

(S. B. 612)

(No. 227)

(Approved August 11, 1998)

AN ACT

To establish the “Puerto Rico Telemedicine Regulating Act”; establish the intent thereof; require that any person engaged in the practice of telemedicine must hold a license; authorize the Medical Board of Examiners to enforce this Act and regulate it; and establish penalties.

STATEMENT OF MOTIVES

The Medical Board of Examiners, created by virtue of Act No. 22 of April 22, 1931, as amended, has the function of regulating the practice of medicine in Puerto Rico. This governing body has been delegated the function of safeguarding and implementing the public policy of the Commonwealth to ensure the highest quality of the services rendered by medical professionals.

This responsibility of the Board of Examiners acquires greater importance today, due to the accelerated rate of change of our ever-developing society is. Technological advancements in the fields of medicine, information technology and computers, among others, have revolutionized the goals and tasks which were traditionally performed by the Board of Examiners, and have broken the geographical barriers between the different countries.

The practice of telemedicine is an example of the changes experienced by our modern society. The ability to practice medicine and offer medical

services to patients in distant locations offers an incalculable wealth of benefits by allowing persons to have new tools with which to solve their health problems.

It is the intention of this Legislature to recognize the practice of telemedicine as an adequate means through which a person may receive medical services of excellence. It is not pretended for telemedicine to replace health care providers or relegate them to a lesser role in the offering of their services. By regulating telemedicine, the fundamental relationship between physician and patient is preserved, expanded and broadened.

Telemedicine is generally defined as the use of information technology to transmit medical information and services from one place to another. It is an interactive telecommunications system that uses information technology such as audio, video, and any other appropriate compatible element.

In the United States, telemedicine is part of the multiple efforts to face and handle the problem of the distribution of service providers and develop health systems in poorly served areas. Telemedicine has been used in one way or another for over 30 years, and is currently being considered by over 40 states of the American Nation.

The use of telemedicine as a support mechanism for the health care provider has the potential to reduce costs, improve the quality of services and provide access to the necessary medical care, besides strengthening the services of infrastructure. It allows access to updated information more speedily and makes it possible for the same to be shared with other providers.

The benefits for patients are, among others, access to a greater number of providers, speedy and more convenient treatment, more continuity in

medical care, cost reduction, and the ability of more and better medical consultations within the system.

However, this Legislature deems it meritorious that this new form of offering medical services be regulated, in order for them to be obtained in a safe and orderly manner.

Therefore, this Legislative Body deems it appropriate to empower the Board of Medical Examiners to regulate the practice of telemedicine, thus quality ensuring that services are offered and the best interests of the residents of this Island are always protected.

BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:

Section 1.- Title.-

This Act shall be known as the “Puerto Rico Telemedicine Regulating Act.”

Section 2.- Definitions.-

For the purposes of this Act, the following terms shall have the meaning and scope stated for each, except when the text clearly indicates another meaning:

(a) “License” means the special license issued by the Board of Medical Examiners for the practice of medicine, surgery or osteology in the Commonwealth of Puerto Rico through the practice of telemedicine.

(b) “Telemedicine” means any test, diagnosis, treatment, operation or prescription for any physical and/or mental illness, ailment, pain, lesion, deformity or condition, for a patient physically located in the Commonwealth of Puerto Rico, when the physician, who practices surgery or osteologist is outside the jurisdiction of the Commonwealth of Puerto Rico and performs such activity through any telecommunications means.

(c) “Board of Examiners” means the Board of Medical Examiners established by virtue of Act No. 22 of April 22, 1931, as amended.

Section 3.- Purpose.-

It is an essential function of the Commonwealth of Puerto Rico to see that the health services offered and rendered to the residents of this Island are of the highest quality and without any kind of barriers that may impede access to said services. Technological advancements make it possible today to offer medical services without the limitation of geographical frontiers. Although it is desirable to facilitate said advancements in medical practice, it is necessary to establish the proper parameters to ensure quality standards in the care and service given to patients. This Act provides the appropriate mechanisms for the protection of the best interests of patients in Puerto Rico by establishing a control on the form and manner that telemedicine can be practiced in the Commonwealth of Puerto Rico.

Section 4.- License.-

As of the effectiveness of this Act, no physician who practice surgery or osteologist may engage in any telemedicine practice in the Commonwealth of Puerto Rico without being duly licensed for said practice by the Board of Examiners, nor shall write or publish any advertisement purporting to be legally qualified to practice telemedicine, or use any title, word, or abbreviation to indicate or to lead others to believe that he/she holds a license to engage in, or practice telemedicine, unless he/she holds a license duly issued for such purposes by the Board of Examiners.

Section 5.- Issue of License.-

The Board of Examiners may issue a special license for the practice of telemedicine in the Commonwealth of Puerto Rico by request of any physician who practices surgery or osteologist holding a current license to

practice medicine, legally issued by any state of the United States or its territories. For such a purpose, he/she must present said license duly legitimized by an certified notary public, and practice the profession in the Commonwealth of Puerto Rico. He/She must also present a sworn statement in which he/she certifies that at the time of submitting his/her application, he/she is not under disciplinary sanction by any state or jurisdiction. The existence of a disciplinary sanction by a state or territory shall be sufficient grounds to refuse to issue the license applied for. However, the Board of Examiners may exercise its discretion and issue a license to any physician who practices surgery or osteologist, previously under disciplinary sanction in another state or jurisdiction, if it deems that such disciplinary action does not indicate that the physician who practices surgery or osteologist is a potential public health risk.

The application shall be submitted on the form provided by the Board of Examiners and shall entail the payment of a fee to be determined by the Board through regulations. The amount of said fee shall not be refunded to the applicant upon disapproval of the application for a license. The fees paid by the applicants shall be covered into the Health Fund, in the special account of the Board of Examiners. The license shall be issued for a three (3)-year term and may be renewed, upon approval by the Board of Examiners, provided the designated form is submitted, and the corresponding fees are paid. The issuing of this license shall not be construed as an authorization for any physician who practices surgery or osteologist, to practice medicine or osteology within the Commonwealth of Puerto Rico, if he/she does not hold a license duly issued for said practice by the Board of Examiners pursuant to the provisions of Act No. 22 of April 22, 1931, as amended.

Section 6.- Effect Of License.-

The issue of a license under the provisions of this Act to any physician who practices surgery or osteologist, shall be construed to bind said surgeon or osteologist to the jurisdiction of the Board of Medical Examiners in all matters related to his/her medical practice and to any legislation or regulations related to said profession; and, he/she shall also be subject to any disciplinary sanction that could be imposed on him/her, and, likewise, it shall be construed that holding a license under this Act binds the physician, surgeon or osteologist to the jurisdiction of the Justice Department of the Commonwealth of Puerto Rico. It shall be construed that any physician who practices surgery or osteologist, to whom a license is issued under the provisions of this Act, has agreed to produce any medical record or any materials or reports, as requested by the Board of Examiners, and/or to appear before the Board of Examiners or any Committee thereof within the term established by the Board of Examiners, after having been duly notified in writing to such effects. Said request shall be issued by the Board of Examiners pursuant to any complaint filed or investigation initiated, and when the records, materials or reports are pertinent to resolve such a complaint or investigation.

The Board of Examiners may revoke or suspend the license of any physician who practices surgery or osteologist who refuses to appear before the Board or to produce the aforementioned records, materials or reports. It shall be construed that such revoking or suspension constitutes a disciplinary sanction for the purpose of any notice to any Board of Examiners or information system.

Section 7.- Medical Records of Patients.-

Any physician who practices surgery or osteologist to whom a license has been issued under the provisions of this Act must comply with any existing legislation or regulations of the Commonwealth of Puerto Rico concerning the management and maintenance of the medical records of his/her patients, including the confidentiality thereof, despite any other existing provision in the state or territory where said physician who practices surgery or osteologist is located.

Section 8.- Informed Consent Of Patient.-

Should the patient agree to the use of telemedicine services, the physician shall obtain the oral and written informed consent of the patient before the services are rendered. The procedure to obtain the informed consent must guarantee, at least, that the patient has been informed orally and in writing, of the following:

(a) The patient retains the option of withholding or withdrawing his/her consent at any time without impairing his/her right to receive any other kind of medical attention or care.

(b) A description of the potential risks, consequences and benefits of telemedicine.

(c) Applicable safeguards to patient confidentiality.

(d) Rights of the patient to the transmitted information and to obtain a copy thereof by paying a reasonable amount.

The patient shall sign a written statement before use of telemedicine services is made, indicating that he/she understands and has discussed its use with his/her physician.

This written consent of the patient shall be made a part of his/her medical record.

In the event that the patient is under legal age or a person legally found to be mentally incompetent, this Section shall apply to his/her custodian or legal representative.

Section 9.- Proviso.-

The provisions of this Act shall not apply to the practice of telemedicine in which a physician who practices surgery or osteologist engages because of a medical emergency. Provided, that the term irregular or infrequent, shall be construed as a practice engaged in only once per patient and involves a maximum of ten (10) patients on a yearly basis. The Board of Examiners shall establish those situations construed to constitute a medical emergency through regulations.

The provisions of this Act shall not apply either to a physician who practices surgery or an osteologist, who engages in the irregular practice of telemedicine without receiving any compensation or remuneration of any kind, or to occasional consultations held by any physician who practices surgery or osteologist with a colleague located outside the jurisdiction of the Commonwealth of Puerto Rico when no direct relationship exists between the physician surgeon or osteologist practicing in said other jurisdiction, and the patient. A practice developed or engaged in pursuant to any contract ,shall not be construed to be an irregular practice.

Section 10.- Penalties.-

Any person who violates any of the provisions of this Act or any Regulations adopted thereunder, shall be construed to be illegally practicing medicine, or surgery, or osteology, and shall be subject to the penalties provided in Section 9 of Act No. 22 of April 22, 1931, as amended.

The Board of Examiners may impose an administrative fine not greater than fifteen thousand dollars (\$15,000) on any person who violates any

provision of this Act or the Regulations adopted thereunder, or who refuses to observe or comply with any order or resolution issued thereby. Fees charged by imposing administrative fines shall be covered into the Health Fund, in a special account of the Board of Examiners, for its exclusive use. The Board of Examiners may request that the Court of First Instance issue a writ of injunction to prevent any violation of this Act or the Regulations adopted thereunder.

Section 11.—Regulations Concerning The Practice Of Telemedicine.—

The Board of Examiners is hereby empowered to implement the rules and regulations needed to enforce the provisions of this Act and/or those needed for the practice of telemedicine in Puerto Rico.

Section 12.—Effectiveness.—

This Act shall take effect sixty (60) days after its approval.

December 21, 1999

Luis G. Hidalgo, Director of the Office of Legislative Services of the Legislature of Puerto Rico, hereby certifies to the Secretary of State that he has duly compared the English and Spanish texts of Act No. 227 (S.B. 612) of the 3rd Session of the 13th Legislature of Puerto Rico, entitled:

AN ACT to establish the “Puerto Rico Telemedicine Regulating Act”; establish the intent thereof; require that any person engaged in the practice of telemedicine must hold a license; authorize the Medical Board of Examiners to enforce this Act regulate it; and establish penalties,

and finds the same are complete, true and correct versions of each other.

Luis G. Hidalgo

