

Mississippi Secretary of State

125 South Congress St., P. O. Box 136, Jackson, MS 39205-0136

ADMINISTRATIVE PROCEDURES NOTICE FILING

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|-------------------------------------------------------------|------------------------|-----------------------------------------------------------------------------|----------------------------------|--------------|
| AGENCY NAME Mississippi State Board of Medical Licensure | | CONTACT PERSON Jonathan Dalton | TELEPHONE NUMBER 601-987-0248 | |
| ADDRESS 1867 Crane Ridge Drive, Suite 200-B | | CITY Jackson | STATE MS | ZIP 39216 |
| EMAIL mboard@msbml.ms.gov | SUBMIT DATE 7/26/22 | Name or number of rule(s): Part 2635 Chapter 5: Practice of Telemedicine | | |

Short explanation of rule/amendment/repeal and reason(s) for proposing rule/amendment/repeal: Revision of the definitions and other sections regarding telemedicine to clarify certain terms common to the telemedicine industry and for other purposes.

Specific legal authority authorizing the promulgation of rule: Miss. Code Ann., §73-43-11

List all rules repealed, amended, or suspended by the proposed rule: R. 5.1, 5.2, 5.3, 5.5, and 5.6

ORAL PROCEEDING:

- An oral proceeding is scheduled for this rule on Date: _____ Time: _____ Place: _____
- Presently, an oral proceeding is not scheduled on this rule.

If an oral proceeding is not scheduled, an oral proceeding must be held if a written request for an oral proceeding is submitted by a political subdivision, an agency or ten (10) or more persons. The written request should be submitted to the agency contact person at the above address within twenty (20) days after the filing of this notice of proposed rule adoption and should include the name, address, email address, and telephone number of the person(s) making the request; and, if you are an agent or attorney, the name, address, email address, and telephone number of the party or parties you represent. At any time within the twenty-five (25) day public comment period, written submissions including arguments, data, and views on the proposed rule/amendment/repeal may be submitted to the filing agency.


ECONOMIC IMPACT STATEMENT:

- Economic impact statement not required for this rule. Concise summary of economic impact statement attached.

| TEMPORARY RULES | PROPOSED ACTION ON RULES | FINAL ACTION ON RULES |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| _____ Original filing _____ Renewal of effectiveness To be in effect in _____ days Effective date: _____ Immediately upon filing _____ Other (specify): _____ | Action proposed: _____ New rule(s) _____ Amendment to existing rule(s) _____ Repeal of existing rule(s) _____ Adoption by reference Proposed final effective date: _____ 30 days after filing _____ Other (specify): _____ | Date Proposed Rule Filed: 11/23/2021 Action taken: _____ Adopted with no changes in text <input checked="" type="checkbox"/> Adopted with changes _____ Adopted by reference _____ Withdrawn _____ Repeal adopted as proposed Effective date: <input checked="" type="checkbox"/> 30 days after filing _____ Other (specify): _____ |

Printed name and Title of person authorized to file rules: Jonathan Dalton, Director of Investigations

Signature of person authorized to file rules: 

| OFFICIAL FILING STAMP | DO NOT WRITE BELOW THIS LINE OFFICIAL FILING STAMP | OFFICIAL FILING STAMP |
|------------------------|-------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------|
| Accepted for filing by | Accepted for filing by |  Accepted for filing by <u>26496 POM</u> |

The entire text of the Proposed Rule including the text of any rule being amended or changed is attached.



RESOLUTION

Whereas, it is necessary for the Occupational Licensing Review Commission to issue a resolution regarding the approval or denial of specific rules submitted for its review: NOW, THEREFORE, LET IT BE RESOLVED BY THE OCCUPATIONAL LICENSING REVIEW COMMISSION, that the following rules shall be known to have been approved by the Commission at a duly called meeting of its members on June 21, 2022, and may now be filed as final with the Secretary of State's Office for inclusion in the Mississippi Administrative Code:

- Rules of the Board of Medical Licensure – Part 2640, Chapter 2 Cannabis Certification; Creation of a new chapter setting forth rules for medical practitioners regarding certification of certain medical conditions for which patients may obtain cannabis, and for related purposes. *Approved as amended to add the following language to Rule 1.6, “Refer also to Title 15: Mississippi State Department of Health, Part 22: Medical Cannabis Program, Chapter 1: Subchapters 1-5 Regulations for Advertisement and Marketing.”*
- Rules of the Board of Medical Licensure – Part 2635 Chapter 5: Practice of Telemedicine; Revision of the definitions and other sections regarding telemedicine to clarify certain terms common to the telemedicine industry and for other purposes.
- Rules of the Board of Nursing – Part 2840, Chapter 1: Section II Cannabis Certification, Rule 1.1 Scope for Part 2840, Chapter 1: Section II
- Rules of the Board of Optometry – Part 2901 Chapter 12: Cannabis Certification
- Rules of the Real Estate Commission – Title 30, Part 1601, Rules 5.2, 5.3, 5.4, 5.5, 5.6, 5.7, 5.8, 5.9; Promulgation of Rules governing Miss. Real Estate Commission Administrative and Disciplinary Proceedings. *Approved as amended to include the following changes along with some non-substantive renumbering:*
 - *Add the following definition to Rule 5.2, “C. Administrative Hearing Officer Option: The option for a licensee/Respondent to elect to have his or her Administrative Hearing conducted by an Administrative Hearing Officer instead of a Commission Hearing Panel. When the Administrative Hearing Officer Option is elected, the Administrative Hearing Officer shall have the same powers to conduct administrative hearings and render decisions as would the Commission Hearing Panel.”*
 - *Delete Subsection 4) in Rule 5.5.*
 - *Clarify Rule 5.7 E. 1) by adding the words ‘or Administrative Hearing Officer’ after ‘...the Commission Hearing Panel’.*
 - *Clarify Rule 5.8 F. and G. by adding the words ‘or Administrative Hearing Officer’ after ‘...before the Commission’.*

Part 2635 Chapter 5: Practice of Telemedicine

Rule 5.1 | Definitions

For the purpose of Part 2635, Chapter 5 only, the following terms have the meanings indicated:

- A. “Provider” means any physician or physician assistant who holds an unrestricted license to practice medicine in the state of Mississippi.
- B. “Telemedicine” is the practice of medicine by a licensed healthcare provider using HIPAA-compliant telecommunication systems, including information, electronic, and communication technologies, remote monitoring technologies and store-and-forward transfer technology. These technologies may be used to facilitate, but are not limited to, provider to patient or provider to provider interactions. The technology must be capable of replicating the interaction of a traditional in-person encounter between a provider and a patient. This definition does not include the practice of medicine through postal or courier services.
- C. “Emergency Telemedicine” is a unique combination of telemedicine used in a consultative interaction between a physician board certified, or board eligible, in emergency medicine, and an appropriate skilled health professional (nurse practitioner or physician assistant).
- D. “Primary Center” is any facility providing telemedicine services to Satellite Centers, as defined in definition ‘G’.
- E. “Remote Monitoring” is defined as the use of technology to remotely track health care data for a patient released to his or her home or a care facility, usually for the intended purpose of reducing readmission rates.
- F. “Real-Time Telemedicine” is defined as real-time communication using interactive audio and visual equipment, such as a video conference with a specialist, also known as ‘synchronous communication.’
- G. “Satellite Center” is any facility receiving telemedicine services from a Primary Center, as defined in definition ‘D’.
- H. “Store-and-Forward Transfer Technology” is defined as technology which facilitates the gathering of data from the patient, via secure email or messaging service, which is then used for formulation of a diagnosis and treatment plan, also known as ‘asynchronous communication.’

Source: Miss. Code Ann. §73-25-34 (1972, as amended).

Rule 5.2 | Licensure

The practice of medicine is deemed to occur in the location of the patient. Therefore, only providers holding a valid Mississippi license are allowed to practice any form of telemedicine, as defined in R.5.1, in Mississippi. The interpretation of clinical laboratory studies as well as pathology and histopathology studies performed by physicians without Mississippi licensure is not

the practice of telemedicine provided a Mississippi licensed provider is responsible for accepting, rejecting, or modifying the interpretation. The Mississippi licensed provider must maintain exclusive control over any subsequent therapy or additional diagnostics.

Source: Miss. Code Ann. §73-25-34 (1972, as amended).

Rule 5.3 | Informed Consent

The provider using any form of telemedicine, as defined in R.5.1, should obtain the patient's informed consent before providing care via telemedicine technology. In addition to information relative to treatment, the patient should be informed of the risk and benefits of being treated via a telemedicine network including how to receive follow-up care or assistance in the event of an adverse reaction to treatment or if there is a telemedicine equipment failure.

Source: Miss. Code Ann. §73-25-34 (1972, as amended).

Rule 5.4 | Physician Patient Relationship

In order to practice any form of telemedicine, as defined in R.5.1, a valid "physician patient relationship" must be established. The elements of this valid relationship are:

- A. verify that the person requesting the medical treatment is in fact who they claim to be;
- B. conducting an appropriate history and physical examination of the patient that meets the applicable standard of care;
- C. establishing a diagnosis through the use of accepted medical practices, i.e., a patient history, mental status exam, physical exam and appropriate diagnostic and laboratory testing;
- D. discussing with the patient the diagnosis, risks and benefits of various treatment options to obtain informed consent;
- E. insuring the availability of appropriate follow-up care; and
- F. maintaining a complete medical record available to patient and other treating health care providers.

Source: Miss. Code Ann. §73-25-34 (1972, as amended).

Rule 5.5 | Examination

Providers using telemedicine technologies to provide medical care to patients located in Mississippi must provide an appropriate examination prior to diagnosis and treatment of the patient. However, this exam need not be in person if the technology is sufficient to provide the same information to the physician as if the exam had been performed face to face.

Store-and-Forward Transfer Technology may be used to enhance, but never replace, real-time provider-patient interaction. Provider-patient interaction may be audio-visual or audio only where medically appropriate.

Other exams may be appropriate if a licensed health care provider is on site with the patient and is able to provide various physical findings that the physician needs to complete an adequate assessment. However, a simple questionnaire without an appropriate exam is in violation of this policy and may subject the physician to discipline by the Board.

Source: Miss. Code Ann. §73-25-34 (1972, as amended).

Rule 5.6 | Medical Records

The provider treating a patient through a telemedicine network must maintain a complete record of the patient's care. The provider must maintain the record's confidentiality and disclose the record to the patient consistent with state and federal laws. If the patient has a primary treating physician and a telemedicine provider for the same medical condition, then the primary physician's medical record and the telemedicine provider's record constitute one complete patient record.

Source: Miss. Code Ann. §73-25-34 (1972, as amended).

Rule 5.7 | Consultative Physician Limited

A duly licensed physician may remotely consult with a duly licensed and qualified Advanced Practice Registered Nurse ("APRN") or Physician's Assistant ("PA"), who is in a hospital setting, using telemedicine. The physician providing Emergency Telemedicine must be either board certified or board eligible in emergency medicine. The Board may waive this requirement under extra ordinary circumstances.

For the purposes of Emergency Telemedicine services, licensees will only be authorized to provide the aforementioned services to those emergency departments of licensed hospitals who have an average daily census of fifty (50) or fewer acute care/medical surgical occupied beds as defined by their Medicare Cost Report. Exceptions may be considered by the Board for physicians affiliated with facilities maintaining greater than fifty (50) beds, but not more than one hundred (100) beds.

Satellite Centers who receive telemedicine services/assistance from a Primary Center must have a transfer agreement with a facility that offers a higher level of care, in order to send any patients who require transfer for a higher level of care.

Source: Miss. Code Ann., §73-25-34 (1972)

Rule 5.8 | Reporting Requirements

Annual reports detailing quality assurance activities, adverse or sentinel events shall be submitted for review to the Mississippi State Board of Medical Licensure by all institutions and/or hospitals operating telemergency programs.

Rule 5.9 | Automated Dispensaries

Recognizing the emergence of sophisticated technology which allows certain levels of automation to the usual and customary process of seeing a provider, to include obtaining a prescription and then filling that prescription at a pharmacy, automated dispensary systems which provide the patient's medications pursuant to a valid telemedicine visit with a licensee of the Board will not be considered in violation of Part 2640, Rule 1.9 *Requirements for Dispensing Physicians*. Any physician utilizing the automated dispensary will be responsible for the proper maintenance and

inventory/accountability requirements as if the physician were personally dispensing the medications to the patient from his or her stock in their personal practice, as required in Rule 1.9 of Part 2640. An automated dispensary may not dispense controlled substances, and refills of medications may not be issued without a follow-up visit with the physician.

Of paramount importance to any automated dispensary process is the continued emphasis on a patient's freedom of choice, as it pertains to selecting a pharmacy to fill any prescriptions authorized. The failure of any system utilizing an automated dispensary to appropriately advise the patient of his or her right to choose where their medications are filled will constitute a violation of Part 2640, Rule 1.12 *Freedom of Choice*.

Any telemedicine service devices or systems which contain automated dispensaries, containing medications ordered and maintained by physician licensees, shall be subject to the oversight of the Board and the Mississippi Board of Pharmacy, as stated in Part 2640, Rule 1.9, and may not operate in this state until approved by both Boards.

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