

DEPARTMENT OF CONSUMER AFFAIRS
SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY
AND HEARING AID DISPENSERS BOARD

FINAL STATEMENT OF REASONS

Subject Matter of Proposed Regulations: Required Professional Experience (RPE) Direct Supervision Requirements and Tele-Supervision

Sections Affected: Sections 1399.153 and 1399.153.3 of Division 13.4 of Title 16, California Code of Regulations (CCR)

Updated Information

The Initial Statement of Reasons is included in the rulemaking file. The information contained therein is updated as follows:

During the August 5, 2022 – September 20, 2022, comment period the Board received 44 public comments. On October 27-28, 2022, the Board held a teleconference meeting and reviewed the public comments. During the teleconference meeting the Board modified the proposed regulatory text as follows:

16 CCR section 1399.153.3:

1. Subdivision (c)(1)(B): Made minor grammatical changes and added the RPE temporary license holder as an option to obtain the verbal or written consent from the patient for the use of tele-supervision.
 - i. Removed the phrase “the RPE supervisor obtained” and added the phrase “was received” to be consistent with the option for the RPE temporary license holder to obtain verbal consent.
 - ii. Removed the phrase “the RPE supervisor obtained” and added the phrase “was received” to be consistent with the option for the RPE temporary license holder to obtain written consent.
2. Subdivision (c)(1)(E): Removed the requirement that the RPE temporary license holder is physically present with the patient while being tele-supervised by the RPE supervisor, and corrected the lettering on the subsequent item.

On October 28, 2022, the Board reviewed and approved the modifications to the proposed regulatory text. On November 7, 2022, the Board issued a 15-day notice of availability of modified text, and the comment period closed on November 23, 2022.

The Board received 7 timely public comments concerning the modifications to the proposed text, and one late comment. On December 13, 2022, the Board held a

teleconference meeting and reviewed the public comments. The Board did not make any additional modifications to the regulatory text.

Local Mandate

A mandate is not imposed on local agencies or school districts.

Small Business Impact

The Board has determined that the proposed regulations will not affect small businesses because this proposal only creates a new kind of supervision that can be utilized by the same supervisor in lieu of direct supervision.

Economic Impact

The Board has determined that the proposed regulations will not have an economic impact on the regulated community because this proposal only creates a new kind of supervision that can be utilized by the same supervisor in lieu of direct supervision.

Fiscal Impact

The Board has determined there will not be an increase in workload because this regulatory proposal does not create a new requirement but instead provides an option to utilize tele supervision in lieu of direct supervision.

Anticipated Benefits of this Proposal

This regulatory proposal would benefit the health and welfare of California residents by requiring the RPE supervisor to inform the patient about the use of tele-supervision and verbal or written consent from the patient will be obtained by either the RPE supervisor or the RPE temporary license holder.

Consideration of Alternatives

The Board has determined that no reasonable alternative to the regulatory proposal it considered or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the regulation is proposed, would be as effective and less burdensome to affected private persons than the regulatory proposal, or would be more cost effective to affected private persons and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the law being implemented or made specific.

The Board considered alternatives brought to the attention of the Board such as allowing 100 percent tele-supervision and limiting tele-supervision on a quarterly basis rather than a monthly basis. The reasons for not adopting the alternatives brought to the attention of the Board are explained in the responses to public comments below.

Objections or Recommendations/Responses from the 45-day Comment Period

Written Comment: The Board received 32 public comments indicated general support for allowing for the tele-supervision of RPEs for up to half of the required monthly supervision hours. The commenters stated the proposed changes will address shortages in the field and allow for RPE and supervisor flexibility. The commenters stated in-person supervision allows real time feedback. The commenters also stated teletherapy is an effective service delivery system and remote supervision is less invasive.

Response to Comment: The Board appreciates the support expressed for the proposed regulatory change to allow tele-supervision of RPE temporary licensees for up to half of the required monthly supervision hours. This proposed change will provide greater flexibility in meeting the monthly supervision requirements which could help the RPE supervisor better manage other responsibilities. The Board also agrees that in-person supervision allows the RPE temporary licensee to pickup on non-verbal cues from the RPE supervisor during sessions that can help shape behavior.

Written Comment: The Board received 3 public comments requesting the Board allow 100 percent tele-supervision for RPE temporary licensees. The commenters raised concerns regarding the shortage of speech-language pathologists, lack of availability of speech-language pathologists for in-person supervision, health and safety conditions due to the COVID-19 pandemic, and services being offered online instead of in-person.

Response to Comment: The Board rejects these comments. The Board discussed allowing 100 percent tele-supervision and decided that some in-person supervision is necessary to establish trust and rapport between the RPE supervisor and RPE temporary licensee. In-person supervision also allows the RPE temporary licensee to pickup on non-verbal cues from the RPE supervisor during sessions that can help shape behavior.

Written Comment: The Board received 2 public comments that all supervision hours should be allowed to be completed through tele-supervision for licensees working for teletherapy based companies. The commenters raised concerns that it is counterproductive to make supervisors sit in the room to supervise a teletherapy session and in-person supervision becomes a hinderance rather than a benefit when teletherapy is being utilized.

Response to Comment: The Board rejects these comments. The Board discussed allowing 100 percent tele-supervision and decided that some in-person supervision is necessary to establish trust and rapport between the RPE supervisor and RPE temporary licensee. In-person supervision also allows the RPE temporary licensee to pickup on non-verbal cues from the RPE supervisor during sessions that can help shape behavior.

Written Comment: The Board received 1 public comment that all supervision hours should be allowed to be completed through tele-supervision if in-person supervision is not allowed by the facility or hospital such as due to an outbreak.

Response to Comment: The Board rejects this comment. The Board discussed allowing 100 percent tele-supervision and decided that some in-person supervision is necessary to establish trust and rapport between the RPE supervisor and RPE temporary licensee. In-person supervision also allows the RPE temporary licensee to pickup on non-verbal cues from the RPE supervisor during sessions that can help shape behavior. Additionally, in the case of a public health emergency such as the COVID-19 pandemic, there are already laws in place that authorize the Governor to waive any laws and regulations that conflict with public health mandates.

Written Comment: The Board received 1 public comment seeking clarification if the RPE temporary licensee can document the patient consent or if the RPE supervisor must do the documentation.

Response to Comment: The Board appreciates this comment and agrees the proposed regulatory changes can be clarified regarding obtaining patient consent. With the use of tele-health, the RPE temporary licensee may be in the same physical location as the patient and/or the patient's record and it would be more efficient for the RPE temporary licensee to document the consent for the use of tele-supervision rather than only allowing the RPE supervisor to meet this requirement. The Board modified Section 1399.153.3(c)(1)(B) to allow either the RPE supervisor or RPE temporary license holder to document verbal or written consent in the patient's record.

Written Comment: The Board received 1 public comment that there should be a limit to the number of speech therapy sessions a practitioner can conduct when providing speech therapy sessions in the school.

Response to Comment: The Board rejects this comment as student caseloads are not germane to this rulemaking package and would need to be addressed in a separate regulatory proposal.

Written Comment: The Board received 1 public comment that there should not be a requirement to attend live continuing education courses.

Response to Comment: The Board rejects this comment as continuing education requirements are not germane to this rulemaking package and would need to be addressed in a separate regulatory proposal.

Written Comment: The Board received 1 public comment that the regulatory proposal is not efficient and may increase the cost of the license.

Response to Comment: The Board rejects this comment since the Board has made a determination that the proposed regulatory action will not have a significant statewide

adverse economic impact on licensees or businesses. This determination is based on this regulatory proposal providing licensees with the ability to utilize tele-supervision to meet a portion of the required supervision hours for RPE temporary licensees, but does not make tele-supervision mandatory.

Written Comment: The Board received 1 public comment that there should be an option to opt-out of providing personal information such as email addresses, phone numbers, and home addresses.

Response to Comment: The Board rejects this comment as requiring disclosure of personal information is not germane to this rulemaking package and would need to be addressed in a separate regulatory proposal.

Written Comment: The Board received 1 public comment in support of direct supervision for at least 50 percent of the required supervision hours for RPEs working in medical settings.

Response to Comment: The Board appreciates the support of direct supervision in medical settings; however, the Board believes RPE temporary licensees working in all settings can benefit from in-person direct supervision for at least 50 percent of the required monthly supervision hours.

Written Comment: The Board received 1 public comment in support of patient informed consent for the use of tele-supervision.

Response to Comment: The Board appreciates this comment and agrees it is important for consumer protection to obtain patient consent prior to using tele-supervision. With the increased use of tele-health, the Board has modified Section 1399.153.3(c)(1)(B) to allow either the RPE supervisor or RPE temporary license holder to document verbal or written consent in the patient's record.

Written Comment: The Board received 2 public comments in support of tele-supervision for speech-language pathology assistants.

Response to Comment: The Board rejects this comment as the supervision of speech-language pathology assistant is not germane to this rulemaking package and would need to be addressed in a separate regulatory proposal.

Written Comment: The Board received 1 public comment seeking clarification of tele-supervision for students and speech-language pathology assistants.

Response to Comment: The Board rejects this comment as the supervision of students and speech-language pathology assistant is not germane to this rulemaking package and would need to be addressed in a separate regulatory proposal.

Verbal Comment: The Board received public comment at the October 28, 2022 Board

meeting requesting the Board allow 100 percent tele-supervision for RPE temporary licensees.

Response to Comment: The Board rejects this comment. The Board discussed allowing 100 percent tele-supervision and decided that some in-person supervision is necessary. The Board made a policy decision to stay with the 50 percent limitation for tele-supervision.

Objections or Recommendations/Responses from the first 15-day Comment Period

Written Comment: The Board received 2 public comments indicating general support for allowing for the tele-supervision of RPEs for up to half of the required monthly supervision hours.

Response to Comment: The Board appreciates the support expressed for the proposed regulatory change to allow tele-supervision of RPE temporary licensees for up to half of the required monthly supervision hours. This proposed change will provide greater flexibility in meeting the monthly supervision requirements, while also requiring some in-person supervision which allows the RPE temporary licensee to pick up on non-verbal cues from the RPE supervisor that can help shape behavior.

Written Comment: The Board received 2 public comments requesting the Board allow 100 percent tele-supervision for RPE temporary licensees. The commenters stated teletherapy is an effective service delivery method and increases access for consumers and RPEs.

Response to Comment: The Board rejects these comments. The Board discussed allowing 100 percent tele-supervision and decided that some in-person supervision is necessary to establish trust and rapport between the RPE supervisor and RPE temporary licensee. In-person supervision also allows the RPE temporary licensee to pick up on non-verbal cues from the RPE supervisor during sessions that can help shape behavior.

Written Comment: The Board received 1 public comment that RPE supervisors don't maintain student files and usually do not have direct contact with the student's parents, which would make it difficult for RPE supervisors to obtain patient consent.

Response to Comment: The Board rejects this comment because the Board modified the regulatory text in Section 1399.153.3(c)(1)(B) to allow either the RPE supervisor or RPE temporary license holder to document verbal or written consent in the patient's record.

Written Comment: The Board received 1 public comment urging that RPEs shouldn't be limited to working only in-person.

Response to Comment: The Board rejects this comment because the Board modified the regulatory text by removing the prior regulatory text in Section 1399.153.3(c)(1)(E) that would have required the RPE temporary license holder to be physically present with the patient while being tele-supervised by the RPE supervisor.

Written Comment: The Board received 1 public comment concerning the RPE supervisor's legal responsibility for the health, safety, and welfare of the patients treated by the RPE temporary license holder. Specifically, the commenter is concerned the RPE supervisor could be held liable for accidents or illnesses that occur at the home, on the school playground, or in a hospital lobby.

Response to Comment: The Board rejects this comment because it was not directed at the proposed changes in this rulemaking and thus is outside the scope of this rulemaking. Additionally, existing law holds an RPE supervisor legally responsible for patients being treated by the RPE temporary license holder. Holding a supervisor responsible for the acts of a supervisee is not a new standard, but a constituent part of the relationship between a supervisor and supervisee. The Department of Consumer Affairs boards hold supervisors legally responsible in this way because the licensed supervisor knows the standards of the practice, while the supervisee is still learning. Supervisors are legally responsible for the care that their supervisees provide to patients for the protection of the public (see *Davis v. Physician Assistant Board* (2021) 66 Cal.App.5th 227). This is consistent with the way all supervisees, interns, trainees, and/or other staff are regulated in the professions regulated by the Department of Consumer Affairs. Reducing the standard of supervisor responsibility would decrease consumer protection and directly contradict the Board's public protection mandate.

Written Comment: The Board received 1 public comment requesting the Board to limit tele-supervision on a quarterly basis rather than a monthly basis. The commenter states this will provide greater flexibility for the supervision to be conducted entirely in-person one month and entirely via tele-supervision the next month. The commenter also states this change may reduce the need for travel for in-demand healthcare workers while preserving the requirement that at least half of the supervision be carried out in-person.

Response to Comment: The Board rejects this comment. The Board believes in-person supervision is necessary to establish trust and rapport between the RPE supervisor and RPE temporary licensee. In-person supervision also allows the RPE temporary licensee to pick up on non-verbal cues from the RPE supervisor during sessions that can help shape behavior, and for these reasons in-person supervision should take place each month.

Proposed Responses to Late Public Comments

Written Comment: The Board received 1 public comment urging that all supervision hours should be allowed to be completed through tele-supervision for licensees working for telepractice based companies. The commenter raised concerns that it is counterproductive to make supervisors sit next to the RPE temporary licensee and

observe them providing services via telepractice. The commenter also stated telepractice has led to higher attendance for patients and increased participation of caregivers.

Response to Comment: The Board rejects this comment. The Board discussed allowing 100 percent tele-supervision and decided that some in-person supervision is necessary to establish trust and rapport between the RPE supervisor and RPE temporary licensee. In-person supervision also allows the RPE temporary licensee to pick up on non-verbal cues from the RPE supervisor during sessions that can help shape behavior.

Mandatory Reports

There are no reports required by this regulatory proposal.

Incorporation by Reference

There are no documents incorporated by reference.