



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

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

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

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

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

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

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

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

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

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

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

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

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DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

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HCR 4 Original

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Simon

Present law, R.S. 24:117(B)(2), authorizes the legislature to express the intended meaning of a law in a duly adopted concurrent resolution.

Present law, R.S. 37:1271(B)(2)(a) and (3), requires that a physician who practices telemedicine use the same standard of care as if the healthcare services were provided in person, and authorizes 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.

Proposed resolution expresses the intent of the legislature that present law establishes the standard of care that physicians are required to use in the practice of telemedicine, and declares that any administrative rules proposing to establish a standard of care that differs from the standard specified in law are inconsistent with the intent of the legislature.