

<b>Kansas State Board of Healing Arts</b>	
<b>Policy Title:</b> Telemedicine	<b>Policy Number:</b> #21-02
<b>Author:</b> General Counsel	<b>Effective Date:</b> June 11, 2021
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<b>Responsible for Updates:</b> General Counsel	<b>Pending Executive Director Approval:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

**PURPOSE:**

The Kansas State Board of Healing Arts (“Board”) recognizes that advancements of medical and communications technology have made it possible for licensees to provide healthcare services to patients who are not at the same location as the provider. In addition, telemedicine use has been shown to rapidly expand in response to public health emergencies, such as the COVID-19 pandemic, meeting the need to ensure access while limiting in-person encounters.<sup>1</sup> Telemedicine is a useful practice model that, if employed appropriately, can provide important benefits to patients, including increased access to healthcare, decreased healthcare disparities, decreased infection risk, expanded utilization of specialty expertise, increased efficiency, better continuity of care, and improved overall healthcare outcomes. The Board is committed to facilitating efforts to improve patient access to the convenience and benefits afforded by telemedicine, while promoting the responsible practice of the healthcare professions the Board licenses and regulates. This Board policy is intended to provide guidance to its licensees in providing healthcare services via telemedicine.

**AUTHORITY:**

K.S.A. 40-2,210 *et seq.*; K.S.A. 65-2865; K.A.R. 100-77-1 through K.A.R. 100-77-3; K.S.A. 48-963; K.S.A. 48-965; Senate Substitute for HB No. 2208, New Sec. 10; K.S.A. 77-438.

**DEFINITIONS:**

1. **Telemedicine:** The delivery of healthcare services or consultations while the patient is at an originating site and the healthcare provider is at a distant site. Telemedicine shall be provided by means of real-time two-way interactive audio, visual, or audio-visual communications. **The term telemedicine incorporates the practice of telehealth.**
2. **Originating site:** The site at which a patient is located at the time of healthcare services are provided by means of telemedicine.
3. **Distant site:** Site at which a healthcare provider is located while providing healthcare services by means of telemedicine.

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<sup>1</sup> As this is a rapidly evolving area of healthcare, the Board intends to revisit this policy as needed to reflect changes that emerge both in clinical practice and law.

4. **Licensee:** A healthcare provider licensed to practice their profession by the Kansas State Board of Healing Arts.

### **POLICY:**

The Board considers the practice of telemedicine to be a modality with which to provide healthcare. All licensees providing healthcare services to patients in Kansas via telemedicine are expected to meet the standard of care.<sup>2</sup> There is not a separate standard of care for telemedicine. Accordingly, it is appropriate for a licensee to provide services via telemedicine to a patient to the extent the licensee is able to maintain the standard of care appropriate to the healthcare service rendered and the clinical circumstances.

Telemedicine has inherent limitations. When practicing telemedicine, it is important for a licensee to know and recognize when not to practice telemedicine. Patients may present with concerns that cannot safely be evaluated or treated from a distance, even with remote-exam strategies. When this occurs, and it is clear the licensee would not be able to maintain the standard of care via telemedicine, the licensee should request that the patient be seen in person. Additionally, the licensee should advise the patient about the rationale for an in-person visit and the risks of delaying care. If after a licensee requests that a patient be seen in person and the patient refuses to do so, or the patient is unable to be seen in person due to a barrier to care, the licensee should document that such request was made, the risks were explained, and the patient's refusal.

### **Licensure**

Kansas law and the Board deem the delivery of healthcare services to occur where the patient is located. Therefore, any healthcare practitioner whose profession is regulated by the Board and who uses telemedicine to provide healthcare services to patients located in Kansas should be licensed to practice their profession in Kansas. Likewise, Kansas licensees intending to practice telemedicine to patients located outside of Kansas should check with the applicable state regulatory agency. Nearly every state requires licensees engaging in telemedicine to be licensed to practice in the state in which the patient is located.

Kansas now has a permanent telemedicine license waiver option for all healthcare professions regulated by the KSBHA. A telemedicine waiver issued by the Board authorizes practice in Kansas limited solely to telemedicine services. Those who hold a telemedicine waiver issued by the Board shall be subject to all the rules and regulations pertaining to the practice of the licensed profession in the state and shall be considered a licensee for the purposes of the professional practice acts administered by the KSBHA. Requirements for eligibility are: (1) currently hold a full, active, and unrestricted license in another state and not the subject of any investigation or disciplinary action by any applicable licensing agency; or (2) meets the qualifications required under Kansas law to

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<sup>2</sup> A licensee has a duty to use the learning and skill ordinarily used by other members of that same field [of healthcare] in the same or similar communities and circumstances. In using this learning and skill, the licensee must also use ordinary care and diligence. Pattern Jury Instructions for Kansas – Civil 4<sup>th</sup>, 123.01, Duty of Health Care Provider (2014).

practice the profession and not the subject of any investigation or disciplinary action by any applicable licensing agency. Those who hold an Active Kansas license do not need to apply for a separate telemedicine waiver; they are authorized to practice telemedicine for patients in Kansas under their Active license.

### **Means of Communication**

Whenever possible and when available, the licensee should use both audio and visual communication for a telemedicine visit. However, the Board recognizes both means are not always available due to a myriad of barriers, including but not limited to insufficient broadband or lack of internet access. Audio only telemedicine visits may be used where evidence demonstrates it to be effective, safe and appropriate, or where it is likely to be so and/or offers immediate access to care that would otherwise be unavailable to a patient. The licensee should document what means of communication were used for each telemedicine visit.

### **Disclaimer and Consent**

Licensees providing telemedicine should obtain a patient's consent (verbal or written<sup>3</sup>) to treat via telemedicine and document such consent. In the event a licensee has requested a patient be seen in person, and the patient refuses to do so or is unable to do so as a result of barriers, the licensee should document that such request was made, risks were explained, and the refusal.

### **Licensee-Patient Relationship**

A licensee using telemedicine in the provision of healthcare services to a patient (whether existing or new) must take appropriate steps to establish and maintain the licensee-patient relationship. The Board stresses that each licensee using telemedicine must provide the licensee's name, location and professional credentials to the patient, and must verify the identity and location of the patient.

### **Prescribing**

Licensees prescribing medication, including controlled substances, by means of telemedicine are expected to comply with all state and federal laws, including licensure. When prescriptions via telemedicine are permissible, the licensee should implement measures to uphold patient safety in the absence of traditional physical examination. Such measures should clearly establish the identity of the patient and provider and include detailed documentation for the clinical evaluation and resulting prescription. Measures to assure informed, accurate, and error-prevention prescribing practices are encouraged.

### **Medical Records**

Licensees treating a patient via telemedicine should maintain a complete record of the telemedicine visit according to established medical record requirements. The licensee must maintain the medical records' confidentiality and provide a copy for the medical record to the patient when requested in

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<sup>3</sup> Written includes written in electronic format.

a manner consistent with state and federal law. The licensee should document what means of communication were used for each telemedicine visit.

**Privacy and Security Information**

Risks associated with privacy and security of information may be increased with the use of telemedicine. Licensees should meet or exceed applicable federal and state legal requirements of medical and health information privacy, including compliance with the Health Insurance Portability and Accountability Act (“HIPAA”) and state privacy, confidentiality, security, and medical retention rules. The licensee should use a HIPPA-compliant electronic platform to provide telemedicine. When providing care to a patient via telemedicine, the Board encourages licensees to ask the patient at the beginning of the visit to identify anyone who is within hearing distance. If anyone other than the patient is identified at any point in the encounter, the licensee should obtain patient consent to proceed with the encounter.

**Miscellaneous**

These guidelines should not be construed to alter the scope of practice of any licensee or authorize the delivery of healthcare services in a setting, or in a manner, not otherwise authorized by law. These guidelines should not be construed to alter the standard of care defined by Kansas law.<sup>4</sup>

Approved by the Kansas State Board of Healing Arts this 11th day of June 2021.

**KANSAS STATE BOARD OF HEALING ARTS**



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Tucker Poling, Executive Director

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<sup>4</sup> See footnote 2.