

2015 Regular Session

HOUSE CONCURRENT RESOLUTION NO. 4

BY REPRESENTATIVE SIMON

A CONCURRENT RESOLUTION

To express the intent of the legislature regarding the standard of care that physicians are required to use in the practice of telemedicine pursuant to the provisions of Act No. 442 of the 2014 Regular Session of the Legislature of Louisiana.

WHEREAS, R.S. 24:177(B)(2) provides, in pertinent part, that the legislature may express the intended meaning of a law in a duly adopted concurrent resolution; and

WHEREAS, recognizing the need to update state law relative to telemedicine in order to accommodate advancing technology and innovations in the practice of medicine, the legislature passed House Bill No. 1280 of the 2014 Regular Session, which became Acts 2014, No. 442, referred to hereafter as "Act No. 442"; and

WHEREAS, a key provision of Act No. 442, now codified as R.S. 37:1271(B)(2)(a), reads as follows: "The physician practicing telemedicine shall use the same standard of care as if the healthcare services were provided in person"; and

WHEREAS, as embodied in the requirement that an equivalent standard of care be used in telemedicine as in the provision of in-person medical services, the intent of Act No. 442 is to ensure patient safety and quality of care while lifting unnecessary restrictions on the delivery of healthcare services through telemedicine; and

WHEREAS, R.S. 37:1262 defines telemedicine as the practice of medicine through interactive telecommunication technology that enables a physician and a patient at two locations separated by distance to interact via two-way video and audio transmissions simultaneously; and

WHEREAS, because telemedicine is simply the practice of "traditional" medicine through technologically advanced methods, it is important as a matter of health policy to combat the misconception that telemedicine is somehow separate and apart from the practice of medicine generally; and

WHEREAS, pursuant to the enactment of Act No. 442, the Louisiana State Board of Medical Examiners, referred to hereafter as "the board", published a notice of intent in the October, 2014 Louisiana Register proposing administrative rules to regulate the practice of telemedicine; and

WHEREAS, these proposed rules exceed the scope of legislative authority delegated to the board as they include specific restrictions on the practice of telemedicine that are not contemplated or authorized in law; and

WHEREAS, notable among the unauthorized restrictions in the proposed rules are those on prescribing of controlled substances; and

WHEREAS, with respect to such prescribing, R.S. 37:1271(B)(3), as enacted by Act No. 442, prohibits a physician from prescribing any controlled dangerous substance through telemedicine prior to conducting an appropriate in-person patient history or physical examination of the patient, except as authorized in rules promulgated by the board; and

WHEREAS, the intent of the exception in R.S. 37:1271(B)(3) is not to authorize restrictions on prescribing that are more strict than the conditions in law relative to conducting an in-person patient history or physical examination, but rather to allow the board to expand physicians' authority to prescribe controlled substances only if the board deems such expanded authority to be in the interest of public health, safety, and welfare; and

WHEREAS, because prescribing of controlled substances when a physician, in his independent medical judgment, sees fit to do so is a legitimate function within the practice of medicine, rules proposing to establish a standard of care in telemedicine that differs in any way from the standard specified in law are inconsistent with the intent of the legislature; and

WHEREAS, with respect to a specific standard of medical care which would apply in a given situation, the Louisiana State Board of Medical Examiners lacks the authority to specify practices or actions which constitute an appropriate standard of care, as the statutes delineating what does and does not constitute an appropriate standard of care are not those providing for the powers of the board (R.S. 37:1261 et seq.), but rather are those which define medical malpractice (R.S. 9:2794 and R.S. 40:1299.39(B) and 1299.41(A)(22)); and

WHEREAS, the provisions of Act No. 442 now codified in R.S. 37:1271(B)(2)(a) and (3) are unambiguous, respectively, in the requirement that a physician who practices telemedicine use the same standard of care as if the healthcare services were provided in

person, and in the authorization for a physician to prescribe a controlled substance through telemedicine after he has conducted an appropriate in-person patient history or physical examination of the patient; and

WHEREAS, R.S. 24:177(B)(1) provides that the text of a law is the best evidence of legislative intent.

THEREFORE, BE IT RESOLVED that the Legislature of Louisiana does hereby express its intent that the provisions of law codified in R.S. 37:1271(B)(2)(a) and (3) establish the standard of care that physicians are required to use in the practice of telemedicine, and does hereby declare that any administrative rules proposing to establish a standard of care that differs in any way from the standard specified in law are inconsistent with the intent of the legislature.

BE IT FURTHER RESOLVED that a copy of this Resolution be transmitted to the members and the executive director of the Louisiana State Board of Medical Examiners.

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

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PRESIDENT OF THE SENATE