



ALABAMA STATE BOARD OF MEDICAL EXAMINERS

P.O. BOX 946
MONTGOMERY, ALABAMA 36101-0946
848 WASHINGTON AVE.
MONTGOMERY, ALABAMA 36104

TELEPHONE: (334) 242-4116
FAX: (334) 242-4155
E MAIL: bme@albme.org

Updated April 6, 2020

JOINT NOTICE OF ENFORCEMENT DISCRETION BY THE ALABAMA STATE BOARD OF MEDICAL EXAMINERS AND THE ALABAMA STATE BOARD OF PHARMACY

The Alabama State Board of Medical Examiners (“BME”) and the Alabama State Board of Pharmacy are both charged with regulating and enforcing the prescribing and dispensing of controlled substances by Alabama health care providers. During the state and national public health emergency brought on by the rapid spread of the Severe Adult Respiratory Syndrome-Coronavirus-2 (SARS-CoV-2), health care providers subject to the Alabama Controlled Substances Act are being encouraged to communicate with patients, and provide telehealth services, through remote communications technologies.

The [DEA has recently relaxed prescribing rules](#) to permit the prescribing of controlled substances using telemedicine. The DEA has stated that, so long as the public health emergency remains in effect, DEA-registered practitioners in all areas of the United States may issue prescriptions for all schedule II-V controlled substances to patients **for whom they have not conducted an in-person medical evaluation**, provided all of the following conditions are met:

- The prescription is issued for a legitimate medical purpose by a practitioner acting in the usual course of his/her professional practice;
- The telemedicine communication is conducted using an audio-visual, real-time, two-way interactive communication system; and
- The practitioner is acting in accordance with applicable Federal and State laws.

The DEA noted that if a prescribing practitioner has **previously conducted an in-person medical evaluation of**

the patient, the practitioner may issue a prescription for a controlled substance after having communicated with the patient via telemedicine. In other words, the DEA's requirement that practitioners utilize a real-time audio and visual telemedicine methodology only applies to the prescribing of controlled substances to new patients who have not been physically examined by the practitioner. A performance of an audio-only telemedicine consult with an existing patient by a practitioner would satisfy DEA's guidelines, provided at all times that the controlled substances are prescribed for a legitimate medical purpose and in the usual course of the practitioner's professional practice.

The DEA further stated that practitioners could electronically transmit or call in the controlled substance prescription to the pharmacist. This guidance included calling in Schedule II controlled substance prescriptions, subject to state and local laws. Alabama does not currently permit a Schedule II prescription to be called in as DEA's guidance provides.

In addition, the DEA recognized that there may be instances where providing a paper prescription as follow up to a call in to an emergency oral prescription may be challenging or impossible. To that end, the DEA has allowed for the practitioner to provide the follow up prescription via facsimile, photograph, or scan of paper prescription in place of the paper prescription.

On March 27, 2020, the DEA distributed additional guidance outlining temporary exceptions to Schedule II prescribing during the state and national emergency. The DEA recognized the potential infeasibility for a practitioner to deliver the follow-up paper prescription for a call in prescription to a pharmacy within 7 days as required by 21 CFR 1306.11(d)(4). Therefore, the DEA granted practitioners 15 days within which to provide a follow-up prescription to the pharmacy. The practitioner must ensure that, regardless of the method used to communicate the prescription, the written prescription must include all required information as outlined in 21 CFR 1306.05 and 1306.11(d), including the statement "Authorization for Emergency Dispensing." Practitioners exercising this exception must maintain the original paper prescription in the patient's file. Regardless of any exceptions DEA has made, pharmacists continue to have a corresponding responsibility to ensure any controlled substance prescription filled was issued for a legitimate medical purpose by a practitioner practicing in the usual course of his/her professional practice. 21 CFR 1306.04(a).

Coextensive with the DEA's guidance, the BME and BOP will exercise their enforcement discretion and will not impose penalties for noncompliance with state controlled substance-related regulatory requirements on health care providers who, in good faith, utilize telemedicine to care for their existing patients during the COVID-19 nationwide public health emergency. This notification is effective immediately.

In particular, the BME and BOP will not enforce the prohibition against the communication of a Schedule II controlled substance prescription by a practitioner to a pharmacist via telephone where the practitioner or pharmacist is not equipped or otherwise impeded from utilizing electronic prescribing. Similarly, BME Rule 540-X-4-.08(2)(a) requires that a physical examination be conducted when prescribing a controlled substance for the treatment of chronic pain. For a limited time, and to allow for health care providers to keep themselves, their staff, and their patients safe, the Board will not enforce this physical examination requirement so that health care providers can continue to care for their chronic pain patients.

Further, the BME and BOP will follow the DEA's guidance and will not strictly enforce the requirement that the prescriber follow up an emergency prescription by providing a written paper prescription to the dispensing pharmacist either in person or by mail within 7 days. Instead, the BME and BOP recommend that prescribers provide the written prescription (or via facsimile, photograph, or scan of paper prescription in place of the paper prescription.) to the dispensing pharmacist as soon as is practicable, but not later than 15 days in order to comply with the DEA's guidance.

This use of the BME and BOP's enforcement discretion is aimed at removing regulatory barriers to the use of telemedicine and allow for greater access to medically necessary prescription medication to meet the legitimate health needs of Alabama patients in a time when people are being directed to avoid in-person contact.

This notice will expire at the direction of the DEA or the termination of the state's public health emergency related to the SARS-CoV-2 pandemic, whichever is sooner.