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To: Board Members **Date:** November 3, 2017

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Executive Officer

**Subject: Agenda Item 12 - Discussion and Possible Action Regarding BPC § 2290.5:
Telehealth; Patient Consent**

Currently, California consumers are quickly able to obtain a corrective vision prescription based on a refraction performed either online or at a kiosk located inside a registered dispensing optician location. So far, most of the complaints received involve prescriptions issued by California licensed ophthalmologists residing outside of California.

The overall concern is patients may not fully understand the difference between a refraction test and a comprehensive eye exam. To the patient, he/she experiences a symptom (difficulty seeing near or far away), and the symptom is “fixed” with a quick and convenient refraction test and a pair of glasses. That patient may assume everything is fine and never see the need to have a comprehensive eye exam.

To address this issue, the CSBO developed an Emerging Technologies Outreach Campaign to educate consumers on the differences between refractions and comprehensive eye exams (attached). The CSBO acknowledges the majority of consumers belong to the younger, more tech-savvy generation. Standard outreach efforts (i.e., brochures, pamphlets, website postings) would not reach the most impacted consumers. This outreach campaign attempts to address that.

In addition, part of the campaign included partnering with programs, such as the MBC, to educate consumers. The CSBO would like to form a collaborative partnership with the MBC in order to address this mutual issue.

As reported in Agenda Item 6, the Board President, Vice President, and Executive Officer met with the Medical Board of California (MBC) leadership to discuss challenges facing both jurisdictions. One prominent challenge discussed was how both regulatory boards can provide adequate consumer protection with the emerging technologies in the eye health industry.

During the meeting with MBC leadership, one potential solution discussed was amending BPC § 2290.5 (b) to require telehealth providers to educate the patient on the differences between refractions and comprehensive eye exams and obtain written consent from the patients prior to rendering services.

As this option has not been discussed by the full Board, Board leadership decided to bring this option to the Board for further consideration. BPC § 2290.5 is attached for easy reference (Attachment 1).

BPC § [2290.5](#).

(a) For purposes of this division, the following definitions shall 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 without the presence of the patient.

(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 either of the following:

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

(B) A marriage and family therapist intern or trainee functioning pursuant to Section 4980.43.

(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 while the patient is at the originating site and the health care provider is at a distant site. Telehealth facilitates patient self-management and caregiver support for patients and includes synchronous interactions and asynchronous store and forward transfers.

(b) Prior to 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) Nothing in this section shall 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 shall not be construed to alter the scope of practice of any 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 his or her medical information shall apply to telehealth interactions.

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

(h) (1) Notwithstanding any other provision of 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.

(Amended by Stats. 2015, Ch. 50, Sec. 1. Effective January 1, 2016.)