



# OHIO MEDICAL BOARD CHANGES TELEMEDICINE RULES

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In March of 2020, the Ohio State Medical Board issued revised rules regarding how telemedicine may be used in place of in-person visits by physicians who may be prescribing both controlled and non-controlled substances, including substances for chronic pain and pain management. These rules were issued in response to the Governor's Executive Order declaring a state of emergency in Ohio and modified rules were issued for an indefinite period.

On July 14, 2021, the Medical Board issued a series of "Frequently Asked Questions" stating that the Board was rescinding the emergency rules on the basis that the Governor had ended the State of Emergency and the Medical Board intended to resume enforcement of the prior version of the rules on September 1, 2021. In response to those FAQs, there were significant responses and comments resulting in the Medical Board issuing additional "Frequently Asked Questions" on August 11, 2021 and deferring the implementation of the restored rules until December 31, 2021. In short, things appear to be a little confused in Columbus which makes it even more confusing for each of you in your practice.

### Reinstitution of In-Person Examination Requirements.

Under the regulations of the Medical Board (and based to a certain extent upon changes in reimbursement authorizations), physicians are still permitted to treat patients through telemedicine visits in Ohio subject to certain limitations particularly if any prescriptions may be issued. If the physician concludes that the treatment via telemedicine meets the standard of care and that standard is the "normal" standard, rather than the "pandemic" standard, then a telemedicine patient visit is permitted. If the patient is likely to need a prescription, then the answer is more complicated and telemedicine may not be permitted.

Practitioners are generally required to conduct at least one in-person annual visit prior to a prescription (or meet an exception) and to conduct an annual in-person examination in order to continue to prescribe for that patient.

The Medical Board has expressly stated that there cannot be a telemedicine visit if the physician intends to prescribe controlled substances and as to non-controlled substances, telemedicine visit would not be permitted if the physician has not conducted a physical examination with some exceptions. The key here is the physician is subject to Medical Board sanctions for non-compliance. Patient convenience and pandemic concerns do not override.

The Board rules provide that a prescription for a controlled substance should not be issued unless the physician has conducted a physical examination of the patient. If you plan that as your baseline, we believe you will be reasonably protected and in full compliance. The rules do make some exceptions in special

circumstances. The exceptions are fairly limited. As to non-controlled substances through telemedicine, if the physician can document that the physician has met all their specific standards articulated by rule the physician may issue the prescription. The burden is on the physician to demonstrate in their records meeting all nine standards. Those standards are:

1. The physician has confirmed the patient's identity and physical location;
2. The physician has obtained a patient's informed consent for a telemedicine visit;
3. The physician must ask the patient for the patient's consent to send the record of the telemedicine visit to the patient's primary care provider or if they do not have one, must specifically refer the patient to such provider;
4. The physician must document that they completed a medical evaluation of the patient during the telemedicine visit meeting the standards of care;
5. Must establish a diagnosis and treatment plan and the reasons for the necessity of the utilization of a prescription;
6. The physician must document in a medical record the patient's consent to a remote evaluation, pertinent history, diagnosis treatment plan, and the like including specific referrals to third-parties;
7. The physician is required to provide follow-up care or recommend follow-up care;
8. The physician must offer to make the medical record of the visit available to the patient; and
9. The physician is required to have appropriate technology to conduct the exam according to standards.

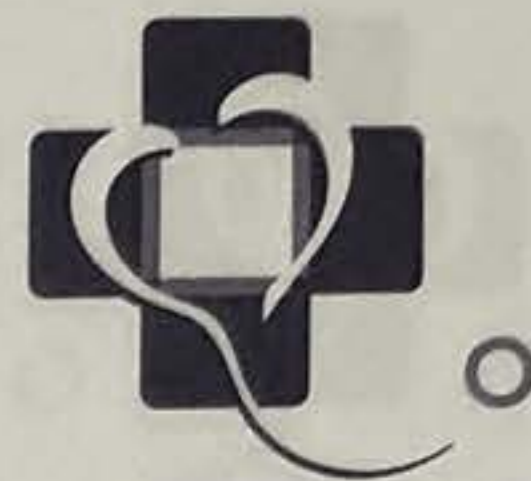
Again, the burden is on the physician to demonstrate that they have met each of these elements.

### Special Rules for Controlled Substances.

Unlike other prescriptions, controlled substance rules are fairly straightforward. Absent an in-person physical examination, a prescriber is not permitted to issue a prescription for a controlled substance through a telemedicine visit except in limited circumstances. Those exceptions include providing coverage for a physician within your own group and that the patient has had an in-person exam by your colleague within the past two years, the patient is physically in the room with another licensed healthcare provider seeking your consult, or in certain institution settings.

### Special Roles for Special Circumstances.

As you know, the Medical Board also has special rules for medications in certain settings. The previous rules dealing with in-person visits and limited prescriptions for a) treatment of sub-acute or chronic pain requiring an every 90-day examination apply, b) office based treatment



rules for opioid addiction apply, c) in-office examination for opioid addiction applies, and d) in-office visit requirements for prescriptions for weight-loss drugs will apply.

**Enforcement.**

What I thought was the most interesting statement, the Medical Board indicated that the Medical Board would not discipline physicians if they failed to follow the rules regarding in-person patient visits for the time periods between March 9, 2020 and December 31, 2021. I cannot recall a prior incidence where the Medical Board has announced in advance it will give absolution for violation of rules but these are challenging times. The Board does state however that it reserves the right to enforce violations of any other rules.

**Policies and Procedures.**

We recommend that you review your office policies and procedures and verify that you have current forms, checklists, and documentation that you will use to fully demonstrate your compliance with these reinstated rules. As offices were responding to pandemic and patient needs, we learned that some practices did adopt some shortcuts to meet the crisis but may not have fully documented written patient consents, confirmation of in-person visits, telemedicine visits other than through fully secure channels and the like. You may want to make sure your practice has the current forms updated to make sure you comply for example with 1) the opioid treatment consent form with its patient acknowledgement of potential addiction and other treatment options, 2) telemedicine consent forms, 3) controlled substance policies, 4) in-person visit requirements, and other policies that are crucial to document your files should you be questioned as to your compliance with the regulatory framework.

*If you have any questions or would like copies of the rules or the Frequently Asked Questions from the Medical Board, please contact Scott P. Sandrock at [spsandrock@bmdllc.com](mailto:spsandrock@bmdllc.com) or (330) 253-4367. Scott Sandrock is a Partner in the Business and Healthcare Practice Groups at Brennan, Manna & Diamond with offices in Canton and Akron.*



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**SAVE-THE-DATE**

*Dear Members,*

*This has been a tough year for everyone. As we struggle to put 2020 – 2021 behind us, it's apparent that we still need to be mindful of best safety practices. Out of an abundance of caution, the board has postponed all future in person meetings until the early spring of 2022.*

*We normally celebrate our Lifetime Achievement winner at our Annual Meeting in October. We will honor our 2021 Lifetime Achievement recipient, Dr. Susan Mercer, as well as, our 50 year and retired members in 2022.*

*As always, thank you for your support of the medical society and we look forward to a time when we can all be together safely.*

*If you or your practice need anything, please do not hesitate to contact us at 330.492.3333. Thank you and have a safe, happy, and healthy holiday season.*



**Stark County Medical Society's 2021 Annual Meeting**

**HONORING THE 2021 LIFETIME ACHIEVEMENT AWARD RECIPIENT, DR. SUSAN MERCER**

our 50-Year Members, Retirees for their Years of Service to the Medical Profession, the Community

**Thursday, October 21, 2021  
at the Ice Country Club**

**Fellowship: 6:00 PM  
Dinner: 6:30 PM**

**RECOGNITION OF HONOREES AND PROGRAM FOLLOWING DINNER**

**POSTPONED**