JOINT NOTICE OF ENFORCEMENT DISCRETION BY THE ALABAMA STATE BOARD OF MEDICAL EXAMINERS AND THE ALABAMA STATE BOARD OF PHARMACY

The Alabama State Board of Medical Examiners ("BME") and the Alabama State Board of Pharmacy are both charged with regulating and enforcing the prescribing and dispensing of controlled substances by Alabama health care providers. During the state and national public health emergency brought on by the rapid spread of the Severe Adult Respiratory Syndrome-Coronavirus-2 (SARS-CoV-2), health care providers subject to the Alabama Controlled Substances Act are being encouraged to communicate with patients, and provide telehealth services, through remote communications technologies.

The DEA has recently relaxed prescribing rules to permit the prescribing of controlled substances using telemedicine. The DEA has stated that, so long as the public health emergency remains in effect, DEA-registered practitioners in all areas of the United States may issue prescriptions for all schedule II-V controlled substances to patients **for whom they have not conducted an in-person medical evaluation**, provided all of the following conditions are met:

- The prescription is issued for a legitimate medical purpose by a practitioner acting in the usual course of his/her professional practice;
- The telemedicine communication is conducted using an audio-visual, real-time, two-way interactive communication system; and
- The practitioner is acting in accordance with applicable Federal and State laws.

The DEA noted that if a prescribing practitioner has **previously conducted an in-person medical evaluation of the patient**, the practitioner may issue a prescription for a controlled substance after having communicated with the patient via telemedicine. In other words, the DEA's requirement

that practitioners utilize a real-time audio and visual telemedicine methodology only applies to the prescribing of controlled substances to new patients who have not been physically examined by the practitioner. The performance of an audio-only telemedicine consult with an existing patient by a practitioner would satisfy DEA's guidelines, provided at all times that the controlled substances are prescribed for a legitimate medical purpose and in the usual course of the practitioner's professional practice.

The DEA further stated that practitioners could electronically transmit or call in the controlled substance prescription to the pharmacist. This guidance included calling in Schedule II controlled substance prescriptions, subject to state and local laws. Alabama does not currently permit a Schedule II prescription to be called in as DEA's guidance provides.

Coextensive with the DEA's guidance, the BME and BOP will exercise their enforcement discretion and will not impose penalties for noncompliance with state controlled substance-related regulatory requirements on health care providers who, in good faith, utilize telemedicine to care for their existing patients during the COVID-19 nationwide public health emergency. This notification is effective immediately.

In particular, the BME and BOP will allow for the communication of a Schedule II controlled substance prescription by a practitioner to a pharmacist via telephone where the practitioner or pharmacist is not equipped or otherwise impeded from utilizing electronic prescribing. Similarly, BME Rule 540-X-4-.08(2)(a) requires that a physical examination be conducted when prescribing a controlled substance for the treatment of chronic pain. For a limited time, and to allow for health care providers to keep themselves, their staff, and their patients safe, the Board will not enforce this physical examination requirement so that health care providers can continue to care for their chronic pain patients. This use of the BME and BOP's enforcement

discretion is aimed at removing regulatory barriers to the use of telemedicine to meet the legitimate health needs of Alabama patients in a time when people are being directed to avoid in-person contact. This notice will expire on April 6, 2020, but may be extended as this public health emergency evolves.