From: Rachel Michelin
To: Sodergren, Anne@DCA
Subject: Patient Access and the APDS Telehealth Gap — A Path Forward Without Rulemaking
Date: Friday, April 24, 2026 2:16:56 PM
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Dear Anne,

I hope you're doing well. I've genuinely appreciated the collaborative relationship between the California Retailers Association and the Board over the years, and it's in that spirit, as partners who share a commitment to patient welfare, that I'm writing today. I want to be direct about a concern that is becoming increasingly urgent for California's pharmacy patients, and I'd like to find a way to resolve it without waiting 18 months for a rulemaking cycle to run its course.

The Board's mission is to protect and promote the health and safety of Californians. The position the Licensing Committee adopted regarding Automated Patient Dispensing Systems and telehealth patients works against that mission in a concrete and immediate way. Millions of Californians rely on telehealth as their primary or only means of accessing healthcare - particularly patients in rural communities, patients with mobility challenges, and patients managing chronic conditions who don't need an in-person visit to receive a refill. When the Board concludes that those patients cannot pick up their medications at an APDS kiosk located inside their own provider's office, it is making an affirmative choice to reduce access. That is not a neutral regulatory posture. It has real consequences for real people, and I genuinely don't understand how the statute supports it.

The relevant provisions are clear and modality neutral. Under Business and Professions Code sections 4427.3(b)(5) and 4427.6(j), an APDS may be located in "*a medical office or other location where patients are regularly seen for purposes of diagnosis and treatment*," and may only dispense to "*patients of the practice*." The Legislature established a two-prong framework: a location prong, requiring the kiosk to sit inside a qualifying medical office, and a patient prong, requiring that dispensing be limited to patients of that practice. Both prongs are entirely satisfied when a telehealth patient uses a kiosk inside their practice office. A telehealth patient is a patient of the practice - full stop. There is no subclause, no cross-reference, and no definitional carve-out that would authorize the Board to create a subcategory of "lesser" patients based on whether their most recent encounter was virtual or in person.

The Legislature did not incorporate any reference to Business and Professions Code

section 2290.5 , the telehealth definitions statute, anywhere in SB 1447. That silence is meaningful. It is not an oversight to be corrected by regulatory interpretation; it is the Legislature's deliberate choice to write a broad, modality-neutral statute. Courts have consistently held that administrative agencies may not read limitations into a statute that the Legislature chose not to include. The Board would be on very difficult legal footing if it attempted to do so here.

The result of the Committee's interpretation is, to put it plainly, absurd. Consider a single patient. On Monday, she visits her doctor in person and picks up her prescription from the kiosk in the lobby on her way out. On Tuesday, she sees the same physician via telehealth - the same provider, the same practice, the same diagnosis, the same prescription - and comes to the same office to use the same kiosk. Under the Board's reading, she cannot. The prescription is identical. The provider is identical. The kiosk is identical. The only variable is whether she sat in a waiting room or joined a video call. There is no statutory basis for that distinction, no patient safety rationale that supports it, and no rational policy justification.

I also want to address the overbreadth concern directly. The worry that confirming telehealth patients' eligibility would open the door to kiosks in parking garages or private homes is, respectfully, a red herring. The statute's physical-site requirement already does that work. An APDS must be located inside a medical office where patients are regularly seen; that guardrail is structural and limits where kiosks can go regardless of who uses them. Confirming that telehealth patients may use a kiosk that is already lawfully placed does not move that guardrail one inch. It simply clarifies who may walk through a door the statute has already opened.

These concerns were raised at last week's meeting, and the Board was asked to provide clarity. I understand the Committee's inclination to route this through rulemaking, and I recognize there are institutional reasons that path can feel safer. But I'd ask you to consider the practical reality: an 18-month or longer rulemaking process means that telehealth patients - already patients of the practice, already standing inside a licensed medical office, trying to pick up a lawfully prescribed medication - are being denied access for the entire duration, when the statute already provides the answer. That is a harm being imposed right now, with no statutory requirement that it be imposed.

My firm view is that the statute means exactly what it says: "*patients of the practice*" under BPC section 4427.6(j) **includes all patients of the medical practice**. The Legislature did not qualify that term by visit modality, and neither should the Board. That reading is compelled by the plain text, consistent with the Legislature's silence on telehealth in SB 1447, and the only interpretation that avoids the irrational two-tiered access problem the Committee's position creates.

Telehealth patients of medical practices should be permitted to use APDS kiosks located in those practices' offices today, under the statute as written. I urge the Board to

issue that clarification without delay.

The patients who need this access are not waiting on rulemaking. I hope the Board won't make them.

Warm regards,

Rachel

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