WEST VIRGINIA CODE: §30-4-8B

§30-4-8b. License or registration requirements to practice teledentistry; rules; and penalties.

(a) A person may not provide dental services through teledentistry to a patient who is located at an originating site in this state unless the person:

(1) Is licensed pursuant to this article or registered pursuant to §30-1-1 *et seq*. of this code to practice dentistry or dental hygiene in this state; and

(2) Possesses and maintains a policy of professional liability insurance which insures the provider against any liability arising from the provision of dental services.

(b) A provider who provides dental services through teledentistry including, without limitation, providing consultation and recommendations for treatment, issuing a prescription, diagnosing, or correcting the position of teeth and using orthodontic appliances shall provide such services in accordance with the same standards of care and professional conduct as when providing those services in person or by other means.

(1) A provider may not:

(A) Provide treatment for any condition based solely on the results of an online questionnaire;

(B) Engage in activity that is outside his or her scope of practice while providing services through teledentistry; or

(C) Delegate to a dental hygienist, dental assistant, dental auxiliary, or any other individual any act or duty through teledentistry that requires the in-person supervision of a licensed or registered dentist or that is otherwise outside such individuals permissible scope of practice.

(c) Except as otherwise provided for in §30-4-8b(d), a provider shall establish a bona fide relationship with a patient before providing services to a patient through teledentistry. A bona fide relationship between a patient and a provider shall exist if the provider has:

(1) Reviewed the patient’s relevant history, medical records, diagnostic records, and, if treatment is for the correction of a malposition of teeth, the patient’s current radiographic records;

(A) "Current radiographic records" means those radiographs or images taken contemporaneously; and

(B) Occurring with the in-person examination.

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(2) Performed an appropriate, in-person, physical examination of the patient for the purpose of diagnosing, assessing, developing a treatment plan, or determining the patient's current medical or dental condition; and

(3) A reasonable expectation that he or she provide in-person follow-up care and treatment to the patient on a regular basis.

(d) Notwithstanding the limitations provided in §30-4-8b(c), a provider may establish a relationship with a patient through teledentistry only:

(1) For the purpose of emergent care;

(2) In connection with a public health program; or

(3) To make an initial diagnosis of a malposition of teeth and a determination of the need for an orthodontic appliance. An initial diagnosis and determination must be confirmed through an in-person visit and review of the patient's current radiographic records before the patient begins using the orthodontic appliance.

(e) Prior to the provision of services to a patient through teledentistry, a provider shall:

(1) Confirm the identity of the patient;

(2) If the patient is a minor who is not authorized by law to consent to the services, confirm that the parent or legal guardian of the patient is present;

(3) Confirm that the patient is located in a jurisdiction where the provider is licensed or otherwise authorized to practice and document the location of the patient in the record of the patient;

(4) Obtain:

(A) Informed written consent that meets the requirements of §30-4-8b(g) from a patient who is an adult or a minor authorized by law to provide consent; or

(B) Informed written consent that meets the requirements of §30-4-8b(g) from the parent or guardian of a patient who is a minor and is not authorized by law to provide consent; and

(5) Document the informed consent provided pursuant this subsection in the record of the patient.

(f) Prior to providing services through teledentistry and upon the request of a patient to whom services are provided through teledentistry, a provider or any partnership, corporation, or other entity through which a provider provides services shall make available to the patient proof of the identity of the provider, the telephone number of the provider, the address at which the provider practices, the license or registration number of the provider,

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and any other relevant information concerning the qualifications of the provider, and any other provider who shall be involved in providing the services through teledentistry.

(g) Informed consent to the provision of services through teledentistry requires the patient or his or her parent or guardian to be informed of:

(1) The types of services that will be provided through teledentistry and any limitations on the provision of those services through teledentistry;

(2) The information prescribed by §30-4-8b(f) for each provider who shall provide services through teledentistry;

(3) Precautions to be taken in the event of a technological failure or an emergency; and

(4) Any other information prescribed by legislative rule of the board.

(h) Except in situations requiring emergency treatment, a dentist of record is required for all patients being treated through teledentistry. The dentist of record shall remain primarily responsible for all dental treatment of the patient, regardless of whether treatment has been delegated to a teledentistry provider.

(i) No provider, partnership, corporation, or other entity which provides, or purports to provide teledentistry services or provides a platform, technology, or support services through which teledentistry is provided, may advertise their services unless they employ a provider licensed or registered in this state. Advertisements for teledentistry services must include the following disclaimer, in a conspicuous location, stating the limitations and safety concerns regarding teledentistry:

DISCLAIMER: Orthodontic treatment is a complex biological process that if not done correctly or performed without a thorough examination of the overall health of the teeth and gums could result in the permanent loss of teeth, which may result in additional costs or lifelong dental problems. Teledentistry services are intended to supplement traditional treatment methods and are not intended to replace in-person examinations. It is important to consult with a licensed or registered orthodontist or dentist prior to beginning any treatment.

(j) A provider who provides services through teledentistry shall:

(1) Use communications technology that complies with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191; and

(2) Create a complete record of each encounter with a patient through teledentistry and maintain such records in accordance with applicable federal and state laws and regulations.

(k) (1) A provider who provides services through teledentistry must be adequately familiar with the nature and availability of dental care in the geographical area in which the patient

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is located to ensure that the patient receives appropriate care during the provision of the services.

(2) If a provider is not able to competently provide services through teledentistry, including, without limitation, because the provider is unable to receive adequate information about the patient, the provider must notify the patient of that fact and:

(A) Provide the services in person;

(B) Request any additional information necessary to competently provide the services through teledentistry; or

(C) Refer the patient to an appropriate licensee or registrant to receive the services in person.

(l) A dentist may only delegate tasks to auxiliaries including, but not limited to, dental hygienists and dental assistants, to the extent permitted by existing law.

(m) A provider who provides services through teledentistry shall refer a patient to the emergency department of a hospital or another provider of acute care in an emergency or any other situation where the provision of acute care is necessary to protect the health and safety of the patient.

(n) The board shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq*. of this code regulating dental services offered through teledentistry. Those rules shall include:

(1) The issuance of prescriptions through teledentistry, consistent with the limitations in §30-1-26(b)(5) of this code;

(2) The maintenance of records concerning patients to whom services are provided through teledentistry and the protection of the privacy of such patients;

(3) The development of evidence-based standards;

(4) The use of teledentistry for collaboration between:

(A) Providers and the office of a physician, physician assistant, or advanced practice nurse; and

(B) Providers who practice in different specialty areas; and

(5) Interaction between providers using teledentistry including, without limitation:

(A) The supervision of a dental hygienist by a dentist using teledentistry; and

(B) Interaction between different providers who are providing care to the same patient.

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(6) Evidence-based standards of practice that shall be used when providing services through teledentistry to ensure the safety of patients, the quality of care, and positive outcomes.

(o) It shall be considered unprofessional conduct to:

(1) Fail to actively involve a patient in decisions concerning his or her treatment;

(2) Require a patient to enter into an agreement that restricts the ability of the patient to submit a complaint to the board, file a lawsuit, join a class action lawsuit, make reports to any governmental entity, to require the patient to submit to binding arbitration, or to otherwise limit or prohibit the patient from obtaining relief for deficiencies in the treatment or services they have received;

(3) Fail to perform an in-person examination of a patient or fail to review a patient's diagnostic and radiographic images taken concurrently with the in-person visit prior to initiating treatment, except for those situations enumerated in §30-4-8b(d) of this code;

(4) Fail to review diagnostic digital or conventional radiographs for orthodontia before:

(A) Taking any action to correct a malposition of teeth; or

(B) The initial use of an orthodontic appliance;

(5) Delegate to an auxiliary a task or service that is not indicated or permitted by existing law to be performed by that individual; or

(6) Failure to comply with the requirements of §30-4-8b(f) of this code.

(p) In addition to the grounds for disciplinary action authorized by this article, the board may also take disciplinary action against any provider who is found to be practicing teledentistry in violation of any section or has committed any of the acts specified in §30-4-8b(o) of this code.

(r) The process for instituting and conducting disciplinary proceedings against a teledentistry provider pursuant to this act shall be the same process as that contained in the Dental Practice Act for disciplinary actions.

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