



March 31, 2023

Oklahoma State Board of Optometry
Suite 201
Oklahoma Agriculture Building
2800 N. Lincoln Blvd
Oklahoma City, OK 73105
Submitted via email to Jessica Torrey, jessica.torrey@optometry.ok.gov

RE: ATA ACTION COMMENTS ON THE BOARD OF OPTOMETRY RULEMAKING TO REGULATE THE USE OF TELEMEDICINE BY OKLAHOMA OPTOMETRISTS

Dear President David Cockrell, O.D., Executive Director Russell Laverty, O.D., and members of the Oklahoma Board of Examiners in Optometry:

On behalf of ATA Action, I am writing you to submit comments for your consideration regarding proposed rule 505:10-5-19 addressing Telemedicine encounters in the practice of optometry. ATA Action strongly encourages the Board to withdraw this draft rulemaking. Should the Board elect to advance the rulemaking to the Oklahoma Register, we would appreciate being included in the notice to interested parties in order to submit further comment.

ATA Action, the American Telemedicine Association's affiliated trade association focused on advocacy, advances policy to ensure all individuals have permanent access to telehealth services across the care continuum. ATA Action supports the enactment of state and federal telehealth policies to secure telehealth access for all Americans, including those in rural and underserved communities. ATA Action recognizes that telehealth and virtual care have the potential to truly transform the health care delivery system – by improving patient outcomes, enhancing safety and effectiveness of care, addressing health disparities, and reducing costs – if only allowed to flourish.

ATA Action is grateful to the Board of Optometry for considering rules which will clarify the appropriate use of telemedicine in the delivery of optometric care. However, we have major concerns with sections of the proposed draft rule which could severely limit the ability of practitioners to utilize telehealth modalities in the delivery of optometric care and urge the Board to reconsider significant portions before proceeding. Enacting this rule in its current form will significantly limit patient access to care on behalf of Oklahoma licensed optometrists and ophthalmologists (together known as “eye care providers” or “ECPs”).

The Proposed Rules Contradict Both Oklahoma Law and the Recommendation of the Federation of State Medical Boards

First, the proposed rule's restriction on establishing physician-patient relationships via telemedicine contradicts current state law. In 2017, Oklahoma Governor Mary Fallin signed Senate Bill 726 into law, which provides therein:

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Establishment of physician-patient relationship through telemedicine. A. Unless otherwise prohibited by law, a valid physician-patient relationship may be established by an allopathic or osteopathic physician with a patient located in this state through telemedicine, provided that the physician: 1. Holds a license to practice medicine in this state; 2. Confirms with the patient the patient's identity and physical location; and 3. Provides the patient with the treating physician's identity and professional credentials.¹

The Board's regulations cannot supersede state statute, which clearly states physicians, including licensed Oklahoma ECPs, can establish a physician-patient relationship via telemedicine in Oklahoma. Indeed, licensed ECPs across Oklahoma have already safely established relationships with tens of thousands of Oklahomans via telemedicine to provide effective care, as supported by Oklahoma law.

The Board justifies its stance by stating telemedicine encounters are “not on par with the same service delivered in person” as the Board has determined that a comprehensive visual examination can only be conducted via an in-person examination. However, this is not established by clinical evidence and creates an undue restriction on the physician-patient relationship. We encourage the Board to make sure that any rule affecting the ability of an optometrist in the state to use telemedicine preserves the ability to exercise professional judgment when deciding which services can be provided via telemedicine for the specific patient.

ATA Action believes that so long as the provider obtains the patient's consent for the use of telehealth services, verifies the patient's identity, and discloses his or her own identity and credentials—as already required by Oklahoma law—he or she should be able to use any appropriate telehealth modality that is sufficient to evaluate and treat the patient for the condition presented – whether it be a synchronous or asynchronous modality. Prohibiting patients and providers from establishing professional relationships using telemedicine modalities will make it far more difficult for patients, especially the Oklahomans who do not have access to internet speeds capable of operating synchronous video modalities reliably, to access high-quality care from their preferred providers. Instead of being able to establish new relationships with providers from convenient locations of their choice, many patients will be forced to take time out of their busy schedules and/or travel long distances to meet with those providers in person.

Additionally, ATA Action encourages the Board to consider the policy principles enumerated in the Federation of State Medical Board's (“FSMB”) most recent update *Model Policy for the Appropriate Use of Telemedicine Technologies in the Practices of Medicine*,² which was ratified by the organization in April 2022. Founded in 1912, The FSMB comprises over 70 state medical boards across the country, and develops policy recommendations for the practice of medicine stemming from the expertise of its membership. In its “Standard of Care” section of the previously mentioned

¹ 59 OK Stat. § 59-478.1 (2020).

² Federation of State Medical Boards, *The Appropriate Use of Telemedicine Technologies in the Practice of Medicine*, April 2022, <https://www.fsmb.org/siteassets/advocacy/policies/fsmb-workgroup-on-telemedicineapril-2022-final.pdf>.



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report, the FSMB articulates that “a physician patient relationship may be established via either synchronous or asynchronous telemedicine technologies without any requirement of a prior in-person meeting, so long as the standard of care is met.” Professional healthcare boards across the country have endorsed this view and the Board’s proposal to restrict patient relationships using telemedicine would set care back in Oklahoma.

The Proposed Rules Restrict Practitioner Discretion Without Basis in Clinical Evidence

The comprehensive, in-person examination requirement prior to the prescribing of spectacles or contact lenses trades Oklahoma licensed, practitioner discretion for a government panacea restricting patient care. ATA Action, as well as the Federation of State Medical Boards and many other organizations, assert that doctors are best suited to diagnose and recommend treatment based on each individual patient’s condition, in which case the doctor may be able to use an innovative new telehealth approach to do so while meeting the standard of care or elect to see that patient in person.

ATA Action also understands, based on years of clinical evidence and patient treatment (particularly during the COVID pandemic), that it is possible to meet the standard of care for ocular assessment of patients. Assessing the health of a patient’s eyes is an important goal during provision of eye care, whether done in-person or via telehealth. An ocular health assessment is defined as an examination capable of diagnosing whether the patient has a visually significant disease or if the patient’s disease state is stable or progressing. Eye exams for ocular health assessments often include a refraction (an assessment of the patient’s refractive error) and when appropriate, may lead to a prescription for corrective eyewear.

To be clear, a comprehensive ocular health assessment is not always medically necessary every time a patient has a refraction and the ECP prescribes corrective eyewear. In some instances, an intermediate eye exam is appropriate. When a patient is not receiving a comprehensive eye examination, or a vision exam without an ocular health assessment, the ECP should ensure that the patient understands both the goal and the limitations of the services provided and is aware when and how to seek an appropriate comprehensive ocular health assessment or eye examination. Most importantly, the ECP should have the discretion to determine that an intermediate eye exam is appropriate for the patient’s specific needs, rather than a broad sweeping government restriction.

We acknowledge that there are situations in which the standard of care for the condition presented by the patient cannot be met through telehealth modalities, synchronous or asynchronous. This could be due to any number of reasons such as inability to properly evaluate the patients condition outside of an in-person setting or due to technological barriers such as requiring equipment that the patient does not have access to at their location. In these instances, it is the responsibility of the provider to take steps to treat the patient in-person or direct them to seek other treatment that does meet the standard of care. Our organization believes that licensed practitioners should be able to utilize the full range of available telehealth technologies while delivering virtual care, so long as the technologies being used are appropriate to meet the standard of care for the condition presented by the patient.

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The Proposed Rules Attempt to Regulate Patient Care Outside of the Board's Jurisdiction

The Board does not have jurisdiction over practice of general physicians, which appear to be implicated by the Board's proposed rule. In the "Telemedicine in Optometry Encounters" section the proposed rule states that "physicians cannot establish a doctor-patient relationship via telehealth." This section also states that "Physicians cannot prescribe controlled substances via telehealth." Again, we disagree with substance of these statements but we also disagree with their breadth; the Board's regulations must make clear that the board is limiting its proposed regulations to the practice of optometry in its definitions section.

Finally, the Board does not have jurisdiction over out-bound care delivery in other states. In the Board's section titled "Where the practice of optometry occurs" the Board states that optometry "occurs both where the patient is located and where the optometrist providing professional services is located." In all fifty states, telehealth providers are subject to the laws of the "originating site," which is where the patient is physically located, not where the practitioner is physically located. This ensures that states can regulate the care being provided to their own residents within their own state boundaries. But it does not allow the Board to regulate care by a physician licensed in another state and who provides care via telehealth to a patient in another state while living or located in Oklahoma.

Ensuring continued access to ocular care via telehealth will become increasingly important as the population ages and innovative technologies become more effective. Eye disease is more prevalent as people age and as the Baby Boomer generation ages, potentially blinding eye disease will become more common. Telehealth methods are a critical way to address the workforce shortage of ECPs and to reduce healthcare disparities, especially for rural and urban underserved and disadvantaged populations. Published medical literature has demonstrated the effectiveness of telehealth modalities to address these critical gaps in specialty eye care access, particularly in rural locations.

Thank you for this opportunity to comment. We encourage you and your colleagues not to move forward with these rules until changes have been made to address the concerns we raised above. Please let us know if there is anything that we can do to assist you in your efforts to adopt practical telehealth policy in Oklahoma. If you have any questions or would like to engage in additional discussion regarding the telehealth industry's perspective, please contact me at kzebley@ataaction.org.

Kind regards,

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

Kyle Zebley
Executive Director
ATA Action

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