DECLARATORY RULING OF

THE ALABAMA STATE BOARD OF MEDICAL EXAMINERS

On April 27, 2023, the Alabama State Board of Medical Examiners ("the Board") considered a request submitted on the behalf of the University of Alabama at Birmingham Heersink School of Medicine and the University of Alabama at Birmingham Health System ("Petitioners") for a declaratory ruling pursuant to Ala. Code § 41-22-11 and Ala. Admin. Code R. 540-X-1-.10, concerning the application of Alabama's statutory licensure requirements to limited-license teaching physicians who may engage in providing telehealth services in the course of their employment with Petitioners and on Petitioners' behalf.

FACTS PRESENTED

Petitioners present the following factual background:

> The use of telemedicine has greatly expanded our ability to improve access to care across our state. Currently, UAB Medicine is providing services such as tele-stroke, tele-nephrology, tele-cardiology, tele-critical care, and tele-neurology across Alabama to health care facilities that never would have had access to this highly subspecialized care. These services enable these health care facilities to retain more patients in their local community.
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> Many other areas of subspecialty care are needed across our state. For example, nearly 56% of Alabamians, mostly in rural regions, lack timely access to a tertiary trauma center (level 1 or 2 centers) within 60 minutes by ground/air ambulance and are treated at non-tertiary centers (level 3 or non-trauma centers). While severely injured patients treated at non-tertiary centers are more likely to experience adverse outcomes, those with minor injuries often undergo unnecessary inter-facility transfer to distantly located tertiary trauma centers resulting in wasted trauma system resources and significant patient costs. The traditional approach to improve access to expert trauma care has largely focused on building new tertiary trauma centers.
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> However, this approach has faced major challenges including high costs and prolonged timescale for development coupled with trauma center closures. Consequently, between 2013 to 2019, nearly 10% of Alabamians (490,000 people) lost timely access to a tertiary trauma center. Therefore, there is a need for us to develop alternative mechanisms to deliver timely, expert bedside trauma care to injured patients in Alabama. The delivery of some of these subspecialty services

including tele-trauma would be enhanced by allowing providers with limited licenses who are practicing at UAB Medicine the ability to deliver care to patients located at other facilities through telehealth.

As illustrated by the contractual and reimbursement arrangements, the software platforms used to deliver telehealth services, and credentialing, teaching physicians with limited licenses would offer these telehealth services exclusively on behalf of UAB Medicine. UAB Medicine contracts with health care facilities to provide telehealth services, and our physicians provide these telehealth services exclusively through UAB Medicine software platforms.

Generally, UAB Medicine handles all billing and receives all reimbursement for the services, and the health care facility reimburses UAB Medicine on a per consult basis. Alternatively, UAB Medicine may contractually release the billing rights to the health care facility. Under either arrangement, there is no direct payment nor billing by the physician themselves, and the teaching physician does not receive any reimbursement outside his or her employment with UAB Medicine.

In addition, the teaching physician would not be independently credentialed by the health care facility. Instead, credentialing is accomplished through a credentialing by proxy agreement between the contracting facility and UAB Medicine. Under a credentialing by proxy arrangement, the facility accepts UAB Medicine's credentialing as proxy for independently credentialing and privileging the physician. Consequently, the teaching physician's privileges to offer telehealth services are predicated on UAB Medicine credentials.

QUESTION PRESENTED

Where a teaching physician licensed under Ala. Code § 34-24-75(a) engages in telehealth services exclusively on behalf of the employing academic medical center and does not receive reimbursement outside his or her employment with the academic medical center for the service, may the limited licensed teaching physician provide telehealth services to an outside health care facility that has contracted with the academic medical center for those services?

ANSWER

A teaching physician licensed under Ala. Code § 34-24-75(a) may provide telehealth services to an outside health care facility that has contracted with the teaching physician's employing academic medical center for those services if the physician is providing the telehealth

services exclusively on behalf of the employing academic medical center and does not receive reimbursement outside of his or her employment with the academic medical center for the services.

DISCUSSION

Under Ala. Code § 34-24-75(a), the Board may "issue a certificate of qualification without examination in [sic] behalf of full-time employed physicians teaching in any medical college in Alabama." Under Ala. Admin. Code R. 540-X-3-.16(1)(c), "[v]isiting professors," "distinguished professors at medical colleges," and "specialty professors at medical colleges" are eligible to obtain this so-called "limited license." A physician who holds a limited license may practice medicine without restriction or limitation, provided that the physician "limit[s] [his or her] practice to the confines of the medical center of which the medical college is a part, and as an adjunct to [his or her] teaching functions in that college." Ala. Code § 34-24-75(a). In other words, a limited license does not limit the physician's scope of medical practice; instead, it only limits the physician to practicing medicine within "the confines of the medical center in which he or she is employed." *Id.*

In 2022, the Alabama Legislature passed Act 2022-302, which defines telehealth and telemedicine in Alabama, as well as setting forth licensure requirements for physicians to provide telehealth services. Under Ala. Code § 34-24-702(a), "[p]hysicians who engage in the provision of telehealth medical services to any individual in this state must possess a full and active license to practice medicine or osteopathy issued by the Medical Licensure Commission." This legislation established telehealth as a modality for delivering healthcare services rather than a separate field or specialty requiring different qualifications or licenses from the usual practice of medicine. Accordingly, the Legislature chose to require physicians who want to provide telehealth medical

services to possess the same medical license that any and all physicians must possess to practice medicine in this state.

The language in Section 702 requiring a "full and active license" creates an apparent conflict with the "limited license" language found in the Board's regulations; however, this conflict is easily resolved. First, the Board is authorized to interpret the applicable provisions. "The State Board of Medical Examiners shall make rules and regulations it considers necessary to carry out the purposes of this section." Ala. Code § 34-24-75(a). "The Board of Medical Examiners . . . may adopt rules regulating the provision of telehealth medical services by physicians in this state. . .." Ala. Code § 34-24-706(a). Accordingly, this declaratory ruling is issued to clarify an apparent conflict and further the legislative purposes of Sections 34-24-75(a) and 34-24-700, *et. seq*.

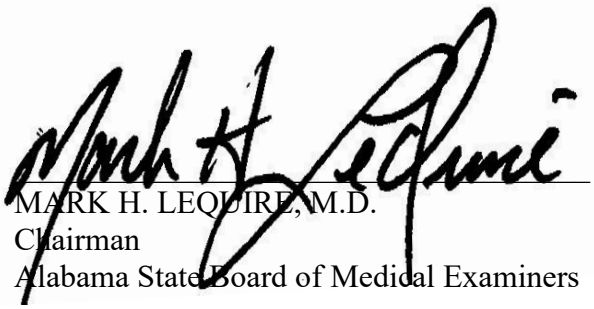
Second, the Board's ruling is consistent with its prior opinion concerning a limited licensee's scope of practice. On July 21, 2010, the Board opined that "a teaching physician at the University of Alabama at Birmingham or the University of South Alabama College of Medicine who holds a limited license may include in his/her medical practice the provision of telemedicine services which are external to the school/college and rendered from the school/college; provided that the telemedicine services are rendered as an adjunct to the physician's teaching functions in that school/college." The current telehealth medical services law (Ala. Code § 34-24-700 *et seq.*) was not in place when this opinion was rendered, so it is appropriate for the Board to issue this declaratory ruling to answer Petitioners' question. That said, it is evident that the Board has historically considered telehealth and telemedicine to fall within the scope of practice for teaching physicians who hold a limited license.

Third, a teaching physician who holds a limited license possesses a "full" license for the purposes of Section 702. The term "full" as it relates to a medical license refers to the scope of

practice authorized by the license. A physician holding a medical license issued by the Medical Licensure Commission ("the Commission") may practice "medicine" to the full extent permissible by law unless that license has been restricted by the Commission. *See* Ala. Code § 34-24-361(g) ("If the board attaches restrictions to a physician's or osteopath's certificate of qualification, it shall notify the commission of the restrictions and the commission shall also place the restrictions on the physician's or osteopath's license to practice medicine or osteopathy in the State of Alabama"); *see also* Ala. Code § 34-24-360 ("The Medical Licensure Commission shall have the power and duty to suspend, revoke, or restrict any license to practice medicine . . . .") When the Board issues a certificate of qualification ("COQ") for a limited license to a teaching physician, the scope of practice is not restricted other than to restrict the location where the physician can practice. The Commission, when it receives a limited license COQ, issues a full license with the sole restriction being that the physician's practice is "limited to the confines of a particular medical center of which a certain medical college is a part." Ala. Code § 34-24-75(a). The Board, by declaring that a teaching physician may provide telehealth services from the confines of the medical center identified on his or her COQ and medical license, is exercising its authority under Section 75(a) to "make rules and regulations it considers necessary to carry out the purpose of this section." Ala. Code § 34-24-75(a). Specifically, it is the opinion and ruling of the Board that the restriction placed on a limited licensee's COQ by the Board only a restricts a limited license holder from providing telehealth medical services outside of the scope of employment or confines of the employing academic medical center, or when the teaching physician receives reimbursement for telehealth medical services outside of the scope of his or her employment with the academic medical center.

This ruling is based upon the precise facts presented and upon statutes and rules currently in existence. Should any relevant statutes or rules be amended or repealed, this ruling may no longer be valid.

DONE this 2nd day of May, 2023.



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