed his fear that earlier iterations of this rule may have been too restrictive. He read the following language into the record:

Ms. Huddleston pointed out that the footnotes refer to the need to define some terms which are used for the first time in this section. Ms. Huddleston also directed the Board to the Georgia telemedicine rules, paragraph (3). [Dr. Musil's remark was inaudible.] Ms. Huddleston believes that these paragraphs go to the heart of the proposed language, without the need for additional definitions. Ms. Martin pointed out that (3)(d) would permit telemedicine with adequate sophistication without the presence of a facilitator. Dr. Baron stated that he is uncomfortable with store-and-forward being the minimum technology, particularly for the initial meeting with the patient. Dr. Zanolli queried the Board to determine whether other members shared Dr. Baron's reservations. There was some discussion of the appropriate definition of store-and-forward. The consensus was that the definition provided by Public Chapter 675 may not be sufficient. Dr. Zanolli stated that in addition to the paragraph cited by counsel, there may be other provisions of the Georgia rule which may be useful to the Board, for example, (3)(c).

Dr. Zanolli referred the Board to the footnote regarding “appropriate medical credentials.” Ms. Huddleston provided that the original proposal included a definition of “facilitators” which still seems applicable.

Ms. Yeiser said that the Georgia rules are easier to understand. Dr. Johnson stated that he likes that the Georgia rules tries to establish some type of home base. Dr. Beckford requested that some examples of adequately sophisticated technology be provided. Dr. Zanolli explained that anything above store-and-forward would be adequately sophisticated—real-time video, etc. Dr. Beckford clarified, how does the sophisticated technology address the identity of the patient? Ms. Huddleston stated that her concerns surrounding an individual’s identity and eliminating the facilitator requirement centers on the people who are going to misuse and abuse telemedicine. Dr. Baron reminded the Board that we have a tremendous overprescribing problem and without the proper safeguards, this practice could be utilized for improper purposes.

Dr. Zanolli stated that there doesn’t seem to be disagreement: if there is a facilitator with an appropriate medical credential, that does provide some security. Dr. Johnson inquired: what is the role of a facilitator? The facilitator will verify the identity of the patient and transmit information to the doctor, such as the patient’s temperature, etc. Accordingly, the adequate sophistication must be able to perform the same functions. Dr. Zanolli acknowledged that under the proposed rules, a person would be able to connect to a computer and access a physician from his or her home so long as there was adequate technological sophistication. Dr. Musil suggested that the Board consider limiting what can be done without a facilitator, for instance, prescribing controlled substances would not be appropriate. Dr. Zanolli suggested the Board adopt (with rewording) paragraph (3)(d) from Georgia’s rule to apply when a facilitator is not present. Dr. Baron suggested that this language be adopted to apply in cases even when a facilitator is present. Ms. Huddleston provided some language which was modified by Dr. Zanolli, Dr. Baron and Dr. Lawrence. Under the definition of telemedicine “option 3”: secure video conferencing, store-and-forward to provide, or support healthcare delivery, as long as the physician is able to examine the patient using technology or peripherals that allow examination of the patient that is equal or superior to an examination done in-person by a provider within that provider’s usual practice of medicine. This same provision could be placed under (6)(a)(ii). Dr. Zanolli advocated on behalf of placing this provision under (6)(a)(ii). Ms. Huddleston said it would be okay if the provision were in both places.

Prescribing through Telemedicine

Dr. Zanolli acknowledged that the Board’s work wouldn’t be done today. He suggested that the Board move on to consideration of paragraph (9) and leave the discussion of (6)(b) for next time. Dr. Zanolli read paragraph (9) into the record. Ms. Huddleston stated that this language was pulled from 0880-02-.14 [the rest of her comments were inaudible]. Dr. Zanolli acknowledged that this is a very important provision for our state. Dr. Zanolli inquired, are there instances, when specific exceptions may be appropriate to the last sentence of paragraph (9): “However, in no event shall a physician prescribe Schedule II controlled substances pursuant to an electronically-mediated encounter.”

Dr. Musil stated that there are two sets of applicable guidelines: American Academy of Pediatrics and... [comments inaudible]. The Board considered whether Schedule IIIs should be permitted. Dr. Johnson suggested that a broad prohibition be articulated with carve outs for specific drugs. Ms. Huddleston stated that the Board could abandon the Schedules and prohibit or permit certain classes of drugs. Dr. Zanolli read from the Georgia rule, 8(c). Dr. Baron stated that a mental health exception might be appropriate. Ms. Huddleston conveyed concern over prohibiting prescribing for certain purposes, such as chronic pain, since a common rebuttal to improper pain management is that the drugs are not being prescribed for chronic pain, but for anxiety, etc. She suggested that she work with Drs. Musil and Baron on some language that would prohibit classes of drugs, but carve-out exceptions for childhood ADD and community health center, etc. Dr. Zanolli suggested that the Board could also specify by specialty.

Dr. Zanolli queried the workgroup to determine the feasibility of a follow-up meeting on Monday, November 17th, before the regularly scheduled meeting. After some discussion, the Board agreed to meet at 8:30 am on Monday, November 17th.

Adjourned 5:05pm