

Report of the Ad Hoc Committee on Telemedicine

Federation of State Medical Boards of the United States

The Federation's governing body accepted the following Report of the Ad Hoc Committee on Telemedicine as policy in April 1996.

A Model Act to Regulate the Practice of Medicine Across State Lines

Executive Summary

Section I. Background

Traditional medical practice is being rapidly transformed by such factors as managed care, the politics of health care reform, as well as technological and other medical advances. Such advances, which include telemedicine, offer opportunities for improved health care delivery.

One aspect of these changes in the health care field is that medical practice may now be conducted over wide geographic areas. This challenges our nation's state-based medical licensure system to facilitate the growth of this evolving mode of patient care while maintaining a high standard of medical care and ensuring public protection.

While telemedicine has been evolving in the United States and abroad for the past 35 years, interest in the field has increased dramatically since 1990 due to the demand for accessible and cost-effective health care. Additionally, government support for the development and testing of sophisticated telecommunications systems has risen recently. Many federal agencies, including the Department of Commerce, the Health Care Financing Administration, the Office of Rural Health Policy, and the Department of Defense, have begun telemedicine research and demonstration programs to study the use of telemedicine over large distances.

Some of the potential benefits of telemedicine include increased access to health care (especially in underserved areas), expanded utilization of specialty expertise, rapid availability of patient records and reduced cost of patient care. There are, however, as yet unresolved issues surrounding telemedicine-medicine, including the regulation of physicians who practice across state boundaries.

Increased competitiveness in the medical marketplace has resulted in a marked increase in the practice of medicine across state lines. Pathological specimens are being shipped routinely to reference laboratories in distant states for processing and interpretation by pathologists. On occasion, the processed specimens may be distributed to pathologists in multiple states for interpretation. Radiographs are being transmitted electronically for interpretation to radiologists located hundreds of miles away from the point of patient contact. Telemedicine demonstration projects have clearly shown that current technology will allow a physician in a distant state to conduct "face-to-face" consultations with a patient in another state.

The Federation of State Medical Boards of the United States is committed to promoting high standards for physician licensure and practice and is actively involved in policy development, research, and education on behalf of its member boards. Because of the increase in the practice of medicine across state lines by telemedicine and other means and the implications for medical licensure, the Federation established a

special committee to evaluate the issues in this area and make recommendations to state medical boards regarding potential regulation.

Pursuant to this endeavor, the Federation's Ad Hoc Committee on Telemedicine studied and evaluated licensure issues involving telemedicine as well as the practice of medicine by other means across state lines. They reviewed recently enacted legislation in South Dakota, Kansas and Texas. Oral and written testimony was received by the committee from many sources, including the American Medical Association, the American Osteopathic Association, the American Telemedicine Association, the American College of Radiology, the American College of Cardiology, the American Board of Pediatrics, the C. Everett Koop Institute, the Mayo Clinic, and a number of state medical boards. Subsequently, the committee drafted a model act that would regulate telemedicine or medicine by other means across state lines for recommendation to state medical boards. Central to this regulatory statute is the establishment of a special license limited to the practice of medicine across state lines.

This executive summary has been developed to clarify the committee's rationale regarding each section of the model act in hopes of facilitating understanding and discussion of the proposal.

Section II. Legislative Findings and Purpose

Due to technological and other advances, which now make possible the delivery of health care services across broad geographical areas, the number of physicians practicing medicine across state boundaries has increased in recent years and is expected to continue to increase in the foreseeable future. While it is desirable to facilitate such advances in medical practice, it is also necessary to establish appropriate regulations, which will ensure that high standards of patient care are maintained. As the practice of medicine across state lines increases, the possibility of adverse outcomes resulting from patient encounters will also increase.

Currently, physicians who practice medicine across state lines without physically being located in the state where the patient encounter occurs are either required to have a full and unrestricted license in that state or are unregulated. It is unacceptable to allow this type of practice to be unregulated, thereby denying the protection of the state to its citizens. However, physicians who are interested in providing their medical expertise in multiple jurisdictions may be daunted by the prospect of having to obtain full licensure in multiple states.

In response to these concerns (the need to protect the public without being overly burdensome to the profession), the committee developed a model legislative act which calls for an abbreviated but effective licensure process for physicians who will not be practicing physically within a state's jurisdiction, but wish to provide services to patients located within that jurisdiction. Such legislation would allow states to appropriately provide regulatory control over physicians providing services within their states. Such control is necessary for the protection of the citizens of the state.

Section III. Definition

The practice of medicine across state lines is defined to include any medical act that occurs when the patient is physically located within the state and the physician is located outside the state. Any contact that results in a written or documented medical opinion and that affects the diagnosis or treatment of a patient constitutes the practice of medicine. This is true whether the physician and patient are connected through telecommunications or whether patient data (such as X-rays, EKGs, or laboratory tests) are transported by courier services or in some other manner. When the practice of medicine occurs as defined by the Medical Practice Act of an individual state in which the patient is located, then such practice should be subject to regulation by the patient's state medical board.

It is important to view the practice of medicine as occurring in the location of the patient in order that the full resources of the state would be available for the protection of that patient. The same standard of care,

already in existence in the patient's home state, would be required of all individuals practicing medicine within any jurisdiction, whether or not they were physically located outside of the state. The agency best able to ensure the maintenance of such standards in the protection of the patient is the medical board in the state of the patient's residence.

Section IV. License Requirement

The proposed model act would require physicians who want to engage in the practice of medicine across state lines by electronic or other means to obtain a special license issued by the state medical board. Such a license would be limited to the practice of medicine across state lines. It would not allow the physician to enter the state for the purpose of engaging in the practice of medicine.

Section V. Issuance of License

This committee's intent was to facilitate the acquisition of licensure in one or more jurisdictions by physicians wishing to practice across state boundaries. An individual holding a valid, unrestricted license in one state should be given every consideration for expedient issuance of a special license to regulate the practice of medicine across state lines in other states. This special license, once issued, would limit the physician solely to this type of medical practice and would prohibit the individual from physically practicing medicine within the state unless a full and unrestricted license was obtained.

While a state clearly has the option of denying such a special license based on grounds it concludes to be appropriate, including previous disciplinary action, the state is encouraged to issue such a license if it finds that the applicant would not present a threat to the public.

Section VI. Effect of License

To be effective in regulating this type of medical practice, this special license to regulate the practice of medicine across state lines must subjugate the licensee to the Medical Practice Act of the issuing state and to the regulatory authority of the state's medical board.

As required of licensed physicians practicing within the state, this license would require the licensee to agree to make himself available to the issuing state's medical board, along with any pertinent records. This requirement would be necessary to allow the board to fully investigate any complaints against such licensees. To ensure compliance with the board's investigation, a licensee who failed to appear or to provide the material requested by the board would be subject to the possible suspension or revocation of the special license until a formal hearing could be conducted. Any such action would be considered disciplinary in nature and reportable.

Section VII. Patient Medical Records

Concerns were raised regarding potential violations of laws and regulations concerning patient medical records currently in place in the patient's home state. To address these concerns, the model act requires that the licensee be subject to laws, rules and regulations governing the maintenance of patient medical records, including patient confidentiality requirements, regardless of the state where the medical records of any patient within the state are maintained. This requirement is appropriate in that the patient should continue to enjoy the protection of confidentiality standards currently in place in his or her state. Such requirements are appropriate to safeguard the patient's medical records, regardless of the state where medical records are maintained.

Section VIII. Exemptions

The special purpose license would only be required of physicians who “regularly or frequently” engage in the practice of medicine across state lines. Each state medical board will define what constitutes the regular practice of such medicine. The practice of medicine across state lines will not fall under the provisions of the model, if the practice occurs less than once a month, involves less than ten patients on an annual basis, or comprises less than one percent (1%) of the physician’s diagnostic or therapeutic practice.

Importantly, it should be noted that physician-physician consultations, which occur from time to time and are traditional in the practice of medicine, would not be so regulated. It is noted that such consultations occur on an informal basis and are not usually the subject of expected compensation by the physician rendering such an informal consultation. The practice of medicine across state lines conducted as a result of a contractual relationship, however, would be considered “formal” and, therefore, be regulated by the Board.

The model act also exempts physicians who would engage in the practice of medicine across state lines in the event of an emergency. Again, the definition of an emergency situation would be defined by the Board in each state.

Section IX. Sanctions

The model act provides provisions that an individual who would engage in the practice of medicine across state lines without this special license would be subject to prosecution for the unlicensed practice of medicine.

Additionally, the model act would not prohibit a state medical board from disciplining a physician located in its own jurisdiction who engaged in the practice of medicine across state lines and violated the state Medical Practice Act. It is appropriate that physicians remain under the regulation of their individual state medical boards even while holding special licenses limited to the practice of medicine in other states.

An Act to Regulate the Practice of Medicine Across State Lines

Legislative Findings and Purpose

The legislature hereby finds and declares that, due to technological advances and changing practice patterns, the practice of medicine is occurring with increasing frequency across state lines and that certain technological advances in the practice of medicine are in the public interest. The legislature further finds and declares that the practice of medicine is a privilege and that the licensure by this State of practitioners outside this State engaging in such medical practice within this State and the ability to discipline such practitioners is necessary for the protection of the citizens of this State and for the public interest, health, welfare, and safety.

Definition

“The practice of medicine across state lines” means:

1. the rendering of a written or otherwise documented medical opinion concerning diagnosis or treatment of a patient within this State by a physician located outside this State as a result of transmission of individual patient data by electronic or other means from within this State to such physician or his or her agent; or

2. the rendering of treatment to a patient within this State by a physician located outside this State as a result of transmission of individual patient data by electronic or other means from within this State to such physician or his or her agent.

License Requirement

No person shall engage in the practice of medicine across state lines in this State, shall hold himself or herself out as qualified to do the same, or use any title, word or abbreviation to indicate to or induce others to believe that he or she is licensed to practice medicine across state lines in this State unless he or she is actually so licensed in accordance with the provisions of this article.

Issuance of License

The Board shall issue a special purpose license to practice medicine across state lines upon application for the same from a person holding a full and unrestricted license to practice medicine in any and all states of the United States or its territories in which such individual is licensed, provided there has not been previous disciplinary or other action against the applicant by any state or jurisdiction. In the event of previous disciplinary or other action against the applicant, the Board may, in its discretion, issue a license to practice medicine across state lines if it finds that the previous disciplinary or other action does not indicate that the physician is a potential threat to the public. An individual shall submit an application to the Board on a form provided by the Board and shall remit to the Board a reasonable fee for such license, the amount of the fee to be set by the Board. A license to practice medicine across state lines issued by the Board limits the licensee solely to the practice of medicine across state lines as defined herein. The special purpose license in this State is valid for the term of _____ years (to be set by the Board to conform with renewal requirements for full and unrestricted licenses) and is renewable upon receipt of a reasonable fee, as set by the Board, and submission of a renewal application on forms provided by the Board.

Effect of License

The issuance by the Board of a special purpose license to practice medicine across state lines subjects the licensee to the jurisdiction of the Board in all matters set forth in the Medical Practice Act and implementing rules and regulations, including all matters related to discipline. In addition, the licensee agrees by acceptance of such license to produce patient medical records and/or materials as requested by the Board and/or appear before the Board or any of its committees within _____ days (to be set by the Board) following receipt of a written notice issued by the Board. Such notice will be issued by the Board pursuant to any complaint or report filed or any complaint initiated by the Board or any of its committees when records and/or materials are deemed relevant to said complaint or report.

Failure of the licensee to appear and/or to produce records or materials as requested, after appropriate notice, allows the Board to suspend or revoke the licensee's special purpose license at its discretion. Notwithstanding any provision of State law to the contrary, such suspension or revocation of such license may be effected prior to a hearing, after appropriate notice and if the Board finds an ongoing and continuous threat to the public. Such action taken by the Board shall be deemed a disciplinary action, for purpose of action by any other state.

Patient Medical Records

Any licensee licensed under the provision of this Act shall comply with all laws, rules and regulations governing the maintenance of patient medical records, including patient confidentiality requirements, regardless of the state where the medical records of any patient within this State are maintained.

Exemptions

A physician who engages in the practice of medicine across state lines in an emergency, as defined by the Board, is not subject to the provisions of this Act.

A physician who engages in the practice of medicine across state lines on an irregular or infrequent basis is not subject to the provisions of this Act. The “irregular or infrequent” practice of medicine across state lines is deemed to occur if such practice occurs less than once a month or involves less than ten patients on an annual basis, or comprises less than one percent (1%) of the physician’s diagnostic or therapeutic practice.

A physician, who engages in the informal practice of medicine across state lines without compensation or expectation of compensation, is not subject to the provisions of this Act. (The practice of medicine across state lines conducted within the parameters of a contractual relationship shall not be considered informal and shall be subject to regulation by the Board.)

Sanctions

Any person who violates the provisions of this Act is subject to criminal prosecution for the unlicensed practice of medicine, and/or injunctive or other action authorized in this State to prohibit or penalize continued practice without a license.

Nothing in this Act shall be interpreted to limit or restrict the Board’s authority to discipline any physician licensed to practice in this State who violates the Medical Practice Act while engaging in the practice of medicine within this or any other State.

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