Executive Summary

Florida Licensure Physician Statute

Licensure Requirements: Those wishing to practice medicine in the state of Florida need to obtain a full medical license. Florida does not have specific language within its state statute, nor its administrative regulations, granting physicians a “special/limited” license to enter the state remotely to practice telemedicine.

Licensure Reciprocity: The Florida Licensure Statute does not allow for license reciprocity between states.

Licensure Exceptions: The Florida Licensure Statute allows for the following common exceptions:

- Consultative Services: Physicians are able to offer consultative services without being required to receive full medical licensure.
- Military Exception: Those physicians, licensed in any one of the 50 states, are permitted to administer care to military members, as either a civilian contract employee or a military physician officer, without having to first receive additional licensure.
- Emergency Exception: A physician is permitted to administer care to a person in an emergency situation, regardless if that physician is licensed in the state where the care is taking place.
- Domestic administration of family remedies.

Internet Prescribing of Medication: Florida’s Administrative Regulations do not allow for the administration of medication over the internet through the use of a medical questionnaire. The regulation requires the patient to be examined by the prescribing physician before medication is administered, unless it is an emergency situation.
For more licensure information, please contact the Florida State Medical Board at (850) 245-4444 or click here for the Website.

According to the Federation of State Medical Boards, the 10th Amendment police power grants states the right to regulate the practice of medicine.

FLORIDA PHYSICIAN LICENSURE STATUTE

Title XXXII. Regulation of Professions and Occupations
Chapter 458. Medical Practice

458.301. Purpose

The Legislature recognizes that the practice of medicine is potentially dangerous to the public if conducted by unsafe and incompetent practitioners. The Legislature finds further that it is difficult for the public to make an informed choice when selecting a physician and that the consequences of a wrong decision could seriously harm the public health and safety. The primary legislative purpose in enacting this chapter is to ensure that every physician practicing in this state meets minimum requirements for safe practice. It is the legislative intent that physicians who fall below minimum competency or who otherwise present a danger to the public shall be prohibited from practicing in this state.

458.303. Provisions Not Applicable to other Practitioners; Exceptions2, etc.


(a) Other duly licensed health care practitioners acting within their scope of practice authorized by statute.

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1 In 1997 and again in 2000, then-Florida State Senator Ginny Brown-Waite (R-FL) introduced legislation that would make it mandatory for a physician administering health care services within the state of Florida to be fully licensed by the Florida State Medical Board. Many who opposed this legislation in Florida argued that it would chill the effects of telemedicine. On May 5, 2000, the legislation died in Committee.

2 “A Call to Action: Georgia Must Adopt a New Standard of Care, Licensure, Reimbursement, and Privacy Laws for Telemedicine,” an article by Shannon S. Venable, published in the 2005 Emory Law Journal, explained that “Florida has no licensure laws pertaining to telemedicine.”
(b) Any physician lawfully licensed in another state or territory or foreign country, when meeting duly licensed physicians of this state in consultation.

(c) Commissioned medical officers of the Armed Forces of the United States and of the Public Health Service of the United States while on active duty and while acting within the scope of their military or public health responsibilities.\(^3\)

(d) Any person while actually serving without salary or professional fees on the resident medical staff of a hospital in this state, subject to the provisions of s. 458.321.

(e) Any person furnishing medical assistance in case of an emergency.\(^4\)

(f) The domestic administration of recognized family remedies.\(^5\)

(g) The practice of the religious tenets of any church in this state.

(h) Any person or manufacturer who, without the use of drugs or medicine, mechanically fits or sells lenses, artificial eyes or limbs, or other apparatus or appliances or is engaged in the mechanical examination of eyes for the purpose of constructing or adjusting spectacles, eyeglasses, or lenses.

(2) Nothing in s. 458.301, s. 458.303, s. 458.305, s. 458.307, s. 458.309, s. 458.311, s. 458.313, s. 458.319, s. 458.321, s. 458.327, s. 458.329, s. 458.331, s. 458.337, s. 458.339, s. 458.341, s. 458.343, s. 458.345, or s. 458.347 shall be construed to prohibit any service rendered by a

\(^3\) In the 1960's, when Americans began exploring space travel, NASA started investing in technology that would allow astronauts to receive care at a distance. This process later became known as telemedicine. Shortly thereafter, the military began using telemedicine to triage medical injuries on the battlefield.

\(^4\) *CTeL Comment:* An example of a medical emergency, in which a physician is permitted to assist, is a car accident on the interstate highway. A physician can render care to save the injured person’s life, regardless of where the physician is licensed.

\(^5\) In *State v. Huff*, 90 P. 279, 284 (1907), the Court permitted the administration of family remedies without a medical license. This exception is also found in California, Massachusetts, New Mexico and Washington.
registered nurse or a licensed practical nurse, if such service is rendered under the
direct supervision and control of a licensed physician who provides specific direction
for any service to be performed and gives final approval to all services performed.
Further, nothing in this or any other chapter shall be construed to prohibit any service
rendered by a medical assistant in accordance with the provisions of s. 458.3485.

The Florida State Medical Board reserves the right to grant “special purpose licenses/restricted
licenses” for the practice of medicine. Currently, there are 11 state boards that grant this
exemption to telehealth providers. Florida is not one of those states.

458.310. Restricted Licenses

(1) It is the intent of the Legislature to provide medical services to all the residents of
this state at an affordable cost.

(2) The Board of Medicine may, by rule, develop criteria and, without examination,
issue restricted licenses annually to up to 100 persons to practice medicine in this state
who:

(a) Meet the requirements of s. 458.311;

(b) Show evidence of the active licensed practice of medicine in another
jurisdiction for at least 2 years of the immediately preceding 4 years, or
completion of board-approved postgraduate training within the year preceding
the filing of an application; and

(c) Enter into a contract to practice for a period of 24 months solely in the employ
of the state or a federally funded community health center or migrant health
center, at the current salary level for that position. The Board of Medicine shall
designate areas of critical need in the state where these restricted licensees may
practice.6

(3) Before the end of the 24-month practice period, the physician must take and
successfully complete the licensure examination.

6 In efforts to decrease disparity in care, some states grant licensure exceptions to physicians
administering care in rural, remote and underserved areas.
An exception to this licensure requirement was found in Hesterly v. Royal Caribbean Cruises, Ltd., 515 F.Supp.2d 1278 (2007), in which a Florida court ruled that statutes governing medical licenses imposed no duty on the owner of a cruise ship, which provided doctors for treatment of passengers, to employ doctors that met Florida licensing requirements. This would support a claim of negligence per se under Florida law, because requiring an owner to employ doctors licensed in Florida would contradict the uniformity of federal maritime law.

Physicians who wish to practice telemedicine in a state that lacks specific licensure requirements for telehealth providers may be required to seek a full medical license. There are 36 states that require telehealth providers to seek a full medical license in order to practice in that state. Florida is one of those states.

In Wagman v. Florida Bd. of Medicine, 590 So.2d 12 (1991), the Florida State Medical Board denied licensure to a physician because the physician lacked “good moral character.” However, while the court found the misrepresentations on the physician’s application “material,” the court reversed and remanded the case, explaining that the Board violated its scope of inquiry during the notice of the hearing.

458.311 Licensure by Examination; Requirements; Fees

(1) Any person desiring to be licensed as a physician, who does not hold a valid license in any state, shall apply to the department on forms furnished by the department. The department shall license each applicant who the board certifies:

(a) Has completed the application form and remitted a nonrefundable application fee not to exceed $500.

(b) Is at least 21 years of age.

(c) Is of good moral character.7

An exception to this licensure requirement was found in Hesterly v. Royal Caribbean Cruises, Ltd., 515 F.Supp.2d 1278 (2007), in which a Florida court ruled that statutes governing medical licenses imposed no duty on the owner of a cruise ship, which provided doctors for treatment of passengers, to employ doctors that met Florida licensing requirements. This would support a claim of negligence per se under Florida law, because requiring an owner to employ doctors licensed in Florida would contradict the uniformity of federal maritime law.

7 According to an opinion released by the Florida Attorney General in 1973, “licenses and employments may not be denied on the basis of a lack of good moral character or the like, when such determination of lack of character is based solely on the fact that an individual is a former offender.”
(d) Has not committed any act or offense in this or any other jurisdiction which would constitute the basis for disciplining a physician pursuant to s. 458.331.

The following are recent legal examples of physicians who committed an “act or an offense” that resulted in the revocation of a license:

- In *U.S. v. Birbragher*, 576 F.Supp.2d 1000 (2008), a Florida physician created a Web-based company that administered non-controlled substances to patients he never met or examined after they completed a medical questionnaire.

(e) For any applicant who has graduated from medical school after October 1, 1992, has completed the equivalent of 2 academic years of pre-professional, postsecondary education, as determined by rule of the board, which shall include, at a minimum, courses in such fields as anatomy, biology, and chemistry prior to entering medical school.  

(f) Meets one of the following medical education and postgraduate training requirements:

1. a. Is a graduate of an allopathic medical school or allopathic college recognized and approved by an accrediting agency recognized by the United States Office of Education or is a graduate of an allopathic medical school or allopathic college within a territorial jurisdiction of the United States recognized by the accrediting agency of the governmental body of that jurisdiction,

   b. If the language of instruction of the medical school is other than English, has demonstrated competency in English through presentation of a satisfactory grade on the Test of Spoken English of the Educational Testing Service or a similar test approved by

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8 These additional requirements were added to ensure that students practicing medicine in the United States remained competitive in the field of medicine. These requirements, in most states, originate with the state medical board.

9 In *Sabastier v. State*, 504 So.2d 45 (1987), the Court ruled that the “requirement that physicians graduate from allopathic medical schools or colleges in order to obtain license to practice medicine was not invidiously discriminatory against those who had not attended allopathic institutions.”
All 50 states have some form of English proficiency requirements for the licensure examination. This requirement was created as a public policy measure to ensure that physicians licensed to practice in the United States are proficient in the English language. Those seeking to practice telemedicine in Florida must also meet this requirement, since Florida requires full licensure of health care providers administering care through telehealth.

10 On November 2, 1981, the Florida State Attorney General released an opinion regarding the requirements for a non-native English speaking physician looking to take a licensure examination. The opinion stated, “An individual who successfully completes a program established by a regulatory board pursuant to this section must take the licensure examination in English unless he also meets the criteria set out in this section for taking the examination in another language.”
(g) Has submitted to the department a set of fingerprints on a form and under procedures specified by the department, along with a payment in an amount equal to the costs incurred by the Department of Health for the criminal background check of the applicant.\footnote{The submission of fingerprints is required to ensure that a physician does not have any former or pending criminal violations.}

(h) Has obtained a passing score, as established by rule of the board, on the licensure examination of the United States Medical Licensing Examination (USMLE); or a combination of the United States Medical Licensing Examination (USMLE), the examination of the Federation of State Medical Boards of the United States, Inc. (FLEX), or the examination of the National Board of Medical Examiners up to the year 2000; or for the purpose of examination of any applicant who was licensed on the basis of a state board examination and who is currently licensed in at least one other jurisdiction of the United States or Canada, and who has practiced pursuant to such licensure for a period of at least 10 years, use of the Special Purpose Examination of the Federation of State Medical Boards of the United States (SPEX) upon receipt of a passing score as established by rule of the board. However, for the purpose of examination of any applicant who was licensed on the basis of a state board examination prior to 1974, who is currently licensed in at least three other jurisdictions of the United States or Canada, and who has practiced pursuant to such licensure for a period of at least 20 years, this paragraph does not apply.

(2) As prescribed by board rule, the board may require an applicant who does not pass the national licensing examination after five attempts to complete additional remedial education or training. The board shall prescribe the additional requirements in a manner that permits the applicant to complete the requirements and be reexamined within 2 years after the date the applicant petitions the board to retake the examination a sixth or subsequent time.\footnote{A 1983 opinion, released by the Florida Office of the Attorney General, explained that the Florida Department of Professional Regulations is not required to administer a medical license to a physician, even if the physician passed all other portions of the licensure application.}

(3) Notwithstanding the provisions of subparagraph (1)(f)3., a graduate of a foreign medical school need not present the certificate issued by the Educational Commission for Foreign Medical Graduates or pass the examination utilized by that commission if
(a) Has received a bachelor's degree from an accredited United States college or university.

(b) Has studied at a medical school which is recognized by the World Health Organization.

(c) Has completed all of the formal requirements of the foreign medical school, except the internship or social service requirements, and has passed part I of the National Board of Medical Examiners examination or the Educational Commission for Foreign Medical Graduates examination equivalent.

(d) Has completed an academic year of supervised clinical training in a hospital affiliated with a medical school approved by the Council on Medical Education of the American Medical Association and upon completion has passed part II of the National Board of Medical Examiners examination or the Educational Commission for Foreign Medical Graduates examination equivalent.  

CTeL Comment: Florida statute does NOT require a Medical student to obtain full licensure before administering care to a patient, as long as that student is under the supervision of a Florida licensed physician. The same holds true for a medical student who is administering care via telehealth, the practitioner the student is working under must be fully licensed in Florida.

(4) The department and the board shall assure that applicants for licensure meet the

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13 In a statement released by the Centers for Medicare and Medicaid Services, U.S. licensed/credentialed physicians wishing to administer care while abroad are precluded from receiving reimbursements by CMS, citing the Section 1862(a)(4) of the Social Security Act “the Medicare law prohibits payment for items and services furnished outside the United States except for certain limited services found at Section 1814(f) of the Social Security Act.”

14 According to an opinion released by the Florida Attorney General in 1961, “Failure of a physician who gave up his American citizenship in 1940 to practice medicine in Cuba to reregister his license annually invalidated his license. The citizenship requirements to practice medicine in this state as set out in subsec. (2)(a) of former § 458.05 could not be waived by the Florida state board of medical examiners in favor of a physician who desired to return to Florida and practice medicine as a Cuban citizen.”
CTel Comment: An example of a possible offense that may trigger an investigation by the State of Florida Medical Board is the prescribing of medications based entirely on a patient’s completion of an electronic medical questionnaire.

According to the Florida State Administrative Code, Standards of Practice for Medical Doctors, 64B8-9, “Prescribing medications based solely on an electronic medical questionnaire constitutes the failure to practice medicine with that level of care, skill, and treatment which is recognized by reasonably prudent physicians as being acceptable under similar conditions and circumstances, as well as prescribing legend “drugs other than in the course of a physician's professional practice.”

Upon completion of the investigation, the provisions of s. 458.331 shall apply. Furthermore, the department may not issue an unrestricted license to any individual who has committed any act or offense in any jurisdiction which would constitute the basis for disciplining a physician pursuant to s. 458.331. When the board finds that an individual has committed an act or offense in any jurisdiction which would constitute the basis for disciplining a physician pursuant to s. 458.331, then the board may enter an order imposing one or more of the terms set forth in subsection (8).

(6) Each applicant who meets the requirements of this chapter shall be licensed as a physician, with rights as defined by law.

In Barker v. Board of Medical Examiners, 428 So.2d 720 (1983), the Court upheld the Department of Professional Regulations ruling that a licensed applicant who was a graduate of a school of osteopathic medicine was not a graduate of a medical school or college approved by the board; therefore, the board’s denial of the application was justified.

(7) Upon certification by the board, the department shall impose conditions, limitations, or restrictions on a license if the applicant is on probation in another jurisdiction for an
act which would constitute a violation of this chapter.

(8) When the board determines that any applicant for licensure has failed to meet, to the board’s satisfaction, each of the appropriate requirements set forth in this section, it may enter an order requiring one or more of the following terms:

(a) Refusal to certify to the department an application for licensure, certification, or registration;

(b) Certification to the department of an application for licensure, certification, or registration with restrictions on the scope of practice of the licensee; or

(c) Certification to the department of an application for licensure, certification, or registration with placement of the physician on probation for a period of time and subject to such conditions as the board may specify, including, but not limited to, requiring the physician to submit to treatment, attend continuing education courses, submit to reexamination, or work under the supervision of another physician.

Evidence supported board of medical examiners’ finding that license applicant, who was a graduate of a school of osteopathic medicine, was not a graduate of a medical school or college approved by the board; therefore, the board’s denial of the application was justified.

3. Foreign medical school graduates

Foreign medical school graduate's right to medical license was controlled by subsec. (2) of this section which specifically refers to “graduates of foreign medical schools,” rather than subsec. (4) of this section pertaining to those who are licensed by examination in the United States and since graduate admittedly did not qualify under subsec. (4) of this section, application was correctly denied by Board of Medicine. Serviansky v. Department of Professional Regulation, Bd. of Medicine, App. 3 Dist., 523 So.2d 772 (1988).

Under former § 458.08 the board could participate in program for evaluation of graduates of foreign medical schools submitted by cooperating committee.
Telehealth practitioners are required to travel to Florida to take the Florida State Licensure Exam.

Out-of-state telehealth providers, like practitioners administering care in Florida, are required to pay fees associated with obtaining a full medical license.

Where fee for medical license examination has been paid, as provided in this section, it may be refunded only in the event that there has been no action taken on the application, and may not be refunded if any action has been taken, however small it may be. Op. Atty. Gen., 056-219, 07/31/1956.

The board of medical examiners had no authority to limit number of applicants permitted to take state examinations at each examination, unless it could clearly show that such regulation was adopted for protection of welfare and health of people. Op. Atty. Gen., 056-103, March 28, 1956.

5. Fees, examinations

Where fee for medical license examination has been paid, as provided in this section, it may be refunded only in the event that there has been no action taken on the application, and may not be refunded if any action has been taken, however small it may be. Op. Atty. Gen., 056-219, 07/31/1956.

The department of professional regulation is neither required nor prohibited from certification of an applicant's qualifications for licensure after successful passage of an examination when the board had previously certified that all licensure requirements except a passing examination score were met. Op. Atty. Gen., 83-99, Dec. 13, 1983.

7. Registration to practice

15 In Serviansky v. Department of Professional Regulation, 523 So.2d 772 (1988), the Court upheld the Board of Medicine ruling, which found that graduates of foreign medical schools' right to obtain a medical license in the United States was controlled under Subsection 2 of this section, which specifically refers to "graduates of foreign medical schools," rather than subsec. (4) of this section, pertaining to those who are licensed by examination in the United States. Since the applicant in question admittedly did not qualify under subsec. (4) of this section, the application was correctly denied.
State board of health may not register as licensed physician person who has been perpetually enjoined from practicing medicine in state, unless and until such injunction is set aside or reversed. Op. Atty. Gen., 1945, p. 521.

A physician wishing to administer care remotely, through the use of telehealth technologies, must be in compliance with licensure laws in both the state where the remote consult is taking place and the state where the physician is physically located.
APPENDIX

458.305 Definitions

As used in this chapter:

(1) "Board" means the Board of Medicine. 16

(2) "Department" means the Department of Health.

(3) "Practice of medicine" means the diagnosis, treatment, operation, or prescription for any human disease, pain, injury, deformity, or other physical or mental condition.

(4) "Physician" means a person who is licensed to practice medicine in this state.

16 Licensure requirements for physicians are state-based, meaning that each state’s Board of Medicine helps to determine licensure requirements for the state’s physicians.