ata ACTION
Telehealth Policy to Transform Healthcare

December 12, 2023

The Honorable Michaux R. Kilpatrick
President, North Carolina Medical Board
3127 Smoketree Court
Raleigh, NC 27604

RE: ATA ACTION COMMENTS ON AMENDED TELEMEDICINE POLICY STATEMENT

Dear President Kilpatrick and members of the North Carolina Medical Board:

On behalf of ATA Action, I am writing to express our concern with the Board's recent amendments to its Telemedicine Position Statement posted in September and ask the Board revisit these changes. ATA Action appreciates the Board's consideration of comments submitted on the original draft statement released in April. However, after this comment period ended, the Board adopted a significant, substantive change to its guidance on telemedicine prescribing that will have serious impacts on both ATA Action member providers and thousands of their North Carolina patients. Therefore, ATA Action urges the Board to adopt its prior language on telemedicine prescribing suggesting that an in-person patient examination may be necessary when controlled substances are prescribed "for the treatment of pain."

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 has actively followed the Board's updates to the Telemedicine Position Statement and supported efforts to bring this policy into alignment with advancements in telemedicine since the statement was last updated in 2019. When the Board issued a draft policy statement for public comment in April of this year, ATA Action submitted comments largely in support of the updated language. ATA Action continues to support several provisions in the position statement, such as the modality neutral approach and uniform standard of care provisions, while also encouraging changes that would bring greater clarity and further expand patient access to care. Our original comments regarding on the initial draft can be found on the Board's website in the Policy Discussion Archive.

As you are aware, both the 2019 Telemedicine position statement and the April re-draft allowed for the telemedicine prescription of controlled substances without a prior in-person patient encounter, except for controlled substances prescribed for the management of pain. ATA Action fully supported this position. Here is the relevant language from the April redraft (emphasis added):

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> ***Prescribing***
> *Licensees are expected to practice in accordance with the Board's Position Statement "4.1.1. Contact with Patients Before Prescribing." It is the position of the Board that the current standard of care to prescribe controlled substances for the treatment of pain is not met when the only patient encounter is by means of telemedicine. Telemedicine providers may prescribe controlled substances by telemedicine when the initial evaluation has been performed by a licensed healthcare provider trained in the care of patients requiring controlled substances for pain management. Licensees prescribing controlled substances by means of telemedicine for other conditions should comply with all relevant federal and state laws and are expected to participate in the Controlled Substances Reporting System.*

At the May board meeting, Board members decided to accept the Policy Committee's recommendation for additional changes to the Telemedicine position statement and to present a revised version of the statement for consideration at a later date, anticipated to be the Board's July meeting. ATA Action and the telemedicine community at large understood the intent behind this decision to provide time to review and possibly adopt public comment recommendations. The Board and Policy Committee then met July 19-21 and September 20-22. The Board's July agenda omits any indication the Board would discuss the Telemedicine statement and there was no publicly available agenda posted for the Board's September meeting indicating a new change to the prescribing guidance was going to be adopted. Furthermore, ATA Action is unaware of, and unable to find, any subsequent re-drafts of the statement posted online for the public to review. Finally, the Board's policy discussions archive on this topic indicates that "Discussion [of the Telemedicine statement] Ended on 04/27/2023."

Therefore, we were surprised to see that a new version of the Telemedicine statement was posted in September without prior notice or opportunity to comment. This is particularly problematic given the new statement is a fundamental departure from the April draft, as the telemedicine prescribing section now reads "*It is the position of the Board that the current standard of care to prescribe controlled substances is not met when the only patient encounter is by means of telemedicine*." By omitting the words "*for the treatment of pain*" from the policy, the Board's new guidance now appears to mandate an in-person patient encounter before a North Carolina licensed physician can prescribe any controlled substance via telemedicine.

Had ATA Action been given the opportunity to comment on this change, we would have underscored how this new guidance will have a remarkable impact on telemedicine care delivery in North Carolina with the following concerns:

First, North Carolina patients—particularly rural patients—may quickly lose access to their telemedicine-prescribed treatment without a conveniently available in-person provider. Consider this difficulty in light of North Carolina Department of Health and Human Services estimates that in 2022 the state had 92 counties with primary care shortages and 93 counties with mental health care shortages.[1] Because the Board has not provided a grace period for compliance, telemedicine providers in North Carolina will now have the difficult task of deciding how best to adhere to the Board's guidance without cutting patients off of their medications overnight. Patients may have to choose between forgoing prescription treatment or

[1] NC Dep't of Health and Human Servs., *North Carolina Health Professional Shortage Area* (June 1, 2023), https://www.ncdhhs.gov/nc-dhhs-orh-hpsa-one-pager/open.

trying to find a new in-person provider, potentially at greater cost and difficulty for an in-person visit, to receive the same care they were already receiving via telemedicine. This disruption will disproportionately affect rural and underserved communities who have come to rely on telemedicine services to fill in provider gaps and in all places where these care shortages are most pronounced.

Second, ending the use of telemedicine prescribing will disrupt treatment for North Carolinians currently receiving care for Opioid Use and Substance Use Disorder treatments via telemedicine. Telemedicine prescribed Medication Assisted Treatment (MAT) is a critical tool for Opioid and Substance Use Disorder treatment. Evidence shows telemedicine MAT increases both access to care and MAT retention rates as compared to in-person services for the treatment of OUD and SUD, particularly in rural areas.[2,3,4,5] Disrupting this care by adding a new barrier to treatment and cutting off prescriptions for those currently receiving such services undoubtedly increases the risk of negative outcomes for these patients.

Finally, this change will quickly make North Carolina an outlier among its neighboring states for telemedicine prescribing. As you are aware, the Drug Enforcement Agency has extended telemedicine prescribing flexibilities through December of 2024. Additionally, state laws in South Carolina, Virginia, Tennessee and Georgia allow controlled substance prescribing by fully licensed telemedicine providers without requiring a prior in-person patient encounter (for most non-narcotic, Sch. III, IV and V drugs). This means that patients in these states will continue to have favorable access to the full range of telemedicine services available to them, while patients in North Carolina will not.

To conclude, the Board's September update is a fundamental departure from the April draft made available to the telemedicine community for review. ATA Action therefore requests that the Board re-adopt its prior guidance on telemedicine prescribing of controlled substances and seek further community input if the Board desires to change this policy in the future. Overall, ATA Action recommends that the Board adopt guidance policies for telemedicine prescribing that are no more restrictive than federal standards, particularly during the DEA waiver period for telemedicine prescribing.

Thank you for your consideration of our comments. Please let us know if there is anything that we can do to assist you in your efforts to adopt practical telemedicine positions in North Carolina. ATA Action is available as a resource to you and your members throughout this process. 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.

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[2] Yeo, E.J., Kralles, H., Sternberg, D. *et al.* Implementing a low-threshold audio-only telehealth model for medication-assisted treatment of opioid use disorder at a community-based non-profit organization in Washington, D.C.. *Harm Reduct J* 18, 127 (2021). https://doi.org/10.1186/s12954-021-00578-1.

[3] Czeisler MÉ. A Case for Permanent Adoption of Expanded Telehealth Services and Prescribing Flexibilities for Opioid Use Disorder: Insights From Pandemic-Prompted Emergency Authorities. JAMA Psychiatry. 2022;79(10):950–952. doi:10.1001/jamapsychiatry.2022.2032.

[4] Mahmoud, H., Naal, H., Whaibeh, E. *et al.* Telehealth-Based Delivery of Medication-Assisted Treatment for Opioid Use Disorder: a Critical Review of Recent Developments. *Curr Psychiatry Rep* 24, 375–386 (2022). https://doi.org/10.1007/s11920-022-01346-z.

[5] Joseph K. Eibl, Graham Gauthier, David Pellegrini, Jeffery Daiter, Michael Varenbut, John C. Hogenbirk, David C. Marsh, The effectiveness of telemedicine-delivered opioid agonist therapy in a supervised clinical setting, Drug and Alcohol Dependence, Volume 176, 2017, Pages 133-138, ISSN 0376-8716, https://doi.org/10.1016/j.drugalcdep.2017.01.048.

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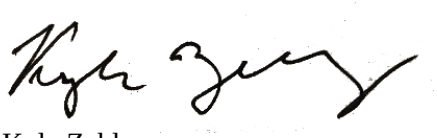
Kind regards,



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