

Telehealth in Florida

- ▶ Jason D. Winn, Esq.
- ▶ WINN LAW
- ▶ 850/222-7199 and
- ▶ 850/519-5876
- ▶ jwinn@jwinnlaw.com



**I have no financial
relationship in regard to
the content of this
presentation - JDW**



**Disclosure
Statement**

Educational Objectives



Understanding of applicable Laws & Rules for Telehealth.



Ability to locate applicable statutes and rules through online resources.



What is Telehealth?



How I can use telehealth to treat my patients?

TRUE OR FALSE?

When prescribing controlled substances to a patient, I can use telehealth.



TRUE OR FALSE?

Telehealth can be phone calls and text messages.



Telehealth vs Telemedicine

- ▶ Telemedicine was a term defined by the Boards of Medicine and Osteopathic Medicine in Rules 64B8-9.0141 and 64B15-14.0081, F.A.C., before the term “telehealth” was defined in section 456.47, F.S. - Use of telehealth to provide services. Both rules have been repealed now that the telehealth law is in effect. The definition of “telehealth” includes the practice of telemedicine.

What is telehealth?

- ▶ Telehealth is defined as the use of synchronous (real-time information sharing) or asynchronous (relay of information with lag time) telecommunications technology by a telehealth provider to provide health care services, including, but not limited to, the assessment, diagnosis, consultation, treatment, and monitoring of a patient; transfer of medical data; patient and professional health-related education; public health services; and health administration. Telehealth does not include audio-only telephone calls, e-mail messages, or fax transmissions.

What is a telehealth provider?

- ▶ Telehealth provider is defined as an individual who provides a health care service using telehealth and who is licensed under s. 393.17; part III of chapter 401; chapter 457; chapter 458; **chapter 459**; chapter 460; chapter 461; chapter 463; chapter 464; chapter 465; chapter 466; chapter 467; part I, part III, part IV, part V, part X, part XIII, or part XIV of chapter 468; chapter 478; chapter 480; part II or part III of chapter 483; chapter 484; chapter 486; chapter 490; or chapter 491; who is licensed under a multi-state health care licensure compact of which Florida is a member state; or who is registered under and complies with s. 456.47(4), Florida Statutes.

I live out of state, can I use telehealth for patients in Florida?

- ▶ A provisional license cannot be used to register as an out-of-state telehealth provider. You must have an active, unencumbered license issued by another state, the District of Columbia, or a possession or territory of the U.S. A provisional license is not “unencumbered” since it has a provision or an obligation that must be complied with, i.e., supervision.

What are the requirements to become an out-of-state telehealth provider?

- ▶ Health care practitioners with an out-of-state license or certification that falls under section 456.47(1)(b), F.S, qualify for an out-of-state telehealth provider registration number when they meet the following requirements:
- ▶ Submit the completed Application for Out-of-State Telehealth Provider Registration;
- ▶ Maintain an active, unencumbered license from another state, the District of Columbia, or a possession or territory of the United States (license verification is required upon registration);
- ▶ Not have a pending investigation, discipline, or revocation on your license within the last five years;
- ▶ **Designate a duly appointed registered agent for service of process in Florida (the agent's name must be on the Registered Agent Name List maintained by the Division of Corporations)**
- ▶ Maintain liability coverage or financial responsibility for telehealth services provided to patients in Florida in an amount equal to or greater than Florida health care practitioner requirements
- ▶ Not open a Florida office or provide in-person health care services to Florida patients
- ▶ Only use a Florida-licensed pharmacy, registered nonresident pharmacy, or outsourcing facility to dispense medicinal drugs to patients in Florida (pharmacists only)

Will I receive a license for my out-of-state telehealth provider registration?

- ▶ Once you are approved as an out-of-state telehealth provider, you will receive an approval letter with your telehealth provider registration number. This approval letter will serve as your proof of registration. Your telehealth provider information, including your registration number, will also be posted on www.flhealthsource.gov/telehealth . A separate license will not be printed for your registration.

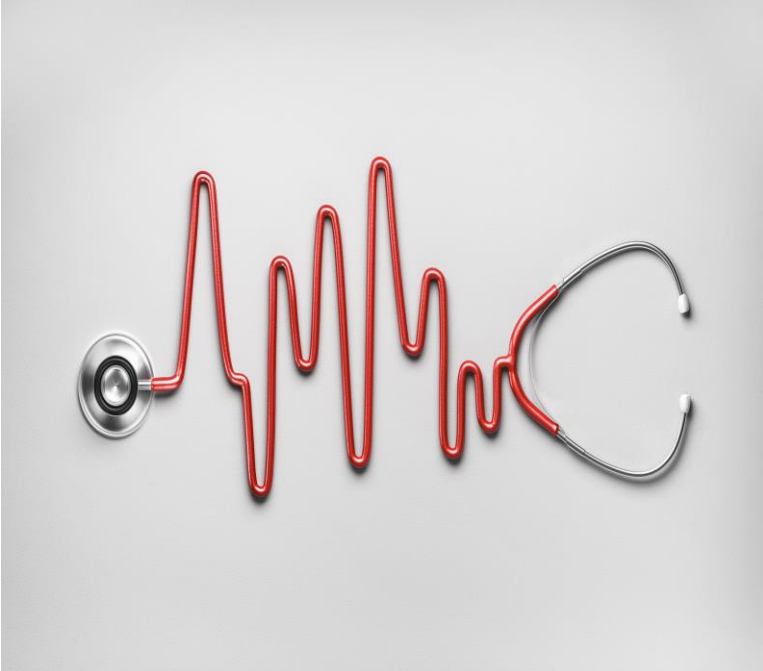
Are there any exemptions from registering as an out-of-state telehealth provider?

- ▶ There are two exemptions that allow an out-of-state licensee to perform telehealth for Florida patients without registering:
- ▶ In response to an emergency medical condition, which is defined as:
 - ▶ A medical condition manifesting itself by acute symptoms of sufficient severity, which may include severe pain, such that the absence of immediate medical attention could reasonably be expected to result in any of the following:
 - ▶ Serious jeopardy to patient health, including a pregnant woman or fetus.
 - ▶ Serious impairment to bodily functions.
 - ▶ Serious dysfunction of any bodily organ or part.
- ▶ With respect to a pregnant woman:
 - ▶ That there is inadequate time to effect safe transfer to another hospital prior to delivery;
 - ▶ That a transfer may pose a threat to the health and safety of the patient or fetus; or
 - ▶ That there is evidence of the onset and persistence of uterine contractions or rupture of the membranes.
- ▶ In consultation with a health care professional licensed in this state who has ultimate authority over the diagnosis and care of the patient

Can Florida health care practitioners register as an out-of-state telehealth provider?

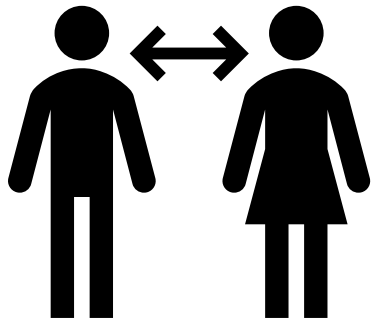
- ▶ Florida licensees can already provide telehealth services to patients in Florida that they can treat in person. No additional registration or certification is required. The out-of-state telehealth provider registration only applies to health care practitioners who are not licensed in Florida and are licensed in another state, the District of Columbia, or a possession or territory of the United States. If a Florida licensee would like to provide telehealth services to a patient outside of Florida, they must review the laws and rules in the location of the patient.

Telehealth: Where it all started...



Telehealth was first established in Florida beginning with a Rule as promulgated by the Board of Osteopathic Medicine and Board of Medicine in 2001.

Telehealth: Where it all started ...



Telehealth was first established as a Medicare service in 2002, limited to Medicare beneficiaries who were in rural and Health Professional Shortage Areas (HPSAs). The rationale at the time to limit Medicare coverage of telehealth to rural areas was that this population would benefit most from having the flexibility to have a video chat with their doctors, while limiting the risk of unnecessary use or overutilization of telehealth.

The FIRST Florida Rule on Telemedicine by Board of Osteopathic Medicine & Medicine

64B15-14.008 Standards for Telemedicine Prescribing Practice.

(1) Prescribing medications based solely on an electronic medical questionnaire constitutes the failure to practice osteopathic medicine with that level of care, skill, and treatment which is recognized by reasonably prudent osteopathic physicians as being acceptable under similar conditions and circumstances, as well as prescribing legend drugs other than in the course of an osteopathic physician's professional practice. Such practice shall constitute grounds for disciplinary action pursuant to Sections 459.015(1)(x) and (t), F.S.

(2) Osteopathic Physicians shall not provide treatment recommendations, including issuing a prescription, via electronic or other means, unless the following elements have been met:

(a) A documented patient evaluation, including history and physical examination, adequate to establish the diagnosis for which any drug is prescribed.

(b) Sufficient dialogue between the osteopathic physician and the patient regarding treatment options and the risks and benefits of treatment.

The FIRST Florida Rule on Telemedicine by Board of Osteopathic Medicine & Medicine

64B15-14.008 Standards for Telemedicine Prescribing Practice. *(Continued)*

(c) Maintenance of contemporaneous medical records meeting the requirements of Rule 64B15-15.004, F.A.C.

(3) The provisions of this rule are not applicable in an emergency situation. For purposes of this rule an emergency situation means those situations in which the prescribing physician determines that the immediate administration of the medication is necessary for the proper treatment of the patient, and that it is not reasonably possible for the prescribing physician to comply with the provision of this rule prior to providing such prescription.

(4) The provisions of this rule shall not be construed to prohibit patient care in consultation with another physician who has an ongoing relationship with the patient, and who has agreed to supervise the patient's treatment, including the use of any prescribed medications, nor on-call or cross-coverage situations in which the physician has access to patient records.

Rulemaking Authority 459.005, 459.015(1)(z)
FS. Law Implemented 459.015(1)(x), (t) FS.
History—New 10-16-01.

The FIRST
Florida Rule
on
Telemedicine
by Board of
Osteopathic
Medicine &
Medicine

**64B15-14.008 Standards for
Telemedicine Prescribing
Practice.**

Rule was repealed in 2014

The **SECOND**
Florida Rule
on
Telemedicine
by Board of
Osteopathic
Medicine &
Medicine

2013

**64B15-14.0081 Standards for
Telemedicine Prescribing
Practice.**

2019

**Rule repealed after passage of
Florida law creating FS 456.47**

64B15-14.0081 Standards for Telemedicine Practice. (2014) Repealed in 2019

- ▶ (1) “Telemedicine” means the practice of medicine by a licensed Florida physician or physician assistant where patient care, treatment, or services are provided through the use of medical information exchanged from one site to another via electronic communications. Telemedicine shall not include the provision of health care services only through an audio only telephone, email messages, text messages, facsimile transmission, U.S. Mail or other parcel service, or any combination thereof.
- ▶ (2) The standard of care, as defined in Section 456.50(1)(e), F.S., shall remain the same regardless of whether a Florida licensed physician or physician assistant provides health care services in person or by telemedicine.
- ▶ (3) Florida licensed physicians and physician assistants providing health care services by telemedicine are responsible for the quality of the equipment and technology employed and are responsible for their safe use. Telemedicine equipment and technology must be able to provide, at a minimum, the same information to the physician and physician assistant which will enable them to meet or exceed the prevailing standard of care for the practice of medicine.
- ▶ **(4) Controlled substances shall not be prescribed through the use of telemedicine.**
- ▶ (5) The practice of medicine by telemedicine does not alter any obligation of the physician or the physician assistant regarding patient confidentiality or recordkeeping.
- ▶ (6) A physician-patient relationship may be established through telemedicine.
- ▶ (7)(a) Nothing contained in this rule shall prohibit consultations between physicians or the transmission and review of digital images, pathology specimens, test results, or other medical data by physicians or other qualified providers related to the care of Florida patients.
- ▶ (b) This rule does not apply to emergency medical services provided by emergency physicians, emergency medical technicians (EMTs), paramedics, and emergency dispatchers. Emergency medical services are those activities or services to prevent or treat a sudden critical illness or injury and to provide emergency medical care and prehospital emergency medical transportation to sick, injured, or otherwise incapacitated persons in this state.
- ▶ (c) The provisions of this rule shall not apply where a physician or physician assistant is treating a patient with an emergency medical condition that requires immediate medical care. An emergency medical condition is a medical condition manifesting itself by acute symptoms of sufficient severity that the absence of immediate medical attention will result in serious jeopardy to patient health, serious impairment to bodily functions, or serious dysfunction of a body organ or part.
- ▶ Rulemaking Authority 459.015(1)(z) FS. Law Implemented 459.015(1)(z) FS. History—New 3-12-14.

Petitions for Variance or Waiver of Rule prohibiting the prescribing of CS through Telemedicine

- ▶ Beginning in 2015, several individual physicians petitioned the Board of Medicine for a variance or waiver of the rule prohibiting the prescribing of CS for patients through Telemedicine. Ultimately, the Board granted the petitions relating to the prescribing of CS for patients as follows:
 - ▶ 1. The treatment of a psychiatric disorder;
 - ▶ 2. Inpatient treatment at a hospital licensed under chapter 395;
 - ▶ 3. The treatment of a patient receiving hospice services as defined in s. 400.601; or
 - ▶ 4. The treatment of a resident of a nursing home facility as defined in s. 400.021.

2019
Florida Statute
456.47

Use of
telehealth to
provide
services.—

(1) **DEFINITIONS.**— As used in this section, the term:

(a) **“Telehealth”** means the use of synchronous or asynchronous telecommunications technology by a telehealth provider to provide health care services, including, but not limited to, assessment, diagnosis, consultation, treatment, and monitoring of a patient; transfer of medical data; patient and professional health-related education; public health services; and health administration. The term does not include audio-only telephone calls, e-mail messages, or facsimile transmissions.

(b) **“Telehealth provider”** means any individual who provides health care and related services using telehealth and who is licensed or certified under s. 393.17; part III of chapter 401; chapter 457; chapter 458; chapter 459; chapter 460; chapter 461; chapter 463; chapter 464; chapter 465; chapter 466; chapter 467; part I, part III, part IV, part V, part X, part XIII, or part XIV of chapter 468; chapter 478; chapter 480; part II or part III of chapter 483; chapter 484; chapter 486; chapter 490; or chapter 491; who is licensed under a multistate health care licensure compact of which Florida is a member state; or who is registered under and complies with subsection (4).

2019
Florida Statute
456.47

Use of
telehealth to
provide
services.—

(2) PRACTICE STANDARDS.—

(a) A telehealth provider has the duty to practice in a manner consistent with his or her scope of practice and the prevailing professional standard of practice for a health care professional who provides in-person health care services to patients in this state.

(b) A telehealth provider may use telehealth to perform a patient evaluation. If a telehealth provider conducts a patient evaluation sufficient to diagnose and treat the patient, the telehealth provider is not required to research a patient's medical history or conduct a physical examination of the patient before using telehealth to provide health care services to the patient.

(c) A telehealth provider may not use telehealth to prescribe a controlled substance unless the controlled substance is prescribed for the following:

1. The treatment of a psychiatric disorder;
2. Inpatient treatment at a hospital licensed under chapter 395;
3. The treatment of a patient receiving hospice services as defined in s. 400.601; or
4. The treatment of a resident of a nursing home facility as defined in s. 400.021.

(d) A telehealth provider and a patient may be in separate locations when telehealth is used to provide health care services to a patient.

(e) A nonphysician telehealth provider using telehealth and acting within his or her relevant scope of practice, as established by Florida law or rule, is not in violation of s. 458.327(1)(a) or s. 459.013(1)(a).

2022
Florida Statute
456.47

Section 1. Paragraph (c) of subsection (2) of section 456.47, Florida Statutes, is amended to read:

456.47 Use of telehealth to provide services.—

(2) PRACTICE STANDARDS.—

(c) A telehealth provider may not use telehealth to prescribe a controlled substance listed in Schedule II of s. 893.03 unless the controlled substance is prescribed for the following:

1. The treatment of a psychiatric disorder;
2. Inpatient treatment at a hospital licensed under chapter 395;
3. The treatment of a patient receiving hospice services as defined in s. 400.601; or
4. The treatment of a resident of a nursing home facility as defined in s. 400.021.

Section 2. This act shall take effect July 1, 2022



MEDICAL MARIJUANA

Medical Marijuana and Tele-Health 381.986 Medical use of marijuana.

- ▶ The Governor's executive order has expired and there is no longer the ability for physicians to treat medical marijuana patients through telemedicine.
- ▶ 1(l) “Qualified patient” means a resident of this state who has been added to the medical marijuana use registry by a qualified physician to receive marijuana or a marijuana delivery device for a medical use and who has a qualified patient identification card.
- ▶ 1(m) “Qualified physician” means a person who holds an active, unrestricted license as an allopathic physician under chapter 458 or as an osteopathic physician under chapter 459 and is in compliance with the physician education requirements of subsection (3).
- ▶ (4) PHYSICIAN CERTIFICATION
- ▶ (a) A qualified physician may issue a physician certification only if the qualified physician:
 - ▶ 1. Conducted a physical examination while physically present in the same room as the patient and a full assessment of the medical history of the patient.

Resources

www.floridahealth.gov Florida Department of Health Home Page - Verify a License

www.floridasosteopathicmedicine.gov/ Board of Osteopathic Medicine Homepage

www.flboardofmedicine.gov/ Board of Medicine Homepage

www.leg.state.fl.us/Statutes/index.cfm All Florida Statutes

www.flrules.org/default.asp All Florida Rules of Board, and All Boards

<https://flhealthsource.gov/telehealth/files/telehealth-financial-responsibility-form.pdf>

Thank you for your time!

Jason D. Winn, Esq.

WINN LAW

2709 Killarney Way, Suite 4, Tall., FL 32309

jwinn@jwinnlaw.com 850/222-7199(o) 850/519-5876(c)