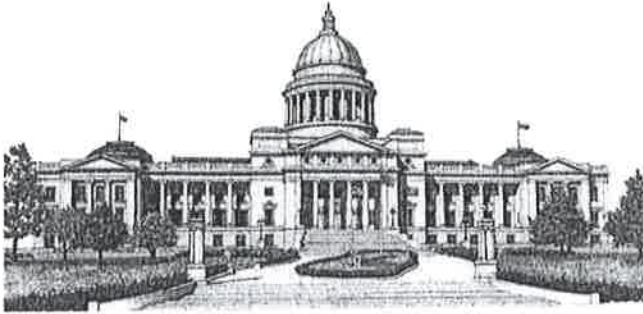


# ARKANSAS REGISTER

## Transmittal Sheet

\* Use only for **FINAL** and **EMERGENCY RULES**



Secretary of State  
**Mark Martin**  
State Capitol, Suite 026  
Little Rock, Arkansas 72201-1094  
(501) 682-3527  
[www.sos.arkansas.gov](http://www.sos.arkansas.gov)



For Office  
Use Only:

Effective Date \_\_\_\_\_ Code Number \_\_\_\_\_

Name of Agency Arkansas State Medical Board

Department \_\_\_\_\_

Contact Kevin M. O'Dwyer E-mail kodwyer@htolaw.com Phone 501-372-4144

Statutory Authority for Promulgating Rules A.C.A. § 17-95-303 Act 438 of 2017

**Rule Title:** Regulation 38- Governing Tele- Medicine

**Intended Effective Date**  
(Check One)

Emergency (ACA 25-15-204)

30 Days After Filing (ACA 25-15-204)

Other \_\_\_\_\_  
(Must be more than 30 days after filing date.)

Legal Notice Published 6/27/2017

Final Date for Public Comment 8/3/2017

Reviewed by Legislative Council 9/12/2017

Adopted by State Agency \_\_\_\_\_

Electronic Copy of Rule submitted under ACA 25-15-218 by:

Kevin M. O'Dwyer kodwyer@htolaw.com

Contact Person \_\_\_\_\_ E-mail Address \_\_\_\_\_ Date \_\_\_\_\_

### CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted  
In Compliance with Act 434 of 1967 the Arkansas Administrative Procedures Act. (ACA 25-15-201 et. seq.)

Signature

501-296-1802

Phone Number

E-mail Address

Executive Director, Arkansas State Medical Board

Title

9/20/17

Date

# Hope, Trice, O'Dwyer & Wilson, P.A.

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RALPH "WIN" WILSON III  
CHRISTOPHER B. ARNOLD

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Email: [kodwyer@htolaw.com](mailto:kodwyer@htolaw.com)

WILLIAM H. TRICE III (1946-2014)

September 18, 2017

Ms. Donna K. Davis, Committee Staff  
Bureau of Legislative Research  
State Capitol Building, Room 315  
Little Rock, AR 72201

**RE: My Client: Arkansas State Medical Board  
Proposed Regulation 38, Telemedicine**

Dear Ms. Davis:

At its meeting on September 12, 2017, the Arkansas State Medical Board approved the proposed Regulation 38 as amended. No-one spoke against the proposal.

Enclosed are the following:

1. Two copies of a mark-up showing the changes to the proposed Regulation
2. Two copies of the approved Regulation 38, Telemedicine.

I am also emailing all of this to you at [donna@arkleg.state.ar.us](mailto:donna@arkleg.state.ar.us), and the Secretary of State's office at [statedocs@library.arkansas.gov](mailto:statedocs@library.arkansas.gov).

Respectfully,



Kevin M. O'Dwyer  
Attorney for the Arkansas State Medical Board

KMO/jab

Enclosures

cc: Karen Whatley, Executive Secretary, Arkansas State Medical Board

## PROPOSED AMENDMENT

### AMENDMENT TO REGULATION 38

### TELEMEDICINE

#### Requirement for all services provided by physicians using telemedicine:

1. A physician-patient or physician assistant/patient relationship must be established in accordance with Regulation 2.8 before the delivery of services via telemedicine. A patient completing a medical history online and forwarding it to a physician or physician assistant is not sufficient to establish the relationship, nor does it qualify as store-and-forward technology.
2. The following requirements apply to all services provided by physicians or physician assistants using telemedicine:
  - A. The practice of medicine via telemedicine shall be held to the same standards of care as traditional in-person encounters.
  - B. The physician or physician assistant must obtain a detailed explanation of the patient's complaint from the patient or the patient's treating physician or physician assistant.
  - C. If a decision is made to provide treatment, the physician or physician assistant must agree to accept responsibility for the care of the patient.
  - D. If follow-up care is indicated, the physician or physician assistant must agree to provide or arrange for such follow-up care.
  - E. A physician or physician assistant using telemedicine may NOT issue a prescription for any controlled substances defined as any scheduled medication under schedules II through V unless the physician or physician assistant has seen the patient for an in-person exam or unless a relationship exists through consultation or referral; on-call or cross-coverage situations; or through an ongoing personal or professional relationship.
  - F. The physician or physician assistant must keep a documented medical record, including medical history.
  - G. At the patient's request, the physician or physician assistant must make available to the patient an electronic or hardcopy version of the patient's medical record documenting the encounter. Additionally, unless the patient declines to consent, the physician or physician assistant must forward a copy of the record of the encounter to the patient's regular treating physician or physician assistant if that physician or physician assistant is not the same one delivering the service via telemedicine.
  - H. Services must be delivered in a transparent manner, including providing access to information identifying the physician or physician assistant in advance of the encounter, with licensure and board certifications, as well as patient financial responsibilities.
  - I. If the patient, at the recommendation of the physician or physician assistant, needs to be seen in person for their current medical issue, the physician or physician assistant must arrange to see the patient in person or direct the patient to their regular treating physician or physician assistant or other appropriate provider if the patient does not have a treating physician or physician assistant. Such recommendation shall be

documented in the patient's medical record.

- J. Physicians or physician assistants who deliver services through telemedicine must establish protocols for referrals for emergency services.
- K. All physicians or physician assistants providing care via telemedicine to a patient located within the State of Arkansas shall be licensed to practice medicine in the State of Arkansas.
- L. A physician shall not issue a written medical marijuana certification to a patient based on an assessment performed through telemedicine.

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