December 20, 2023

Via Email: ***William.Bostock@dch.ga.gov***

Dr. William Bostock, Chair
Georgia Composite Medical Board
2 MLK Jr. Drive SE
East Tower, 11th Floor
Atlanta, Georgia 30334

RE: GCMB Rescission of DEA Flexibilities for Telehealth Prescribing

Dear Dr. Bostock:

During the COVID-19 public health emergency, the Georgia Composite Medical Board ("GCMB" or the "Board") provided physicians and other practitioners with several regulatory flexibilities that were necessary to ensure patients' access to care. These included the ability for physicians and other practitioners registered with the U.S. Drug Enforcement Administration (DEA) to prescribed schedule II-V controlled substances via telemedicine without first seeing the patient for an in-person exam if such prescribing was done in accordance with the DEA's temporary guidance. This flexibility has increased access to primary and specialty care for tens of thousands of patients across the state. Recognizing the importance of this flexibility and to "avoid lapses in care for patients," the DEA **extended** its flexibilities via a temporary rule until the end of 2024 while it works to publish a final rule.[1]

Unfortunately, the Board revoked its teleprescribing flexibility, effective Jan. 1, 2024, without warning at its Dec. 7 meeting,[2] an action that did not involve a public notice and comment period as would usually accompany this type of significant change in public policy. The **press release** rescinding the flexibilities does not provide an explanation for the Board's abrupt action. However, the ability to prescribe controlled substances via telehealth has truly expanded access and enhanced safe care for patients. Physicians, advanced practice providers, hospitals, and health clinics across the state are now scrambling to determine how to maintain access to care for their patients because teleprescribing has become a key part to so many care plans, especially for those who have difficulty attending in-person visits. Some examples of how hospitals and health systems have begun to use telehealth and the

[1] The federal *Ryan Haight Act of 2008* placed restrictions on the ability to prescribe controlled substances without first performing an in-person exam of the patient. The U.S. Congress instructed the DEA in the *SUPPORT for Patients and Communities Act* to establish a "special registration" process by October 2019 that would allow practitioners to prescribe controlled substances without an in-person examination.

[2] The **agenda** for the Dec. 7 Board meeting contained no reference to its rules governing the practice of medicine through electronic means, telemedicine, or its temporary teleprescribing policy.

teleprescribing of controlled substances to safely and effectively increase access to care over the last three years include:

- Cancer Care
- Neurological Services
- Care for Chronic Conditions
- Behavioral Health Care
- Palliative Care
- Virtual Critical Care
- Substance Use Disorder Treatment

Teleprescribing is also of particular benefit to certain groups of patients, including those with:

- cancer
- paraplegia or severe disabilities;
- neurological conditions such as neuropathic pain or epilepsy;
- sleep disorders such as hypersomnia;
- sickle cell disease;
- developmental disabilities or moderate to severe cognitive impairments;
- caregivers with employment constraints;
- financially vulnerable patients that continue to try to work and remain in the workforce;
- an opioid addiction being managed with buprenorphine or similar drugs;
- transportation problems; and
- limited access to health care services in rural areas or other health professional shortage areas.

The DEA has been clear that the primary purpose for extending its temporary rule "is to ensure a smooth transition for patients and practitioners that have come to rely on the availability of telemedicine for controlled medication prescriptions…"[3] The DEA intends to issue a final rule in the fall of 2024 to allow prescribers and patients time to transition to the extent any changes are required.[4] We share the Board's concern regarding the misuse of opioids and other controlled substances and appreciate the work of the Board to stem the tide of the opioid epidemic. However, the Board's action prohibits an orderly transition for Georgia's telehealth patients, including patients being treated with buprenorphine or similar drugs for maintenance and withdrawal management of opioid use disorder. **GHA respectfully requests the Board reconsider its action to rescind its teleprescribing flexibilities and allow Georgia patients continued access to medically necessary medications via telehealth in accordance with DEA policy.**

In light of the Board's new position, GHA has received many questions from hospitals about how the Board's existing teleprescribing of controlled substance regulations may

[3] Second Temporary Extension of COVID-19 Telemedicine Flexibilities for Prescription of Controlled Medications, 88 Fed. Reg. 69879, 69880 (Oct. 10, 2023).

[4] *Id*.

be interpreted moving forward. Hospitals have always had questions about how the Board's telehealth regulations would be interpreted when it comes to prescribing. These questions used to be about whether a new program to increase access could be implemented in Georgia. However, the questions have taken on a new urgency because programs – and access to care – may have to be scaled back or even eliminated due to the Board's recent action. **If the Board is unwilling to fully rescind its action, we request that the Board delay the effective date of its decision until the DEA policy expires in December 2024 and provide additional guidance or examples of when a controlled substance may be prescribed under the existing Georgia regulations.[5]**

Board Rule 360-3-.02(5) states that it is considered unprofessional conduct for a physician to prescribe "controlled substances…for a patient *based solely* on a consultation via electronic means with the patient…" (emphasis added). It is not clear from the current regulations when the Board would consider a prescription to be based solely on a telehealth consultation. For example, what if the patient were seen by the physician for an in-person exam within the last year? What if the previous in-person visit was for a different diagnosis? What if the patient has been referred to another provider in the same practice? What type of documentation is required to demonstrate that a prescription is not based solely on a telehealth consultation? Under Board Rule 360-3-.06, what is considered a "relatively short period of time" for purposes of classifying a patient as having a terminal condition when prescribing pain medication?

We will not have clarity on these and other questions before Jan. 1, 2024, when the Board's teleprescribing flexibilities now terminate. **Prior to limiting access to this form of care, GHA strongly encourages the Board to further examine the use of telehealth in the state, to learn how other state medical boards across the country are handling this issue,[6,7] to identify and study any problems or issues with the use of teleprescribing, and to engage with physicians and patients who are**

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[5] The Board may need to revisit its existing regulations regarding teleprescribing after the DEA publishes its final rule.

[6] Many states have taken an egalitarian approach to teleprescribing of controlled substances whereby the same standards apply regardless of whether a medication is proscribed via an in-person examination or a telehealth visit. *See* Mich. Comp. Laws § 333.7303a.

[7] The Federation of State Medical Board's Model Guidelines on **The Appropriate Use of Telemedicine Technologies** provides:

> Prescribing medications via telemedicine, as is the case during in-person care, is at the professional discretion of the physician. The indication, appropriateness, and safety considerations for each prescription issued during a telemedicine encounter must be evaluated by the physician in accordance with state and federal laws, as well as current standards of practice, and consequently carry the same professional accountability as prescriptions delivered during an encounter in person. However, where such measures are upheld, and the appropriate clinical consideration is carried out and documented, *physicians may exercise their judgment and prescribe medications as part of telemedicine encounters.* (Emphasis added).

currently using teleprescribing to safely and effectively increase access to medically necessary care.

GHA appreciates the Board's urgent attention to this matter, and we look forward to working toward a solution with the Board that balances the need to increase access to care with the need to protect patients from harm.

Sincerely,

Keri F. Conley
General Counsel &
Executive Vice President, Health Care Policy

cc: Daniel Dorsey, Executive Director, GCMB
Lauren Curry, Deputy Chief of Staff, Office of the Governor
Kristyn Long, Chief Operating Officer, Office of the Governor