



Board of Behavioral Sciences

# Memo

1625 North Market Blvd., Suite S-200  
Sacramento, CA 95834  
(916) 574-7830, (916) 574-8625 Fax  
www.bbs.ca.gov

**To:** Board Members **Date:** February 16, 2024

**From:** Rosanne Helms  
Legislative Manager

**Subject:** Discussion and Possible Action to Initiate a Rulemaking to Amend  
the Board's Standards of Practice for Telehealth Regulations (16  
CCR §1815.5)

---

## **Summary**

The Board's Telehealth Committee (Committee) met from January 2021 until December 2023, when it held its final meeting. The Committee ended with one last review of the Board's telehealth regulations (California Code of Regulations (CCR) Title 16, §1815.5) to determine desired amendments based on its previous discussions.

## **Background**

The Board's current telehealth regulations were adopted in 2016. Prior to 2016, the Board's law offered very little guidance about telehealth, other than providing a definition and some basic requirements for patient consent and confidentiality in Business and Professions Code (BPC) §2290.5 (**Attachment B**).

The lack of guidance caused confusion among licensees and registrants as telehealth became more prevalent. To address this, the Board proposed its first telehealth regulations. These regulations were developed after extensive review and research on the topic, as well as discussion with stakeholders, over several Board and committee meetings.

The practice of psychotherapy via telehealth continues to evolve, and the Board has received feedback that some provisions of the current telehealth regulations may need to be reconsidered or adjusted.

## **Discussion of Proposed Adjustments**

Proposed amendments to §1815.5 of the telehealth regulations are shown in **Attachment A** and are as follows:

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

To practice via telehealth with a client located in California, the regulation states that a “valid and current” California license or registration is required.

It is unclear exactly what a “valid” license includes. According to the Board’s Regulations Counsel, “valid” is typically interpreted to mean a license that is current, active and unrestricted.

However, it is unlikely the intent of the Board to restrict someone on probation from doing therapy via telehealth, unless the terms of their probation specifically prohibit it. Therefore, the Telehealth Committee recommended replacing the requirement in §1815.5(a) that requires a license be “valid and current” to engage in telehealth, to instead require the license to be “current and active” to specifically prescribe the intended license status needed to practice via telehealth.

2. 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. The Committee discussed further clarifying this standard as noted below.

One possible option was found in a bill signed last year pertaining to telehealth in the practice of veterinary medicine. Newly adopted statute BPC section 4826.6(h)(1) of [AB 1399](#) (Chapter 475, Statutes of 2023) states that a vet who practices via telehealth must “*Ensure that the technology, method, and equipment used to provide veterinary medicine services via telehealth comply with all current privacy protection laws.*”

The Telehealth Committee discussed the possibility of using the Veterinary Medical Board’s language. However, the Board’s Regulation Counsel raised a concern that the language does not make it clear what privacy protection laws are being referenced. She pointed out that unlike statutes, regulations need to meet a higher clarity standard in order to be approved by OAL.

Given that information, the Policy and Advocacy Committee decided to move forward with replacing the requirement in 1815.5(d)(3) to utilize “industry best practices”. The amendments are derived from language used in statute by the

Veterinary Medical Board, but with further specificity recommended by Board Regulations Counsel as to which main state and federal laws and regulations would be included in this requirement. This would include the Confidentiality of Medical Information Act, and HIPAA and its implementing regulations. The full proposed text with these recommended revisions is shown in **Attachment A**.

3. Replace Gendered Pronouns with Gender-Neutral Pronouns

Gendered pronouns in §1815.5(c)(3) and (d) were replaced with gender-neutral ones.

4. Subdivisions 1815.5(e) and (f)

Regulation §1815.5(e) currently 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.

This subsection was added because often, Board licensees and registrants are unaware that it is common for jurisdictions to require their license to practice with a patient located there. To avoid opening themselves up to liability, therapists need to check to make sure they are following that jurisdiction's laws before practicing there. Otherwise, that jurisdiction could decide to take disciplinary action if there were a violation. If the jurisdiction decided to take such an action for a violation of their law, it would be within their authority to do so because the violation occurred in their jurisdiction.

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

CAMFT had 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. For example, it does not necessarily account for a patient who is traveling, a patient who is transitioning to a new therapist, or a patient in crisis. They suggested that the location of 1815.5(e) be moved to after 1815.5(f) so that it functions as guidance, rather than a requirement that one must follow to avoid discipline by this Board.

However, the Board's Regulations Counsel pointed out that any violation of the Board's statutes and regulations is unprofessional conduct. BPC sections 4982(e), 4989.54(f), 4992.3(f), and 4999.90(e) state that the following is unprofessional conduct:

*Violating, attempting to violate, or conspiring to violate any of the provisions of this chapter or any regulation adopted by the board.*

Based on this, the Telehealth Committee determined that §1815.5(f) is unnecessary and recommended that it be struck.

### **Committee Recommendation**

At its January 19, 2024 meeting, the Board's Policy and Advocacy Committee discussed the above noted changes and recommendations and directed staff to make changes it had discussed, and recommended that the Board approve the proposed regulatory text and initiate a rulemaking to amend CCR section 1815.5 as provided in **Attachment A**.

### **Recommendation**

Staff recommends that the Board review the proposed regulatory text shown in **Attachment A** and consider whether to approve it as written, or to suggest changes to the proposed text. After review and discussion, consider one of the following motions:

**Motion A:** (To be used if the Board has NO suggested changes for the proposed regulatory text):

Approve the proposed regulatory text as presented in **Attachment A** and submit the approved text to the Director of the Department of Consumer Affairs and the Business, Consumer Services, and Housing Agency for review, and if no adverse comments are received, authorize the Executive Officer to take all steps necessary to initiate the rulemaking process, make any non-substantive changes to the text and the package, and set the matter for a hearing if requested. If after the 45-day public comment period, no adverse comments are received and no public hearing is requested, authorize the Executive Officer to take all steps necessary to complete the rulemaking, and adopt the proposed regulations for Title 16, California Code of Regulations section 1815.5.

**Motion B:** (To be used if the Board DOES have suggested changes for the proposed regulatory text)

Approve the proposed regulatory text as presented in **Attachment A** with the following changes: (*specify the proposed changes to the proposed text*). In addition, submit the approved text to the Director of the Department of Consumer Affairs and the Business, Consumer Services, and Housing Agency for review, and if no adverse comments are received, authorize the Executive Officer to take all steps necessary to initiate the rulemaking process, make any non-substantive changes to the text and the package, and set the matter for a hearing if requested. If after the 45-day public comment period, no adverse comments are received and no public hearing is requested, authorize the Executive Officer to take all steps necessary to complete the rulemaking, and adopt the proposed regulations for Title 16, California Code of Regulations section 1815.5.

### **Attachments**

**Attachment A:** 16 CCR §1815.5: Proposed Amendments: Telehealth Regulations

**Attachment B:** Statute Relating to Telehealth: BPC § 2290.5.

**Reference 1:** [BPC section 4826.6\(h\)\(1\) of AB 1399, Pertaining to Telehealth in Veterinary Medicine](#)

**Blank Page**

**ATTACHMENT A**  
**Proposed Amendments: Telehealth Regulations**  
**California Code of Regulations (CCR) Title 16, Division 18**

**§ 1815.5. STANDARDS OF PRACTICE FOR TELEHEALTH.**

- (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~~ current and active license or registration issued by the Board.
- (b) All psychotherapy services offered by board licensees and registrants via telehealth fall within the jurisdiction of the board just as traditional face-to-face services do. Therefore, all psychotherapy services offered via telehealth are subject to the board's statutes and regulations.
- (c) Upon initiation of telehealth services, a licensee or registrant shall do the following:
  - (1) Obtain informed consent from the client consistent with Section 2290.5 of the Code.
  - (2) Inform the client of the potential risks and limitations of receiving treatment via telehealth.
  - (3) Provide the client with ~~his or her~~ their license or registration number and the type of license or registration.
  - (4) Document reasonable efforts made to ascertain the contact information of relevant resources, including emergency services, in the patient's geographic area.
- (d) Each time a licensee or registrant provides services via telehealth, ~~he or she~~ they shall do the following:
  - (1) Verbally obtain from the client and document the client's full name and address of present location, at the beginning of each telehealth session.
  - (2) Assess whether the client is appropriate for telehealth, including, but not limited to, consideration of the client's psychosocial situation.
  - (3) ~~Utilize industry best practices for telehealth to ensure both client confidentiality and the security of the communication medium. Ensure that the technology, method, and equipment used to provide services via telehealth comply with all applicable federal and state privacy, confidentiality, and security laws and regulations, including the following:~~

- i. [The Confidentiality of Medical Information Act \(Part 2.6 \(commencing with section 56\) of Division 1 of the Civil Code\).](#)
- ii. [The Health Insurance Portability and Accountability Act of 1996 \("HIPPA" -- \(42 U.S.C. §§ 1320d - 1320d-8\)\) as amended by subsequent legislation.](#)
- iii. [The regulations promulgated under HIPAA by the United States Department of Health and Human Services, including, 45 Code of Federal Regulations parts 160 and 164, as are currently in effect or as later amended.](#)

(e) A licensee or registrant of this state may provide telehealth services to clients located in another jurisdiction only if the California licensee or registrant meets the requirements to lawfully provide services in that jurisdiction, and delivery of services via telehealth is allowed by that jurisdiction.

~~(f) Failure to comply with these provisions shall be considered unprofessional conduct.~~

Note: Authority cited: Sections 4980.60 and 4990.20, Business and Professions Code.  
Reference: Sections 2290.5, 4980, 4989.50, 4996, 4999.30, and 4999.82, Business and Professions Code.



**ATTACHMENT B**  
**Statute Relating to Telehealth: BPC §2290.5**

**BPC §2290.5.**

(a) For purposes of this division, the following definitions apply:

(1) "Asynchronous store and forward" means the transmission of a patient's medical information from an originating site to the health care provider at a distant site.

(2) "Distant site" means a site where a health care provider who provides health care services is located while providing these services via a telecommunications system.

(3) "Health care provider" means any of the following:

(A) A person who is licensed under this division.

(B) An associate marriage and family therapist or marriage and family therapist trainee functioning pursuant to Section 4980.43.3.

(C) A qualified autism service provider or qualified autism service professional certified by a national entity pursuant to Section 1374.73 of the Health and Safety Code and Section 10144.51 of the Insurance Code.

(D) An associate clinical social worker functioning pursuant to Section 4996.23.2.

(E) An associate professional clinical counselor or clinical counselor trainee functioning pursuant to Section 4999.46.3.

(4) "Originating site" means a site where a patient is located at the time health care services are provided via a telecommunications system or where the asynchronous store and forward service originates.

(5) "Synchronous interaction" means a real-time interaction between a patient and a health care provider located at a distant site.

(6) "Telehealth" means the mode of delivering health care services and public health via information and communication technologies to facilitate the diagnosis, consultation, treatment, education, care management, and self-management of a patient's health care. Telehealth facilitates patient self-management and caregiver support for patients and includes synchronous interactions and asynchronous store and forward transfers.

(b) Before the delivery of health care via telehealth, the health care provider initiating the use of telehealth shall inform the patient about the use of telehealth and obtain verbal or written consent from the patient for the use of telehealth as an acceptable

mode of delivering health care services and public health. The consent shall be documented.

(c) This section does not preclude a patient from receiving in-person health care delivery services during a specified course of health care and treatment after agreeing to receive services via telehealth.

(d) The failure of a health care provider to comply with this section shall constitute unprofessional conduct. Section 2314 shall not apply to this section.

(e) This section does not alter the scope of practice of a health care provider or authorize the delivery of health care services in a setting, or in a manner, not otherwise authorized by law.

(f) All laws regarding the confidentiality of health care information and a patient's rights to the patient's medical information shall apply to telehealth interactions.

(g) All laws and regulations governing professional responsibility, unprofessional conduct, and standards of practice that apply to a health care provider under the health care provider's license shall apply to that health care provider while providing telehealth services.

(h) This section shall not apply to a patient under the jurisdiction of the Department of Corrections and Rehabilitation or any other correctional facility.

(i) (1) Notwithstanding any other law and for purposes of this section, the governing body of the hospital whose patients are receiving the telehealth services may grant privileges to, and verify and approve credentials for, providers of telehealth services based on its medical staff recommendations that rely on information provided by the distant-site hospital or telehealth entity, as described in Sections 482.12, 482.22, and 485.616 of Title 42 of the Code of Federal Regulations.

(2) By enacting this subdivision, it is the intent of the Legislature to authorize a hospital to grant privileges to, and verify and approve credentials for, providers of telehealth services as described in paragraph (1).

(3) For the purposes of this subdivision, "telehealth" shall include "telemedicine" as the term is referenced in Sections 482.12, 482.22, and 485.616 of Title 42 of the Code of Federal Regulations.