California Controlled Substance Telemedicine Prescribing Policy

A. Purpose

The purpose of this policy is to ensure that physicians and nurse practitioners (the “Practitioners”) for American Telepsychiatrists (“ATPS”) understand the heightened state and federal requirements that must be met in order for ATPS to facilitate the prescribing of controlled substances to California patients through the use of technology, in lieu of a traditional in-office encounter when the Practitioner and patient would otherwise be located in the same physical location at the time of the prescribing encounter.

B. Policies

When any ATPS Practitioner facilitates or participates in a Telemedicine Encounter (i.e., the use of technology to facilitate the delivery of healthcare services in lieu of a traditional in-office encounter), the Practitioner must ensure that the following heightened conditions and requirements are met to ensure compliance with all relevant laws. Each of the requirements below must be documented in ATPS’s electronic medical record for the patient in question. Any deviations from the requirements below must be approved in advance by ATPS’s President and CEO who will determine if it is appropriate to waive any requirements that may not be required under the law in a specific circumstance.

There are essentially six options available to ATPS Practitioners for prescribing controlled substances to California patients via telemedicine, as discussed below.

1. DEA-Registered Clinic. An ATPS Practitioner would be permitted to prescribe a controlled substance via telemedicine under the DEA’s “registered facility” exception, so long as each of the following conditions were met and documented in the patient’s medical record:
   
   i. The patient is being treated at a DEA-registered clinic (i.e., the County Facility is a DEA registered clinic) when the ATPS Practitioner is interacting with the patient via telemedicine;
   
   ii. The technology used during the telemedicine encounter allows the ATPS Practitioner and the patient to hear and see each other in real time (i.e., a live video feed); and
   
   iii. The ATPS Practitioner certifies (based on his/her medical judgment and the relevant standard of care) that the information about the patient available to the Practitioner was sufficient for conducting a good faith examination of the patient necessary for prescribing the medication in question.

2. Specialist Consultation. An ATPS Practitioner would be permitted to prescribe a controlled substance via telemedicine for an existing patient of a Local Practitioner under the DEA’s consultation exception, so long as each of the following conditions were met and documented in the patient’s medical record. Of note, the Local
Practitioner could be a local primary care physician, nurse practitioner, or physician assistant who is in need of the psychiatric expertise of the ATPS Practitioner.

i. The patient is in the physical presence of a DEA-registered Local Practitioner at some point when the Prescribing Practitioner is interacting with the patient via telemedicine;

ii. The technology used during the telemedicine encounter allows the ATPS Practitioner and the patient to hear and see each other in real time (i.e., a live video feed); and

iii. The ATPS Practitioner certifies (based on his/her medical judgment and the relevant standard of care) that the information about the patient available to the Practitioner was sufficient for conducting a good faith examination of the patient necessary for prescribing the medication in question.

3. **Local Practitioner Writes the Actual Prescription.** Another option is for the ATPS Practitioner to conduct the evaluation of the patient and provide treatment and prescribing recommendations for a Local Practitioner. If the Local Practitioner retains ultimate decision-making authority over the patient and decides whether to write the prescription or not under the advice of the ATPS Practitioner, then none of the heightened DEA rules apply to ATPS or its Practitioners. As with Option 2 above, the Local Practitioner could be a local primary care physician, nurse practitioner, or physician assistant who is in need of the psychiatric expertise of the ATPS Practitioner.

4. **Call Coverage for Local Practitioners.** An ATPS Practitioner (the “Prescribing Practitioner”) would be permitted to prescribe a controlled substance via telemedicine for an existing patient of a Local Practitioner under the DEA’s call coverage exception, so long as each of the following conditions were met and documented in the patient’s medical record:

i. The patient has previously been examined in a traditional in-person office encounter by the Local Practitioner within the past 24 months;

ii. The Local Practitioner is temporarily unavailable or unwilling to conduct the evaluation of the patient at his/her office at the time of the requested telemedicine encounter. The Local Practitioner may be unwilling or unavailable to conduct the evaluation because the Local Practitioner does not have the level of expertise or specialized training in psychiatry or psychiatric medication management to address the patient's needs in a timely manner.

iii. The Local Practitioner or the County has requested ATPS to assign these types of patient matters to an ATPS Practitioner in his/her absence or unavailability;

iv. The technology used during the telemedicine encounter allows the ATPS Practitioner and the patient to hear and see each other in real time (i.e., a live video feed); and
v. The Prescribing Practitioner certifies (based on his/her medical judgment and the relevant standard of care) that the information about the patient available to the Practitioner was sufficient for conducting a good faith examination of the patient necessary for prescribing the medication in question.

5. **Established Patient.** An ATPS Practitioner would be permitted to prescribe a controlled substance via telemedicine for an existing patient of that ATPS Practitioner so long as:

   i. The ATPS Practitioner personally conducted an in-person physical examination of the patient no more than 24 months ago (i.e., the date of the physical examination was not more than 24 months before the date of the telemedicine encounter that resulted in the controlled substance prescription); and

   ii. The ATPS Practitioner certifies (based on his/her medical judgment and the relevant standard of care) that the information about the patient available to the Practitioner was sufficient for conducting a good faith examination of the patient necessary for prescribing the medication in question.

6. **Call Coverage Among ATPS Practitioners.** An ATPS Practitioner (the “Prescribing ATPS Practitioner”) would be permitted to prescribe a controlled substance via telemedicine for an existing patient of another ATPS Practitioner (the “Primary ATPS Practitioner”) under the DEA’s call coverage exception, so long as each of the following conditions were met and documented in the patient’s medical record:

   i. The patient has previously been examined in a traditional in-person office encounter by the Primary ATPS Practitioner within the past 24 months;

   ii. The Primary ATPS Practitioner is temporarily unavailable to conduct the evaluation of the patient at his/her office at the time of the requested telemedicine encounter (e.g., the Primary ATPS Practitioner’s schedule is already booked for the day or the Primary ATPS Practitioner is on vacation, sick or is just not scheduled to physically come into the office that day);

   iii. The Primary ATPS Practitioner has requested ATPS to assign these types of patient matters to another ATPS Practitioner in his/her absence or unavailability; and

   iv. The Prescribing ATPS Practitioner certifies (based on his/her medical judgment and the relevant standard of care) that the information about the patient available to the Practitioner was sufficient for conducting a good faith examination of the patient necessary for prescribing the medication in question.

C. **Legal Authority**

This section of the policy outlines the federal legal authority for each of the six scenarios discussed above when an ATPS Practitioner may prescribe a controlled substance to a
patient based on a telemedicine encounter. The legal authority is based primarily on the Ryan Haight Act, which was passed by the United States Congress in 2008. Generally, the Ryan Haight Act requires a physician to examine a patient while in the same physical location of the patient before prescribing a controlled substance unless one of the exceptions to that requirement are met, as defined by the Ryan Haight Act.

1. DEA-Registered Clinic Exception. This exception to the physical presence examination is found at 21 U.S.C.A. § 802(54)(A), and which states:

   The term “practice of telemedicine” means, for purposes of this subchapter, the practice of medicine in accordance with applicable Federal and State laws by a practitioner (other than a pharmacist) who is at a location remote from the patient and is communicating with the patient, or health care professional who is treating the patient, using a telecommunications system referred to in section 1395m(m) of Title 42, which practice ... is being conducted ... while the patient is being treated by, and physically located in, a hospital or clinic registered under section 823(f) of this title.

2. Specialist Consultation Exception. This exception to the physical presence examination is found at 21 U.S.C.A. § 802(54)(B), and which states:

   The term “practice of telemedicine” means, for purposes of this subchapter, the practice of medicine in accordance with applicable Federal and State laws by a practitioner (other than a pharmacist) who is at a location remote from the patient and is communicating with the patient, or health care professional who is treating the patient, using a telecommunications system referred to in section 1395m(m) of Title 42, which practice ... is being conducted ... while the patient is being treated by, and in the physical presence of, a practitioner ... registered under section 823(f) of this title in the State in which the patient is located.

3. Exception when the Local Practitioner Writes the Prescription. This exception to the physical presence examination is found at 21 U.S.C.A. § 829(e)(1) and (e)(2)(A)(i), and which states:

   No controlled substance that is a prescription drug as determined under the Federal Food, Drug, and Cosmetic Act may be delivered, distributed, or dispensed by means of the Internet without a valid prescription. ... As used in this subsection ... the term “valid prescription” means a prescription that is issued for a legitimate medical purpose in the usual course of professional practice by ... a practitioner who has conducted at least 1 in-person medical evaluation of the patient ...
4. Exception when the ATPS Practitioner is Providing Coverage for A Local Practitioner. This exception to the physical presence examination is found at 21 U.S.C.A. § 829(e)(1), (e)(2)(A)(ii) and (e)(2)(C), which states:

No controlled substance that is a prescription drug as determined under the Federal Food, Drug, and Cosmetic Act may be delivered, distributed, or dispensed by means of the Internet without a valid prescription. ... As used in this subsection ... the term “valid prescription” means a prescription that is issued for a legitimate medical purpose in the usual course of professional practice by ... a covering practitioner ... The term “covering practitioner” means ... a practitioner who conducts a medical evaluation (other than an in-person medical evaluation) at the request of a practitioner who--(i) has conducted at least 1 in-person medical evaluation of the patient or an evaluation of the patient through the practice of telemedicine, within the previous 24 months; and (ii) is temporarily unavailable to conduct the evaluation of the patient.

5. Existing Patient Exception. This exception to the physical presence examination is found at 21 U.S.C.A. § 829(e)(1) and (e)(2)(A)(i), and which states:

No controlled substance that is a prescription drug as determined under the Federal Food, Drug, and Cosmetic Act may be delivered, distributed, or dispensed by means of the Internet without a valid prescription. ... As used in this subsection ... the term “valid prescription” means a prescription that is issued for a legitimate medical purpose in the usual course of professional practice by ... a practitioner who has conducted at least 1 in-person medical evaluation of the patient ...

6. Exception when an ATPS Practitioner is Covering for Another ATPS Practitioner. This exception to the physical presence examination is found at 21 U.S.C.A. § 829(e)(1), (e)(2)(A)(ii) and (e)(2)(C), which states:

No controlled substance that is a prescription drug as determined under the Federal Food, Drug, and Cosmetic Act may be delivered, distributed, or dispensed by means of the Internet without a valid prescription. ... As used in this subsection ... the term “valid prescription” means a prescription that is issued for a legitimate medical purpose in the usual course of professional practice by ... a covering practitioner ... The term “covering practitioner” means ... a covering practitioner ... The term “covering practitioner” means ... a practitioner who conducts a medical evaluation (other than an in-person medical evaluation) at the request of a practitioner who--(i) has conducted at least 1 in-person medical evaluation of the patient or an evaluation of the patient through the practice of telemedicine, within the previous 24 months; and (ii) is temporarily unavailable to conduct the evaluation of the patient.