



TELEHEALTH COMMITTEE MINUTES

This committee meeting was webcasted. A record of the webcast is available at the following link: <https://youtu.be/mfNfkZvsxJc>

DATE December 15, 2023

MEETING PLATFORM WebEx Video/Phone Conference

TIME 9:00 a.m.

ATTENDEES

Members Present: Christopher (Chris) Jones, Chair, LEP Member
Susan Friedman, Public Member
Kelly Ranasinghe, Public Member

Members Absent: *All members present*

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

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

1. Call to Order and Establishment of Quorum

Christopher Jones, Chair of the Telehealth Committee (Committee) called the meeting to order at 9:00 a.m. Roll was called, and a quorum was established.

2. Introductions

Committee members, Board staff, and remote public attendees introduced themselves.

3. Consent Calendar: Discussion and Possible Approval of June 8, 2023 Committee Meeting Minutes

Motion: Approve the June 8, 2023 Committee Meeting Minutes.

M/S: Friedman/Ranasinghe

Public Comment: None

Motion carried. Support: 3 Oppose: 0

Board Member	Vote
Friedman	Yes
Jones	Yes
Ranasinghe	Yes

4. Overview of the Committee’s Roles and Tasks

The Committee members and stakeholders have discussed the following:

- Future topic areas for discussion
- The Board’s existing statutes and regulations related to telehealth.
- Baseline telehealth coursework requirement
- Clarification of telehealth laws for associates and trainees
- Laws of several other states that pertain to temporary practice across state lines.
- Development of a telehealth best practices document
- Discussion of interstate compacts
- Discussion of online-only therapy platforms and other alternative modes of therapy.

This Committee has concluded its work. Future issues related to telehealth will be addressed by the Policy & Advocacy Committee.

5. Discussion Regarding Online-Only Therapy Platforms

The Committee discussed use of online-only therapy platforms and alternative methods of therapy, and whether these methods pose any new public protection concerns.

A survey was administered to licensees and registrants who have had experience working for an online-only therapy platform. The survey was open from April 10 through May 15, 2023, and over 1,700 responses were received.

Survey results were presented. Three areas of concern were:

1. Concern related to reporting from some therapists that an online-only therapy platform had matched them to clients in states where they were not licensed.
2. Concern related to how the custodian of record and informed consent agreements were managed.
3. Concern about lack of an emergency plan.

Committee Direction

After discussing the areas of concern, the Committee directed staff to take two actions in advance of its next meeting.

1. Meet with Staff Members from the Senate and Assembly Business and Professions Committee

Staff met with representatives from both the Senate and Assembly Business and Professions Committees. Staff provided them with the survey results, relayed the Board's areas of concern and discussed how the areas of concern relate to the Board's mandate.

The representatives from the Senate and Assembly Business and Professions Committees indicated that they would report the information to their respective committee chairs and reach out with any further feedback and questions.

2. Draft a Letter Providing Guidance to Online-Only Therapy Platforms

A draft of the letter was provided.

6. Discussion and Possible Recommendation Regarding the Board’s Current Telehealth Laws (California Code of Regulations, Title 16, section 1815.5 and Business and Professions Code section 2290.5)

The Board has received feedback that some provisions of the current telehealth regulations may need to be reconsidered or adjusted.

1. Subdivisions 1815.5(e) and (f)

Regulation §1815.5(e) states that a California licensee or registrant may only provide telehealth to a client in another jurisdiction if they meet the requirements to lawfully provide services in that jurisdiction, and if telehealth is allowed by that jurisdiction.

Regulation §1815.5(f) states that failure to comply with any provisions of the Board’s telehealth regulations is unprofessional conduct.

CAMFT raised a concern that making it unprofessional conduct if a therapist fails to check to make sure he or she is following the laws of the jurisdiction where the client is located is too rigid and could lead to unintended consequences. CAMFT suggests moving 1815.5(e) after 1815.5(f) so that it functions as guidance, rather than a requirement that one must follow to avoid discipline by the Board.

The Board’s regulation counsel stated that moving the two subsections does not change the legality. Counsel also noted that each license type has a provision which states that it is unprofessional conduct to violate any of the board statutes and regulations.

Recommendation: Strike subdivision (f)

2. Replace the Term “Valid and Current License or Registration; Subdivision 1815.5(a)

Regulation states that a “valid and current” California license or registration is required to practice telehealth with a client located in California.

Since it is unclear what a “valid and current” license/registration means, it may be more precise to make an amendment to require a “current and active” license or registration.

Regulation counsel stated that “valid” is implied in the law to mean “current, active, and unrestricted.” If the Board has no concerns with restricted licenses, providing these services with a “current and active” license would meet the objective.

Since it is not the Board's intent to restrict a licensee/registrant that is on probation from practicing telehealth, the recommendation would be to amend "valid and current" to "current and active."

3. Disclosure of License and Registration Number

At its last meeting in November 2023, the Board directed staff to pursue a legislative proposal that would require a licensee or registrant to provide a client with a notice prior to initiating psychotherapy services, or as soon as practically possible thereafter, and must include the licensee or registrant's name, license or registration number, the type of license or registration, and the expiration date.

If this legislative proposal become law, then adding the requirement to §1815.5 will be duplicative.

Recommendation: No action. Wait for outcome on the current legislative proposal.

4. Documentation of Emergency Services

This Committee recently discussed the results of its online-only therapy platform survey. Forty percent (40%) of the survey respondents indicated that the online-only therapy platform that they worked for did not have a clear emergency plan in place.

Subdivision (c)(4) of the Board's telehealth regulations requires the therapist to "Document reasonable efforts made to ascertain the contact information of relevant resources, including emergency services, in the patient's geographic area", upon initiation of telehealth services.

The Committee was asked if this requirement is sufficient or if modification is needed.

Recommendation: No changes.

5. Utilization of "Industry Best Practices"

The current telehealth regulations (§1815.5(d)(3)) require that each time a therapist provides services via telehealth, they must "utilize industry best practices for telehealth to ensure both client confidentiality and the security of the communication medium."

Stakeholders have noted that the requirement to utilize "industry best practices" is a vague term that has led to confusion about exactly how this requirement is fulfilled.

Staff provided options to clarify this, referring to the Veterinary Medical Board's (VMB) bill pertaining to telehealth and the Board of Psychology's telehealth regulations.

Regulation counsel feedback: Understands the vagueness issue; however, "it gives the Board flexibility to establish by expert testimony what those practices are."

Recommendation by Ranasinghe: Use the VMB's language with the additional rider referring to complying with state and federal laws concerning confidentiality.

Helms: Stated that she will work with regulatory counsel to use the VMB option and include the additional language to meet OAL's requirements.

Public Comment

Ben Caldwell: Any change to the language will improve clarity and understanding.

Motion: Direct staff to make the following changes and bring the proposal to the Policy and Advocacy Committee for consideration:

1. Strike §1815.5(e)
2. Replace "valid and current" with "current and active"
3. Watch and wait
4. No changes
5. Draft §1815.5(d) using the VMB model and reference state and federal health care laws.

M/S: Friedman/Jones

Public Comment: None

Motion carried. Support: 3 Oppose: 0

Board Member	Vote
Friedman	Yes
Jones	Yes
Ranasinghe	Yes

7. Suggestions for Future Agenda Items

Friedman: Artificial intelligence

8. Public Comment for Items not on the Agenda

None

9. Adjournment

The Committee adjourned at 10:14 a.m.