

TELEHEALTH COMMITTEE MINUTES

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A recorded webcast of this meeting is available at
<https://www.youtube.com/watch?v=exhU6b4xlrA>

DATE January 28, 2022

MEETING PLATFORM WebEx Video/Phone Conference

TIME 1:00 p.m.

ATTENDEES

Members Present: Christopher (Chris) Jones, Chair, LEP Member
Susan Friedman, Public Member
Diana Herweck, LPCC Member

Members Absent: *All members present*

Staff Present: Steve Sodergren, Executive Officer
Rosanne Helms, Legislative Manager
Christy Berger, Regulatory Analyst
Christina Kitamura, Administrative Analyst
Sabina Knight, Legal Counsel

Other Attendees: Public participation via WebEx video conference/phone
conference

1 **I. Call to Order and Establishment of Quorum**

2
3 Chris Jones, Chair of the Telehealth Committee (Committee) called the
4 meeting to order at 1:03 p.m. Roll was called, and a quorum was established.

5
6 **II. Introductions**

7
8 Committee members introduced themselves.

9
10 **III. Consent Calendar**

11 **a. Discussion and Possible Approval of September 9, 2021 Committee**
12 **Meeting Minutes**

13
14 Correction made on page 3, line 19 per public comment from CAMFT.

15
16 **Motion:** Approve the September 9, 2021 Committee Meeting Minutes as
17 amended.

18
19 Diana Herweck moved; Susan Friedman seconded.

20
21 Public Comment

22 Correction noted on page 3, line 19. Strike “opposed to...” CAMFT does
23 not have a formal position.

24
25 Roll call vote:

Member	Yea	Nay	Abstain	Absent	Recusal
Susan Friedman	x				
Diana Herweck	x				
Christopher Jones	x				

26
27 Vote: 3 yea, 0 nay. Motion carried

28
29 **b. Discussion and Possible Approval of October 1, 2021 Committee**
30 **Meeting Minutes**

31
32 This item was tabled.

33
34 **IV. Overview of the Committee’s Roles and Tasks**

35
36 The Committee members and stakeholders have discussed the following:

- 37 • Future topic areas for Committee discussion.
- 38 • The Board’s existing statutes and regulations related to telehealth.
- 39 • Laws of several other states that pertain to temporary practice across state
- 40 lines.
- 41 • Potential telehealth coursework requirement.

- Potential clarification of telehealth laws for associates and trainees.
- Supervision via videoconferencing.

V. Discussion and Possible Recommendation Regarding Allowable Telehealth Locations for Pre-Licensees

The COVID-19 pandemic has raised questions regarding allowable telehealth locations:

1. The physical location of a pre-licensure when performing in-state services via telehealth.
2. The ability of a pre-licensure located outside of California (in another state or country) to provide services via telehealth to clients located in California.
3. The ability of pre-licenseses located outside of California (in another state or country) to count hours providing services to clients in another jurisdiction.

1. Discussion of the Physical Location of a Pre-Licensee when Performing In-State Services via Telehealth

Business and Professions Code (BPC) §§4980.43.4(a), 4996.23.3(a), 4999.46.4(a) states the following:

A trainee, associate, or applicant for licensure shall only perform mental health and related services at the places where their employer permits business to be conducted.

This law was implemented in 2019, and the intent was to allow more incidental flexibility for pre-licenseses.

The California Association of Marriage and Family Therapists (CAMFT), National Association of Social Workers – California Chapter (NASW-CA), and California Association for Licensed Professional Clinical Counselors (CALPCC) have authored a letter to the Board that outlines numerous questions related to telehealth and tele-supervision.

Committee Discussion

Herweck: Is texting a telehealth modality? Is that acceptable for pre-licenseses as a telehealth model? “Telehealth” needs to be defined before determining where it can be done.

Jones: Agreed that “telehealth” needs to be defined.

1 Public Comment

2 J. Alley, CAMFT: Referenced questions outlined in the letter from CAMFT,
3 NASW-CA, and CALPCC. The list of questions does not cover the issues
4 that arise when discussing pre-licensees working from home but
5 demonstrate the complicated and technical issues that require evaluation.
6 CAMFT feels that the existing statute is unclear and urged the Committee to
7 evaluate the questions in determining how therapy will be delivered in a
8 manner that increases access to care.
9

10 Julie Hayden: Emphasized the importance of training with proper
11 supervision during these times when telehealth is predominant.
12

13 Miranda Furie: 1) Urged the Board to implement accommodations if it is
14 going to required office-based work for associates. 2) Concerned that
15 texting does not meet clinical standards, especially for long-term treatment.
16 Some work cannot be done over text. Furthermore, there is no way a
17 therapist can know who is on the other side of the text.
18

19 Sierra Smith: Concerned about the implications for community mental
20 health agencies if the therapist is required to do telehealth from the office
21 (financial burden in acquiring the technology for a telehealth hub).
22

23 Ben Caldwell: 1) There's confusion about how the Board interprets and
24 enforces existing rules, and there's anxiety from supervisors and
25 supervisees about whether they are leaving themselves open to potential
26 discipline for doing what appears to be in the interest of public health.
27 Requests that the Board provide clarification on how it works with existing
28 statutes and how existing statutes are going to be enforced during the
29 pandemic and after. 2) Requests that existing statutes or regulations that
30 are to be updated to include accommodations for disability.
31

32 Rebecca Gonzales, NASW-CA: Echoed Alley and Caldwell.
33

34 Marianna Callahan: Tremendous increase of access to care during this time
35 because they're not limited to the number of treatment rooms in the clinic.
36 The increase in flexibility is beneficial to the public. Echoed Smith regarding
37 the burden on a non-profit organization to create an in-office telehealth hub.
38

39 Lisa: 1) Working from home can accommodate more "less-advantaged"
40 clinicians entering the field. 2) There are ways to legislate for safety. There
41 are many gatekeeping constraints already within the clinical environment
42 within the schools. Cautioned the Committee about legislating more, in
43 ways that may not serve the profession.
44

45 Alicia Dabney: 1) Asked if a checklist could be added for evaluating a
46 workplace location that ensures HIPAA compliance and protection of the

1 public and that still allows employers and supervisors the flexibility to make
2 the final determination. 2) In the past 2 years with providers working from
3 home, access to care has greatly increased due to the flexibility it has
4 allowed. Requested that the Committee consider keeping this increased
5 access.

6
7 J. Alley, CAMFT: Regarding protections for associates working from home –
8 that there be stronger protections to make sure that they’re not providing the
9 equipment and software necessary to ensure confidentiality, appropriate
10 internet, etc.

11
12 M. Furie: Requests that the Board go on record to say that it will not be
13 enforcing discipline on associates working from home.

14
15 Committee/Staff Discussion

16 Herweck: The law as written is clear, allowing the associate to provide
17 services from their home if supervisor permits it. As for educators, they are
18 responsible for the sites. It’s up to the educator to allow or not allow their
19 students to do telehealth. Prefers to leave it to the agencies to determine.

20
21 Helms: Perhaps adding another line in the Supervisor’s Responsibility
22 Statement would clear up some confusion.

23
24 Herweck: There may be a need to clarify the supervisor’s responsibilities.

25
26 Jones: The law as written is clear, stating that services can be provided
27 where the employer permits business to be conducted. Asked if the Board
28 should investigate and create criteria for what an appropriate setting looks
29 like in order to give guidance to agencies.

30
31 Sodergren: Suggested a guidance document, or checklist, for supervisors
32 and agencies.

33
34 Herweck: Suggested reiterating to supervisors that they are responsible
35 and not get prescriptive. A checklist would be good for this purpose.

36
37 **Motion:** Direct staff to create a guidance document clarifying telehealth
38 expectations for employers.

39
40 Herweck moved; Jones seconded.

41
42 Public Comment

43 B. Caldwell: Requests that the document include clarification stating that
44 supervisees can work from home full time if the employer/supervisor allows
45 it.
46

J. Alley, CAMFT: Concerned about lack of clarity that exists. Happy to collaborate to develop the document. What is the risk to the associate and their clinical hours? How are they protected? Would like the guidance document to address this and to also state that they're not furnishing all the equipment to use at home.

Roll call vote:

Member	Yea	Nay	Abstain	Absent	Recusal
Susan Friedman	x				
Diana Herweck	x				
Christopher Jones	x				

Vote: 3 yea, 0 nay. Motion carried

2. Discussion of the Ability of a Pre-Licensee Located Outside of California to Provide Services via Telehealth to Clients Located in California

The Board is often asked whether a California-registered associate may practice with clients located in California via telehealth, while the associate is in another state or country. This same question is also asked regarding trainees, including whether a trainee can they gain their required practicum hours practicing in this manner.

Current Law: Associates

- Specifies that the Board’s associates may provide services via telehealth. (BPC §2290.5(a)(3))
- The Board’s telehealth regulations state the following (California Code of Regulations (CCR) Title 16, §1815.5(a):

All persons engaging in the practice of marriage and family therapy, educational psychology, clinical social work, or professional clinical counseling via telehealth, as defined in Section 2290.5 of the Code, with a client who is physically located in this State must have a valid and current license or registration issued by the Board.

- Requires all pre-licensees to only perform services where their employer permits business to be conducted. Additionally, the supervisor must be a California licensee (BPC §§4980.03(g)(5), 4996.20(a)(5), 4999.12(h)(5).

Based on current law, the issue that may stop an associate from providing telehealth services is the mode of supervision. Currently, the law only permits supervision via videoconferencing if the associate is working in an

1 exempt setting. Associates in all other settings need to be able to meet with
2 their supervisor in-person to comply with weekly supervision requirements.

3
4 The Board is pursuing a bill proposal that would allow supervision via
5 videoconferencing in all settings.
6

7 Current Law: Trainees

- 8
- 9 • Current law permits MFT trainees to perform services with clients
10 located in California via telehealth (BPC §2290.5(a)(3)). It does not
11 specify whether this is permissible for social work interns or professional
12 clinical counselor (PCC) trainees. (The Board is pursuing a law change
13 this year to clarify that PCC trainees may provide services via
14 telehealth.)
 - 15 • Current law requires all trainees to only perform services where their
16 employer permits business to be conducted.
 - 17
 - 18 • Trainees and social work interns are not permitted to provide services in
19 a private practice (BPC §§4980.43.3(b)(1), 4996.15(b), 4999.46.3(c)(1)).
20
 - 21 • The law states that the required practicum hours providing counseling
22 must be face-to-face (BPC §§4980.36(d)(1)(B), 4999.33(c)(1)(L)).
23

24 The Board's telehealth regulations state that a license or registration is
25 required to provide services via telehealth to California clients. However,
26 the law also appears to leave discretion to the school regarding whether a
27 trainee or intern can provide services via a remote location.
28

29 Marriage and family therapist (MFT) trainees and PCC trainees: The law
30 requires experience hours gained to be coordinated between the school and
31 the site and specifies details within the agreement between the school and
32 site. Social work interns: The law requires interns to be performing services
33 as part of a supervised course of study. Some clarification to the law in this
34 area may be beneficial.
35

36 Only MFT trainees may count pre-degree experience hours and must take
37 extra steps to ensure they utilize a supervisor that meets all the Board's
38 supervisor qualifications. MFT trainees who are not working in an exempt
39 setting must have in-person supervision.
40

41 The law does not address whether required practicum hours may be gained
42 via telehealth. LMFT and LPCC trainees: The law requires a specified
43 number of practicum hours providing "face-to-face" experience providing
44 counseling. Some clarification in this area may be beneficial.
45

1 Discussion

2 Herweck: It’s a viable option. But it’s important that the supervisor is a
3 California licensee.

4
5 Jones: Conceptually, it can be done if the right oversight is in place.

6
7 Public Comment: None

8
9 **Motion:** Direct staff to draft language to bring back to the Committee to
10 clarify §1815.5(a) to include trainees and interns to provide services via
11 telehealth and define “face-to-face” practicum in LMFT and LPCC law to
12 include video conferencing.

13
14 Jones moved; Herweck seconded.

15
16 Public Comment: None

17
18 Roll call vote:

Member	Yea	Nay	Abstain	Absent	Recusal
Susan Friedman	x				
Diana Herweck	x				
Christopher Jones	x				

19
20 Vote: 3 yea, 0 nay. Motion carried

21
22 **3. Discussion of the Ability of Pre-Licensees Located Outside of**
23 **California to Count Hours Providing Services to Clients in Another**
24 **Jurisdiction**

25
26 A question that comes up is whether a California-registered associate or a
27 trainee, temporarily located in another state or country, may count
28 experience hours for practice with clients located in that state or country.

29
30 Law for Associates

31 The law requires a California-registered associate to have a California-
32 licensed supervisor to treat clients located in California. However, a
33 California registration only provides authority to practice under supervision
34 with clients in California.

35
36 If a person is treating clients in another state, they are expected to follow the
37 laws of that state regarding registration and supervision. Upon application,
38 the Board would evaluate whether the experience was substantially
39 equivalent to California’s supervised experience requirements. Recently
40 added regulations, effective 1/1/2022, state the following regarding

1 experience gained outside of California (CCR Title 16, §§1821.2, 1833.2,
2 1870.5):

3
4 (a) *Experience gained outside of California must have been supervised*
5 *in accordance with the following criteria:*

6
7 (1) *At the time of supervision, the supervisor was licensed or certified*
8 *by the state or jurisdiction in which the supervision occurred and*
9 *possessed a current and active license or certification that was not*
10 *under suspension or probation.*

11
12 (2) *The supervisor must have been licensed or certified by that state*
13 *or jurisdiction for at least two (2) of the past five (5) years*
14 *immediately prior to acting as a supervisor, as either a professional*
15 *clinical counselor, clinical social worker, psychologist, physician*
16 *certified in psychiatry by the American Board of Psychiatry and*
17 *Neurology, marriage and family therapist or similarly titled marriage*
18 *and family practitioner, or other equivalent license or certification*
19 *that allows the practitioner to independently provide clinical mental*
20 *health services.*

21
22 Law for Trainees

23 The law does not address whether trainees may gain hours with clients in
24 another state or country and whether they can count it toward their
25 practicum. In this situation, the question is whether a trainee located in
26 another state or country can count practicum experience hours for practice
27 with clients located in that other state or country if they follow the rules of
28 the other jurisdiction.

29
30 Discussion

31 Herweck: The schools have authority for PCC trainees and social work
32 interns. For the MFT trainees, who can count those hours, it's tricky. MFT
33 trainees gaining hours in another state would have to meet California
34 requirements. This would need to be clarified. The trainee needs to
35 understand that they're working across 2 jurisdictions and need to meet
36 requirements for both.

37
38 Helms: The Board may not want to get involved beyond that, other than to
39 say that it's not advisable.

40
41 Friedman: Not sure that anything needs to be changed.

42
43 Public Comment

44
45 R. Gonzales, NASW-CA: No additional clarification is needed for social
46 work interns.

1 ***No action taken.***

2
3 **VI. Public Comment for Items not on the Agenda**

4
5 M. Furie: 1) Suggested implementing an oath for licensees. 2) Recommended
6 that the Board look into national online companies that are hiring therapists that
7 under the Board's jurisdiction.

8
9 **VII. Suggestions for Future Agenda Items**

10
11 M. Furie: Discuss the use of texting as a mode of treatment.

12
13 Friedman: Discuss the use of texting.

14
15 J. Alley, CAMFT: Parameters around pre-licensees regarding telehealth at
16 home, telehealth for practicum hours, and in-person experience prior to getting
17 licensed.

18
19 **VIII. Adjournment**

20
21 The Committee adjourned at 3:24 p.m.