



August 9, 2021

Ms. Betty Montgomery
President, State Medical Board of Ohio
30 E. Broad Street, 3rd Floor
Columbus, OH 43215

RE: OHIO MEDICAL BOARD TELEMEDICINE FAQs

Good afternoon President Montgomery,

On behalf of the American Telemedicine Association and the over 400 organizations we represent, I am writing to seek clarification on the recently published Telemedicine Frequently Asked Questions document that is published on the Board’s website.

By way of background, the ATA is the only national organization whose mission revolves solely around the advancement of telehealth in the United States, ensuring that Americans have the ability to receive affordable, first-rate health care when and where they need it. The ATA represents a diverse and expansive coalition of technology solution providers and payers, as well as partner organizations and alliances, working together to promote the implementation of telehealth across the country, endorse responsible telehealth policy, encourage government and market normalization, and deliver education and resources designed to further the integration of virtual care through the use of various innovative technologies.

While we appreciate the Board’s dedication to ensuring that licensees and the public are fully aware of the laws and regulations for telemedicine in Ohio, the ATA has specific concerns regarding Question 12 of the FAQs. In the answer, it states:

“Generally, there is no telemedicine for initial patient visits with a physician or physician assistant involving prescribing as OAC rule 4731-11-09 prohibits physicians from prescribing controlled substances or non-controlled substances to a person on whom the physician has never conducted a physical examination with some exceptions.”

We are concerned that this language will create confusion for providers who are attempting to prescribe non-controlled substances to new patients via telemedicine. Reading this answer in isolation may lead a provider to believe that they are not allowed to prescribe a non-controlled substance to a patient without first performing an in-person examination; however, this is not the case. While it is true that OAC Rule 4731-11-09(A) and (B) forbid the prescriptions of controlled and non-controlled substances without a physical examination, subpart (C) creates a wide-ranging exception for the prescription of non-controlled substances. Indeed, the requirements to meet the “exception” that subpart (C) lays out are simply basic informed consent, document retention/transfer, and standard of care requirements which are present in nearly every encounter regardless of delivery modality. Most physicians adhere to these requirements already. Therefore, more often than not a prescriber would be able to provide a prescription for a non-



controlled substance for a patient seen only via telemedicine simply by following their already established practice protocols. However, the current answer would may lead a prescriber to believe that there are only limited exceptions to when one can prescribe an non-controlled substance – particularly if the reader did not continue reading to Question 16. Though the hedging phrases of “generally” and “with some exceptions” are helpful, we believe this answer requires a more nuanced response to avoid creating confusion for Ohio licensees.

With this in mind, the ATA believes that the FAQs would be more helpful for Ohio licensees if the answer to Q12 either: (1) explains the requirements for prescribing an non-controlled substance via telemedicine similarly to how Q16 does as opposed to summarily prohibiting it; (2) remove “non-controlled” from the answer to emphasize the more restrictive prohibition on controlled substances; (3) cross-cites the answer to Q16 (which provides the requirements as found in subpart (C)) similarly to how Q12 already cross-cites Questions 22, 23, and 24; or (4) a combination of 1-3.

It is our hope that by making this relatively minor change, the FAQs will be much more helpful for readers who are trying to understand the telemedicine rules and statutes in Ohio and will avoid any confusion regarding the prescription of non-controlled substances. The adoption of telehealth around the country continues to ease the strain on our overburdened health care system, enabling it to provide care for millions more patients every year in an efficient, effective, and affordable manner. It is our hope that by collaboratively working with professional licensing Boards such as the Ohio Medical Board and other stakeholders, telehealth will continue to advance and offer patients and practitioners new ways to receive and deliver much needed care.

As always, we thank you for your interest in telemedicine and please let us know how we can be helpful in your efforts to adopt telehealth policy in Ohio. If you have any questions or would like to discuss further the telehealth industry’s perspective, please contact me at kzebley@americantelemed.org.

Kind regards,

A handwritten signature in black ink that reads "Kyle Zebley".

Kyle Zebley
Public Policy Director
American Telemedicine Association