



November 1, 2014

Cheryl Walker-McGill, MD
President
North Carolina Medical Board
PO Box 20007
Raleigh, NC 27619-0007

Dear Dr. Walker-McGill:

The Robert J. Waters Center for Telehealth and e-Health Law (CTeL) appreciates the opportunity to comment on the proposed telemedicine guidelines being considered by the North Carolina Medical Board (Board).

CTeL was founded in 1995 as the pioneer non-profit organization providing research and policy guidance in telemedicine. We have long been involved in telemedicine's legal research and policy development, reflecting the 175 years of combined experience CTeL's board of directors have in the telemedicine field. We appreciate the Board's efforts to balance the need to ensure safe medical procedures with the changing landscape of telemedicine delivery models.

In January 2013, CTeL first provided state medical boards with recommendations on the establishment of the physician-patient relationship through telemedicine. We urged that states recognize that a physician-patient relationship can be established through telemedicine—with certain conditions.

Since that time, we have continued to refine our recommendations. We view any proposed telemedicine statutes or regulations through the lens of CTeL's safe telemedicine principles (attached). These principles include:

1. Telemedicine is a mechanism to deliver safe, effective healthcare.
2. Legally recognize an examination through telemedicine technology that provides the practitioner with information equal to or superior to an in-person examination.
3. A physician-patient relationship can only be established through an examination by tablet, phone app, or web camera if the examination 1) provides information equivalent to an in-person examination, 2) conforms to the standard of care expected of in-person care; and 3) if necessary, incorporates peripherals and diagnostic tests sufficient to provide an accurate diagnosis.
4. A physician-patient relationship cannot be established through an examination by telephone (audio-only), text message, or email.
5. "On call" language may not be used by a physician to prescribe for a patient never seen by the physician unless there is an established agreement between the patient's personal physician and covering physician, compliant with state law governing on call relationships between practitioners.



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We believe a telemedicine encounter incorporating these principles can help ensure a safe medical encounter. After all, a safe medical encounter is a safe telemedicine encounter.

We applaud the Board for including language requiring the examination to 1) be equivalent or superior to an in-person examination; 2) conform to the standard of care; and 3) incorporate diagnostic tests and peripherals, if necessary.

We believe requiring diagnostic/laboratory tests and peripherals, if necessary to confirm the diagnosis, is critical in helping to ensure a safe medical encounter. To make certain that physicians understand the Board's expectations, these specific references should be included in any telemedicine policy statement where the Board expects an encounter that 1) is equal to or superior to an in-person examination and 2) conforms to the standard of care.

Regarding web-based examination, CTeL is routinely approached for a list of states that permit an "electronic examination" to establish the physician-patient relationship. Based on our conversations with the requestors, we are concerned that many delivery models and their physicians believe a mere visual "examination" of the patient complies with state laws and regulations. That is why we feel strongly that all state legal and regulatory language related to telemedicine must include reference to diagnostic tests and peripherals to confirm the diagnosis. For many "common" issues, we urge the Board to consider whether a safe medical encounter can be executed without these tools, and still meet the Board's requirement that the encounter mirror an in person encounter and conform to the standard of care.

CTeL would also like to note, that delivering medical care by telephone is not new or unique. Physicians have been providing medical care by telephone, since the telephone was invented. A telephone call diagnosing and treating a patient does not automatically make the encounter "telemedicine."

CTeL does not believe a first time encounter, over the telephone, can allow the physician to meet the requirements of equivalency to in-person examinations and conform to the standard of care. Business models using audio-only do not incorporate the use of diagnostic tools or peripherals, which we believe is necessary to keep with the medical standard of care and provide an accurate diagnosis. Except in statutorily recognized "on call" arrangements between the patient's physician and physician he/she designate to be on call, we do not believe an appropriate examination can be executed through audio-only.



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The same concern would apply to conducting an “examination” through a web portal or email, with written-only information. We would urge the board to clearly state that audio-only examination, or a physician-patient exchange through email or a web portal, is not sufficient for a first time encounter. Absent this language, we believe the Board will be in a continual state of enforcement, examining audio-only and written encounters to determine whether the encounter is equivalent to an in-person examination and conforms to the standard of care.

Finally, we want to comment on the issue of enforcement. Enforcement of these standards will be critical to ensure that those practicing telemedicine in North Carolina are practicing safe medicine. Observers have noted that we have seen the current explosion of “telemedicine” models because of a general lack of enforcement at the state level. It will be critical for the Board to set clear and direct enforcement standards so that delivery models and their physicians know what is—and is not—permissible in North Carolina to ensure a safe medical encounter through telemedicine.

Again, thank you for allowing CTeL the opportunity to comment on the Board’s proposed policy changes for telemedicine. We stand ready to answer any questions you might have or provide further information in this area. We believe specific guidelines, like those the Board is considering, coupled with aggressive enforcement, are critical to the future of telemedicine. We believe we are one bad encounter away from onerous regulations that would not discriminate between the various methods of the delivery of telemedicine. This is an outcome that none of us want.

Sincerely,

Greg Billings
Executive Director