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WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

CHERISH ORANJE,

Applicant,

vs.

**CRESTWOOD BEHAVIORAL HEALTH;
NATIONAL UNION FIRE INSURANCE
COMPANY,**

Defendants.

Case No. ADJ7568484
(Santa Rosa District Office)

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

Defendant seeks reconsideration of a Findings and Order issued by a workers' compensation administrative law judge (WCJ) on August 26, 2014. As relevant to the instant Petition, in the Findings and Order, the WCJ found that applicant was entitled to further medical treatment in the form of "continuing counseling sessions, either 'face to face' or by 'telephonic therapy,' with [marriage and family therapist (MFT)] Christopher Jones." In this matter, while employed as a case manager on March 14, 2010, applicant sustained admitted injury to her left arm, left hand and psyche.

Defendant contends that the WCJ erred in finding applicant entitled to "telephonic therapy" with MFT Jones. Applicant now resides in Nevada, while MFT Jones is in California during the telephonic therapy sessions. Since MFT Jones is licensed in California, but not Nevada, defendant argues that continued therapy with MFT Jones violates Nevada law. We have received an Answer, and the WCJ has filed a Report and Recommendation on Petition for Reconsideration.

As explained below, we will deny defendant's Petition.

The use of "telemedicine" or "telehealth" has been expanding in California. Telemedicine was originally introduced in California in 1996 when the Legislature passed the Telemedicine Development Act of 1996, which allowed physicians¹ and surgeons licensed by the Medical Board or the Osteopathic

¹ For purposes of this discussion, "physician" refers only to licensed physicians and surgeons holding an M.D. or D.O. degree, rather than the more expansive definition in the Labor Code applicable to most aspects of workers' compensation proceedings. (See Lab. Code, § 3209.3.)

1 Medical Board to deliver telemedicine services to a remote patient. (Former Bus. & Prof. Code,
2 § 2290.5.) In October 2007, the Legislature authorized the Medical Board of California to expand the
3 practice of telemedicine and to implement a pilot program “to develop methods, using a telemedicine
4 model, of delivering health care to those with chronic diseases and delivering other health information.”
5 (Bus. & Prof. Code, § 2028.5.) In October 2011, the Legislature repealed the Telemedicine Development
6 Act of 1996 and instead enacted the Telehealth Advancement Act of 2011. (Bus. & Prof. Code,
7 § 2290.5.) The Telehealth Advancement Act broadens the scope of telehealth services by expanding
8 telehealth providers to include all licensed healthcare professionals (i.e., not just telemedicine by licensed
9 physicians and surgeons) and by expanding telehealth care settings.

10 There are now a number of telehealth statutes and regulations. (E.g., Bus. & Prof. Code, §§ 686,
11 2290.5; Health & Saf. Code, §§ 1367, subd. (e)(2), 1374.13; Ins. Code, §§ 10123.85, 10123.13, subd. (a),
12 10123.147, subd. (a); Welf. & Inst. Code, §§ 5008, subd. (a), 14132.72, 14132.73; Cal. Code Regs.,
13 tit. 16, § 4172.)

14 The two telehealth provisions most relevant here are Business and Professions Code sections 686
15 and 2290.5. Business and Professions Code section 686 allows “[a] health care practitioner licensed
16 under Division 2 (commencing with Section 500)” to provide services via telehealth. Among the many
17 health care practitioners regulated under Division 2 are Marriage and Family Therapists, who are
18 governed by Chapter 13 of Division 2 of the Business and Professions Code. Therefore, Marriage and
19 Family Therapists licensed in California can practice telehealth.

20 Business and Professions Code section 686 goes on to provide that a health care practitioner
21 providing telehealth services “shall be subject to the requirements and definitions set forth in [Business
22 and Professions Code] Section 2290.5, to the practice act relating to his or her licensed profession, and to
23 the regulations adopted by a board pursuant to that practice act.” Therefore, we must look to section
24 2290.5 to determine the appropriate scope of telehealth services.

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1 In pertinent part, section 2290.5(a) provides:

2 "For purposes of this division, the following definitions shall apply:

- 3 (1) 'Asynchronous store and forward' means the transmission of a patient's
4 medical information from an originating site to the health care provider at a
5 distant site without the presence of the patient.
- 6 (2) 'Distant site' means a site where a health care provider who provides health
7 care services is located while providing these services via a
8 telecommunications system.
- 9 (3) 'Health care provider' means a person who is licensed under this division.
- 10 (4) 'Originating site' means a site where a patient is located at the time health
11 care services are provided via a telecommunications system or where the
12 asynchronous store and forward service originates.
- 13 (5) 'Synchronous interaction' means a real-time interaction between a patient and
14 a health care provider located at a distant site.
- 15 (6) 'Telehealth' means the mode of delivering health care services and public
16 health via information and communication technologies to facilitate the
17 diagnosis, consultation, treatment, education, care management, and self-
18 management of a patient's health care while the patient is at the originating
19 site and the health care provider is at a distant site. Telehealth facilitates
20 patient self-management and caregiver support for patients and includes
21 synchronous interactions and asynchronous store and forward transfers."

22 Therefore, under sections 686 and 2290.5(a), a health care practitioner may provide synchronous
23 (i.e., real-time) telehealth services from his or her "distant site" to a patient's "originating site" (i.e., the
24 place where the patient is located at the time the services are provided). Nothing in section 2290.5 states
25 that the patient's "originating site" must be within California. Indeed, nothing in section 2290.5 gives
26 any indication of the purpose for distinguishing the "originating site" and the "distant site." Accordingly,
27 a California-licensed health care provider may provide telehealth services while he or she is located in
California, whether or not the patient is also located in California. Moreover, if telehealth services are
provided in accordance with Business and Professions Code section 2290.5, California law precludes a
health insurer or health care service plan from limiting the type of setting for where and how the
telehealth services are provided. (Ins. Code, § 10123.85; Health & Saf. Code, § 1374.13.)

Defendant correctly points out that, under Nevada law, a person who is engaged in the practice of
marriage and family therapy must be licensed under Nevada law. (Nev. Revised Stats. 641A.410; see

1 also 641A.080.) However, MFT Jones was in California, not Nevada, while he was providing telehealth
2 services to applicant. Defendant has not provided any authority standing for the proposition that a
3 licensed medical health provider located in California is violating Nevada law when providing telehealth
4 services to a Nevada resident. In any event, it is not relevant to our determination whether MFT Jones
5 might have violated Nevada law. Labor Code section 3600.5(a) entitles a worker who is injured while
6 "regularly employed in the state ... to compensation *according to the law of this state.*" (Emphasis
7 added.) Thus, our concern is only whether the treatment is consistent with California law. As discussed
8 above, MFT Jones' telephonic therapy sessions do not violate California law.

9 We therefore deny defendant's Petition for Reconsideration.

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1 For the foregoing reasons,

2 **IT IS ORDERED** that defendant's Petition for Reconsideration of the Findings and Order of
3 August 26, 2014 is hereby **DENIED**.

4 **WORKERS' COMPENSATION APPEALS BOARD**

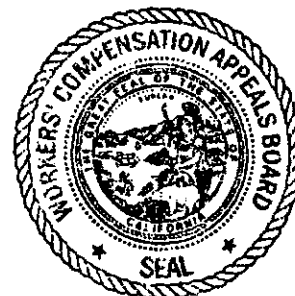
5  **DEPUTY**

6
7 **NEIL P. SULLIVAN**

8 **I CONCUR,**

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11 _____
12 **MARGUERITE SWEENEY**

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15 _____
16 **FRANK M. BRASS**



17 **DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

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19 **NOV 14 2014**

20 **SERVICE MADE ON THE ABOVE DATE ON THE PERSONS LISTED BELOW AT THEIR**
21 **ADDRESSES SHOWN ON THE CURRENT OFFICIAL ADDRESS RECORD.**

22 **CHERISH ORANJE**
23 **CIPOLLA, CALABA, MARRONE, WOLLMAN & SILVA**
24 **MARK WEINBERGER**

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26
27 **DW:mm**

ORANJE, Cherish