

Kevin Meyer
Lieutenant Governor
State Capitol
Juneau, Alaska 99811
907.465.3520
WWW.LTGOV.ALASKA.GOV




530 West 7th Ave, Suite 1700
Anchorage, Alaska 99501
907.269.7460 269.0263
LT.GOVERNOR@ALASKA.GOV

**OFFICE OF THE LIEUTENANT GOVERNOR
ALASKA**

MEMORANDUM

TO: Amy Demboski
Department of Commerce Community and Economic Development

FROM: April Simpson, Office of the Lieutenant Governor 
465.4081

DATE: May 11, 2020

RE: Filed Emergency Regulations: State Medical Board
State Medical Board emergency regulations re: telemedicine - Amended (12 AAC 40.943)

Attorney General File:	Emergency Regulations
Regulation Filed:	5/11/2020
Effective Date:	5/5/2020
Expiration Date:	September 1, 2020 unless made permanent by the adopting agency
Print:	234, July 2020

cc with enclosures: Harry Hale, Department of Law
Judy Herndon, LexisNexis
Sher Zinn, Regulations Specialist

FINDING OF EMERGENCY

The State Medical Board finds that an emergency exists and that the attached regulation changes are necessary to 12 AAC 40.943, dealing with telemedicine, for the immediate preservation of the public peace, health, safety, or general welfare. The facts constituting the emergency include the following:

The recent regulation allowing the initiation of medication assisted treatment via telemedicine was found too restrictive and an amendment was necessary to avoid a negative health impact on the public by decreasing access to and engagement with treatment during the public health emergency caused by the Covid19 pandemic.

ORDER CERTIFYING ADOPTION

I certify that the State Medical Board, under the authority of AS 08.64.100, AS 08.64.101, and AS 08.64.364, adopted at its April 30, 2020 teleconference meeting the attached two pages of regulation changes as an emergency regulation to take effect immediately upon filing by the lieutenant governor, as provided in AS 44.62.180(3).

This action is not expected to require an increased appropriation.

DATE: 5/8/2020
Juneau, Alaska

Alysia D. Jones

Digitally signed by Alysia D.
Jones
Date: 2020.05.08 06:42:13 -08'00'

Alysia Jones, Executive Administrator
State Medical Board

FILING CERTIFICATION

April Simpson for
I, Kevin Meyer, Lieutenant Governor for the State of Alaska, certify that on May
11th, 2020, at 4:31 p.m., I filed the attached regulations according to the
provisions of AS 44.62.

for A. Simpson

Kevin Meyer, Lieutenant Governor

Effective: May 5, 2020

Register: 234, July 2020

Expires September 1st 2020
unless made "permanent"
by the adopting agency

FOR DELEGATION OF THE LIEUTENANT GOVERNOR'S AUTHORITY

**I, KEVIN MEYER, LIEUTENANT GOVERNOR OF THE STATE OF ALASKA,
designate the following state employees to perform the Administrative Procedures Act
filing functions of the Office of the Lieutenant Governor:**

**Josh Applebee, Chief of Staff
Kady Levale, Notary Administrator
April Simpson, Regulations and Initiatives Specialist**

**IN TESTIMONY WHEREOF, I have
signed and affixed the Seal of the State of
Alaska, in Juneau, on December 11th,
2018.**



A handwritten signature in blue ink, appearing to read "K. Meyer", is written over a horizontal dotted line.

**KEVIN MEYER
LIEUTENANT GOVERNOR**

EMERGENCY REGULATIONS

Register 234, July 2020 PROFESSIONAL REGULATIONS

Chapter 40. State Medical Board.

12 AAC 40.943 is amended to read:

12 AAC 40.943. Standard of practice for telemedicine. (a) The guiding principles for telemedicine practice in the American Medical Association (AMA), *Report 7 of the Council on Medical Service (A-14), Coverage of and Payment for Telemedicine*, dated 2014, and the Federation of State Medical Boards (FSMB), *Model Policy for the Appropriate Use of Telemedicine Technologies in the Practice of Medicine*, dated April 2014, are adopted by reference as the standards of practice when providing treatment, rendering a diagnosis, prescribing, dispensing, or administering a prescription or controlled substance without first conducting an in-person physical examination under AS 08.64.364.

(b) During a public health emergency disaster declared by the governor of this state under AS 26.23.020, an appropriate licensed health care provider need not be present with the patient to assist a physician or physician assistant with examination, diagnosis, and treatment if the physician or physician-assistant is prescribing, dispensing, or administering buprenorphine to initiate treatment for opioid use disorder and the physician or physician assistant

(1) is a Drug Addiction Treatment Act (DATA) waived practitioner;

(2) documents all attempts to conduct a physical examination under AS 08.64.364(b) and the reason why the examination cannot be performed; and

(3) requires urine or oral toxicology screening as part of the patient's medication adherence plan. (Eff. 10/8/2017, Register 224; am 5 / 5 / 2020, Register

234)

EMERGENCY REGULATIONS

Register 234, July 2020 **PROFESSIONAL REGULATIONS**

Authority: AS 08.64.100 AS 08.64.101 AS 08.64.364

AFFIDAVIT OF STATE MEDICAL BOARD ACTION

I, Alysia Jones, for State Medical Board, under penalty of perjury, state the following:

The attached motion dealing with telemedicine, was passed by the State Medical Board during its May 7, 2020 meeting.

There is no notary public or other official empowered to administer oaths available to notarize this document as a result of social distancing requirements implemented statewide.

I certify under penalty of perjury that the foregoing is true.

Date: 5/8/2020

(password-protected electronic signature)
Alysia Jones, Executive Administrator
State Medical Board

State of Alaska
Juneau, Juneau City and Borough

Excerpt from the State Medical Board Meeting Minutes of May 7, 2020.

6. Proposed amendment to 12 AAC 40.943(b)(3)

Dr. Daugherty stated that the request appeared straightforward and expressed his support of the change. Several members agreed. The Chair asked Ms. Jones to explain the necessary process to make the change. Ms. Jones deferred to Assistant Attorney General Megyn Weigand.

Ms. Weigand explained that emergency regulations, regardless of content, are only in effect for 120 days, after which they expire. Ms. Weigand noted that they cannot be extended and explained that the intent of the emergency regulations is to address an emergent situation, while giving the board time to determine what they want the permanent regulations to say and issue it in its final version.

Ms. Weigand explained that emergency regulations can be changed into permanent regulations through the notice that occurs after it is filed. Ms. Weigand explained that the public notice introduces the emergency regulation and then let's people know that you intend to make it permanent and are accepting public comments. After reviewing the public comments, the board would then file their permanent version.

Ms. Weigand stated that it was her understanding the board's intent for the emergency regulation regarding 12 AAC 40.943(b) was to have it be a permanent regulation as that would last for the duration of the declaration of the public health emergency, which, per SB 241 is currently November 15, 2020 and exceeds the 120 days of an emergency regulation. Ms. Weigand explained that it was drafted as an emergency regulation that would be public noticed as a permanent regulation. The language was intentionally drafted to be coextensive with the governor's declaration of emergency. It was noted that there may have been some confusion regarding what type of notice (emergency or permanent) should be put out now that the regulations have been filed.

Ms. Weigand asked the board if they wanted a regulation that would expire at the end of 120 days no matter what or one that might be coextensive with the governor's declaration of emergency.

The Chair noted his preference to have an expiration date. Dr. Daugherty suggested moving forward with the emergency regulation and noticing as permanent to capture in put and bring to light any objections and offered to make a motion.

Due to the potential amendment and need to clarify the type of notice of the emergency regulation, the Chair suggested both items be discussed before a motion was made.

Ms. Weigand explained that the process for adopting the amendment would require another emergency regulation package, including a new finding of emergency.

The Chair asked the board for commentary on adding "oral fluid" to 12 AAC 40.943(b)(3). Dr. Gay expressed his support of the amendment, but asked if a timeframe of when the screening needed to occur should be added to the language. There were no further comments.

Dr. Daugherty made a motion to adopt the language on the screen (12 ACC 40.943(b)(3)) requiring "urine or oral toxicology screening as part of the patient's medication adherence plan" effective immediately as an emergency regulation.

Ms. Weigand reiterated that if the board wished to receive comments it should be public noticed as a permanent regulation after filing.

The Chair reiterated his preference for an expiration date, particularly given the far-reaching aspects of this topic. The Chair stated that he likes to promote patient-provider interactions, especially as it relates to addiction and expressed his concern with making it permanent. Ms. Weigand explained that noticing this regulation change as permanent, gives the board the opportunity to receive comments and adjust the language within the 120 days, at the end of which, a final version will be issued.

The Chair asked the board for comments. Dr. Daugherty appreciated the Chair's concerns and was amenable to the will of the board, but argued that noticing it as permanent would allow for deeper consideration and public input, which would assist in keep it on the board's radar.

The Chair asked Ms. Jones to assist the board in tracking these regulation projects.

Dr. Daugherty amended the motion.

On motion duly made by Dr. Daugherty, seconded by Dr. Parker, and approved unanimously, the board adopt the language on the screen (in 12 ACC 40.943(b)(3)) requiring urine or oral toxicology screening as part of the patient's medication adherence plan effective immediately and noticed as permanent.

Ms. Bigelow Hood was experiencing technical difficulties and unable to provide an auditory vote. She submitted the following via text: "I agree but would like to later address the Chair's concern"

The Chair thanked Dr. Sheufelt for bringing this topic to the board's attention. Dr. Sheufelt thanked the board for all their hard work.

10. Follow up on Previously Asked Questions

Ms. Jones reported that the regulations adopted at the April 30th meeting went into effect on May 5th and requested the board complete the finding of emergency statement for the regulations adopted at today's meeting.

Ms. Jones also announced the paper versions of the emergency courtesy license applications are now available on the website. Online versions would be posted shortly.

The board reviewed the draft finding of emergency statement provided by Ms. Weigand.

On a motion duly made by Mr. Boswell, seconded by Dr. Daugherty, approved unanimously, the Board accepted the finding of emergency statement.

Mr. Boswell read the following statement into the record:

The recent regulation allowing the initiation of medication assisted treatment via telemedicine was found too restrictive and an amendment was necessary to avoid a negative health impact on the public by decreasing access to and engagement with treatment during the public health emergency caused by the Covid19 pandemic.

Due to technical difficulties, Ms. Bigelow Hood submitted her vote of "I agree!" via text.