

# **CALIFORNIA BOARD OF OCCUPATIONAL THERAPY**

## **FINAL STATEMENT OF REASONS**

**Hearing Date:** Not Applicable (No request from the public was received)

**Subject Matter of Proposed Regulations:** Standards of Practice for Telehealth

**Sections Affected:** Title 16, Division 39, California Code of Regulations, Section 4172

### **Updated Information:**

The Initial Statement of Reasons is included in the file describing the reason, rationale, and necessity of this proposed action.

This regulatory action was proposed to eliminate confusion or misinterpretation on the part of employers and practitioners regarding the frequency that an occupational therapist must obtain informed consent from a patient/client that has agreed to receive services via telehealth technologies. During the course of this proposed action the Board and staff are satisfied that existing language in Business and Professions Code (BPC) Section 2290.5(b) provides enough clarity that an occupational therapist only needs to obtain consent from the patient prior to the delivery of health care services via telehealth, and that consent for each and every treatment session thereafter is not necessary.

Due to public comments provided at its November 20, 2015, Board Meeting, additional modifications to existing language in Section 4172 were noticed and made available for comment. The additional modifications pertain to the deletion of sections 4172(c)(1) and (c)(2) due to concerns stemming from the fact that existing language requires the treating occupational therapist to ensure that an on-site occupational therapist be available in the event an in-person evaluation or interventions were necessary. In some remote rural locations, it is not feasible for the treating occupational therapist to *ensure* that an on-site occupational therapist could be available to perform in-person evaluations or interventions so these sections are being deleted.

A typographical error was identified in the modified text, section 4172(c), that was made available for comment on December 2, 2015. The error pertained to the beginning of the section which incorrectly read “On occupational therapist shall determine...” when it should have read “An occupational therapist shall determine...”. The typographical error has been corrected in the Order of Adoption that is contained in this rulemaking file.

Other technical and formatting edits were necessary due to the elimination of sections 4172(c)(1) and (c)(2).

**Local Mandate:** None

### **Business Impact/Finding of Necessity:**

The Board has determined this proposed action will not have an adverse economic impact on business in California. This proposed action serves to clarify principles and standards for occupational therapists that choose to deliver occupational therapy services via telehealth technologies.

This proposed action is designed to promote the Board's mission to regulate the practice of occupational therapy and protect the health, safety, and welfare of California consumers.

**Consideration of Alternatives:**

No reasonable alternative was considered by the Board would be more effective in carrying out the purpose for which the regulation was proposed, would be as effective and less burdensome to affected private persons than the adopted regulation, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. The only alternative is to do nothing, which would not achieve the purpose of the regulations.

**Summary of Public Comments Received During 45-day Comment Period:**

**Occupational Therapy Association of California (OTAC)**

Written comment dated October 9, 2015, supporting the proposed regulatory action.

*Board Response: The Board acknowledges and appreciates the support of OTAC on the proposed regulatory action.*

**California Nurses Association (CNA)**

Written comment dated October 29, 2015, expressed concern over the CNA's perception that the proposed regulatory action eroded or diminished the meaning of informed consent. The CNA reported replacing "informed consent" with mere "consent" was a very significant change and they did not see how the proposed change would eliminate the confusion surrounding the nature and frequency consent must be obtained. The CNA provided suggested language for the Board to modify section 4172(b) relevant to the concerns expressed in their written comment.

*Board Response: The Board rejected the CNA's suggested language changes to section 4172(b). The Board believes the language that it initially proposed has the same force and affect as suggested language that the CNA proposed. The Board's initial proposed amendments establish that an occupational therapist shall inform the patient about providing occupational therapy services via telehealth. This would include the advantages, disadvantages, and potential risks associated with this mode of delivery of services and the occupational therapist would obtain the patient's consent/approval prior to initiating services via telehealth. The Board did not incorporate CNA's suggested language pertaining to "verbal or written informed consent" and "informed consent shall be documented" because they are duplicative of existing language in the authorizing statute, Business and Professions Code (BPC) Section 2290.5, subsection (b). The Board appreciates CNA's comments and shares its interest in ensuring that all consumers have access to safe, quality care.*

**Center for Connected Health Policy (CCHP)**

Written comment dated October 30, 2015, provided suggested language to supplement the Board's proposed amendments to section 4172(b) to add "The occupational therapist need only obtain consent from the patient once unless the course of treatment changes or the occupational therapist is treating the patient for a new and separate condition."

*Board Response: The Board rejected the CCHP's suggested language out of concern that the language might someday conflict with a change to the authorizing statute, BPC Section 2290.5. After review by the Board's Legal Counsel, the Board and staff are satisfied that existing language in BPC Section 2290.5(b) provides enough clarity that an occupational therapist needs to obtain consent from the*

*patient prior to the delivery of services via telehealth, and the consent shall be documented. The Board appreciates CCHP's suggestion relative to this proposed action.*

**Summary of Public Comments Received During 15-day Comment Period:**

**Center for Connected Health Policy (CCHP)**

Written comment dated December 15, 2015, is supportive of the proposed action. The CCHP correspondence also identified a typographical error in the modified text pertaining to section 4172(c) which incorrectly began "On occupational therapist shall determine..." when it should have read "An occupational therapist shall determine..."

*Board Response: The Board acknowledges and appreciates CCHP's support and suggestion. The typographical error identified by CCHP has been corrected in the Order of Adoption in the final rulemaking process.*

**The American Occupational Therapy Association (AOTA)**

Written comment dated December 18, 2015, supporting the proposed regulatory action.

*Board Response: The Board acknowledges and appreciates the support of AOTA on the proposed regulatory action.*