



Telehealth and the Future of Professional Regulation

A presentation for the Arizona Telemedicine Program webinar series

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October 11, 2023

States Have
Long
Regulated
Medical
Professionals,
with the Goal
of Protecting
the Public

DENT *v.* WEST VIRGINIA.

ERROR TO THE SUPREME COURT OF APPEALS OF THE STATE OF
WEST VIRGINIA.


No. 119. Submitted December 11, 1888. — Decided January 14, 1889.

“The power of the state to provide for the general welfare of its people authorizes it to prescribe all such regulations as in its judgment will secure or tend to secure them against the consequences of ignorance and incapacity, as well as of deception and fraud.”

“The law of West Virginia was intended to secure such skill and learning in the profession of medicine that the community might trust with confidence those receiving a license”

Licensure is a form of self-regulation that reinforces professional identity.

But its ultimate goal is to serve patients in the state.



VIEW DOCUMENT

The Arizona Revised Statutes have been updated to include the revised sections from the 55th Legislature, 2nd Regular Session. Please note that the next update of this compilation will not take place until after the conclusion of the 56th Legislature, 1st Regular Session, which commences in January 2023.

DISCLAIMER

This online version of the Arizona Revised Statutes is primarily maintained for legislative drafting purposes and reflects the version of law that is effective on January 1st of the year following the most recent legislative session. The official version of the Arizona Revised Statutes is published by Thomson Reuters.

[ARS TITLE PAGE](#)[PREVIOUS SECTION](#)[TITLE 32](#)[NEXT SECTION](#)[PRINTABLE VERSION](#)

[32-1403. Powers and duties of the board; compensation; immunity; committee on executive director selection and retention](#)

A. The primary duty of the board is to protect the public from unlawful, incompetent, unqualified, impaired or unprofessional practitioners of allopathic medicine through licensure, regulation and rehabilitation of the profession in this state. The powers and duties of the board include:

1. Ordering and evaluating physical, psychological, psychiatric and competency testing of licensed physicians and candidates for licensure as may be determined necessary by the board.
2. Initiating investigations and determining on its own motion whether a doctor of medicine has engaged in unprofessional conduct or provided incompetent medical care or is mentally or physically unable to engage in the practice of medicine.
3. Developing and recommending standards governing the profession.

State-Based Regulation Poses Challenges in the Telehealth Era

Telehealth can expand access to high-quality care by enabling medical professionals to provide care at a distance.

But state-based regulations can stand in the way if they:

- Require state licensure to treat patients located in the state, imposing costs & delays for cross-state care
- Impose differing licensure-related requirements, such as for CME, creating logistical and cost barriers to maintaining multistate licensure
- Adopt varying regulations with respect to the provision of care to patients located in the state, increasing confusion and compliance costs for multistate care

Approaches to Facilitating Cross-State Practice

- The Interstate Medical Licensure Compact (IMLC)
 - As of July 2023, 39 states (including AZ) are IMLC members
 - Other licensure compacts include nursing, psychology, physical therapy, audiology; over 250 pieces of compact legislation passed since 2016 (National Center for Interstate Compacts)
- Regional reciprocity arrangements (e.g, DC/MD/VA)
- Special telehealth-only licenses or permits (8 states)
- Broad telehealth registration systems (FL, AZ) or other registration/waiver systems
- Licensure requirement exceptions for episodic and/or followup care (11 states), consultations (15 states)
- Other kinds of licensure exceptions

See <https://www.fsmb.org/siteassets/advocacy/key-issues/interstate-telemedicine-map.pdf>
<https://www.fsmb.org/siteassets/advocacy/policies/states-with-episodic-follow-up-care.pdf>

Uniform Telehealth Act: Process

- Uniform Law Commission (ULC): Established in 1892 to develop “non-partisan, well-conceived and well-drafted legislation that brings clarity and stability to critical areas of state statutory law”
- States appoint commissioners, who are lawyers
- Uniform Telehealth Act (UTA) development process:
 - Committee to Monitor Health Law
 - Study Committee on Telehealth (2019-2020)
 - Drafting Committee on Telehealth (2020-2022)
 - ULC approval and publication of UTA (2022)
- Committee meetings include participation from both commissioners & “observers” with relevant expertise
- State legislators may introduce legislation based on UTA; four introductions to date



Uniform Telehealth Act

- Scope: Provision of telehealth to patients located in enacting state
- Authorizes provision of telehealth within the state; definition of telehealth is broad and technology-neutral
- Requires telehealth to be delivered in accordance with the standard of care and all relevant state and federal laws
- Establishes a registration system for practitioners licensed elsewhere to provide telehealth services; similar to current systems in FL, AZ
- Subjects registered practitioners to disciplinary framework
- Creates exceptions to licensure requirements for telehealth in the form of:
 - Consultation with a practitioner
 - Specialty assessment, diagnosis, or recommendation for treatment
 - Services delivered pursuant to previously established relationship

American Medical Association on Telehealth Licensure

Supports waiver/exception/registration or other mechanism for physicians with full/unrestricted licenses who provide care only via telehealth when:

- The physician has an established and ongoing patient-physician relationship;
- The physician has treated the patient in-person;
- The care provided is incident to an existing care plan or one that is being modified; and
- Telehealth services are covered under malpractice insurance satisfying state requirements.

Source: AMA issue brief: Telehealth Licensure (Updated May 8, 2023)

How Might Legislated Medicine Impact Cross-State Delivery of Health Care?

- Legislative actions may create divergent expectations of medical professionals
- State legislatures have enacted statutes that identify as grounds for professional discipline, civil liability, and/or criminal liability care such as gender-affirming care, conversion therapy, and abortion
- What happens when one state restricts or prohibits a practice that another state permits?

Cross-State Physician Discipline

- States have long considered conduct in other states in issuing licenses and engaging in discipline
- Licensure applications ask for
 - Discipline involving any license
 - Current investigations in any jurisdiction
 - Arrests and criminal convictions in any state
- Grounds for discipline may include
 - Acts contrary to honesty or good morals, “whether committed within this state or elsewhere”
 - Being found guilty in another state or country of conduct that would constitute grounds for discipline in this state
 - Practicing medicine in another state without appropriate licensure
 - Violations of laws or rules governing the practice of medicine, including those of other states

What happens
when state
expectations
of physician
conduct
conflict?

		State of Patient Care	
		Permissive	Restrictive
State of Licensure	Permissive	No discipline In either state	?
	Restrictive	?	Discipline authorized in both states

The Implications of Structural Cross-State Discipline

- Under IMLC rules, *any* disciplinary action “**may** be a basis for discipline by other member Boards,” *including* actions that are not grounds for discipline under the other member boards’ state laws
- If state of principal license suspends/revokes license, other member boards **required** to do same; if non-principal license state does so, other members suspend license
- November 2022: States required to impose licensing actions against Compact physician can immediately undo the action “pursuant to the Medical Practice Act of that state”

More information available at:

<https://www.imlcc.org/wp-content/uploads/2022/11/IMLCC-Rule-Chapter-6-Coordinated-Information-System-Joint-Investigations-and-Disciplinary-Actions-Adopted-November-16-2018-Amended-11-8-2022.pdf>

Cross-State
Discipline Has
Benefits, But
Disciplinary
Discordance
Presents
Challenges

- Benefits
 - Protects the integrity of the profession
 - Reduces the risk of future harm to patients
 - Prevents physicians from evading sanctions
- Challenges
 - Creates uncertainty for physicians
 - Has the potential to affect care available to patients in other states

Some Options for Confronting Disciplinary Discordance

- Regulation based on physician, not patient, location
- Unitary professional regulation (federal licensure, or regulations tied to principal state of licensure)
- Medical boards' exercise of discretion
- Statutory shields against extraterritorial disciplinary effects

The Future of Professional Regulation

Our state-based professional regulatory systems arose in an era when medical science was in its infancy, medical standards were local, quality assessment was nearly nonexistent, travel was difficult, and communication technologies were limited.

Given the changes in these factors, to best serve their goal of protecting patients, regulators of medical professionals should push toward:

- Expansion of continuity-of-care and consultation exceptions
- Alternative mechanisms for ensuring cross-state accountability (e.g., registration)
- Evidence-based standards of care, rather than telehealth exceptionalism
- Increasing harmonization of standards of care and disciplinary practices