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South Carolina
Department of Labor, Licensing and Regulation

Board of Medical Examiners



Henry D. McMaster
Governor

Emily H. Farr
Director

PUBLIC HEALTH STATE OF EMERGENCY ORDER 2020-BME-PH-03

**ORDER SUSPENDING ENFORCEMENT OF PROHIBITION
ON PRESCRIBING SCHEDULE II AND III MEDICATIONS
VIA TELEMEDICINE WITHOUT PRIOR BOARD APPROVAL**

WHEREAS, on March 13, 2020, Governor Henry McMaster issued Executive Order No. 2020-08 declaring a public health state of emergency due to the evolving nature and scope of the public health threat or other risks posed by COVID-19 and the actual and anticipated impacts associated with the same;

WHEREAS, Governor McMaster has issued subsequent Executive Orders in which he has taken additional action to protect the citizens of South Carolina;

WHEREAS, under federal law, a prescription for a controlled substance issued by means of the Internet (including telemedicine) must generally be predicated on an in-person medical evaluation (21 U.S.C. 829(e)); however, the Controlled Substances Act contains certain exceptions to this requirement, including when the Secretary of Health and Human Services (“HHS”) has declared a public health emergency under 42 U.S.C. 247d (section 319 of the Public Health Service Act), as set forth in 21 U.S.C. 802(54)(D);

WHEREAS, the Secretary of HHS has declared a public health emergency;

WHEREAS, as of March 16, 2020, and continuing for as long as the Secretary’s designation of a public health emergency remains in effect, HHS and the Drug Enforcement Agency (“DEA”) have indicated that DEA-registered practitioners in all areas of the United States may issue prescriptions for all schedule II-V controlled substances to patients for whom they have not conducted an in-person medical evaluation, provided all of the following conditions are met:

- The prescription is issued for a legitimate medical purpose by a practitioner acting in the usual course of his/her professional practice;
- The telemedicine communication is conducted using an audio-visual, real-time, two-way interactive communication system; and
- The practitioner is acting in accordance with applicable Federal and State laws.

Provided the practitioner satisfies the above requirements, the practitioner may issue the prescription using any of the methods of prescribing currently available and in the manner set forth in the DEA regulations. Thus, the practitioner may issue a prescription either electronically (for schedules II-V) or by calling in an emergency schedule II prescription to the pharmacy, or by calling in a schedule III-V prescription to the pharmacy.

The term "practitioner" in this context includes a physician [. . .] or other person licensed, registered, or otherwise permitted, by the United States or the jurisdiction in which s/he practices to prescribe controlled substances in the course of his/her professional practice (21 U.S.C. 802(21)).

WHEREAS, S.C. Code Ann. § 40-47-37(C)(6) provides that a licensee who establishes a physician-patient relationship solely via telemedicine shall “prescribe within a practice setting fully in compliance with this section and during an encounter in which threshold information necessary to make an accurate diagnosis has been obtained in a medical history interview conducted by the prescribing licensee; provided, however, that Schedule II and Schedule III prescriptions are not permitted except for those Schedule II and Schedule III medications specifically authorized by the board [. . .].”

WHEREAS, the Board understands that a significant number of practitioners are utilizing, or intend to utilize, telemedicine to treat patients as a method of encouraging social distancing and to relieve some of the burden imposed upon the healthcare infrastructure during this pandemic;

WHEREAS, the Board concludes that the responsible use of telemedicine to achieve these goals will benefit individual South Carolina patients and the public at large; however, the Board also recognizes that there are countervailing concerns with allowing numerous practitioners, many with no physical presence in South Carolina, to prescribe controlled substances in the midst of an opioid crisis. The Board concludes that it may strike a reasonable balance between these competing interests by allowing certain practitioners permanently licensed in good standing who are physically present in South Carolina to prescribe Schedule II and III medications via telemedicine without first obtaining Board approval so long as this Order remains in effect. Among other protections, patients prescribed controlled substances in this manner will have the opportunity for an in-person visit with the practitioner should any complications arise.

NOW, THEREFORE, for the reasons set forth above and in accordance with the action previously taken by HHS and DEA, the Board hereby suspends enforcement of the prohibition on prescribing Schedule II and III medications via telemedicine without prior Board approval, subject to certain conditions. Such approval is granted to the following practitioners who are permanently licensed in good standing in South Carolina and physically present in South Carolina at the time care is provided: physicians; physician assistants (“PAs”) if authorized in a written scope of practice guidelines, if applicable, and otherwise allowed by law; and advanced practice registered nurses (“APRNs”), if authorized in a written practice agreement, if applicable, authorized by the Board of Nursing, and otherwise allowed by law.

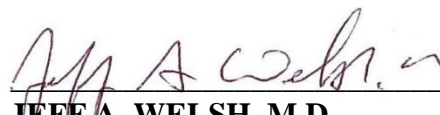
Notwithstanding the Board’s suspension of enforcement of the prohibition on prescribing Schedule II and III medications via telemedicine without Board approval subject to the conditions identified above, the Board will enforce all other aspects of the Telemedicine Act, as set forth in S.C. Code Ann. § 40-47-37, including, but not limited to, the practitioner’s participation in the South Carolina Prescription Monitoring Program set forth in Article 15, Chapter 53, Title 44 and the prohibition on prescribing all other classes of drugs identified in S.C. Code Ann. § 40-47-37(C)(6). This Order shall not affect the practitioner’s obligation to comply with any and all rules, regulations, and statutes administered by other regulatory agencies, including the South Carolina Department of Health and Environmental Control (“DHEC”) and the DEA. Likewise, this Order shall not in any manner be construed to alter the standard of care for prescribing any medication.

Finally, practitioners are reminded that the provisions of the Telemedicine Act only apply to situations where the practitioner-patient relationship is established solely via telemedicine. The prohibitions on prescribing Schedule II and III medications do not apply to practitioners treating established patients whom the practitioner has previously seen in-person.

This Order shall remain in effect for the duration of the declared public health state of emergency in South Carolina, or the DEA’s withdrawal of its guidance, whichever is sooner, unless otherwise modified, amended, or rescinded by subsequent order.

IT IS SO ORDERED.

STATE BOARD OF MEDICAL EXAMINERS



JEFF A. WELSH, M.D.

President of the Board

March 22, 2020