



Electronic Examination for Telemedicine Prescribing

Purpose: Twelve states allow a bona fide physician-patient relationship to be established through an appropriate electronic examination.

Primarily relying on the language from many of these states (see below), The Robert J. Waters Center for Telehealth and e-Health Law (CTeL) drafted language to offer some clarity regarding the utilization of an electronic examination to establish a bona fide physician-patient relationship for purposes of prescribing non-controlled substances.

This language consists of two parts: 1) Statute/Administrative Code and 2) State Board Policy Statement. CTeL believes that adoption of the objectives contained in these templates would ensure that patient safety would be upheld and would provide clarity for telemedicine providers who wrestle with prescribing in states where the use of an electronic “face-to-face” examination is not specifically identified.

Section One: Policy Set by State Statutes/Administrative Code

- 1) A bona fide practitioner-patient-pharmacist relationship is one in which a practitioner prescribes, and a pharmacist dispenses the prescription in good faith to his patient for a medicinal or therapeutic purpose within the course of his professional practice.
- 2) In addition, a bona fide practitioner-patient relationship means that the practitioner shall:
 - (i) Obtain informed consent;
 - (ii) Obtain and record, as appropriate, a medical or drug history;
 - (iii) Have performed an appropriate face-to-face examination of the patient, conforming to the applicable standard of care, either physically, or by the use of two-way video conferencing technology, allowing for interactive, real-time visual and auditory communication, or store and forward technology. A bona fide practitioner-patient relationship for prescribing purposes may not be created solely by use of an audio-only telephone conversation.
- 3) The face-to-face examination may be waived when a face-to-face examination would not normally be part of a typical face-to-face encounter with the patient for the specific services being provided.
- 4) Except for medical emergencies, prior to issuing a prescription, an appropriate examination shall be performed by 1) the practitioner himself/herself 2) by a practitioner within the group in which the practitioner practices, or 3) by a consulting practitioner the practitioner engages or designates. The practitioner shall initiate additional interventions and follow-up care, if necessary.

Note: Language contained in this section was obtained from a number of state statutes and policy statements, including those found in the states of Virginia, New Mexico, and Maryland.



Section Two: Policy Set by State Medical Board Notice

- 1) Telehealth is the practice of medicine using electronic communication, information technology or other means between a licensee in one location and a patient in another location with or without an intervening healthcare provider.
- 2) Telehealth is a useful tool that, if employed appropriately, can provide important benefits to patients, including: increased access to healthcare, accessing healthcare professionals that are not available in the patient's home community, rapid availability of patient records, and a reduction in the cost of healthcare delivery. Telehealth is a tool in medical practice, not a separate form of medicine.
- 3) Telehealth is not an audio-only, telephone conversation, e-mail/instant messaging conversation, or fax. It typically involves the application of videoconferencing or store and forward technology to provide or support healthcare delivery by replicating the interaction of a traditional, in-person encounter between a provider and a patient.
- 4) Licensees practicing via telehealth will be held to the same standard of care as licensees employing more traditional in-person medical care. A failure to conform to the appropriate standard of care, whether that care is rendered in-person or via telehealth, may subject the licensee to potential discipline by this Board.
- 5) Licensees using telehealth technologies to provide care to patients located in [insert state] must provide an appropriate face-to-face examination prior to diagnosing and/or treating the patient. However, this examination need not be in-person if the technology, such as two way video conferencing technology, diagnostic equipment, or store and forward technology, is sufficient to provide the licensee information, equal or superior to that which he/she would have obtained if the examination had been performed face-to-face.
- 6) Except for medical emergencies, prior to issuing a prescription, an appropriate examination shall be performed by 1) the practitioner himself/herself 2) by a practitioner within the group in which the practitioner practices, or 3) by a consulting practitioner the practitioner engages or designates. The practitioner shall initiate additional interventions and follow-up care, if necessary.
- 7) The face-to-face examination may be waived when a face-to-face examination would not normally be part of a typical face-to-face encounter with the patient for the specific services being provided.

Note: Language contained in this section was obtained from a number of state statutes and policy statements, including those found in the states of California, Virginia, New Mexico, Maryland, and North Carolina.