



INSTITUTE FOR JUSTICE

April 24, 2020

VIA Email and UPS

Honorable Tim Walz
Governor, State of Minnesota
75 Rev. Dr. Martin Luther King Jr Blvd, #130
Saint Paul, MN 55155

Ms. Ruth Martinez
Executive Director
Minnesota Board of Medical Practice
2829 University Avenue SE, Suite 500
Minneapolis, MN 55414
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Re: Improving access to telehealth services during COVID-19 pandemic

To Governor Walz and Ms. Martinez:

The Institute for Justice (IJ) respectfully requests that you expand the offering of telehealth services to allow Minnesotans the opportunity to continue staying healthy at home. **Specifically, please expand Executive Order 20-28 to allow all healthcare professionals, not just mental health professionals, licensed anywhere in the United States to provide telehealth services to Minnesota residents.** As the COVID-19 pandemic has demonstrated, Minnesotans need access to more care, not less. Now is the time to continue to take commonsense and compassionate action that will reassure Minnesotans during this unprecedented emergency.

IJ is a national civil liberties law firm that has worked for nearly three decades to reduce and remove unreasonable occupational licensing requirements, including in the medical professions.¹ For example, IJ has sued several states regarding laws that unreasonably restrict access to telehealth services.² In addition, IJ drafts legislation and advises legislatures throughout the country on licensing and other regulatory matters. And for fifteen years, IJ has maintained an office in Minneapolis to specifically address policy questions narrowly tailored for Minnesota.³

We applaud the quick action you have already taken to increase access to healthcare. For example, EO 20-23 suspended many licensing requirements for medical professionals. This was extremely welcomed. More, however, needs to be done.

Expanding access to telehealth services will further the state's efforts to combat the pandemic in two important ways. First, increasing access to telehealth services will allow

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residents to continue sheltering in place if they choose. Second, access to out-of-state telehealth services may free up in-state practitioners to be allowed where they are needed most.

Minnesota already recognizes that telehealth is safe.⁴ Therefore, Minnesota residents should benefit from telehealth services to the maximum extent possible, but the current law makes it difficult for Minnesotans to access telehealth care from out-of-state providers. The onus is currently on the practitioner to research Minnesota law, register with the Board, and pay a fee for the privilege of providing telehealth services here. But those steps ultimately harm patients. Patients should have access to the practitioners of their choosing, regardless of where that practitioner happens to be licensed.

Instead of protecting patients or increasing the quality of service, laws that largely restrict telehealth services to in-state providers merely insulate in-state providers from competition. That type of protectionism is harmful during regular times and has no place during a pandemic. Several federal courts have held that licensing laws that exist solely to protect one group from competition are unconstitutional.⁵

Luckily, there is a pragmatic solution. Recently, many states, including Idaho,⁶ Florida,⁷ Utah,⁸ and Washington D.C.,⁹ have waived telehealth restrictions, allowing their residents to receive telehealth services from doctors licensed anywhere in the nation.

We thus respectfully recommend that you expand EO 20-28 to allow Minnesotans to utilize telehealth services from any healthcare provider licensed in the United States during the state of emergency. In light of the actions you have already taken, this is a small step that has the potential to dramatically promote Minnesotans' health. We also hope that you will consider making this change permanent. Beyond the pandemic, the immuno-compromised, disabled, and those in rural Minnesota would benefit greatly from this measure.

IJ stands ready to assist you in crafting a tailored solution that will serve the citizens of this great state. Please contact us at (612) 435-3451.

Sincerely,



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¹ *E.g.*, Plaintiffs' Amended Complaint, *Tiwari v. Friedlander*, No. 3:19-cv-00884-JRA. (W.D. Ky. filed Jan. 17, 2020); *Garrett v. Tex. State Bd. or Pharmacy*, No. D-1-GN-19-003686 (Tex. Dist. Ct. Travis Cty. 98th Jud. Dist. filed June 27, 2019).

² *E.g.*, *Opternative, Inc. v. S.C. Bd. of Med. Exam'rs*, Civil Action No. 2016-CP-40-06276 (S.C. 5th Jud. Cir. filed Oct. 20, 2016); *Hines v. Quillivan*, No. 1:18-cv-00155 (S.D. Tex. filed Oct. 2, 2018).

³ See, e.g., HF 140 (2019) (deregulating hair braiders); SF 1876 (2009) (deregulating household goods movers); SF 2750 (2006) (reforming Minnesota's eminent domain laws following IJ's case *Kelo v. New London*).

⁴ See Minn. Stat. § 147.032.

⁵ See, e.g., *St. Joseph Abbey v. Castille*, 712 F.3d 215 (5th Cir. 2013); *Craigmiles v. Giles*, 312 F.3d 220 (6th Cir. 2002); *Merryfield v. Lockyer*, 547 F.3d 978 (9th Cir. 2008); *Bruner v. Zawacki*, 997 F. Supp. 2d 691 (E.D. Ky. 2014).

⁶ Ida. State Bd. of Medicine Proclamation (Mar. 18, 2020), https://bom.idaho.gov/BOMPortal/BOM/Procedures/board_of_medicine_proclamation_03-18-2020.pdf.

⁷ Fla. Dep't of Health, Emergency Order 20-002 (Mar. 16, 2020), (<http://www.flhealthsource.gov/pdf/emergencyorder-20-002.pdf>) (Broadly waiving telehealth licensure requirements); Fla. Dep't of Health, Emergency Order 20-003 (Mar. 21, 2020) <https://www.flgov.com/wp-content/uploads/covid19/DOH%20EO%202020-003%203.21.2020.pdf> (extending waiver through May 8, 2020).

⁸ Utah Executive Order, *Suspending Enforcement of Statutes Relating to Telehealth Servs.* (Mar. 25, 2020), https://dopl.utah.gov/docs/Telehealth_Executive_Order.pdf; see also, <https://dopl.utah.gov/covid19.html>.

⁹ District of Columbia Administrative Order No. 2020-02 (Mar. 13, 2020), <https://www.echpca.org/sites/default/files/2020-03/State%20Action%20COVID-19%20District%20of%20Columbia.pdf>.