

## IDAPA 24 – DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSES

### IDAHO STATE BOARD OF MEDICINE

#### 24.33.03 – General Provisions of the Board of Medicine

##### **Who does this rule apply to?**

*This rule applies to medical physicians, osteopathic physicians, physician assistants, athletic trainers, respiratory therapists, dietitians, and naturopathic medical doctors who are licensed or seek to be licensed under the Board of Medicine (“Board”). This rule also applies to polysomnographers who seek to be permitted under the Board.*

##### **What is the purpose of this rule?**

*The purpose of this rule is to provide information on the eligibility and requirements for licensure or permitting, requirements for renewal licensure or permitting, license by endorsement, provisional licensure, and inactive or volunteer licenses. In addition, this rule provides grounds for discipline of a license or permit along with complaint investigation. This rule also provides guidelines for the practice of telehealth.*

##### **What is the legal authority for the agency to promulgate this rule?**

*This rule implements the following statutes passed by the Idaho Legislature:*

The Medical Practice Act -

Physicians and Physician Assistants:

- [54-1801, et seq.](#)
- [54-1806, Idaho Code](#) – Powers and Duties
- [54-1806A, Idaho Code](#) – Medical Disciplinary Enforcement
- [54-1808, Idaho Code](#) – The Board to Issue Licenses
- [54-1813, Idaho Code](#) – Temporary License and Registration
- [54-1814, Idaho Code](#) – Grounds for Medical Discipline
- [54-1841, Idaho Code](#) – Volunteer’s License – Qualifications

The Athletic Trainer Practice Act -

- [54-3901, et seq.](#)

The Respiratory Care Practice Act -

- [54-4301, et seq.](#)

The Dietitian Practice Act

- [54-3501, et seq.](#)

##### **Who do I contact for more information on this rule?**

Idaho State Board of Medicine

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## 24.33.03 – GENERAL PROVISIONS OF THE BOARD OF MEDICINE

### 000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Sections 54-1806(2), and 54-5713, Idaho Code. (4-11-19)

### 001. TITLE AND SCOPE.

The title of this chapter is IDAPA 24.33.03, “General Provisions of the Board of Medicine.” This chapter has the following scope: these rules govern general aspects of Board of Medicine operations, complaint investigation and telehealth services. (4-11-19)

### 002. -- 099. (RESERVED)

### 100. GENERAL QUALIFICATIONS FOR LICENSURE.

**01. Applicant.** An applicant must meet the statutory requirements of licensure. The Board may refuse licensure or to issue a permit if it finds the applicant has engaged in conduct prohibited by state law for that specific category of licensure; provided the Board will take into consideration the rehabilitation of the applicant and other mitigating circumstances. (3-20-20)

**02. Licensure.** Each applicant must have attained the level of education required by the Board, and have passed an examination required by the Board, or be entitled to apply by Licensure by Endorsement, or provisional licensure, if applicable. (3-20-20)

**03. Application.** All applications for license or permit will be made to the Board on forms supplied by the Board, will be verified, must include all requested information, and must include the nonrefundable application fee. (3-20-20)

**04. Application Expiration.** All applicants must complete their license application within one (1) year unless extended by the Board after filing an application for extension. Unless extended, applications that remain on file for more than one (1) year will be considered null and void and a new application and new fees will be required as if filing for the first time. (3-20-20)

**05. Personal Interview.** The Board may, at its discretion, require the applicant to appear for a personal interview. (3-20-20)

**06. Residence.** No period of residence in Idaho is required of any applicant, however, each applicant for licensure must be legally able to work and live in the United States. Original documentation of lawful presence in the United States must be provided upon request only. The Board may refuse licensure or to renew a license if the applicant is not lawfully present in the United States. (3-20-20)

### 101. LICENSE OR PERMIT EXPIRATION AND RENEWAL.

**01. License Expiration.** Licenses and permits will be issued for a period of not more than five (5) years. All licenses expire on the expiration date printed on the face of the certificate and become invalid after that date unless renewed. The Board will collect a fee for each renewal year of a license. Prorated fees may be assessed by the Board to bring the expiration date of the license within the next occurring license renewal period. (3-20-20)

**02. Renewal.** Each license to practice medicine may be renewed prior to its expiration date by the payment of a renewal fee to the Board and by completion of a renewal form provided by the Board. In order to be eligible for renewal, a licensee must provide a current address and e-mail address to the Board and must notify the Board of any change of address or e-mail address prior to the renewal period. Licenses not renewed by their expiration date will be canceled. (3-20-20)

**03. Reinstatement.** Licenses canceled for nonpayment of renewal fees may be reinstated by filing a reinstatement application on forms prescribed by the Board and upon payment of a reinstatement fee and applicable renewal fees for the period the license was lapsed. (3-20-20)

**04. Reapplication.** A person whose license has been canceled for a period of more than five (5) years, is required to make application to the Board as a new applicant for licensure. (3-20-20)

### 102. LICENSE BY ENDORSEMENT.

Where permitted by law, an applicant, in good standing with no restrictions upon or actions taken against their license to practice in a state, territory or district of the United States or Canada is eligible for licensure by endorsement to

practice medicine in Idaho. An applicant with any disciplinary action, including past, pending, or confidential, by any board of medicine, licensing authority, medical society, professional society, hospital, medical school or institution staff in any state, territory, district or country is not eligible for licensure by endorsement. An applicant ineligible for licensure by endorsement may make a full and complete application pursuant to the requirements found in Title 54, Idaho Code, IDAPA 24.33.03, and on Board-approved forms. (3-20-20)

**01. Application.** All applications for license or permit will be made to the Board on forms supplied by the Board, will be verified, must include all requested information, and the nonrefundable application fee. (3-20-20)

**02. Character.** An applicant is not eligible for licensure by endorsement if the Board finds the applicant has engaged in conduct prohibited by state law for that specific category of licensure. (3-20-20)

**03. Residence.** No period of residence in Idaho is required of any applicant, however, each applicant for licensure must be legally able to work and live in the United States. Original documentation of lawful presence in the United States must be provided upon request. The Board may refuse licensure or to renew a license if the applicant is not lawfully present in the United States. (3-20-20)

### **103. PROVISIONAL LICENSURE.**

Where permitted by law, the Board may issue a provisional license to a person who has successfully completed the academic requirements required by the Board and has met all the other requirements for licensure set forth in statute, but who has not yet passed the relevant examination required by the Board for licensure in their specific profession. (3-20-20)

**01. Application.** Each applicant for provisional licensure will submit a completed written application to the Board on forms prescribed by the Board, together with the application fee, and all requested information, including the affidavit of a monitor licensed to practice the same profession in the state who will undertake the supervision of the provisional licensee. (3-20-20)

**02. Affidavit.** An affidavit must be signed by an monitor licensed in Idaho to practice the same profession, in which they affirm and attest to supervise and be responsible for the activities of the provisionally licensed provider being supervised and to review and countersign all records and documentation of services performed by the provisionally licensed provider. (3-20-20)

**03. Supervision.** The practice of a provider holding a provisional license will be in direct association with an Idaho licensee of the same profession who shall is responsible for the activities of the provisionally licensed provider being supervised and will review and countersign all patient documentation performed by the provisionally licensed provider. The supervising monitor need not be physically present or on the premises at all times but will be available for telephonic consultation. The extent of communication between the monitor and the provisionally licensed provider will be determined by the competency of the individual, the treatment setting, and the diagnostic category of the patients. (3-20-20)

### **104. INACTIVE LICENSE**

**01. Issuance of Inactive License.** Any applicant who is eligible to be issued a license by the Board, except a volunteer license, may be issued, upon request, an inactive license to practice on the condition that he will not engage in the practice of the relevant profession in this state. An inactive license fee will be collected by the Board. (3-20-20)

**02. Renewal of Inactive License.** Inactive licenses will be issued for a period of not more than five (5) years and such licenses will be renewed upon payment of an inactive license renewal fee of no more than one hundred dollars (\$100) for each renewal year. The inactive license certificate will set forth its date of expiration. (3-20-20)

**03. Inactive to Active License.** An inactive license may be converted to an active license by application to the Board and payment of required fees. Before the license will be converted the applicant must account for the time during which an inactive license was held. The Board may, in its discretion, require a personal interview. (3-20-20)

105. -- 149. (RESERVED)

**150. ADDITIONAL GROUNDS FOR SUSPENSION, REVOCATION, DISCIPLINARY SANCTIONS OR DENIAL OR RESTRICTION OF A LICENSE.**

**01. Discipline.** In addition to the grounds for discipline set forth in Idaho Code, every person licensed or permitted by the Board is subject to discipline upon any of the following grounds: (3-20-20)

**02. Unethical Advertising.** Advertising the licensee or permittee's practice in any unethical or unprofessional manner, including but not limited to: (3-20-20)

**a.** Using advertising or representations likely to deceive, defraud or harm the public. (3-20-20)

**b.** Making a false or misleading statement regarding the licensee or permittee's skill or the efficacy or value of the treatment, remedy, or service offered, performed, or prescribed by the licensee or permittee. (3-20-20)

**03. Standard of Care.** Providing health care that fails to meet the standard of health care provided by other qualified licensees or permittees of the same profession, in the same community or similar communities, including but not limited to: (3-20-20)

**a.** Being found mentally incompetent or insane by any court of competent jurisdiction. (3-20-20)

**b.** Engaging in practice or behavior that demonstrates a manifest incapacity or incompetence to practice his or her profession. (3-20-20)

**c.** Allowing another person or organization to use his or her license or permit to practice his or her profession. (3-20-20)

**d.** Prescribing, selling, administering, distributing or giving any drug legally classified as a controlled substance or recognized as an addictive or dangerous drug to himself or herself or to a spouse, child or stepchild. (3-20-20)

**e.** Using any controlled substance or alcohol to an extent that use impairs the licensee or permittee's ability to practice his or her profession competently. (3-20-20)

**f.** Violating any state or federal law or regulation relating to controlled substances. (3-20-20)

**g.** Directly promoting surgical procedures or laboratory tests that are unnecessary and not medically indicated. (3-20-20)

**h.** Failure to transfer pertinent and necessary medical records to another provider when requested to do so by the subject patient or client or by his or her legally designated representative. (3-20-20)

**i.** Failing to maintain adequate records. Adequate patient or client records means legible records that contain, at a minimum, subjective information, an evaluation and report of objective findings, assessment or diagnosis, and the plan of care. (3-20-20)

**j.** Providing care or performing any service outside the licensee or permittee's scope of practice as set forth in Idaho Code, including providing care or performing a service without supervision, if such is required by Idaho Code or Board rule. (3-20-20)

**k.** Failing to have a supervising or directing physician who is licensed by the Board, if such supervision is required by Idaho Code or Board rule. (3-20-20)

**04. Conduct.** Engaging in any conduct that constitutes an abuse or exploitation of a patient or client arising out of the trust and confidence placed in the licensee or permittee by the patient or client, including but not limited to: (3-20-20)

- a. Obtaining any fee by fraud, deceit or misrepresentation. (3-20-20)
- b. Employing abusive billing practices. (3-20-20)
- c. Commission of any act of sexual contact, misconduct, exploitation or intercourse with a patient or client or former patient or client or related to the licensee's practice. (3-20-20)
  - i. Consent of the patient or client shall not be a defense. (3-20-20)
  - ii. This Section 150 does not apply to sexual contact between a licensee or permittee and the licensee or permittee's spouse or a person in a domestic relationship who is also a patient or client. (3-20-20)
  - iii. A former patient or client includes a patient or client for whom the licensee or permittee has provided services related to the licensee or permittee's practice, including prescriptions, within the last twelve (12) months; sexual or romantic relationships with former patients or clients beyond that period of time may also be a violation if the licensee or permittee uses or exploits the trust, knowledge, emotions or influence derived from the prior professional relationship with the patient or client. (3-20-20)
- d. Accepting any reimbursement for service, beyond actual expenses, while providing services under a volunteer license. (3-20-20)
- e. Employing, supervising, directing, aiding or abetting a person not licensed or permitted in this state who directly or indirectly performs activities or provides services requiring a license or permit. (3-20-20)
- f. Failing to report to the Board any known act or omission of a Board licensee or permittee that violates any provision of these rules. (3-20-20)
- g. Interfering with an investigation or disciplinary proceeding by willful misrepresentation of facts or by use of threats or harassment against any patient or client, Board or Advisory Board or Committee member, Board staff, hearing officer, or witness in an attempt to influence the outcome of a disciplinary proceeding, investigation, or other legal action. (3-20-20)
- h. Failing to obey any and all state and local laws and rules related to the licensee or permittee's practice or profession. (3-20-20)

**151. COMPLAINTS.**

Complaints may be submitted in writing to the Board, and will include the name of the provider, the approximate date of the incident or care, the concerns regarding the incident or care, along with the complainant's e-mail address, telephone number, and mailing address. Complaints will be reviewed to determine if they fall under the jurisdiction of the Board, upon which determination, an investigation will ensue. Disposition of investigations will be determined following recommendations to the Board by the Committee on Professional Discipline or the appropriate allied health board or committee. (3-20-20)

**152. NOTICE.**

The Board will notify, in writing, a licensee under investigation within ten (10) business days of the commencement of the investigation, and will provide an opportunity for any licensee under investigation to meet with the Committee on Professional Discipline or Board staff before the initiation of formal disciplinary proceedings by the Board. (3-20-20)

**153. ON SITE REVIEW.**

The Board, by and through its designated agents, is authorized to conduct on-site reviews of the activities of its licensees at the locations and facilities in which the licensees practice at such times as the Board deems necessary. (3-20-20)

**154. -- 200. (RESERVED)**

**201. DEFINITIONS PERTAINING TO TELEHEALTH SERVICES IN IDAHO.**

**01. Asynchronous Store and Forward Transfer.** “Asynchronous store and forward transfer” means the transmission of a patient’s health care information from an originating site to a provider at a distant site over a secure connection that complies with state and federal security and privacy laws. (4-11-19)

**02. Distant Site.** “Distant site” means the site at which a provider delivering telehealth services is located at the time the service is provided. (4-11-19)

**03. Originating Site.** “Originating site” means the location of a patient at the time telehealth services are provided. (4-11-19)

**04. Provider.** “Provider” means a person who is licensed, required to be licensed, or, if located outside of Idaho, would be required to be licensed if located in Idaho, pursuant to Title 54, Idaho Code, to deliver health care consistent with his or her license. (4-11-19)

**05. Synchronous Interaction.** “Synchronous interaction” means real-time communication through interactive technology that enables a provider and a patient at two (2) locations separated by distance to interact simultaneously through two-way video and audio or audio transmission. (4-11-19)

**06. Telehealth Services.** “Telehealth services” means health care services provided by a provider to a person through the use of electronic communications, information technology, asynchronous store and forward transfer or synchronous interaction between a provider at a distant site and a patient at an originating site. Such services include, but are not limited to, clinical care, health education, home health and facilitation of self-managed care and caregiver support. (4-11-19)

**202. IDAHO LICENSE REQUIRED.**

Any physician, physician assistant, respiratory therapist, polysomnographer, dietitian, athletic trainer, or naturopathic medical doctor who provides any telehealth services to patients located in Idaho must hold an active Idaho license issued by the Idaho State Board of Medicine for their applicable practice. (3-20-20)

**203. PROVIDER-PATIENT RELATIONSHIP.**

In addition to the requirements set forth in Section 54-5705, Idaho Code, during the first contact with the patient, a provider licensed by the Idaho State Board of Medicine who is providing telehealth services must: (4-11-19)

**01. Verification.** Verify the location and identity of the patient; (4-11-19)

**02. Disclose.** Disclose to the patient the provider's identity, their current location and telephone number and Idaho license number; (4-11-19)

**03. Consent.** Obtain appropriate consents from the patient after disclosures regarding the delivery models and treatment methods or limitations, including a special informed consent regarding the use of telehealth technologies; and (4-11-19)

**04. Provider Selection.** Allow the patient an opportunity to select their provider rather than being assigned a provider at random to the extent possible. (4-11-19)

**204. STANDARD OF CARE.**

A provider providing telehealth services to patients located in Idaho must comply with the applicable Idaho community standard of care. The provider is personally responsible to familiarize themselves with the applicable Idaho community standard of care. If a patient's presenting symptoms and conditions require a physical examination, lab work or imaging studies in order to make a diagnosis, the provider shall not provide diagnosis or treatment through telehealth services unless or until such information is obtained. (4-11-19)

**205. INFORMED CONSENT.**

In addition to the requirements of Section 54-5708, Idaho Code, evidence documenting appropriate patient informed consent for the use of telehealth technologies must be obtained and maintained at regular intervals consistent with the

community standard of care. Appropriate informed consent should, at a minimum, include the following terms: (4-11-19)

- 01. Verification.** Identification of the patient, the provider and the provider's credentials; (4-11-19)
- 02. Telehealth Determination.** Agreement of the patient that the provider will determine whether or not the condition being diagnosed and/or treated is appropriate for telehealth services; (4-11-19)
- 03. Security Measures Information.** Information on the security measures taken with the use of telehealth technologies, such as encrypting data, password protected screen savers and data files, or utilizing other reliable authentication techniques, as well as potential risks to privacy and notwithstanding such measures; (4-11-19)
- 04. Potential Information Loss.** Disclosure that information may be lost due to technical failures. (4-11-19)

**206. MEDICAL RECORDS.**

As required by Section 54-5711, Idaho Code, any provider providing telehealth services as part of his or her practice shall generate and maintain medical records for each patient. The medical record should include copies of all patient-related electronic communications, including patient-physician communications, prescriptions, laboratory and test results, evaluations and consultations, relevant information of past care, and instructions obtained or produced in connection with the utilization of telehealth technologies. Informed consents obtained in connection with the provision of telehealth services should also be documented in the medical record. The patient record established during the provision of telehealth services must be accessible and documented for both the physician and the patient, consistent with all established laws and regulations governing patient healthcare records. (4-11-19)

**207. -- 999. (RESERVED)**



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