

## **AGENDA**

### **CONNECTICUT STATE BOARD OF EXAMINERS FOR PHYSICAL THERAPISTS**

Tuesday, September 14, 2021 at 9:00 AM  
Department of Public Health  
410 Capitol Avenue, Hartford CT

#### **CALL TO ORDER**

**I. MINUTES**

Adoption of the minutes from May 11, 2021

**II. NEW BUSINESS**

A. Public Act 21-152 (Licensure Compacts)

B. Telehealth

#### **ADJOURN**

This meeting will be held by video conference at the link below,

**Board of Examiners for Physical Therapists via Microsoft Teams**

Join on your computer or mobile app

[Click here to join the meeting](#)

**Or call in (audio only)**

[+1 860-840-2075](#)

Phone Conference ID: 975 803 751#

*The following minutes are draft minutes which are subject to revision and which have not yet been adopted by the Board.*

The **Connecticut State Board of Examiners for Physical Therapists** held a meeting on May 11, 2021.

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<b>BOARD MEMBERS PRESENT:</b>	Michael J. Parisi, PT, Chairman Laurie Devaney, PT
<b>BOARD MEMBERS ABSENT:</b>	James Ware, MD
<b>ALSO PRESENT</b>	Stacy Schulman, Esq., Hearing Officer, DPH Jeffrey Kardys, Board Liaison

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The meeting was called to order by Mr. Parisi at 9:01 a.m. All participants were present via Microsoft Teams.

**I. MINUTES**

The minutes from the January 26, 2021 meeting were reviewed. Ms. Devaney made a motion, seconded by Mr. Parisi, to adopt the minutes. The motion passed.

**II. DECLARATORY RULING – DRY NEEDLING**

A. Reinstatement Application Review – Steven Hutt, PT

Stephen Carragher, Public Health Service Manager, DPH Practitioner Licensing and Investigation Section presented license reinstatement application for Steven Hutt.

Mr. Parisi made a motion, seconded by Ms. Devaney, recommending to the Department that Mr. Hutt's license be reinstated after becoming current with twenty credits of continuing education, including the American Physical Therapy Association Home Health Regulation and Documentation course. The motion passed unanimously.

B. Telehealth

The Board discussed issues relating to telehealth and the practice of physical therapy. There will be additional discussion at the next meeting

**III. ADJOURNMENT**

There was no further business and the meeting was adjourned at 9:216 a.m.

Respectfully submitted,  
Michael J. Parisi, PT  
Chairman  
Connecticut State Board of Examiners for Physical Therapists



**Substitute House Bill No. 6449**

**Public Act No. 21-152**

**AN ACT EXPANDING ECONOMIC OPPORTUNITY IN OCCUPATIONS LICENSED BY THE DEPARTMENTS OF PUBLIC HEALTH AND CONSUMER PROTECTION AND REQUIRING A REPORT FROM CERTAIN EXECUTIVE BRANCH AGENCIES REGARDING BACKGROUND CHECKS AND THE FEASIBILITY OF ESTABLISHING PRECLEARANCE ASSESSMENTS OF CRIMINAL HISTORY.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. (NEW) (*Effective October 1, 2021*) (a) An occupational or professional license, permit, certification or registration issued by the Department of Public Health pursuant to chapter 368v, 370, 372, 373, 375, 375a, 376, 376a, 376b, 376c, 377, 378, 378a, 379, 379a, 380, 381, 381a, 381b, 382a, 382b, 382c, 383, 383a, 383b, 383c, 383d, 383e, 383f, 383g, 383h, 384, 384a, 384b, 384c, 384d, 385, 386, 387, 387a, 388, 388a, 393a, 395, 397a, 398, 399, 400a, 400c or 474 of the general statutes shall be issued, in the occupation or profession applied for and at a practice level determined by the department, to a person who is (1) a resident of this state, as defined in section 12-701 of the general statutes, and provides a current driver's license, utility bill, lease agreement or property deed indicating such person's residence in this state; or (2) married to an active duty member of the armed forces of the United States and accompanies such member, pursuant to an official permanent change of station, to a military installation located in this state if:

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(A) The person holds a valid license, permit, certification or registration in at least one other jurisdiction in the United States in the occupation or profession applied for;

(B) The person has practiced under such license, permit, certification or registration for not less than four years;

(C) The person is in good standing in all jurisdictions in the United States in which he or she holds a license, permit, certification or registration and has not had a license, permit, certification or registration revoked or discipline imposed by any jurisdiction in the United States, does not have a complaint, allegation or investigation related to unprofessional conduct pending in any jurisdiction, and has not voluntarily surrendered a license, permit, certification or registration while under investigation for unprofessional conduct in any jurisdiction;

(D) The person satisfies any background check or character and fitness check required of other applicants for the license, permit, certification or registration; and

(E) The person pays all fees required of other applicants for the license, permit, certification or registration.

(b) In addition to the requirements set forth in subsection (a) of this section, the Department of Public Health (1) shall require a resident of this state to take and pass all or a portion of any examination required of other persons applying for the license, permit, certification or registration; and (2) may require a person married to an active duty member of the armed forces of the United States to take all or a portion of such examination.

(c) Any person issued a license, permit, certification or registration pursuant to this section shall be subject to the laws of this state and the jurisdiction of the Department of Public Health.

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(d) Notwithstanding the provisions of this section and pursuant to section 19a-14 of the general statutes, the Commissioner of Public Health may deny an occupational or professional license, permit, certification or registration if he or she finds such denial is in the best interest of the state.

Sec. 2. (*Effective July 1, 2021*) (a) The Commissioner of Public Health shall convene working groups to determine whether Connecticut should join any interstate licensure compacts.

(b) Such working groups shall consist of (1) the Commissioner of Public Health, the Secretary of the Office of Policy and Management, and the executive director of the Office of Health Strategy, or their designees; (2) the chair of the appropriate board of examiners or advisory board, or his or her designee; (3) a representative of the appropriate state professional association; (4) a representative of the professional assistance program for regulated professions established pursuant to section 19a-12a of the general statutes; and (5) any other members the Commissioner of Public Health deems appropriate. Each working group shall convene not later than sixty days after the effective date of this section.

(c) Not later than January 15, 2022, the Commissioner of Public Health shall submit a report, in accordance with the provisions of section 11-4a of the general statutes, to the joint standing committee of the General Assembly having cognizance of matters relating to public health. Such report shall include recommendations that reflect the determinations pursuant to subsection (a) of this section. The working groups shall terminate upon the submission of the report.

Sec. 3. (*Effective July 1, 2021*) Not later than January 15, 2022, the Commissioner of Public Health shall submit a report, in accordance with the provisions of section 11-4a of the general statutes, to the joint standing committee of the General Assembly having cognizance of

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matters relating to public health. Such report shall be developed in consultation with such boards or commissions as the commissioner deems appropriate and shall recommend whether it would be in the best interest of the state (1) for any examination administered by the state pursuant to chapter 368v, 370, 372, 373, chapters 375 to 388a, inclusive, chapter 393a, 395, chapters 397a to 399, inclusive, chapter 400a, 400c or 474 of the general statutes to be administered by a national organization acceptable to the Department of Public Health, and (2) to reduce any experience and training requirements while increasing any such examination's ability to test applicants' knowledge or skills.

Sec. 4. (NEW) (*Effective October 1, 2021*) (a) An occupational or professional license, permit, certification or registration issued by the Department of Consumer Protection pursuant to chapter 389, 390, 391, 392, 394, 396, 396a, 399a, 399b, 400, 400b, 400f, 400g, 400h, 400j, 400m, 400o or 400p of the general statutes shall be issued, in the occupation or profession applied for and at a practice level determined by the department, to a person who is (1) a resident of this state, as defined in section 12-701 of the general statutes, and provides a current driver's license, utility bill, lease agreement or property deed indicating their residence in this state; or (2) married to an active duty member of the armed forces of the United States and accompanies such member, pursuant to an official permanent change of station, to a military installation located in this state, if such person:

(A) Holds a valid license, permit, certification or registration in at least one other jurisdiction in the United States in the occupation or profession applied for;

(B) Has at least four years of experience, including (i) practice under such license, permit, certification or registration, (ii) classroom education, and (iii) on-the-job training;

(C) Is in good standing in all jurisdictions in United States in which

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he or she holds a license, permit, certification or registration and has not had a license, permit, certification or registration revoked or discipline imposed by any jurisdiction, does not have a complaint, allegation or investigation related to unprofessional conduct pending in any jurisdiction and has not voluntarily surrendered a license, permit, certification or registration while under investigation for unprofessional conduct in any jurisdiction;

(D) Satisfies any background check or character and fitness check required of other applicants for the license, permit, certification or registration;

(E) Pays all fees required of other applicants for the license, permit, certification or registration; and

(F) Takes and passes all or a portion of any examination required of other persons applying for the license, permit, certification or registration, except a person married to an active duty member of the armed forces of the United States may be required to take and pass all or a portion of such examination at the discretion of the Commissioner of Consumer Protection.

(b) Any person issued a license, permit, certification or registration pursuant to this section shall be subject to the laws of this state and the jurisdiction of the Department of Consumer Protection.

(c) Notwithstanding the other provisions of this section, the Commissioner of Consumer Protection may deny an occupational or professional license, permit, certification or registration if the commissioner finds such denial is in the best interest of the state.

(d) A person applying for a license, permit, certification or registration that is not required to practice an occupation or profession in at least twenty-five states who relocates to this state from another state that did not require a license, permit, certification or registration to

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practice the person's occupation or profession may be considered to have satisfied the conditions of subparagraphs (A) and (B) of subdivision (2) of subsection (a) of this section if he or she establishes to the satisfaction of the Department of Consumer Protection that he or she has four or more years of related work experience with a substantially similar scope of practice within the five years preceding the date of application to said department.

Sec. 5. Section 20-333 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2021*):

(a) To obtain a license under this chapter, an applicant shall have attained such applicant's eighteenth birthday and shall furnish such evidence of competency as the appropriate board or the Commissioner of Consumer Protection shall require. A recommendation for review issued pursuant to section 31-22u shall be sufficient to demonstrate such competency. The applicant shall satisfy such board or the commissioner that such applicant [is of good moral character,] possesses a diploma or other evidence of graduation from the eighth grade of grammar school, or possesses an equivalent education to be determined on examination and has the requisite skill to perform the work in the trade for which such applicant is applying for a license and can comply with all other requirements of this chapter and the regulations adopted under this chapter. A recommendation for review issued pursuant to section 31-22u shall be sufficient to demonstrate that an applicant possesses such requisite skill and can comply with all other requirements of this chapter and the regulations adopted under this chapter. For any application submitted pursuant to this section that requires a hearing or other action by the applicable examining board or the commissioner, such hearing or other action by the applicable examining board or the commissioner shall occur not later than thirty days after the date of submission for such application. Upon application for any such license, the applicant shall pay to the department a nonrefundable application fee of ninety



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dollars for a license under subdivisions (2) and (3) of subsection (a) and subdivision (4) of subsection (e) of section 20-334a, or a nonrefundable application fee of one hundred fifty dollars for a license under subdivision (1) of subsection (a), subdivisions (1) and (2) of subsection (b), subdivision (1) of subsection (c) and subdivisions (1), (2) and (3) of subsection (e) of section 20-334a. Any such application fee shall be waived for persons who present a recommendation for review issued pursuant to section 31-22u.

(b) The department shall conduct such written, oral and practical examinations as the appropriate board, with the consent of the commissioner, deems necessary to test the knowledge of the applicant in the work for which a license is being sought. The department shall allow any applicant, who has not participated in an apprenticeship program but presents a recommendation for review issued pursuant to section 31-22u, to sit for any such examination. Any person completing the required apprentice training program for a journeyman's license under section 20-334a shall, within thirty days following such completion, apply for a licensure examination given by the department. If an applicant does not pass such licensure examination, the commissioner shall provide each failed applicant with information on how to retake the examination and a report describing the applicant's strengths and weaknesses in such examination. Any apprentice permit issued under section 20-334a to an applicant who fails three licensure examinations in any one-year period shall remain in effect if such applicant applies for and takes the first licensure examination given by the department following the one-year period from the date of such applicant's third and last unsuccessful licensure examination. Otherwise, such permit shall be revoked as of the date of the first examination given by the department following expiration of such one-year period.

(c) The Commissioner of Consumer Protection, subject to section 46a-

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80, may deny a license or may issue a license pursuant to a consent order containing conditions that shall be met by the applicant if the applicant reports that he or she has been found guilty or convicted as a result of an act which constitutes a felony under (1) the laws of this state at the time of application for such license, (2) federal law at the time of application for such license, or (3) the laws of another jurisdiction, and which, if committed within this state, would constitute a felony under the laws of this state.

[(c)] (d) When an applicant has qualified for a license, the department shall, upon receipt of the license fee or upon waiver of such fee pursuant to section 20-335, issue to such applicant a license entitling such applicant to engage in the work or occupation for which a license was sought and shall register each successful applicant's name and address in the roster of licensed persons authorized to engage in the work or occupation within the appropriate board's authority. All fees and other moneys collected by the department shall be promptly transmitted to the State Treasurer as provided in section 4-32.

Sec. 6. (Effective October 1, 2021) The Departments of Administrative Services, Agriculture, Consumer Protection, Correction, Emergency Services and Public Protection and Public Health, the Labor Department, and the Office of Early Childhood shall, not later than January 1, 2022, report to the Secretary of the Office of Policy and Management on (1) the number of employees who perform background checks related to the department's or office's licensing functions, the job classifications of such employees, and the type or level of clearance of the background checks that are being performed, (2) the number of hours each such employee spends on average per week performing background checks, and (3) for any licenses in which some education or training is required of the applicant prior to obtaining a license, the feasibility of establishing a preclearance assessment of criminal history prior to potential applicants beginning such education or training. Such

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recommendations shall additionally assess the feasibility of centralizing and standardizing background checks performed by state government agencies and shall address any related issues of delegation of authority by such agencies.

Approved July 12, 2021

# STATE OF CONNECTICUT

## DEPARTMENT OF PUBLIC HEALTH

Deidre S. Gifford, MD, MPH  
Acting Commissioner



Ned Lamont  
Governor  
Susan Bysiewicz  
Lt. Governor

### ORDER

**Whereas**, on March 10, 2020, Governor Ned Lamont (the Governor), in response to the global pandemic of 2019 Coronavirus disease (COVID-19), declared a public health and civil preparedness emergency throughout the State of Connecticut pursuant to Sections 19a-131a and 28-9 of the Connecticut General Statutes, to remain in effect through September 9, 2020, unless sooner terminated by the Governor; and

**Whereas**, on September 1, 2020, the Governor renewed the March 10, 2020 declaration of public health and civil preparedness emergencies and also issued new declarations of public health and civil preparedness emergencies, which new and renewed emergencies shall remain in effect until February 9, 2021, unless earlier terminated; and

**Whereas**, on December 18, 2020, the Governor signed Executive Order No. 9S modifying Section 19a-131j(a) of the Connecticut General Statutes authorizing the Commissioner of Public Health to temporarily suspend, for the duration of the public health and civil preparedness emergency, the requirements for licensure, certification or registration pursuant to sections 19a-512 and 19a-513 of the Connecticut General Statutes (nursing home administrators), and chapters 368d (Emergency Medical Services), 370 (Medicine and Surgery), 376 (Physical Therapists), 376a (occupational therapist), 376b (alcohol and drug counselor), 376c (radiographer, radiologic technologist, radiologist assistant and nuclear medicine technologist), 378 (Nursing), 378a (Nurse's Aides), 379 (dentist), 379a (dental hygienist), 381a (Respiratory Care Practitioners), 382a (behavior analyst), 383 (Psychologists), 383a (Marital and Family Therapists), 383b (Clinical Social Workers and Master Social Workers), 383c (Professional Counselors), 383d (genetic counselor), 383f (music therapist), 383g (art therapist), 384b (dietician-nutritionist), 384d (Emergency Medical Services Personnel), 385 (Embalmers and Funeral Directors), 399 (speech and language pathologist); and 400j (Pharmacy), to allow persons who are appropriately licensed, certified or registered in another state or territory of the United States or the District of Columbia, to render temporary assistance in Connecticut within the scope of the profession for which a provider is licensed, certified or registered.

**Now, Therefore**, based on concerns relative to COVID-19, and in accord with the authority set forth above and pursuant to Section 19a-131j(a) of the Connecticut General Statutes, as modified by Executive Order No. 9S, unless sooner terminated by me or unless the Governor sooner repeals or modifies the declared emergencies or Executive Order No. 9S, **I hereby order, effective immediately, the temporary suspension, for the duration of the public health and civil preparedness emergency, of the requirements for licensure, certification or registration**, pursuant to sections 19a-512 and 19a-513 of the Connecticut General Statutes (nursing home administrators), and chapters 368d (Emergency Medical Services), 370 (Medicine and Surgery), 376 (Physical Therapists), 376a (occupational therapist), 376b (alcohol and drug counselor), 376c (radiographer, radiologic technologist, radiologist assistant and nuclear medicine technologist), 378 (Nursing), 378a (Nurse's Aides), 379 (dentist), 379a (dental hygienist), 381a (Respiratory Care Practitioners), 382a (behavior analyst), 383 (Psychologists), 383a (Marital and Family Therapists), 383b (Clinical Social Workers and Master Social Workers), 383c (Professional Counselors), 383d (genetic counselor), 383f (music therapist), 383g (art therapist), 384b (dietician-



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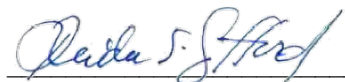
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nutritionist), 384d (Emergency Medical Services Personnel), 385 (Embalmers and Funeral Directors), 399 (speech and language pathologist); and 400j (Pharmacy), to allow persons who are appropriately licensed, certified or registered in another state or territory of the United States or the District of Columbia, to render temporary assistance in Connecticut within the scope of the profession for which a provider is licensed, certified or registered; provided that:

1. Nothing herein shall be construed to permit such provider to provide services beyond the scope allowed in the chapter of the Connecticut General Statutes specified that pertains to such provider's profession;
2. Any such provider would be required to have and maintain malpractice or other form of liability insurance as required if such provider were licensed in Connecticut and shall have and maintain such insurance coverage in the form and amount required for his or her entire period of assistance in Connecticut;
3. Any Connecticut business or medical entity which engages or contracts with any such out-of-state provider shall be required to verify the credentials of such provider in the state in which he or she is licensed, certified or registered, ensure that such provider is in good standing in such state, and confirm the required insurance coverage.
4. Any such provider who is enrolled in Medicaid or a fully insured commercial plan shall accept the Medicaid or in-network reimbursement, respectively, as payment in full for his or her services.
5. Any such provider who provides medical services for a patient in Connecticut who is not a Medicaid beneficiary or covered by a fully insured commercial plan, may provide such services for such patient provided that such provider, prior to engaging in such services, must determine whether a patient is covered by a health plan other than Medicaid or a fully insured commercial plan, and whether such plan provides coverage for such services. Any such provider who receives payment under such health plan shall not bill a patient for any additional charges beyond the reimbursement received under such health plan. Any such provider who determines that payment is not available under another such health plan or who determines a patient is uninsured, shall accept as reimbursement for that service, as payment in full, the amount that Medicare reimburses for such service, provided that if such provider determines that the patient is uninsured or otherwise unable to pay for such services, such provider shall offer financial assistance if such provider is otherwise required to provide financial assistance under state or federal law.
6. Prior Orders regarding the temporary suspension of licensure, certification or registration for out-of-state providers, issued by the Commissioner of Public Health on March 23, 2020, May 15, 2020 and July 14, 2020, are hereby superseded.

Ordered this 24th day of December 2020



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Deidre S. Gifford, MD, MPH  
Acting Commissioner

## **Memorandum of Law Regarding Interstate Telehealth Treatment**

### **Question:**

If a patient is a New York (or out-of-state) resident; had their initial visit in Connecticut; and, plans to have their follow-ups by telehealth with a Connecticut provider, must the doctor be licensed in Connecticut or New York (or state of the patient's residency)?

### **Answer:**

The required location for a licensed physician varies by state. Currently most states have emergency orders in place that waive the requirement that a physician be licensed in the state that their patient is a resident of. New York, for example, pursuant to Executive Order 202.05, allows for any licensed physician in current good standing in any state to practice medicine in New York State without civil or criminal penalty related to lack of licensure. This executive order has been extended to June 16, 2021 by Executive Order 202.108. Without this order however, full licensure and registration would be required to practice medicine in New York State, regardless of whether that treatment is administered through telecommunication.

### **Rule:**

States have their own laws regarding licensure requirements. New York statute requires full licensure and current registration of any professional who practices in New York State, unless specifically suspended or waived pursuant to an Executive Order issued by the New York

State Governor during a disaster emergency.<sup>1</sup> On March 7, 2020, New York’s Governor Cuomo issued Executive Order Number 202, declaring a state of emergency for the entire state.<sup>2</sup> This gives the Governor authority under “Section 29-a of Article 2-B of the Executive Law to temporarily suspend or modify any state, local law, ordinance, order, rule, or regulation... [that] would prevent, hinder, or delay action necessary to cope with the disaster emergency.”<sup>3</sup>

Executive Order Number 202.5 expanded upon the March 7 declaration. 202.5 temporarily suspended “[s]ections 6512 through 6516, and 6534 of the Education Law and Part 60 of Title 8 of the NYCRR, to the extent necessary to allow physician’s licensed and in current good standing in any state in the United States to practice in New York State without civil or criminal penalty related to lack of registration”.<sup>4</sup> Originally meant to last only until April 17, 2020, all executive orders have been continuously extended. The latest, Executive Order Number 202.108, extends the suspension until June 16, 2021.

Another relevant exception is New York Statute section 6526(2) which states that “any physician who is licensed in a bordering state and who resides near a border of this state, provided such practice is limited in this state to the vicinity of such border and provided such physician does not maintain an office or place to meet patients or receive calls within this state” may practice without a license.<sup>5</sup>

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<sup>1</sup> *WHAT IS TELEPRACTICE?*, THE STATE EDUCATION DEPARTMENT (accessed May 20, 2021), Telepractice Memo (nysed.gov).

<sup>2</sup> 9 NYCRR § 8.202

<sup>3</sup> *Id.*

<sup>4</sup> 9 NYCRR § 8.202.5

<sup>5</sup> NY CLS Educ § 6526(2).

## **Analysis:**

It is a crime under New York Education Law to practice medicine without a New York license.<sup>6</sup> The law makes no differentiation between a doctor who treats a patient in person versus a doctor who provides treatment through telecommunicative means. If a doctor in Connecticut were to provide telehealth treatment to a patient in New York, they would be violating this law if the patient's primary residence is in New York. The fact that the patient may have had an initial consultation in Connecticut would not play a factor in this scenario.

The most prominent exception to this rule becomes relevant during a declaration of a state of emergency. Covid-19 created a sufficient enough state of emergency that allowed Governor Cuomo to temporarily waive the requirements of this law, because it inhibits action necessary to cope with the crisis.<sup>7</sup> It can be reasonably seen how prohibiting telehealth treatment from out-of-state doctors would negatively impact the health and safety of a population whose need for medical support was drastically increasing. Since the declaration of Emergency Order 8.202, there has been no restriction on out-of-state licensed physicians providing telehealth treatment to patients in New York.

This is not a permanent exception though. Currently the emergency order has been extended to June 16, 2021.<sup>8</sup> It is entirely likely that this temporary suspension will be extended further, but this cannot be guaranteed. However, there does exist an exception to New York licensing laws that is not temporary. A physician in another state who is near the border of New York, may provide treatment to a New York patient who is also located near the same

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<sup>6</sup> See *generally* NY CLS Educ § 6512-6516.

<sup>7</sup> See 9 NYCRR § 8.202.

<sup>8</sup> See 9 NYCRR § 8.202.108.



border.<sup>9</sup> The physician is not permitted to maintain an office within New York though.<sup>10</sup> The issue with this exception is that there is no definition of what is considered close enough to the state border. It does not appear that any case law has accurately defined this requirement either. This exception is still worth noting though, because if the physician and patient are within a close enough vicinity, but separated by the border, the emergency order justification may be able to be bypassed entirely.

It's also important to keep in mind that telehealth has only recently gained significant attention. There are many who advocate for the expansion of telehealth access. The laws being cited here were not written with telehealth in mind. Governor Cuomo is currently looking to expand telehealth access beyond the borders of New York. Specifically, there is discussion about developing an interstate licensing reciprocity with northeastern states for specialties that suffer from access shortages.<sup>11</sup> While this is only being discussed currently, it signifies a potential change in telehealth regulation.

### **Conclusion:**

Telehealth licensing restrictions vary by state. New York currently allows for out-of-state physicians to provide treatment to New York residents due to an active Executive Order. Unless the Executive Order is extended, this privilege will end on June 16, 2021. Without the Executive Order, no physician may provide treatment, telehealth or in person, to any New York resident

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<sup>9</sup> NY CLS Educ § 6526(2).

<sup>10</sup> *Id.*

<sup>11</sup> *Governor Cuomo Announces Proposal to Expand Access to Telehealth for All as Part of 2021 State of the State*, NEW YORK STATE (Jan 10, 2021), <https://www.governor.ny.gov/news/governor-cuomo-announces-proposal-expand-access-telehealth-all-part-2021-state-state>.

without a state license (unless they are within close enough vicinity to the state border). These laws may be on their way towards a change, but currently, without expressed waiver of requirements from of Governor's Office, an out of state physician may not use telehealth to provide treatment to a New York patient without a state license.

**John Tyler Castellanete**  
Interim Paralegal, FOI  
Legal Office  
Connecticut Department of Public Health  
[Dph.foi@ct.gov](mailto:Dph.foi@ct.gov) | 860-509-8167



**Sec. 19a-906. Telehealth services.** (a) As used in this section:

- (1) “Asynchronous” means any transmission to another site for review at a later time that uses a camera or other technology to capture images or data to be recorded.
- (2) “Facility fee” has the same meaning as in section 19a-508c.
- (3) “Health record” means the record of individual, health-related information that may include, but need not be limited to, continuity of care documents, discharge summaries and other information or data relating to a patient's demographics, medical history, medication, allergies, immunizations, laboratory test results, radiology or other diagnostic images, vital signs and statistics.
- (4) “Medical history” means information, including, but not limited to, a patient's past illnesses, medications, hospitalizations, family history of illness if known, the name and address of the patient's primary care provider if known and other matters relating to the health condition of the patient at the time of a telehealth interaction.
- (5) “Medication-assisted treatment” means the use of medications approved by the federal Food and Drug Administration, in combination with counseling and behavioral therapies, to provide a whole-patient approach to the treatment of substance use disorders.
- (6) “Originating site” means a site at which a patient is located at the time health care services are provided to the patient by means of telehealth.
- (7) “Peripheral devices” means the instruments a telehealth provider uses to perform a patient exam, including, but not limited to, stethoscope, otoscope, ophthalmoscope, sphygmomanometer, thermometer, tongue depressor and reflex hammer.
- (8) “Remote patient monitoring” means the personal health and medical data collection from a patient in one location via electronic communication technologies that is then transmitted to a telehealth provider located at a distant site for the purpose of health care monitoring to assist the effective management of the patient's treatment, care and related support.
- (9) “Store and forward transfer” means the asynchronous transmission of a patient's medical information from an originating site to the telehealth provider at a distant site.
- (10) “Synchronous” means real-time interactive technology.
- (11) “Telehealth” means the mode of delivering health care or other health services via information and communication technologies to facilitate the diagnosis, consultation and treatment, education, care management and self-management of a patient's physical and mental health, and includes (A) interaction between the patient at the originating site and the telehealth provider at a distant site, and (B) synchronous interactions, asynchronous store and forward transfers or remote patient monitoring. Telehealth does not include the use of facsimile, audio-only telephone, texting or electronic mail.
- (12) “Telehealth provider” means any physician licensed under chapter 370, **physical therapist licensed under chapter 376**, chiropractor licensed under chapter 372, naturopath licensed under chapter 373, podiatrist licensed under chapter 375, occupational therapist licensed under chapter 376a, optometrist licensed under chapter 380, registered nurse or advanced practice registered nurse licensed under chapter

378, physician assistant licensed under chapter 370, psychologist licensed under chapter 383, marital and family therapist licensed under chapter 383a, clinical social worker or master social worker licensed under chapter 383b, alcohol and drug counselor licensed under chapter 376b, professional counselor licensed under chapter 383c, dietitian-nutritionist certified under chapter 384b, speech and language pathologist licensed under chapter 399, respiratory care practitioner licensed under chapter 381a, audiologist licensed under chapter 397a or pharmacist licensed under chapter 400j, who is providing health care or other health services through the use of telehealth within such person's scope of practice and in accordance with the standard of care applicable to the profession.

(b) (1) A telehealth provider shall only provide telehealth services to a patient when the telehealth provider: (A) Is communicating through real-time, interactive, two-way communication technology or store and forward technologies; (B) has access to, or knowledge of, the patient's medical history, as provided by the patient, and the patient's health record, including the name and address of the patient's primary care provider, if any; (C) conforms to the standard of care applicable to the telehealth provider's profession and expected for in-person care as appropriate to the patient's age and presenting condition, except when the standard of care requires the use of diagnostic testing and performance of a physical examination, such testing or examination may be carried out through the use of peripheral devices appropriate to the patient's condition; and (D) provides the patient with the telehealth's provider license number and contact information.

(2) At the time of the telehealth provider's first telehealth interaction with a patient, the telehealth provider shall inform the patient concerning the treatment methods and limitations of treatment using a telehealth platform and, after providing the patient with such information, obtain the patient's consent to provide telehealth services. The telehealth provider shall document such notice and consent in the patient's health record. If a patient later revokes such consent, the telehealth provider shall document the revocation in the patient's health record.

(c) Notwithstanding the provisions of this section or title 20, no telehealth provider shall prescribe any schedule I, II or III controlled substance through the use of telehealth, except a schedule II or III controlled substance other than an opioid drug, as defined in section 20-14o, in a manner fully consistent with the Ryan Haight Online Pharmacy Consumer Protection Act, 21 USC 829(e), as amended from time to time, for the treatment of a person with a psychiatric disability or substance use disorder, as defined in section 17a-458, including, but not limited to, medication-assisted treatment. A telehealth provider using telehealth to prescribe a schedule II or III controlled substance pursuant to this subsection shall electronically submit the prescription pursuant to section 21a-249.

(d) Each telehealth provider shall, at the time of the initial telehealth interaction, ask the patient whether the patient consents to the telehealth provider's disclosure of records concerning the telehealth interaction to the patient's primary care provider. If the patient consents to such disclosure, the telehealth provider shall provide records of all telehealth interactions to the patient's primary care provider, in a timely manner, in accordance with the provisions of sections 20-7b to 20-7e, inclusive.

(e) Any consent required under this section shall be obtained from the patient, or the patient's legal guardian, conservator or other authorized representative, as applicable.

(f) The provision of telehealth services and health records maintained and disclosed as part of a telehealth interaction shall comply with the provisions of the Health Insurance Portability and Accountability Act of 1996 P.L. 104-191, as amended from time to time.

(g) Nothing in this section shall prohibit: (1) A health care provider from providing on-call coverage pursuant to an agreement with another health care provider or such health care provider's professional entity or employer; (2) a health care provider from consulting with another health care provider concerning a patient's care; (3) orders of health care providers for hospital outpatients or inpatients; or (4) the use of telehealth for a hospital inpatient, including for the purpose of ordering any medication or treatment for such patient in accordance with Ryan Haight Online Pharmacy Consumer Protection Act, 21 USC 829(e), as amended from time to time. For purposes of this subsection, "health care provider" means a person or entity licensed or certified pursuant to chapter 370, 372, 373, 375, 376 to 376b, inclusive, 378, 379, 380, 381a, 383 to 383c, inclusive, 384b, 397a, 399 or 400j, or licensed or certified pursuant to chapter 368d or 384d.

(h) No telehealth provider shall charge a facility fee for telehealth services.