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**To:** Committee Members                           **Date:** September 15, 2021  
**From:** Rosanne Helms                           **Telephone:** (916) 574-7897  
Legislative Manager  
**Subject:** Discussion of Allowance of Supervision Via Videoconferencing

## Summary

This discussion will focus on whether supervision via videoconferencing should continue to be allowed only in exempt settings or if it should also be allowed in other settings.

## **Supervision via Videoconferencing**

Current law only permits associates to be supervised via videoconferencing if they are working in an exempt setting (a governmental entity, a school, college, or university, or an institution that is nonprofit and charitable).

In addition, right now the law only explicitly permits associates working in an exempt setting to obtain supervision via videoconferencing. The Board is currently pursuing an amendment, via its setting definition bill (AB 690), that would change the law to instead permit supervisees working in an exempt setting to obtain supervision via videoconferencing. This would clarify that trainees in exempt settings can also receive supervision via videoconference.

The COVID-19 state of emergency has raised questions about whether further change to the law is warranted. Due to the state of emergency, therapy has shifted from largely in-person to telehealth, and it remains to be seen to what degree this will continue after the emergency has passed. In the interest of public health, the director of the Department of Consumer Affairs (DCA) issued a law waiver that currently allows supervision to be via videoconference, regardless of the setting. However, that waiver will expire once it is safe for in-person activities to resume.

Based on the discussion at its September 9, 2021 meeting, the Committee directed staff to draft potential amendments to statute regarding supervision via videoconferencing based on two options:

- ### **1. Option One: 50% In-Person Supervision Required (Attachment A)**

**2. Option Two: Supervision via Videoconference Allowed with First Meeting In-Person (**Attachment B**)**

**Option One: 50% In-Person Supervision Required (Attachment A)**

Option One does the following:

- Clarifies that face-to-face direct supervisor contact means either in-person, or via two-way, real time videoconferencing.
- Continues to allow supervisees working in an exempt setting to obtain their supervision via videoconferencing with no limit.
- Permits supervisees working in a non-exempt setting to obtain up to 50% of their required supervision hours, per supervisor and per month, to be via videoconferencing.

**Option Two: Supervision Via Videoconference Allowed with First Meeting In-Person (Attachment B)**

Option Two does the following:

- Clarifies that face-to-face direct supervisor contact means either in-person, or via two-way, real time videoconferencing.
- Requires that a supervisor must conduct an initial in-person meeting with a supervisee before initiating direct supervision.
- Requires that during the initial in-person meeting, the supervisor must assess the appropriateness of allowing the supervisee to gain experience hours via telehealth, and the appropriateness of the supervisee to receive supervision via videoconferencing. The results of the assessment must be documented.

The Committee may wish to consider the following if it chooses Option Two:

- Whether the initial in-person meeting requirement should apply to all settings (as currently written), or to non-exempt settings only.
- Whether the initial in-person meeting requirement should apply only to new supervisory relationships after its effective date, or all supervisory relationships.
- Whether fitness for videoconferencing supervision should be the only assessment, or whether fitness for telehealth with clients should be assessed as well (as currently written).
- Should the language about “assessing the appropriateness of allowing the supervisee” to receive videoconference supervision/practice via telehealth be

more specific? Or is appropriate to leave the language as-is to give more discretion to the supervisor?

- Instead of requiring an initial in-person meeting before supervision begins, the Committee could alternatively require the meeting to take place within the first 60 days of commencing supervision. The proposed supervision regulations (expected to become effective on January 1, 2022) will require supervisors and supervisees to sign a supervision agreement within 60 days of commencing supervision. The regulations will also require the supervisor to submit a self-assessment report within 60 days of commencing supervision. It is possible the initial in-person meeting could be a good fit with this timeline, so that those other items could be discussed at the initial meeting as well.

### **Other States and Supervision via Videoconferencing**

Here are some examples of what other states allow regarding supervision via videoconferencing:

Delaware: (For social workers) Live video conferencing is permitted for no more than 50% of the total supervision provided in any given month. (Reference 2)

Indiana: (For social workers) 50% of supervision may occur through virtual technology. (Reference 2)

Kentucky: (For social workers) Electronic supervision may be used for one direct meeting per month, after the first 25 hours of supervision is obtained in person. No more than 50% of individual supervision hours may be obtained in an electronic format. (Reference 2)

Arizona: (LMFTs, LPCCs, LCSWs) “The Board shall accept hours of clinical supervision submitted by an applicant for licensure if: 1. At least two hours of the clinical supervision were provided in a face-to-face setting during each six-month period; 2. No more than 90 hours of the clinical supervision were provided by videoconference and telephone. 3. No more than 15 of the 90 hours of clinical supervision provided by videoconference and telephone were provided by telephone; and 4. Each clinical supervision session was at least 30 minutes long.” (Reference 1)

Massachusetts: (LMFTs, mental health counselors, LCSWs) Virtual supervision is permitted, but the first session must be in-person. (Reference 1)

Minnesota: (LPCCs) At least 75 percent of the required supervision hours must be received in person. The remaining 25 percent of the required hours may be received by telephone or by audio or audiovisual electronic device. (Reference 1)

Nevada (For social workers) The supervisor must meet in person with the supervisee at least once per month. (Reference 1)

Virginia: (LMFTs, LPCCs, LCSWs) 100% of supervision hours appear to be permitted via virtual supervision. (Reference 1)

### **Implications for Out-of-State Practice**

Over the course of this discussion, the Committee and stakeholders should keep in mind that allowing supervision via videoconferencing has implications for allowing out-of-state practice. Right now, the videoconferencing prohibition in non-exempt settings ensures a supervisee is not working entirely remotely from another state. Therefore, once the Committee decides which options to pursue, staff recommends an additional review of the draft language in the context of out-of-state practice at a future meeting.

Examples of questions to be considered are as follows:

- Should an associate temporarily or permanently located in another state or country be able to practice with clients located in California? (This would assume they are registered as an associate in this state and have a California-licensed supervisor, who they are seeing via videoconference)
- Should a trainee temporarily or permanently located in another state or country be allowed to practice with clients located in California? (This would assume they have permission from their school and have a California-licensed supervisor, who they are seeing via videoconference (if an MFT trainee)).
- Should an associate or trainee located in another state or country be permitted to count experience hours for practice with clients who are located in that other state or country, if they follow the rules of the other jurisdiction and have supervision by a California-licensed supervisor who meets the Board's supervision requirements?

### **Recommendation**

Conduct an open discussion about the draft language contained in Option One and Option Two for supervision via videoconferencing. Direct staff regarding the next steps.

### **Attachments**

**Attachment A:** Option One: 50% In-Person Supervision Required

**Attachment B:** Option Two: Supervision Via Videoconference Allowed with First Meeting In-Person

**Reference 1:** [State-by-State Online Clinical Supervision Rules \(Source: Motivo\)](#)

**Reference 2:** ASWB Comparison of U.S. Clinical Social Work Supervised Experience License Requirements (as of 9-23-19) (See p. 8-10) <https://www.aswb.org/wp-content/uploads/2021/01/Comparison-of-clinical-supervision-requirements-9.23.19.pdf>

## Attachment A

### **Option One: 50% In-Person Supervision Required**

**Reference Sections: BPC §§4980.43.2, 4996.23.1, 4999.46.2**

*Note: Red underline/strikeout is language being proposed via legislation this year.*

*Blue underline/strikeout is newly proposed language for discussion today.*

### **LMFTs**

#### **Business and Professions Code (BPC) § 4980.43.2. (As proposed in AB 690)**

(a) Except for experience gained by attending workshops, seminars, training sessions, or conferences, as described in paragraph ~~(9) (10)~~ of subdivision ~~(a) (c)~~ of Section 4980.43, direct supervisor contact shall occur as follows:

(1) Supervision shall include at least one hour of direct supervisor contact in each week for which experience is credited in each work setting.

(2) A trainee shall receive an average of at least one hour of direct supervisor contact for every five hours of direct clinical counseling performed each week in each setting. For experience gained on or after January 1, 2009, no more than six hours of supervision, whether individual, triadic, or group, shall be credited during any single week.

(3) An associate gaining experience who performs more than 10 hours of direct clinical counseling in a week in any setting shall receive at least one additional hour of direct supervisor contact for that setting. For experience gained on or after January 1, 2009, no more than six hours of supervision, whether individual, triadic, or group, shall be credited during any single week.

(4) Of the 104 weeks of required supervision, 52 weeks shall be individual supervision, triadic supervision, or a combination of both.

(b) For purposes of this chapter, “one hour of direct supervisor contact” means any of the following:

(1) Individual supervision, which means one hour of face-to-face contact between one supervisor and one supervisee.

(2) Triadic supervision, which means one hour of face-to-face contact between one supervisor and two supervisees.

(3) Group supervision, which means two hours of face-to-face contact between one supervisor and no more than eight supervisees. Segments of group supervision may be split into no less than one continuous hour. A supervisor shall ensure that the amount and degree of supervision is appropriate for each supervisee.

(c) Face-to-face direct supervisor contact as described in subdivision (b) may be in-person contact, may be via two-way, real-time videoconferencing, or may be some combination of these.

- (i) Supervisees working in an exempt setting described in Section 4980.01 may obtain all required direct supervisor contact via two-way, real-time videoconferencing.
- (ii) Supervisees working in a non-exempt setting described in Section 4980.06 shall obtain no more than fifty (50) percent of the required direct supervisor contact hours per month with each supervisor via two-way, real time videoconferencing.
- (iii) Regardless of the method of supervision, the supervisor shall be responsible for ensuring compliance with federal and state laws relating to confidentiality of patient health information.

(ed) Direct supervisor contact shall occur within the same week as the hours claimed.

(de) Alternative supervision may be arranged during a supervisor's vacation or sick leave if the alternative supervision meets the requirements of this chapter.

(d) (e) Notwithstanding subdivision (b), an associate working in a governmental entity, school, college, university, or an institution that is nonprofit and charitable a supervisee working in an exempt setting described in Section 4980.01 may obtain the required weekly direct supervisor contact via two-way, real-time videoconferencing. The supervisor shall be responsible for ensuring compliance with federal and state laws relating to confidentiality of patient health information.

(e)(f) Notwithstanding any other law, once the required number of experience hours are gained, associates and applicants for licensure shall receive a minimum of one hour of direct supervisor contact per week for each practice setting in which direct clinical counseling is performed. Once the required number of experience hours are gained, further supervision for nonclinical practice, as defined in paragraph (9)(10) of subdivision (a)(c) of Section 4980.43, shall be at the supervisor's discretion.

### **LCSWs**

**BPC §4996.23.1.**

***Make same corresponding changes.***

### **LPCCs**

**BPC §4999.46.2**

***Make same corresponding changes.***

## Attachment B

### **Option Two: Supervision via Videoconference Allowed with First Meeting In-Person**

**Reference Sections: BPC §§4980.43.2, 4996.23.1, 4999.46.2**

*Note: Red underline/strikeout is language being proposed via legislation this year.  
Blue underline/strikeout is newly proposed language for discussion today.*

#### **LMFTs**

#### **Business and Professions Code (BPC) § 4980.43.2. (As proposed in AB 690)**

##### **4980.43.2.**

(a) Except for experience gained by attending workshops, seminars, training sessions, or conferences, as described in paragraph ~~(9) (10)~~ of subdivision ~~(a) (c)~~ of Section 4980.43, direct supervisor contact shall occur as follows:

(1) Supervision shall include at least one hour of direct supervisor contact in each week for which experience is credited in each work setting.

(2) A trainee shall receive an average of at least one hour of direct supervisor contact for every five hours of direct clinical counseling performed each week in each setting. For experience gained on or after January 1, 2009, no more than six hours of supervision, whether individual, triadic, or group, shall be credited during any single week.

(3) An associate gaining experience who performs more than 10 hours of direct clinical counseling in a week in any setting shall receive at least one additional hour of direct supervisor contact for that setting. For experience gained on or after January 1, 2009, no more than six hours of supervision, whether individual, triadic, or group, shall be credited during any single week.

(4) Of the 104 weeks of required supervision, 52 weeks shall be individual supervision, triadic supervision, or a combination of both.

(b) For purposes of this chapter, “one hour of direct supervisor contact” means any of the following:

(1) Individual supervision, which means one hour of face-to-face contact between one supervisor and one supervisee.

(2) Triadic supervision, which means one hour of face-to-face contact between one supervisor and two supervisees.

(3) Group supervision, which means two hours of face-to-face contact between one supervisor and no more than eight supervisees. Segments of group supervision may be

split into no less than one continuous hour. A supervisor shall ensure that the amount and degree of supervision is appropriate for each supervisee.

(c) Face-to-face direct supervisor contact as described in subdivision (b) may be in-person contact, may be via two-way, real-time videoconferencing, or may be some combination of these. The supervisor shall be responsible for ensuring compliance with federal and state laws relating to confidentiality of patient health information.

(d) Notwithstanding subdivision (c), on and after January 1, 2023, before initiating direct supervision a supervisor must conduct an initial in-person meeting with the supervisee. During that meeting, the supervisor shall assess both of the following:

- (i) The appropriateness of allowing the supervisee to gain experience hours via telehealth.
- (ii) The appropriateness of allowing the supervisee to receive supervision via two-way, real-time videoconferencing.

The results of this in-person assessment shall be documented by the supervisor.

(ee) Direct supervisor contact shall occur within the same week as the hours claimed.

**(df) Alternative supervision may be arranged during a supervisor's vacation or sick leave if the alternative supervision meets the requirements of this chapter.**

~~(d) (e) Notwithstanding subdivision (b), a supervisee working in an exempt setting described in Section 4980.01 may obtain the required weekly direct supervisor contact via two-way, real time videoconferencing. The supervisor shall be responsible for ensuring compliance with federal and state laws relating to confidentiality of patient health information.~~

**(e) (f) Notwithstanding any other law, once the required number of experience hours are gained, associates and applicants for licensure shall receive a minimum of one hour of direct supervisor contact per week for each practice setting in which direct clinical counseling is performed. Once the required number of experience hours are gained, further supervision for nonclinical practice, as defined in paragraph (9) (10) of subdivision (a) (c) of Section 4980.43, shall be at the supervisor's discretion.**

## **LCSWs**

**BPC §4996.23.1.**

***Make same corresponding changes.***

## **LPCCs**

**BPC §4999.46.2**

***Make same corresponding changes.***