



Telemedicine Licensure and Prescribing: What Do States Need to Know

Speakers:

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CTeL's History

- CTeL was founded in 1995 to focus research and information on the legal and regulatory barriers impacting telehealth and related e-health services at both the Federal and state levels.
- CTeL, formerly known as the Center for Telemedicine Law, was created under the vision and leadership of:
 - Mayo Foundation
 - Cleveland Clinic
 - Midwest Rural Telemedicine Consortium
 - Texas Children's Hospital
 - Robert J. Waters



CTeL's Founder - Robert J. Waters, Esq.

- Bob – “ the father of telemedicine and e-Health law.”
- The Founder of the modern-day telemedicine movement.
- He was an attorney by trade and telemedicine enthusiast and advocate.
- Mentored young attorneys in telemedicine & e-Health law; started CTeL Legal Fellowship Program.
- CTeL was renamed the Robert J. Waters Center for Telehealth & e-Health in 2011.





CTeL's Expertise

- Practitioner Licensure Requirements
- Telehealth Credentialing and Privileging Process
- Telemedicine and Internet Prescribing
- Medicare, Medicaid, and Private Payer Reimbursement
- HIPAA Privacy Compliance
- Referral restrictions and anti-kickback statutes
- International and Maritime Law
- Industrial telemedicine
- FDA Laws and Telemedicine



Objectives

- Review legal and regulatory issues facing telehealth practitioners:
 - Licensure
 - Prescribing of medication



Licensure for Telehealth

- Where is the patient located?
- Telehealth practitioners must meet licensing requirements in the state in which they provide services—where the patient is located.
- Licensure requirements are different in each state.



Physician Licensure

- 36 States require full medical licensure.
- 9 States have a telemedicine or special licensure process.
- 43 States require licensure in another locality in order to practice across state lines.



Licensure: Exceptions

- Physician to physician consultation
- Resident in training
- Border states
- U.S. Military/VA physicians
- Public health services
- Medical emergencies/natural disasters



Licensure: Exceptions

- “Infrequent” or “occasional” consultations permitted.
 - 28 states allow this exception
 - 5 states define “occasional” or “infrequent”
 - Delaware: fewer than six consults per year
 - New Mexico: no more than 10 patients per year
 - Wyoming: not more than seven days in any 52 week period.



Special Telemedicine License Procedure/ Special Purpose License

1. Alabama
2. Louisiana
3. Montana
4. Nevada
5. New Mexico
6. Ohio
7. Tennessee
8. Texas
9. Wyoming



Special Telemedicine License Procedure/ Special Purpose License

- May require other conditions for special license:
 - Maintain a full medical license in another state
 - No ethics violations
 - Must not have an in-state office



Consultation versus Practicing?

- Can the lines be blurred between consultation and practicing?
 - Is the relationship between the consulting practitioner and the primary practitioner at or near the same “level”?
 - Or is the consulting practitioner at a significantly different level than the primary practitioner?
- Can the lines be crossed so a consultation is actually practicing medicine without being properly licensed at the originating site?

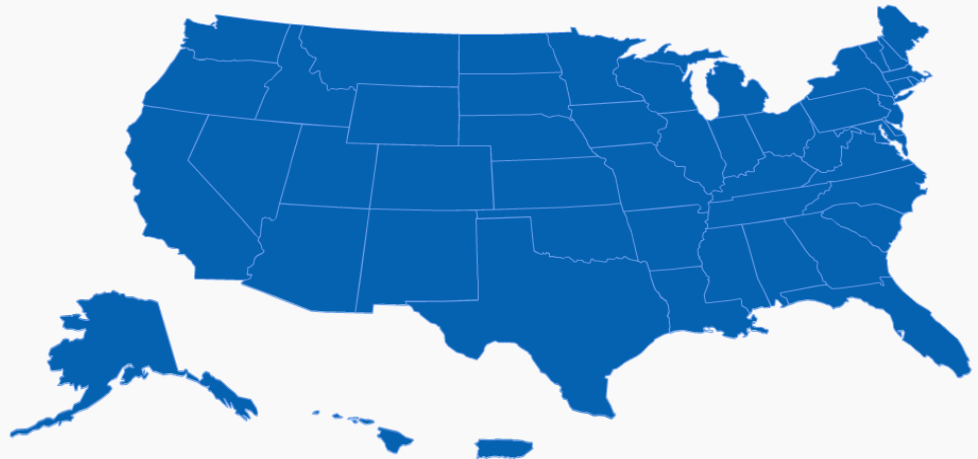
Need Licensure Information?

- www.ctel.org

Physician Licensure

Healthcare professionals must obtain a medical license in the state where they wish to administer care. States are granted the right to regulate the practice of medicine in order to ensure that those administering care within the state's boundaries are fully competent.

For decades, the issue of licensure was simple, meaning that if a physician wished to practice medicine within a specific state, they would first need to seek medical licensure. However, with the onset of telehealth in the administration of care, these once clearly defined legal and regulatory lines have now become blurred because physicians can physically be in one state and simultaneously administer care to a patient in another state. As a result, once basic practices pertaining to physician licensure have become more complex. For more in-depth descriptions of state laws and licensure requirements, review the below map.





Internet/Telemedicine Prescribing: Scope of Practice

- Prescribing statutes were written before the widespread use of telemedicine.
- 41 states require physical exam or a preexisting physician-patient relationship.
- Problem: Statutes use vague language.
 - Can a “face to face” or “in person” examination occur through telemedicine?



Internet/Telemedicine Prescribing: Scope of Practice

- 13 states allow for the physical examination to take place electronically (administered differently)
 - California
 - Kansas
 - Maryland
 - New Mexico
 - Ohio
 - Texas
 - Vermont
 - Hawaii**
 - Louisiana
 - Nevada
 - North Carolina
 - South Dakota
 - Virginia



Internet/Telemedicine Prescribing: Scope of Practice

- 29 States require a Patient Medical History before prescribing.
- 17 States require physician to establish appropriate follow up medical care.
- 14 States allow for emergency prescribing.
- 30 States specifically prohibit medical questionnaires and/or patient supplied history as sole basis for prescription.



The Telemedicine Community has Questions

- “Can a physician see a patient for the *first time* over Skype, gchat, or OVOO and prescribe (non-controlled) medication?”
- “If I can’t do that then why are BIG insurance companies partnering with companies that have those models?”
- “You say I can’t...the law says I can’t...but BIG X Company is operating in Y state with no problems.”



How Is the Physician-Patient Relationship Established in Your State?

How many states:

- Require in person or face-to-face exam?
- Allow that exam to be conducted through two way video (conforming to standard of care)?
- Allow that exam to be conducted through a telephone call? Through an email? Through an online portal?
- Allow the “on call” privileges to be assumed by a physician not designated by the primary care physician?
- Require the examination to take place at an “established-medical site.”



Confusion Reins

- Statutes and regulations are not always clear to physicians – they are very confused.
- Why the confusion? Physicians see...
 - Provider companies using a telephone encounter
 - Companies joining with insurance companies
 - Providers in programs providing care directly to patients they never have met and not through normal “on-call”
 - People often read these developments in the news media and assume “it must be legal if XYZ is involved.”



Example #1: Program Operating in at Least One of Your States

Screen capture of established health system's use of
"telemedicine" to NEW patients.

**Help! For the past two days, I have to pee every five
minutes...and it hurts.**

1. You Contact Us

You send us an email describing
your symptoms.

2. We Talk

Our doctor responds in a few
min. You answer her detailed
questions. It sounds like a UTI.

3. Problem Solved

Our doctor prescribes an
antibiotic and a medication that
alleviates the burning. We call in
a prescription and 10 minutes
later you have what you need to
get back on track.



Example #2: Program Operating in at Least One of Your States

Screen capture of well-known telemedicine company's services offered to NEW patients through "telemedicine".

Conditions We Treat

What do you think you have?	Symptoms	Conditions
Bladder Infection	<ul style="list-style-type: none"> • Pain or burning with urination • Frequent urination • Urgency 	<ul style="list-style-type: none"> • Bladder Infection (UTI)
Breast Infection	<ul style="list-style-type: none"> • Breast pain • Tenderness • Redness • Warmth 	<ul style="list-style-type: none"> • Breast Infection
Chlamydia, Gonorrhea & Trichomoniasis	<ul style="list-style-type: none"> • My partner told me I've been exposed to an STI 	<ul style="list-style-type: none"> • Chlamydia Exposure • Gonorrhea Exposure • Trichomoniasis Exposure
Cold, Cough & Allergy	<ul style="list-style-type: none"> • Sore throat • Runny nose • Itchy eyes or nose • Watery eyes • Sneezing • Stuffy or blocked nose, congestion • Sinus pain and pressure • Deep cough • Hoarse voice 	<ul style="list-style-type: none"> • Bronchitis • Common Cold • Laryngitis • Sinus Infection • Pet Allergies • Pertussis • Seasonal Allergies



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