

Dear Senators MARTIN, Souza, Jordan, and  
Representatives WOOD, Wagoner, Chew:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of the  
Division of Occupational and Professional Licenses - Medicine, Board of:  
IDAPA 24.33.03 - General Provisions of the Board of Medicine - Proposed Rule (Docket No.  
24-3303-2001).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the  
cochairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research  
and Legislation no later than fourteen (14) days after receipt of the rules' analysis from Legislative  
Services. The final date to call a meeting on the enclosed rules is no later than 09/25/2020. If a meeting is  
called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules' analysis  
from Legislative Services. The final date to hold a meeting on the enclosed rules is 10/23/2020.

The germane joint subcommittee may request a statement of economic impact with respect to a  
proposed rule by notifying Research and Legislation. There is no time limit on requesting this statement,  
and it may be requested whether or not a meeting on the proposed rule is called or after a meeting has  
been held.

To notify Research and Legislation, call 334-4854, or send a written request to the address on the  
memorandum attached below.



Eric Milstead  
Director

# Legislative Services Office Idaho State Legislature

*Serving Idaho's Citizen Legislature*

## MEMORANDUM

**TO:** Rules Review Subcommittee of the Senate Health & Welfare Committee and the House Health & Welfare Committee  
**FROM:** Legislative Drafting Attorney - Matt Drake  
**DATE:** September 08, 2020  
**SUBJECT:** Division of Occupational and Professional Licenses - Medicine, Board of

IDAPA 24.33.03 - General Provisions of the Board of Medicine - Proposed Rule (Docket No. 24-3303-2001)

### Summary and Stated Reasons for the Rule

The Idaho Board of Medicine submits notice of proposed rulemaking at IDAPA 24.33.03 – General Provisions of the Board of Medicine. The board states that the purpose of the proposed rulemaking is to delete, and thus make permanent, certain provisions that were suspended due to COVID-19. In each instance, the board determined that the deleted rule was duplicative or outdated. The rulemaking additionally removes other duplicative and outdated language. The board states that the rulemaking was conducted in response to Executive Order 2020-13.

### Negotiated Rulemaking / Fiscal Impact

Negotiated rulemaking was not conducted because the changes respond to Executive Order 2020-13. There is no fiscal impact.

### Statutory Authority

The rulemaking appears authorized pursuant to section 54-1806(2), Idaho Code.

cc: Division of Occupational and Professional Licenses - Medicine, Board of  
Russ Barron

### \*\*\* PLEASE NOTE \*\*\*

Per the Idaho Constitution, all administrative rules may be reviewed by the Legislature during the next legislative session. The Legislature has 3 options with this rulemaking docket: **1)** Approve the docket in its entirety; **2)** Reject the docket in its entirety; or **3)** Reject the docket in part.

# IDAPA 24 – DIVISION OF OCCUPATIONAL AND PROFESSIONAL LICENSES

## 24.33.03 – GENERAL PROVISIONS OF THE BOARD OF MEDICINE

DOCKET NO. 24-3303-2001

### NOTICE OF RULEMAKING – PROPOSED RULE

**AUTHORITY:** In compliance with Sections 67-5220(1) and 67-5220(2), Idaho Code, notice is hereby given that this agency initiated proposed rulemaking procedures. The action is authorized Pursuant to Section 54-1806(2), Idaho Code.

**PUBLIC HEARING SCHEDULE:** A public hearing concerning this rulemaking will be held as follows:

<b>PUBLIC HEARING</b>
<b>Wednesday, September 23, 2020</b> <b>5:00 - 6:00 p.m. (MDT)</b>
<b>Idaho State Board of Medicine</b> <b>345 W. Bobwhite Court, Suite 150</b> <b>Boise, ID 83706</b>

The meeting site will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the meeting, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the intended rulemaking and the principal issues involved:

The purpose of this rulemaking is to update the general provisions of the Board of Medicine to delete certain provisions suspended for COVID-19 that the Board determined to be duplicative or outdated. In addition, the Board removed outdated or duplicative language in other subsections of the rule that were not suspended to streamline the chapter.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: N/A

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking:

Not applicable. The Board of Medicine is a dedicated funds agency, and therefore, there will be no fiscal impact to the state general fund. This rule also has no fiscal impact on the Board of Medicine funds.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the changes made were in response to [Executive Order 2020-13](#).

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2) (a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rules, contact Anne K. Lawler, Executive Director, (208) 327-7000.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 23, 2020.

Dated this 7th day of August, 2020.

Anne K. Lawler, JD, RN, Executive Director  
Phone (208) 327-7000  
Fax (208) 327-7005

Idaho State Board of Medicine  
345 W. Bobwhite Court, Suite 150  
Boise, Idaho 83706

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 24-3303-2001**  
**(Only Those Sections With Amendments Are Shown.)**

**100. GENERAL QUALIFICATIONS FOR LICENSURE.**

~~01. **Applicant.** An applicant must meet the statutory requirements of licensure. The Board may refuse licensure or to issue a permit if it finds the applicant has engaged in conduct prohibited by state law for that specific category of licensure; provided the Board will take into consideration the rehabilitation of the applicant and other mitigating circumstances. (3-20-20)~~

~~02. **Licensure.** Each applicant must have attained the level of education required by the Board, and have passed an examination required by the Board, or be entitled to apply by Licensure by Endorsement, or provisional licensure, if applicable. (3-20-20)~~

**031. **Application.**** All applications for license or permit will be made to the Board on forms supplied by the Board, will be verified, must include all requested information, and must include the nonrefundable application fee. (3-20-20)

**042. **Application Expiration.**** All applicants must complete their license application within one (1) year unless extended by the Board after filing an application for extension. Unless extended, applications that remain on file for more than one (1) year will be considered null and void and a new application and new fees will be required as if filing for the first time. (3-20-20)

**053. **Personal Interview.**** The Board may, at its discretion, require the applicant to appear for a personal interview. (3-20-20)

**064. **Residence.**** No period of residence in Idaho is required of any applicant, however, each applicant for licensure must be legally able to work and live in the United States. Original documentation of lawful presence in the United States must be provided upon request only. The Board may refuse licensure or to renew a license if the applicant is not lawfully present in the United States. (3-20-20)

**(BREAK IN CONTINUITY OF SECTIONS)**

**103. ~~PROVISIONAL LICENSURE. (RESERVED)~~**

~~Where permitted by law, the Board may issue a provisional license to a person who has successfully completed the academic requirements required by the Board and has met all the other requirements for licensure set forth in statute, but who has not yet passed the relevant examination required by the Board for licensure in their specific profession. (3-20-20)~~

~~01. **Application.** Each applicant for provisional licensure will submit a completed written application to the Board on forms prescribed by the Board, together with the application fee, and all requested information, including the affidavit of a monitor licensed to practice the same profession in the state who will undertake the supervision of the provisional licensee. (3-20-20)~~

~~02. **Affidavit.** An affidavit must be signed by an monitor licensed in Idaho to practice the same profession, in which they affirm and attest to supervise and be responsible for the activities of the provisionally licensed provider being supervised and to review and countersign all records and documentation of services performed by the provisionally licensed provider. (3-20-20)~~

~~03. **Supervision.** The practice of a provider holding a provisional license will be in direct association with an Idaho licensee of the same profession who shall is responsible for the activities of the provisionally licensed~~

~~provider being supervised and will review and countersign all patient documentation performed by the provisionally licensed provider. The supervising monitor need not be physically present or on the premises at all times but will be available for telephonic consultation. The extent of communication between the monitor and the provisionally licensed provider will be determined by the competency of the individual, the treatment setting, and the diagnostic category of the patients.~~ (3-20-20)

**104. INACTIVE LICENSE**

**01. Issuance of Inactive License.** Any applicant who is eligible to be issued a license by the Board, except a volunteer license, may be issued, upon request, an inactive license to practice on the condition that he will not engage in the practice of the relevant profession in this state. An inactive license fee will be collected by the Board. (3-20-20)

**02. Renewal of Inactive License.** Inactive licenses will be issued for a period of not more than five (5) years and such licenses will be renewed upon payment of an inactive license renewal fee ~~of no more than one hundred dollars (\$100) for each renewal year.~~ The inactive license certificate will set forth its date of expiration. (3-20-20)( )

**03. Inactive to Active License.** An inactive license may be converted to an active license by application to the Board and payment of required fees. Before the license will be converted the applicant must account for the time during which an inactive license was held. The Board may, in its discretion, require a personal interview. (3-20-20)

**(BREAK IN CONTINUITY OF SECTIONS)**

~~**152. NOTICE.**~~

~~The Board will notify, in writing, a licensee under investigation within ten (10) business days of the commencement of the investigation, and will provide an opportunity for any licensee under investigation to meet with the Committee on Professional Discipline or Board staff before the initiation of formal disciplinary proceedings by the Board.~~ (3-20-20)

~~**153. ON SITE REVIEW.**~~

~~The Board, by and through its designated agents, is authorized to conduct on-site reviews of the activities of its licensees at the locations and facilities in which the licensees practice at such times as the Board deems necessary.~~ (3-20-20)

~~**154. -- 200. (RESERVED)**~~

**(BREAK IN CONTINUITY OF SECTIONS)**

~~**202. IDAHO LICENSE REQUIRED.**~~

~~Any physician, physician assistant, respiratory therapist, polysomnographer, dietitian, athletic trainer, or naturopathic medical doctor who provides any telehealth services to patients located in Idaho must hold an active Idaho license issued by the Idaho State Board of Medicine for their applicable practice.~~ (3-20-20)

~~**203. PROVIDER-PATIENT RELATIONSHIP.**~~

~~In addition to the requirements set forth in Section 54-5705, Idaho Code, during the first contact with the patient, a provider licensed by the Idaho State Board of Medicine who is providing telehealth services must:~~ (4-11-19)

~~**01. Verification.** Verify the location and identity of the patient; (4-11-19)~~

~~**02. Disclose.** Disclose to the patient the provider's identity, their current location and telephone number and Idaho license number; (4-11-19)~~

**03. Consent.** Obtain appropriate consents from the patient after disclosures regarding the delivery models and treatment methods or limitations, including a special informed consent regarding the use of telehealth technologies; and (4-11-19)

**04. Provider Selection.** Allow the patient an opportunity to select their provider rather than being assigned a provider at random to the extent possible. (4-11-19)

**2043. STANDARD OF CARE.**

A provider providing telehealth services to patients located in Idaho must comply with the applicable Idaho community standard of care. The provider is personally responsible to familiarize themselves with the applicable Idaho community standard of care. If a patient's presenting symptoms and conditions require a physical examination, lab work or imaging studies in order to make a diagnosis, the provider shall not provide diagnosis or treatment through telehealth services unless or until such information is obtained. (4-11-19)

**2054. INFORMED CONSENT.**

In addition to the requirements of Section 54-5708, Idaho Code, evidence documenting appropriate patient informed consent for the use of telehealth technologies must be obtained and maintained at regular intervals consistent with the community standard of care. Appropriate informed consent should, at a minimum, include the following terms: (4-11-19)

**01. Verification.** Identification of the patient, the provider and the provider's credentials; (4-11-19)

**02. Telehealth Determination.** Agreement of the patient that the provider will determine whether or not the condition being diagnosed and/or treated is appropriate for telehealth services; (4-11-19)

**03. Security Measures Information.** Information on the security measures taken with the use of telehealth technologies, such as encrypting data, password protected screen savers and data files, or utilizing other reliable authentication techniques, as well as potential risks to privacy and notwithstanding such measures; (4-11-19)

**04. Potential Information Loss.** Disclosure that information may be lost due to technical failures. (4-11-19)

**2065. MEDICAL RECORDS.**

As required by Section 54-5711, Idaho Code, any provider providing telehealth services as part of his or her practice shall generate and maintain medical records for each patient. The medical record should include copies of all patient-related electronic communications, including patient-physician communications, prescriptions, laboratory and test results, evaluations and consultations, relevant information of past care, and instructions obtained or produced in connection with the utilization of telehealth technologies. Informed consents obtained in connection with the provision of telehealth services should also be documented in the medical record. The patient record established during the provision of telehealth services must be accessible and documented for both the physician and the patient, consistent with all established laws and regulations governing patient healthcare records. (4-11-19)

**2076. -- 999. (RESERVED)**