October 26, 2012

Carol Dorsey  
Georgia Composite Medical Board  
2 Peachtree Street, N.W.  
36th Floor  
Atlanta, GA 30303-3465

Dear Ms. Dorsey:

The American Telemedicine Association appreciates the opportunity to comment on the Board’s proposed Official Code of Georgia Annotated 360-3-.07 to regulate under what circumstances medical practice “by electronic or other such means” (commonly referred to as “telemedicine”) constitutes “unprofessional conduct” and is subject to related disciplinary action.

The Board’s proposal contains a serious and fundamental flaw: the Board is attempting to regulate and limit current telemedicine use rather than specifying and regulating “unprofessional” conduct. The proposal specifies rules for telemedicine which are not even followed by physicians providing in-person care such as in emergency rooms, in specialist offices or even between any hospitals and private practices. In effect, the Board has proposed separate but unequal standards -- with telemedicine held to higher, and in some cases unattainable requirements.

This becomes readily apparent by considering the proposed “unprofessional” practices as if they applied to normal in-person care. Striking out such phrases as "by electronic or other such means" in the main proposed rule, as shown in the appendix, reveals the absurdity of this proposal.

The approach of the Board creates a “we vs. them” situation that appears to be designed to thwart the use of telemedicine rather than regulate medical practice. The rules protect the private business interests of some Georgia physicians over their telemedicine-using colleagues. The losers in this whole process are Georgia patients as well as Georgia practitioners wanting to use technology to increase access, improve care and reduce costs. The danger is that Georgia will end up on the wrong side of the digital divide, lagging behind health care practices in the rest of the country.

We urge the Medical Board to further reconsider this proposed measure, revise it fundamentally and propose consistent application among medical practices.

Sincerely,

Jonathan D. Linkous  
Chief Executive Officer

Quality healthcare through telecommunications technology
APPENDIX

Proposed Rule 360-3-.07 with strikethrough "by electronic or other such means."

(a) Under O.C.G.A. §§ 43-34-8 and 43-1-19, the Board is authorized to take disciplinary action against licensees for unprofessional conduct, and in connection therewith, to establish standards of practice. Except as otherwise provided, in order for a physician to practice within the minimum standards of practice while providing treatment and/or consultation recommendations by electronic or other such means, all the following conditions must be met:

(1) All treatment and/or consultations must be done by Georgia licensed practitioners;

(2) A history of the patient shall be available to the Georgia licensed physician, physician assistant or advanced practice registered nurse who is providing treatment or consultation via electronic or other such means;

(3) A Georgia licensed physician, physician assistant or advanced practice registered nurse either:

   a. Has personally seen and examined the patient and provides ongoing or intermittent care by electronic or other such means; or

   b. Is providing medical care by electronic or other such means at the request of a physician, physician assistant or advanced practice registered nurse licensed in Georgia who has personally seen and examined the patient; or

   c. Is providing medical care by electronic or other such means at the request of a Public Health Nurse, a Public School Nurse, the Department of Family and Children's Services, law enforcement, or through an established child advocacy center for the protection of a minor, and the physician, physician assistant or advanced practice registered nurse is able to examine the patient using technology and peripherals that are equal or superior to an exam done personally by a provider within that provider's standard of care; or

   d. Is able to examine the patient using technology and peripherals that are equal or superior to an exam done personally by a provider within that provider's standard of care.

(4) The Georgia licensed physician, physician assistant or advanced practice registered nurse providing treatment or consultations by electronic or other means must maintain patient records on the patient and must document the evaluation and treatment along with the identity of the practitioners providing the service by electronic or other means, and if there is a referring practitioner, a copy of this record must also be provided to the referring physician, physician assistant or advanced practice registered nurse;

(5) When Georgia licensed physician assistants or advanced practice registered nurses are providing care by electronic or other such means, such physician assistants or advanced practice registered nurses may only do so after the supervising or delegating physician has
seen or examined the patient in person or has provided the initial treatment or consultation for the patient via electronic or other means;

(6) Patients treated by electronic or other such means or patient's agent must be given the name, credentials and emergency contact information for the Georgia licensed physician, physician assistant and/or advanced practice registered nurse providing the treatment or consultation. Emergency contact information does not need to be provided to those treated within the prison system while incarcerated but should be provided to the referring provider. For purposes of this rule, “credentials” is defined as the area of practice and training for physicians, and for physician assistants and advanced practice registered nurses, “credentials” shall mean the area of licensure and must include the name of the delegating physician or supervising physician;

(7) The patient being treated via electronic or other means or the patient's agent must be provided with clear, appropriate, accurate instructions on follow-up in the event of needed emergent care related to the treatment. In the case of prison patients, prison staff will be provided this information if the consult is provided to an inmate; and

(8) The physician, physician assistant or nurse practitioner who provides care or treatment for a patient by electronic or other such means must make diligent efforts to have the patient seen and examined in person by a Georgia licensed physician, physician assistant or nurse practitioner at least annually.

(b) This rule should not be interpreted to interfere with care and treatment by telephonic communication in an established physician-patient relationship, call coverage for established physician-patients relationships, or telephone and internet consultations between physicians, nurse practitioners, physician assistants, other healthcare providers or child protection agencies.

(c) This rule does not authorize the prescription of controlled substances for the treatment of pain or chronic pain by electronic or other such means. All treatment of pain or chronic pain must be in compliance with Rule 360-3-.06.

(d) Nothing in this rule shall excuse a physician, nurse practitioner or physician's assistant from ordering appropriate laboratory or other diagnostic tests needed to make diagnoses within the minimum standard of care.