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## **Telemedicine Frequently Asked Questions**

(Note: These FAQs were approved by the State Medical Board of Ohio on August 11, 2021 and reflect the laws and rules in effect on that date.)

Since the telemedicine FAQs were published on July 16, 2021, the Medical Board has received several situation specific questions. While the Board is unable to give specific legal advice, we would like to provide the general decision-making framework of telemedicine in Ohio to help licensees and other interested parties apply that to their particular situations. This first set of General Questions are intended to provide that framework for understanding telemedicine as well as references to more specific information in other FAQs in this document.

### **General Questions:**

#### **Q1: I am a physician who wants to treat a patient via telemedicine. When can I treat patients through telemedicine in Ohio?**

**A:** A physician who wants to treat a patient through telemedicine must answer “yes” to these questions for each particular patient situation in which telemedicine is being considered:

- (1) Am I licensed as a physician or physician assistant in Ohio? See FAQs 12-16 for more information about licensure and telemedicine in Ohio and in other states.
- (2) Can I meet the standard of care for providing telemedicine in this particular situation? See FAQs 19 and 20 for more information on the standard of care for telemedicine in Ohio.
- (3) If the telemedicine patient visit will involve or is likely to involve prescribing, am I able to comply with the Medical Board’s prescribing laws and rules? See FAQs 21-29 for more information about the Medical Board’s prescribing laws and rules affecting telemedicine in Ohio.

#### **Q2: I am a physician assistant licensed in Ohio who last did an in-person physical examination of a patient in January of 2020. Can I see that patient via telemedicine now?**

**A:** It depends. Can you meet the standard of care for providing telemedicine to this patient for the particular medical issue that is the subject of the upcoming visit? See FAQs 19 and 20 for more information.

If the standard of care can be met, will this telemedicine visit likely involve prescribing? If the telemedicine visit will not involve prescribing and the standard of care can be met, you should be able to see that patient via telemedicine.

If the telemedicine visit will likely involve prescribing, then you should refer to FAQs 21-29 for more information on the Medical Board laws and rules affecting whether you can do telemedicine in your particular situation.

**Q3: Are the Medical Board prescribing laws and rules that may affect my ability to do telemedicine new?**

**A:** No, these laws and rules and the physician and physician assistant's responsibility to comply with them existed before the Covid-19 pandemic. What has changed is that more providers are utilizing telemedicine to treat patients than ever before. The Medical Board is using these Telemedicine FAQs and other communication opportunities to remind its licensees of their obligations under these laws and rules. For information on Medical Board enforcement of these laws and rules, please see FAQs 6-11.

**Q4: I am a physician whose patient mix includes patients who are on Medicaid. How does the Medicaid telehealth rule (OAC 5160-1-18) affect my obligation to follow the Medical Board laws and rules regarding standard of care and prescribing?**

**A:** The Medicaid telehealth rule in OAC 5160-1-18(C) states:

(C) Provider responsibilities when providing services through telehealth.

(1) It is the responsibility of the practitioner to deliver telehealth services in accordance with all state and federal laws including the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and any HIPAA related directives from the office for civil rights (OCR) at the department of health and human services (HHS) issued during COVID-19 national emergency and 42 C.F.R. part 2 (January 1, 2020).

**(2) It is the responsibility of the practitioner to deliver telehealth services in accordance with rules set forth by their respective licensing board and accepted standards of clinical practice.**

(3) The practitioner site is responsible for maintaining documentation in accordance with paragraph (C)(1) of this rule for the health care service delivered through the use of telehealth and to document the specific telehealth modality used.

(4) For practitioners who render services to an individual through telehealth for a period longer than twelve consecutive months, the telehealth practice or practitioner is expected to conduct at least one in-person annual visit or refer the individual to a practitioner or their usual source of clinical care that is not an emergency department for an in-person annual visit.

**So, the Medicaid telehealth rule requires physicians and physician assistants licensed in Ohio to follow the Medical Board's laws and rules regarding standard of care and prescribing.**

**Q5: I am a social worker who was recently talking to two friends (one is a chiropractor and the other is a nurse) about the requirements for doing telehealth in Ohio. Can you tell me what the Medical Board's requirements are for me and my friends to do telehealth?**

**A:** The Medical Board's telemedicine rules and laws only apply to physicians and physician assistants. Social workers, nurses, and chiropractors should contact their respective licensing boards for telehealth requirements in those occupations.

### **Effect of the COVID-19 Pandemic State of Emergency on Telemedicine in Ohio**

**Q6: What did the Medical Board do at the beginning of the Covid-19 pandemic regarding enforcement of its laws and rules requiring in-person patient visits in Ohio?**

**A:** On March 18, 2020, the Medical Board issued the following guidance to licensees: Effective March 9,

2020 until Executive Order 2020-01D (declaration of a state of emergency for Ohio for the COVID-19 pandemic) expires, providers can use telemedicine in place of in-person visits, without enforcement from SMBO. This includes, but is not limited to:

- Prescribing controlled substances
- Prescribing for subacute and chronic pain
- Prescribing to patients not seen by the provider
- Pain management
- Medical marijuana recommendations and renewals
- Office-based treatment for opioid addiction

Providers must document their use of telemedicine and meet minimal standards of care. The Medical Board will provide advance notice before resuming enforcement of the above regulations when the state emergency orders are lifted.

**Q7: What is the Medical Board's recent updated guidance on its laws and rules requiring in-person patient visits?**

**A:** At its August 11, 2021 meeting, the Medical Board agreed to resume enforcement of its laws and rules requiring in-person patient visits on December 31, 2021. The purpose of this announcement was to give advance notice to hospitals, practice groups, physicians, physician assistants, and most importantly patients.

**Q8: Since Governor DeWine ended the state of emergency on June 18, 2021, when will the Medical Board resume enforcement of its laws and rules requiring in-person patient visits?**

**A:** The Medical Board will resume enforcement on December 31, 2021 .

**Q9: What is the effect of Ohio ending its state of emergency before the end of the President's declaration of a national emergency and/or the U.S. Department of Health and Human Services' declaration of a public health emergency for COVID-19?**

**A:** While the federal government has temporarily relaxed requirements or stayed enforcement of many laws and rules related to the provision of telemedicine, it has also still required providers to comply with state law. If the federal emergency has not ended before enforcement of state telemedicine laws and rules resumes on December 31, 2021, physicians and physician assistants who are providing medical care to a patient situated in Ohio must still comply with the Ohio laws and rules governing telemedicine.

**Q10: What does it mean for the Medical Board to resume enforcement regarding the provision of telemedicine in Ohio?**

**A:** It means that providers must follow the existing laws and rules governing in-person visits for patients. Beginning again on December 31, 2021, if a provider is licensed by the State Medical Board of Ohio and fails to follow the laws and rules governing in-person patient visits, they could be subject to a disciplinary action by the State Medical Board of Ohio. If the provider is not licensed in Ohio, that provider could be subject to civil, criminal, and/or administrative penalties for the unlicensed practice of medicine in Ohio.

**Q11: Will the Medical Board discipline licensees for conduct involving failure to follow laws and rules requiring in-person patient visits for the time period between March 9, 2020 to December 31, 2021?**

**A:** The Medical Board will not retroactively enforce these rules. However, a licensee could be disciplined for conduct involving violations of other Medical Board laws and rules during this time period.

## Licensure and other general questions

### **Q12: To what professions do the Medical Board laws and rules requiring in-person patient visits apply?**

**A:** The current Medical Board laws in Chapters 4730 and 4731 of the Revised Code (R.C.) and rules in Chapters 4730 and 4731 of the Ohio Administrative Code (OAC) governing in-person patient visits apply to physicians (including training certificate holders) and physician assistants licensed in Ohio.

### **Q13: Why do these FAQs (except those involving medical marijuana) include physician assistants in the questions and answers when the language of most of the relevant rules only states “physician”?**

**A:** The rules are applicable to physician assistants because OAC rule 4730-1-07 states that the provisions of all rules in Chapters 4731-11 and 4731-29 of the Ohio Administrative Code are applicable to physician assistants. In addition, R.C. 4730.42 provides that a supervising physician shall not grant physician-delegated prescriptive authority to a physician assistant in a manner that exceeds the supervising physician's prescriptive authority.

### **Q14: Do I have to apply for a separate telemedicine license?**

**A:** No, there is not a separate license for telemedicine in Ohio. Specific to licensees of the Medical Board, in order to practice telemedicine in Ohio, the provider must be licensed in Ohio as a physician or physician assistant.

### **Q15: Do I have to be physically located in Ohio at the time that I am seeing a patient located in Ohio via telemedicine?**

**A:** If a physician or physician assistant is licensed in Ohio, that healthcare provider may provide telemedicine that is compliant with Medical Board laws and rules to a patient located in Ohio while the healthcare provider is located in another state of the United States.

### **Q16: I am an Ohio physician that wants to provide telemedicine to patients located in another state. What regulations does the State Medical Board of Ohio have on this out-of- state practice?**

**A:** Because the practice of medicine is deemed to occur in the state in which the patient is located, the laws of the other state where the patient is located regulate this practice of medicine. Most states, including Ohio, require physicians to be licensed in that state to perform telemedicine. Ohio licensees who want to practice medicine via telemedicine to treat or diagnose patients located in another state should check with that other state’s licensing board for updated licensure and state law information. Information on the telemedicine laws, rules, and policies of other states may be accessed at the [Federation of State Medical Boards \(“FSMB”\) website](#).

## Laws and rules for telemedicine in Ohio

### **Q17: What are the telemedicine laws and rules that the Medical Board enforces as to its physician and physician assistant licensees?**

**A:** To protect the health and safety of patients, the Medical Board has laws and rules that require an initial and/or periodic in-person patient visit for those medical visits involving the prescribing of drugs. Generally, there is no telemedicine for initial patient visits with a physician or physician assistant involving prescribing as OAC rule 4731-11-09 prohibits physicians from prescribing controlled substances or non-controlled substances to a person on whom the physician has never conducted a physical examination with some exceptions. In addition, visits that involve prescribing of specific types of controlled drugs also have initial and periodic in-person visit requirements. These are explained in FAQs 27, 28, and 29.

**Q18: What are the laws and rules that apply to physicians and physician assistants not licensed in Ohio who want to provide telemedicine to patients located in Ohio?**

**A:** R.C. 4731.34 provides that the practice of medicine in Ohio includes both the practice of medicine that occurs in person or “through the use of any communication, including oral, written, or electronic communication.” If a physician or physician assistant located in Ohio or in another state wants to provide medical care to patients in Ohio via telemedicine, that physician or physician assistant must obtain an Ohio physician or physician assistant license. In almost all cases, a physician or physician assistant that is not licensed in Ohio cannot provide telemedicine to a patient located in Ohio as that is the unlicensed practice of medicine prohibited by Ohio law. However, R.C. 4731.36(A) provides two limited exceptions:

“(3) A physician or surgeon in another state or territory who is a legal practitioner of medicine or surgery therein when providing consultation to an individual holding a license to practice issued under this chapter who is responsible for the examination, diagnosis, and treatment of the patient who is the subject of the consultation, if one of the following applies:

- (a) The physician or surgeon does not provide consultation in this state on a regular or frequent basis.
- (b) The physician or surgeon provides the consultation without compensation of any kind, direct or indirect, for the consultation.
- (c) The consultation is part of the curriculum of a medical school or osteopathic medical school of this state or a program described in division (A)(2) of section 4731.291 of the Revised Code.

(4) A physician or surgeon in another state or territory who is a legal practitioner of medicine or surgery therein and provided services to a patient in that state or territory, when providing, not later than one year after the last date services were provided in another state or territory, follow-up services in person or through the use of any communication, including oral, written, or electronic communication, in this state to the patient for the same condition.”

**Q19: What is the standard of care that applies to telemedicine?**

**A:** The standard of care for telemedicine must be consistent with the standard of care for in-person medical care. A physician or physician assistant can face disciplinary action for “a departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established.” R.C. 4731.22(B)(6) and R.C. 4730.25(B)(19).

**Q20: For medical treatment that does not involve prescribing or one of the laws or rules discussed in the FAQs, how does the Medical Board’s resumption of enforcement of telemedicine laws and rules affect physicians, physician assistants, and patients?**

**A:** The physician or physician assistant is responsible for communicating with the patient as to whether telemedicine is appropriate in a given situation knowing that the standard of care must be met regardless of if the medical diagnosis or treatment is given in-person or via telemedicine. This standard of care includes but is not limited to:

- (1) informing patient about telemedicine services provided and obtaining informed consent from patient;
- (2) compliance with federal and state laws and regulations related to the privacy of patient health information;
- (3) documentation of all telemedicine services provided including:
  - (a) the full name and license number of the licensee;
  - (b) verification of patient identity for the appropriate provision of telemedicine;
  - (c) complete medical record of telemedicine visit including but not limited to patient

- history, patient exam, testing, and treatment; and
- (d) referral of patients when medical services cannot be provided by telemedicine to another Ohio licensed medical provider who practices in an area of Ohio that patient can access for in-person medical services.

The medical provider is also responsible for training staff in the competent use of the appropriate telemedicine technology.

### **Visits involving prescribing a drug that is a not a controlled substance**

#### **Q21: What are the rules for telemedicine related to a medical visit involving prescribing a drug that is not a controlled substance?**

**A:** OAC rule 4731-11-09(B) states: Except as provided in paragraph (C) of this rule, a physician shall not prescribe, personally furnish, otherwise provide, or cause to be provided, any prescription drug that is not a controlled substance **to a person on whom the physician has never conducted a physical examination**. Paragraph (C) allows a physician to prescribe, personally furnish or otherwise provide a non-controlled substance prescription drug to a person on whom the physician has never conducted a physical examination and who is at a location remote from the physician if the physician complies with all of the following requirements:

- (1) The physician shall establish the patient's identity and physical location;
- (2) The physician shall obtain the patient's informed consent for treatment through a remote examination;
- (3) The physician shall request the patient's consent and, if granted, forward the medical record to the patient's primary care provider or other health care provider, if applicable, or refer the patient to an appropriate health care provider or health care facility;
- (4) The physician shall, through interaction with the patient, complete a medical evaluation that is appropriate for the patient and the condition with which the patient presents and that meets the minimal standards of care, which may include portions of the evaluation having been conducted by other Ohio licensed healthcare providers acting within the scope of their professional license;
- (5) The physician shall establish or confirm, as applicable, a diagnosis and treatment plan, which includes documentation of the necessity for the utilization of a prescription drug. The diagnosis and treatment plan shall include the identification of any underlying conditions or contraindications to the recommended treatment;
- (6) The physician shall document in the patient's medical record the patient's consent to treatment through a remote evaluation, pertinent history, evaluation, diagnosis, treatment plan, underlying conditions, any contraindications, and any referrals to appropriate health care providers, including primary care providers or health care facilities;
- (7) The physician shall provide appropriate follow-up care or recommend follow-up care with the patient's primary care provider, other appropriate health care provider, or health care facility in accordance with the minimal standards of care;
- (8) The physician shall make the medical record of the visit available to the patient;
- (9) The physician shall use appropriate technology that is sufficient for the physician to conduct all steps in this paragraph as if the medical evaluation occurred in an in-person visit.

#### **Q22: For prescribing non-controlled substance prescription drugs, does rule 4731-11-09 specify what type of telemedicine technology must be used?**

**A:** The rule states that a physician shall "use appropriate technology that is sufficient for the physician to conduct all steps in this paragraph as if the medical evaluation occurred in an in- person visit."

## **Visits involving prescribing a drug that is a controlled substance**

### **Q23: What are the rules for telemedicine for a medical visit involving prescribing a drug that is a controlled substance?**

**A:** The first applicable rule is OAC rule 4731-11-09(A) which states that “ [e]xcept as provided in paragraph (D) of this rule, a physician shall not prescribe, personally furnish, otherwise provide, or cause to be provided, any controlled substance to a person on whom the physician has never conducted a physical examination.” There are additional rules addressed in FAQs 27, 28, and 29 regarding prescribing specific types of controlled substance prescription drugs.

### **Q24: What are the exceptions in which an Ohio licensed prescriber may prescribe a drug that is a controlled substance to a person on whom the physician has not conducted a physical examination and who is at a location remote from the physician?**

**A:** Paragraph (D) of OAC rule 4731-11-09 lists the limited exceptions in which an Ohio licensed prescriber may prescribe a drug that is a controlled substance to a patient whom they have not personally physically examined and who is at a different location than the prescriber:

- (1) The person is an active patient of an Ohio licensed physician or other health care provider who is a colleague of the physician, and the drugs are provided pursuant to an on call or cross coverage arrangement between them and the physician complies with all steps of OAC rule 4731-11-09(C). An active patient is defined as one that within the previous twenty-four months the physician or physician assistant being cross-covered conducted at least one in-person medical evaluation of the patient or an evaluation of the patient through the practice of telemedicine.
- (2) The patient is physically located in a hospital or clinic registered with the U.S. drug enforcement administration (“DEA”) to personally furnish or provide controlled substances, when the patient is being treated by an Ohio licensed physician or other healthcare provider acting in the usual course of their practice and within the scope of their professional license and who is registered with the DEA to prescribe or otherwise provide controlled substances in Ohio.
- (3) The patient is being treated by, and in the physical presence of, an Ohio licensed physician or healthcare provider acting in the usual course of their practice and within the scope of their professional license, and who is registered with the DEA to prescribe or otherwise provide controlled substances in Ohio.
- (4) The physician has obtained from the administrator of the DEA a special registration to prescribe or otherwise provide controlled substances in Ohio.
- (5) The physician is the medical director, hospice physician, or attending physician for a hospice program licensed pursuant to Ohio Revised Code Chapter 3712 and both of the following conditions are met: (a) the controlled substance is being provided to a patient who is enrolled in that hospice program, and (b) the prescription is transmitted to the pharmacy by a means that is compliant with Ohio board of pharmacy rules.
- (6) The physician is the medical director of, or attending physician at, an institutional facility (as defined in OAC rule 4729-17-01) and both of the following conditions are met: (a) the controlled substance is being provided to a person who has been admitted as an inpatient to or is a resident of an institutional facility, and (b) the prescription is transmitted to the pharmacy by a means that is compliant with Ohio board of pharmacy rules.

**Q25: What are the telemedicine technology requirements for a physician that prescribes a drug that is a controlled substance to a person on whom the physician has never conducted a physical examination and who is at a location remote from the physician?**

**A:** Per federal law that has remained unchanged during the pandemic, the telemedicine communication in a patient visit involving prescribing a prescription drug that is a controlled substance must be conducted by a telecommunication system that includes, at a minimum, audio and video equipment permitting two-way, real-time interactive communication between the patient and distant site physician or physician assistant. Telephones, facsimile machines, and electronic mail systems do not meet the definition of an interactive telecommunications system. R.C. 4731.74 requires that the prescribing of a prescription drug that is a controlled substance to a person on whom the physician has never conducted a physical examination and who is at a location remote from the physician must comply with federal law requirements.

**Q26: In a group practice where one or more of the group practice physicians or physician assistants have examined the patient, can any of the physicians and PAs that have examined the patient within the past 24 months prescribe drugs that are controlled or non-controlled substances for the patient by telemedicine without having to follow all of the requirement of OAC rule 4731-11-09?**

**A:** To fall outside of the requirements of OAC rule 4731-11-09, a physician or physician assistant must have sufficient familiarity with the patient such that the physician or PA must have examined the patient previously and become familiar with the patient's specific condition for which the medication is being prescribed. If the physician or PA has examined the patient previously for a different problem or condition than the specific condition for which the medication is being prescribed, that prescriber would have to comply with the requirements of OAC rule 4731-11-09.

**Q27: What are the specialized requirements for prescribing drugs that are controlled substances?**

**A: OAC rule 4731-11-03(B): Schedule II Controlled substance stimulants:** A physician may use a schedule II controlled substance stimulant for only specified purposes in the rule if the physician performs an appropriate physical examination of the patient.

**OAC rule 4731-11-14(B)(1)and (G): Prescribing for subacute and chronic pain:** Before prescribing an opioid analgesic for subacute or chronic pain, the physician shall complete and document in the patient record assessment activities to assure the appropriateness and safety of the medication including a physical examination. If the treatment includes opioids at doses at or above the average of 50 MED per day, the physician shall, every three months, complete an assessment which includes a physical examination.

**OAC rule 4731-29-01(E)(6)(a)(i): Standards and procedures for the operation of a pain management clinic:** Patient records must contain information regarding physical examination.

**OAC rule 4731-33-03(B)(1)(e): Office-based treatment for opioid addiction:** Physician must perform an assessment including an appropriate physical examination. This assessment includes the following testing: urine drug screen or oral fluid drug testing; pregnancy test for women of childbearing age and ability, HIV, Hepatitis B & C tests, and consideration for screening for tuberculosis and sexually transmitted diseases in patients with known risk factors. Also, **OAC rule 4731-33-01(B)(2)** allows that "for other than the toxicology tests for drugs and alcohol, appropriate history, substance abuse history, and pregnancy test, the physician may satisfy the assessment requirements by reviewing records from a physical examination and laboratory testing of the patient that was conducted within a reasonable period of time prior to the visit."

**OAC rule 4730-4-03(B): Office-based treatment for opioid addiction:** Rule includes the same requirements for physician assistant assessment and physical examination of patient as for physicians

in OAC rule 4731-33-03.

**Q28: What are the specialized requirements for prescribing weight loss drugs?**

**A: OAC rule 4731-11-04(B)(2)(b) and (C)(1): Controlled substances: Utilization of short term anorexiant for weight reduction:** Before initiating treatment for weight reduction utilizing schedule III or IV controlled substances, the physician shall perform an appropriate physical examination of the patient. When using schedule III or IV controlled substances, the physician shall meet face-to-face with the patient at a minimum of every thirty days.

**OAC rule 4731-11-04.1(A)(1)(b) and (B)(1): Controlled substances: utilization for chronic weight management:** Before initiating treatment utilizing any controlled substance anorexiant for the purposes of chronic weight management, the physician shall perform a physical examination of the patient. A physician shall meet face-to-face with the patient for the initial visit and at least every thirty days during the first three months of treatment.

**Q29: What are the specialized requirements for recommending treatment with medical marijuana to a patient?**

**A: R.C. 4731.30** requires a physician to obtain a certificate to recommend from the Medical Board before a physician may recommend treatment with medical marijuana to a patient.

Further, **R.C. 4731.30(C)(1)(b)(i)** requires a physician to conduct an in-person physical examination of a patient to establish a bona fide physician-patient relationship to issue a recommendation for treatment with medical marijuana to the patient. In addition, **R.C. 4731.30(D)(2)** requires a physician to also conduct a physical examination for the issuance of a recommendation for treatment with medical marijuana to the patient after the expiration of the original recommendation and three renewals.

**OAC rule 4731-32-03(A) and (E) Standard of Care – Medical Marijuana** The physician shall establish and maintain a bona fide physician-patient relationship with the patient for the provision of medical services that is established in an in-person visit that complies with this rule and for which there is an expectation that the physician will provide care to the patient on an ongoing basis. Physician shall be available to provide follow-up care and treatment to the patient, including physical examinations relevant to the patient’s condition to determine the efficacy of medical marijuana in treating the patient’s qualifying medical condition.

**OAC rule 4731-32-03(B)(9): Standard of Care - Medical Marijuana:** The physician shall create and maintain a medical record that documents the provision of medical services, including the performance of a physical examination relevant to the patient’s current medical condition.

**Note:** There are more situation specific FAQs regarding OAC rule 4731-11-09 [here](#).