

Reach Out and Shrink Someone...

Pamela H. Harmell Ph.D.

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Pamela H. Harmell, Ph.D.

Reach Out and Shrink Someone: Legal and Ethical Considerations in the Age of Technology

Section B

Psychotherapy in the Age of Technology

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World of Technology

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- *NOTE: The formal literature hasn't yet caught up...*
 - *Some references are opinion pieces*
 - *Some references are based upon teletherapy prior to COVID-19*
 - *Two bibliographies*
 - *Specific to telehealth during COVID-19*
 - *Web addresses are given*
 - *General to telehealth*
 - *Formal literature*

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World of Technology

- Terminology and Definitions
- The Third Party Rule
- Informed Consent for Telehealth during the COVID-19 Pandemic
 - Suggested format and wording
- Working Across State Lines in General
- Working Across State Lines in the time of Covid
 - APA Position Paper
 - How to Protect Yourself
- Psychotherapists as “Essential” Workers
- Informed Consent with Teletherapy

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Telepsychology Definitions

Typical Conversation Currently:

Did you get the vaccine yet?

If not, when are you getting the vaccine?

Which one did you get?

How do you feel? Did it hurt?

When are you getting the second vaccine?

Telepsychology

“Any delivery of mental and behavioral health services, including but not limited to therapy, consultation and psychoeducation, by a licensed practitioner to a client in a non-face-to-face setting....” Rummell & Joyce, 2010, p. 483

*“**Telepsychology** is defined as the provision of psychological services using telecommunication technologies...”
APA, 2012. p. 792*

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HIPAA Federal Rule
Privacy Rights Clearing House

<https://privacyrights.org/consumer-guides/health-privacy-hipaa-basics>

Health care providers must comply with HIPAA **only if they transmit health information electronically in connection with covered transactions**. Most providers transmit information electronically to carry out functions such as processing claims and receiving payment. Therefore, most providers are covered under HIPAA.

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Telepsychology
APA, 2010, p. 3

“All interactions that are not in-person between health care professionals and their patients.”

- *Special credentials?*
 - *Not yet required*
- *Many states have telehealth laws*
- *Pennsylvania does NOT*

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Internet Statistics <https://hostingtribunal.com>

- *Over half of the world's population is online; that's more than 3.5 billion users*
- *Over half of those browsed websites using mobile devices: 52.2%*
- *On average, mobile internet users spend nearly 3 hours online every day*
- *Somewhat logically, Asian users are by far the most numerous at about 2 billion*
- *Somewhat scarily, more than 50% of teenagers are addicted to the global network and its endless possibilities*
- *Global brands recognize that – Google generates about 95% of its revenue through ads*
- *Ecommerce retail grows about three times faster than brick-and-mortar shops*

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Internet Statistics 2020 <https://hostingtribunal.com>

Statistics

- *It took 4 years for the internet to reach 50 million users*
- *The internet reached 1 billion users in 2005*
- *In 2011, the 2 billion user mark was reached*
- *Currently, there are over 3.5 billion internet users*
- *Asia has more than 2 billion internet users*
- *Europe has more than 700 million internet users*
- *98% of US citizens aged 18-29 are online*
- *More than 60% of users prefer WiFi to mobile internet*
- *More than 3 billion people are on social media*

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Example: California Board of Psychology Guidelines for Consumers

You Have Full Slide – I will review items in **BOLD**

- Verify that the practitioner has a **current and valid license** in the State of California.
- Be sure you **understand the fee** that you will be charged for the services to be rendered and that you fully understand how and to whom the fee is to be paid.
- Be sure you are satisfied with the methods used to ensure your communications with and by the therapist will be **confidential**.
- Be sure you are aware of the **risks and benefits** of receiving therapy over the Internet so that you can make an informed choice about the therapy to be provided.
- According to Business and Professions Code Section 2290.5, prior to the delivery of health care via telemedicine, the health care practitioner who has ultimate authority over the care or primary diagnosis of the patient shall **obtain verbal or written informed consent** from the patient or the patient's legal representative.

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Primary Issue: Working across state lines

Patient abandonment vs Licensing laws

More later...

NOTE: Please check for updates in your state

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Example: California

Emergency Orders

<https://www.apaservices.org/practice/clinic/covid-19-telehealth-state-summary>

- *Cal Bus & Prof Code § 2290.5*
Cal Health & Safety Code §1374.13, §1374.14
Cal Ins Code § 10123.85, § 10123.855
Cal Wel & Inst Code § 14132.725
- **Emergency orders expiration**
Executive Order N-43-20 dated 4/3/20 relaxed certain privacy and security requirements to expand access to telehealth services.
- State of emergency declared on 3/4/20. Public Health Emergency still in effect, not yet terminated.
- **Emergency state action on coverage of telehealth services?**
An *announcement dated 3/21/20*, commercial and Medi-Cal managed care plans were directed to allow members to obtain health care via telehealth.
- The *California Board of Psychology issued guidance* for trainees and supervisors regarding service delivery (using HIPAA compliant video) and face-to-face supervision requirements (using video or phone).

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Example: California

Emergency Orders

<https://www.apaservices.org/practice/clinic/covid-19-telehealth-state-summary>

- **Emergency state action on telehealth reimbursement parity?**
Insurance Commissioner guidance dated 3/30/20 directs health insurance companies to provide increased access to telehealth services, including reimbursement parity for telehealth services mirroring rates for equivalent in-person services.
- See also *DMHC APL 20-013 dated 4/7/20* directing all health plans to allow for reimbursement of telehealth services and establish common billing procedures.
- *CMS Section 1135 Medicaid Waiver approved 3/23/20* allows for reimbursement of payable claims by out of state licensed providers not enrolled in the state Medicaid program subject to certain conditions for the duration of the public health emergency.**

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Example: California

Emergency Orders

<https://www.apaservices.org/practice/clinic/covid-19-telehealth-state-summary>

- **Emergency state action to include audio-only phone?**
Insurance Commissioner guidance dated 3/30/20 directs health insurance companies to provide increased access to telehealth services by allowing network providers to use all available and appropriate technologies, including phone calls to deliver care.
- Medi-Cal Information Notice No. 20-09 updated 3/19/20 allows for audio-only phone to deliver services during the declared public health emergency.
- **Emergency licensure waiver?**
Executive Order No. N-39-20 dated 3/30/20 grants authority to the Department of Consumer Affairs to temporarily waive licensing requirements for health care providers during the declared public health emergency.
- The order encourages out-of-state providers to register with the California Health Corps to provide non-COVID-19 services to California residents at designated health care sites.
- No further information yet available on the California Board of Psychology website.
- **Supervised trainee telehealth services – Telesupervision and Medicaid reimbursement**
Per guidance from the board of Psychology, trainees can provide psychological services via telehealth as long as they are properly supervised in doing so and the supervisor is adequately trained and experienced in providing services via telehealth. SPE can be accrued if they meet the requirements set forth in title 16 CCR section 1387.

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Section 2999-DD Telehealth delivery of services Public Health (PBH)

For details in **New York** see website:

<https://www.nysenate.gov/legislation/laws/PBH/2999-DD>



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Example: New York

Emergency Orders

<https://www.apaservices.org/practice/clinic/covid-19-telehealth-state-summary>

- **Existing state telehealth coverage mandate?**
YES for commercial health plans and Medicaid
- NY CLS Ins Law §3217-h
NY CLS Ins Law § 4306-g
NY CLS Pub Health § 2999-dd NY CLS Pub Health § 4406-g
NY CLS Soc Serv § 367-u(2)
- **Emergency orders expiration**
- Executive Order No. 202.67 dated October 5, 2020 renewed and extended EO 202.60 for an additional 30 days through November 3, 2020.
- Executive Order No. 202.60 dated 9/4/20 renewed and extended EO 202.27 for an additional 30 days through 10/4/20
- Executive Order Nos. 202.27 and 202.18 had been previously renewed and extended by Executive Order 202.044, Executive Order No. 202.048, Executive Order No. 202.055.

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Example: New York

Emergency Orders

<https://www.apaservices.org/practice/clinic/covid-19-telehealth-state-summary>

There is no further word available about updates...

- State disaster emergency declaration (#202) was issued on 3/7/20 and to remain in effect through 9/7/20.
- Medicaid waivers allowing audio-only phone and the patient's home as an originating site are in effect for duration of public health emergency.
- Executive Order 202.27 dated 5/5/20 temporarily allowing out-of-state health care providers to practice in New York up to 30 days remains effective through 6/04/20.
- Executive Order 202.32 dated 5/21/20 extends EO 20.27 through 6/20/20.
- **Emergency state action to include audio-only phone?**
NY Office of the Professions has existing guidance recognizing audio-only phone, email, chat and videoconferencing for telepractice.
- NY Office of Mental Health has issued supplemental guidance dated 3/17/20 allowing use of phone and/or commonly available video apps for delivery of telehealth services to Medicaid patients during the public health emergency period.

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Example: New York

Emergency Orders

<https://www.apaservices.org/practice/clinic/covid-19-telehealth-state-summary>

There is no further word available about updates...

- [NY Medicaid Bulletin Vol. 36, No. 5 dated 3/23/20](#) allows audio-only phone to deliver services during the public health emergency.
- **Emergency changes in originating sites requirements?**
[NY Medicaid Bulletin Vol. 36, No. 5 dated 3/23/20](#) removes any limitations on the originating sites (where the patient is) and distant sites (where the provider is) when delivering telehealth services for the duration of the public health emergency.
- **Emergency licensure waiver?**
Recent executive orders temporarily waive state licensing requirements for certain medical providers; however, [NYSED Office of the Professions](#) emphasize that all other licensed professionals must have a NYS license to provide services.
- **Supervised trainee telehealth services – Telesupervision and Medicaid reimbursement**
New York does not permit Medicaid reimbursement for trainee services (1135 waiver says only licensed practitioners).

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1:00

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Internet “Digital Natives”

Born after 1960

Definition: Digital Natives are people who have grown up in the digital world using technology as a way to communicate, record, educate, and understand society. (“about.com”)

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Internet Issues

*"Putting something on the internet is no different than leaving it on a table at a coffee shop at the mall."
(Stephen Behnke, cited in Chamberlin, 2007)*

*"The internet is a public location in which individuals are free to observe what transpires...the internet offers no veil of privacy..."
(Lehavot, 2009)*

The "third party rule"



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Third Party Doctrine Collins, 2012; Kerr, 2009

The **third-party** doctrine is a United States **legal** theory that holds that people who voluntarily give information to **third parties** have "no reasonable expectation of privacy."

See also:

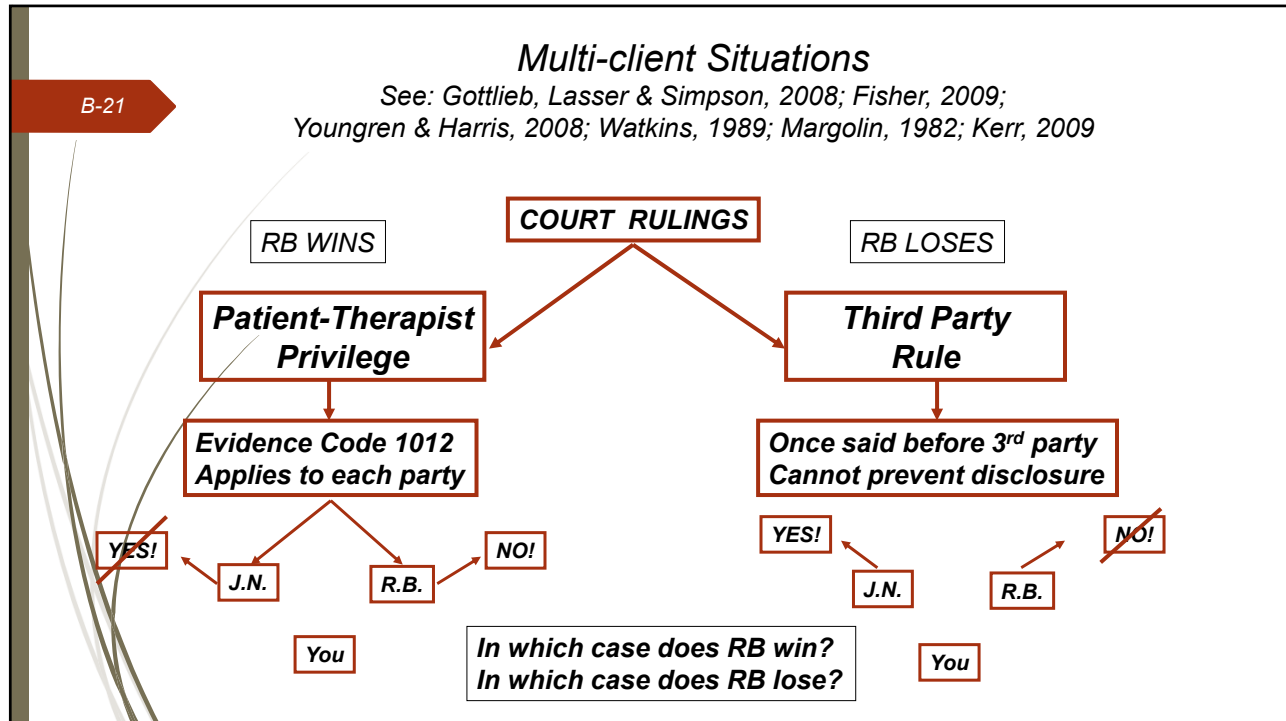
The 3rd Party Doctrine in the Digital Age, John P. Collins NY Law School 2012

https://web.archive.org/web/20170214223733/http://www.nyls.edu/documents/justice-action-center/student_capstone_journal/cap12collins.pdf

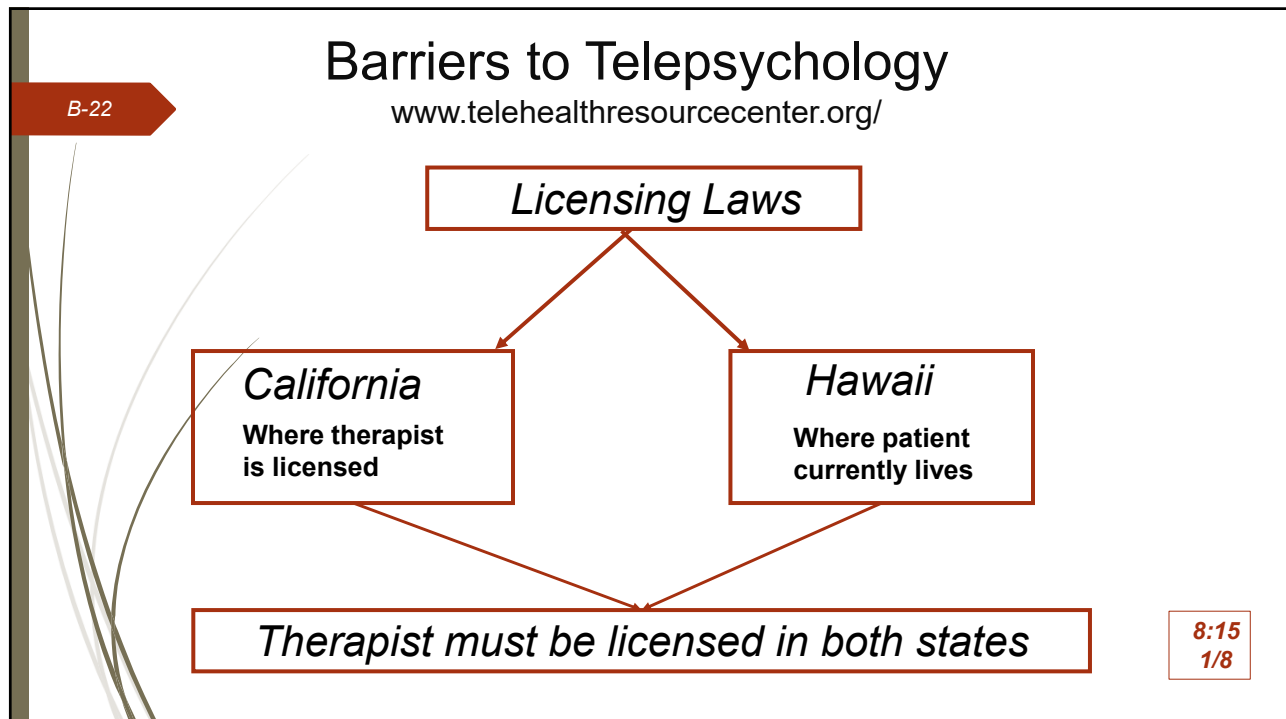
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To See Your State's Action or Policy

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To Explore State-by-State Actions Taken that Provide Guidance:

<https://blog.zencare.co/teletherapy-across-state-lines-coronavirus/>

<https://www.apaservices.org/practice/clinic/covid-19-telehealth-state-summary>

file:///C:/Users/pharm/Downloads/temporary_interjurisdictional.pdf

C:/Users/pharm/Downloads/Telehealth%20guidance%20by%20state%20during%20COVID-19.pdf

Conclusion: It seems working across state lines is approved for medicare and in some states Medicaid but not for private practice. CHECK WITH YOUR LICENSING BOARD and SEE THE ABOVE RESOURCES

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Guidelines for the Practice of Telepsychology
<https://www.apa.org/practice/guidelines/telepsychology>

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Eight APA Guidelines for Telepsychology

Definition

About the Guidelines

Guideline 1: Competency

Guideline 2: Standard of Care in Delivery

Guideline 3: Informed Consent (more later)

Guideline 4: Confidentiality

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Guidelines for the Practice of Telepsychology
<https://www.apa.org/practice/guidelines/telepsychology>

Eight APA Guidelines for Telepsychology

Guideline 5: Security of Transmission

Guideline 6: Disposal of Data

Guideline 7: Testing and Assessment

Guideline 8: Interjurisdictional Practice (across state lines)

Conclusion

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APA Position Paper
2020

Access to Mental Health Care – Across State Lines

- The federal government has identified psychologists as critical, essential workers in the U.S. response to COVID-19
- This means that psychologists and psychology trainees do not have to do work in person
 - Essential psychological services can, and in many cases, should be delivered through telehealth

“It is critically important that psychologists are able to meet the needs of their patients and communities during this difficult time, without further increasing the risk of contagion”

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APA Position Paper 2020

Access to Mental Health Care – Across State Lines

- Congress passed legislation in 2020 providing psychologists with greater flexibility to practice across state lines for Medicare clients
- It stopped short of providing similar benefits to those on Medicaid and private insurance
- Did not extend Medicare reimbursement for
 - Audio-only services via telephone or for psychological testing
 - Despite the fact that some people do not have computers or internet
- APA requested insurance companies reimburse for teletherapy

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AAMFT and Practicing Across State Lines

<https://www.aamft.org/Events/Coronavirus-Telehealth-Update.aspx>

Providing Services Across State Lines During Coronavirus

- **Does your state allow MFTs to practice teletherapy?**
- Some states have requirements that must be met first
 - Certain number of hours of CEs for online treatment
 - Things change rapidly...
 - Check in with your licensing board regularly
- Some state governments have issued emergency declarations that could impact whether or not MFTs can practice telehealth

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AAMFT and Practicing Across State Lines

<https://www.aamft.org/Events/Coronavirus-Telehealth-Update.aspx>

Providing Services Across State Lines During Coronavirus

- **Have licensure laws, or sections within these laws, been waived for the duration of the epidemic?**
 - The short answer is “no” so far
 - The only exceptions would be if the government waives a statute or rule under one of the following:
 1. Emergency declaration by the president or governor or other executive authority, OR
 2. Emergency rulemaking by a licensure board, OR
 3. A court order
 - This is a state by state issue

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Example: Pennsylvania

<https://www.nasw-pa.org/page/COVID-19>

- **RESOURCES**
- **Social Work Licensure**
- [3/26/20 DOS issues waiver for face-to-face contact for accruing clinical hours for licensure](#)
- [3/22/20 DOS issues waiver for “in-person” supervision via electronic means](#)
- [3/18/20 Governor Wolf allows licensed practitioners in other states to practice in PA](#)
- [New Jersey Temporary Emergency License for Out-of-State Providers](#)
- [Ohio: Guidance for out-of-state practitioners treating existing clients temporarily in Ohio](#)
- [DOS Suspended Licensing Regulations homepage](#)
- [BPOA: Continuing Operations FAQ](#)
- [ASWB State-by-State COVID-19 Social Work Licensure Provision](#)

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General Resources from NASW Regard COVID-19
<https://www.socialworkers.org/Practice/Infectious-Diseases/Coronavirus>

Social Work Resources

- *NASW has been working on multiple fronts to prevent the spread of COVID-19 and ensure access to services, such as **teletherapy***
- *Social workers are in a unique position to promote disease prevention efforts and to help address anxiety due to the pandemic*
- *Go to website for further resources*

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General Resources from ACA Regarding COVID-19
<https://ct.counseling.org/2020/05/counselings-evolution-under-covid-19/>

- *ACA page of COVID-19 related resources*, including information about telebehavioral health, taking care of your emotional and mental health during times of uncertainty and more.
- *ACA's state-by-state breakdown of telebehavioral health resources*
- *Counseling Today's June magazine has already been sent to the printers and ACA members should be receiving it via U.S. Mail soon. More than 10 years of Counseling Today is available digitally for ACA members to browse or download here.*
- *Go to website for further resources*

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1:15

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POLL C-2
Increase in Patients Since Covid

I have seen an increase in my practice of people seeking therapy since the stressors of COVID.

- ☐ Yes
- ☐ No

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Informed Consent for Telehealth During COVID-19

To Reduce Anxiety...

"Telehealth Informed Consent during the Coronavirus Pandemic" will be presented now



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Tran-Lien, 2020

<https://www.camft.org/Resources/Legal-Articles/Legal-Department-Staff-Articles/Telehealth-FAQS-for-Therapists-During-COVID-19>

Question: Do I need training to provide Telehealth?

Answer:

- *Most states do not require training to provide Telehealth services... but some do*
 - *Check you state licensure regulations*
- *Gain competence and knowledge about using technology*
- *Recognize the risks and benefits*

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Tran-Lien, 2020

<https://www.camft.org/Resources/Legal-Articles/Legal-Department-Staff-Articles/Telehealth-FAQS-for-Therapists-During-COVID-19>

Q: Do I need a written informed consent form to provide Telehealth services?

Answer:

Most state laws do not require written informed consent from clients to participate in Telehealth. However, therapists providing Telehealth services must obtain consent from the client as required by law, which includes:

1. *Informing the client about the use of Telehealth, AND*
2. *Obtaining from the client verbal or written consent for the use of Telehealth as an acceptable mode of delivering psychotherapy AND*
3. *Documenting the consent obtained by the client in the client's treatment record*

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Informed Consent for Telehealth During Covid
<https://caltrc.org/wp-content/uploads/2020/04/Sample-consent-telehealth-COVID-19-2.pdf>

[SAMPLE] INFORMED CONSENT FOR TELEHEALTH DURING THE CORONAVIRUS (COVID-19) PANDEMIC

This Informed Consent for Telehealth contains important information focusing on providing healthcare services using the phone or the Internet. Please read this carefully, and let me (the provider of services) know if ' you have any questions. When you sign this document, it will represent an agreement between us.

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Benefits and Risks of Telehealth

Telehealth refers to providing [insert type- Speech Language Pathology, Physical Therapy] services remotely using telecommunications technologies, such as video conferencing or telephone. One of the benefits of telehealth is that the patient and clinician can engage in services without being in the same physical location. This can be helpful particularly during the Coronavirus (COVID-19) pandemic in ensuring continuity of care as the patient and clinician likely are in different locations or are otherwise unable to continue to meet in person. It is also more convenient and takes less time. Telehealth, however, requires technical competence on both our parts to be helpful. Although there are benefits of telehealth, there are some differences between in-person treatment and telehealth, as well as some risks. For example:

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- Risks to confidentiality. As telehealth sessions take place outside of your [insert discipline]'s office [clinic], there is potential for other people to overhear sessions if you are not in a private place during the session. On my end, I will take reasonable steps to ensure your privacy. It is important; however, for you to make sure you find a private place for our session where you will not be interrupted. It is also important for you to protect the privacy of our session on your cell phone or other device. You should participate in therapy only while in a room or area where other people are not present and cannot overhear the conversation.
- Issues related to technology. There are many ways that technology issues might impact telehealth. For example, technology may stop working during a session, other people might be able to get access to our private conversation, or stored data could be accessed by unauthorized people or companies.

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- Crisis management and intervention. Usually, I will not engage in telehealth with clients who are currently in a crisis situation requiring high levels of support and intervention. We may not have an option of in-person services presently, but in a crisis situation, you may require a higher level of services. Before engaging in telehealth, we will develop an emergency response plan to address potential crisis situations that may arise during the course of our telehealth work.

Electronic Communications

You may have to have certain computer or cell phone systems to use telepsychology services. You are solely responsible for any cost to you to obtain any necessary equipment, accessories, or software to take part in telehealth.

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- Optional provisions to add more detail about the use of email/text messaging and communication between sessions. Modify as you feel appropriate.

For communication between sessions, I only use email communication and text messaging with your permission and only for administrative purposes unless we have made another agreement. This means that email exchanges and text messages with my office should be limited to administrative matters. This includes things like setting and changing appointments, billing matters, and other related issues. You should be aware that I cannot guarantee the confidentiality of any information communicated by email or text. Therefore, I will not discuss any clinical information by email or text and prefer that you do not either. Also, I do not regularly check my email or texts, and do not respond immediately, therefore, these methods **should not** be used if there is an emergency.

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- Optional provisions to add more detail about the use of email/text messaging and communication between sessions. Modify as you feel appropriate.

Treatment is most effective when clinical discussions occur at your regularly scheduled sessions. But if an urgent issue arises, you should feel free to attempt to reach me by phone. I will try to return your call within 24 hours except on weekends and holidays. If you are unable to reach me and feel that you cannot wait for me to return your call, and if you need immediate attention, contact your family physician or the nearest emergency room. If I will be unavailable for an extended time, I will provide you with the name of a colleague to contact in my absence, if necessary.

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- Optional provisions to add more detail about the use of email/text messaging and communication between sessions. Modify as you feel appropriate.

Confidentiality

I have a legal and ethical responsibility to make my best efforts to protect all communications that are a part of telehealth services. The nature of electronic communications technologies, however, is such that I cannot guarantee that our communications will be kept confidential or that other people may not gain access to our communications. I will try to use updated encryption methods, firewalls, and back-up systems to help keep your information private, but there is a risk that our electronic communications may be compromised, unsecured, or accessed by others. You should also take reasonable steps to ensure the security of our communications (for example, only using secure networks for telehealth sessions and having passwords to protect the device you use for telehealth).

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- Optional provisions to add more detail about the use of email/text messaging and communication between sessions. Modify as you feel appropriate.

The extent of confidentiality and the exceptions to confidentiality that I outlined in my Informed Consent *[use whatever title you have for your informed consent document]* still apply in telehealth. Please let me know if you have any questions about exceptions to confidentiality.

Appropriateness of Telehealth

During this time, it may not be possible to engage in in-person sessions to “check-in” with one another. I will let you know if I decide that telehealth is no longer the most appropriate form of treatment for you. If you decide telehealth is not optimal for you, it is important to let me know. We will discuss options of engaging in referrals to another professional in your location who can provide appropriate services.

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- Optional provisions to add more detail about the use of email/text messaging and communication between sessions. Modify as you feel appropriate.

Emergencies and Technology

[Providers must work with their telehealth patients to develop a plan for dealing with crisis/emergency situations and technology failures when providing telehealth services. These plans should include things such as: how crisis/emergency situations will be addressed (local resources, hotlines, trusted people identified by the patient, etc.); how to confirm patient's location; how to deal with technology failures during sessions and in crisis situations; how to deal with billing in the event of technology failures; and similar considerations. Some optional language is included below – these are only suggestions and should be modified as appropriate for your specific circumstances.]

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- Optional provisions to add more detail about the use of email/text messaging and communication between sessions. Modify as you feel appropriate.

Assessing and evaluating threats and other emergencies can be more difficult when conducting telehealth than in traditional in-person treatment. To address some of these difficulties, we will create an emergency plan before engaging in telehealth services. I will ask you to identify an emergency contact person who is near your location and who I will contact in the event of a crisis or emergency to assist in addressing the situation. I will ask that you sign a separate authorization form allowing me to contact your emergency contact person as needed during such a crisis or emergency.

If the session is interrupted for any reason, such as technological connection failure, and you are having an emergency, do not call me back; instead, call 9-1-1, *[include any local hotlines or other resources]*, or go to your nearest emergency room. Call me back after you have called or obtained emergency services.

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If the session is interrupted and you are not having an emergency, disconnect from the session and I will wait two (2) minutes and then re-connect you via the telehealth platform on which we agreed to conduct treatment. If I do not connect via the telehealth platform within two (2) minutes, then call me on the phone number I provided you (XXX-XXX-XXXX).

Fees

The same fee rates will apply for telehealth as apply for in-person therapy. Some insurers are waiving co-pays during this time. It is important that you contact your insurer to determine if there are applicable co-pays or fees which you are responsible for. Insurance or other managed care providers may not cover sessions that are conducted via telecommunication. If your insurance, HMO, third-party payor, or other managed care provider does not cover electronic therapy sessions, you will be solely responsible for the entire fee of the session. Please contact your insurance company prior to our engaging in telehealth sessions in order to determine whether these sessions will be covered.

If there is a technological failure and we are unable to resume the connection, you will only be charged the prorated amount of actual session time.

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Records

The telehealth sessions shall not be recorded in any way unless agreed to in writing by mutual consent. I will maintain a record of our session in the same way I maintain records of in-person sessions in accordance with my policies.

Informed Consent

This agreement is intended as a supplement to the general informed consent that we agreed to at the outset of our treatment together and does not amend any of the terms of that agreement.

Your signature below indicates agreement with its terms and conditions.

Patient

Date

Provider

Date

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Checklist for Telehealth
APA.ORG, 2020; Landrum, 2020

Checklist for Telehealth

- *Check with your state licensing board regulations*
 - *Is your video platform HIPAA compliant*
 - *Check routinely to make sure they are still HIPAA compliant*
 - *See next two slides*
 - *Check liability insurance for coverage*
 - *Check ethics codes of your license*
 - *Discuss HIPAA compliant payment methods*
- 

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Examples of
HIPAA Compliant Communication Packages

- *Hushmail*
- *SKYPE Microsoft E3 or E5*
- *DocuSign*
- *Lumahealth*
- *Spok*
- *Rhinogram*
- *OHMD*

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B-51

Examples of HIPAA Compliant Communication Packages

- [SimplePractice](#)
- [VSee](#)
- [Doxy.me](#)
- [SecureVideo](#)
- [Tera-link](#)
- [CounSol.com](#)
- [WeCounsel.com](#)
- [Evisit.com](#)
- [Zoom Healthcare](#)

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B-52

Encryption Resources <https://www.trustinsurance.com>

- Basic guides to computer and smartphone/mobile device encryption
 - Generally:
 - <http://www.pcworld.com/article/2025462/how-to-encrypt-almost-anything.html>
 - Computers
 - <http://lifehacker.com/a-beginners-guide-to-encryption-what-it-is-and-how-to-1508196946>
 - Android smartphones
 - <http://www.techrepublic.com/article/encrypt-your-android-smartphone-for-paranoid-level-security>
 - Smartphones/mobile devices
 - https://security.uwmedicine.org/guidance/technical/encryption/mobiledevice_encryption/default.asp
 - https://www.apple.com/business/docs/iOS_Security_Guide.pdf
 - <https://www.cnet.com/news/iphone-android-encryption-fbi>

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Encryption Resources
<https://www.trustinsurance.com>

B-53

E-mail

- http://www.pcworld.com/article/254338/how_to_encrypt_your_email.html
- Sites that review encryption software
 - Computers
 - <http://encryption-software-review.toptenreviews.com>
 - <http://privacy-pc.com/encryption-software-review>
 - Smartphones/mobile devices
 - <http://www.techradar.com/news/top-10-best-privacy-apps-for-android-in-2017>
 - <https://drfone.wondershare.com/iphone/iphone-security-apps.html>
 - E-mail
 - <http://www.toptenreviews.com/software/security/best-encryption-software>
 - <https://www.lifewire.com/best-secure-email-services-4136763>

53

Checklist for Telehealth APA.ORG, 2020; Landrum, 2020

B-54

Method to Accept Payment:

- *If you don't have an Electronic Health Record (EHR) that is integrated with your payment/billing process listed below **DO NOT USE PAYPAL/VENMO!** They are not HIPAA compliant.*
- <https://www.simplepractice.com/>
- <https://www.therapynotes.com/>
- <https://squareup.com/us/en>
- <https://stripe.com/>
- <https://www.talktoivy.com/ivypay>

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HIPAA Compliance

Note:

- *There are varied opinions about technology and HIPAA compliance*
- *Consult an expert when deciding which mechanisms are considered “technology risks”*
- *All my IT “experts” say it is risky business!*
 - *Still in process of being formulated*
- *The following is a suggested overview*

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B-56

Skype and HIPAA The HIPAA Journal, 2019

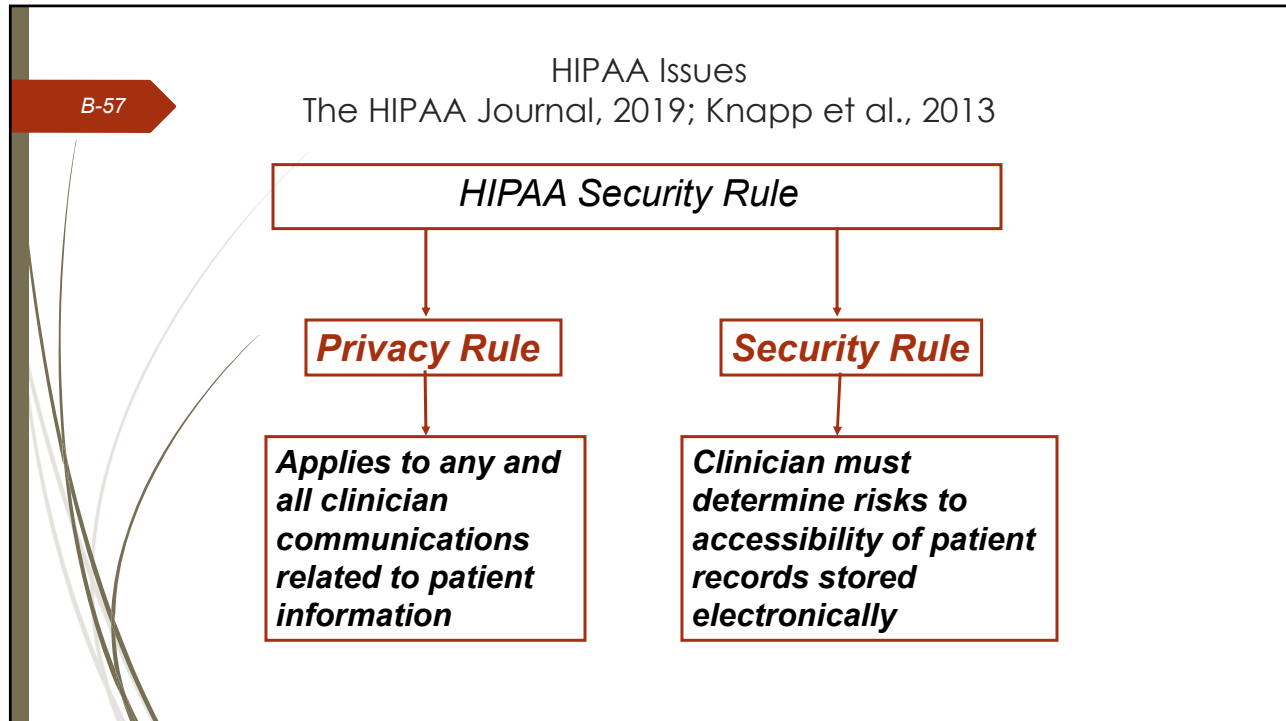
HIPAA Laws

- *Require assessment of “technology risks”*
- *All communications must be encrypted*
- *Is SKYPE an encrypted technology?*

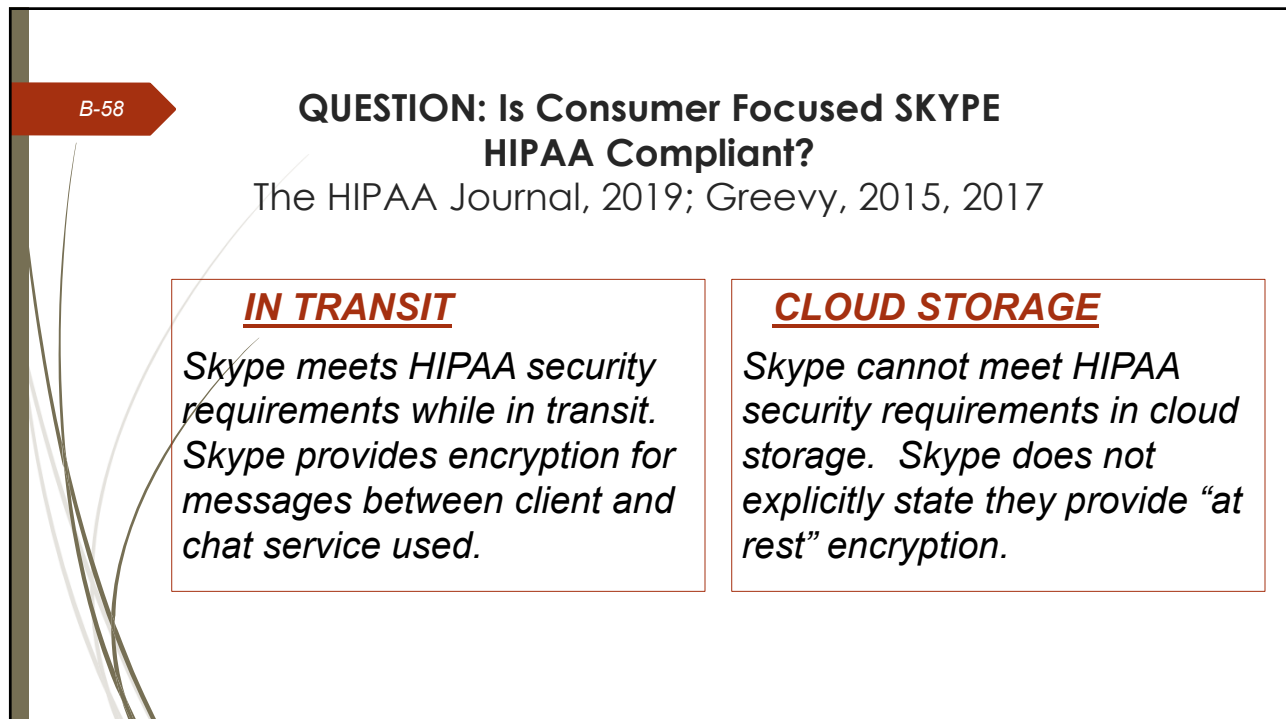
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B-59

Skype and HIPAA
The HIPAA Journal, 2019

Consumer Focused SKYPE and HIPAA (1)

- *Microsoft owns SKYPE*
- *HIPAA requires Business Associates Agreement (BAA)*
 - *Agreement between therapist (provider) and company responsible for the online technology (Microsoft)*
 - *BAA must guarantee HIPAA compliance*

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B-60

Skype and HIPAA
The HIPAA Journal, 2019

Consumer Focused SKYPE and HIPAA (2)

- *Microsoft's BAA explicitly **omits SKYPE***

Conclusion: *In absence of BAA Skype is not HIPAA compliant*

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B-61

SKYPE and HIPAA
The HIPAA Journal, 2019; Greevy, 2015, 2017

“SKYPE has not applied yet for a HIPAA compliance review for any of it’s clients or even the whole system.”

**Conclusion: Ordinary use of consumer focused
SKYPE is NOT HIPAA Compliant**

61

B-62

Purchasing HIPAA Compliance
The HIPAA Journal, 2019

**CONCLUSION: Consumer Focused SKYPE
is not HIPAA COMPLIANT**

- **Is Skype for Business** HIPAA compliant?
- It can be, if the Enterprise E3 or E5 package is purchased
- That means a business associate agreement must be obtained from Microsoft prior to using Skype for Business to send any ePHI.

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B-63

Text Messaging and HIPAA
The HIPAA Journal, 2019; Kanga, 2016

HIPAA Unambiguously States (1)

- *Sending health information in a text message is a straight up violation*
 - *Unless its to a patient with **proper consent form***
 - *Applies to messages as simple as appointment reminders*

63

B-64

Text Messaging and HIPAA
The HIPAA Journal, 2019; Kanga, 2016

HIPAA Unambiguously States (2)

- *Engaging in texts without documenting context, consideration, and **patient consent** can trigger \$50,000 fine for each text message*

Conclusion: TEXT Messaging is not HIPAA compliant so if one uses ordinary consumer focused text programs, get patient consent

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B-65

Is Facetime and HIPAA Compliance
HIPAA Journal, 2018

HIPAA Security With Apple

- *Encryption is mandatory for health care organizations using **Apple devices** to send or receive ePHI*
- *As for FaceTime, **Apple** says that “with the proper configuration, it can be **HIPAA compliant**”*
- *It is complex, so basically one has to check with Apple before assuming HIPAA compliance*

65

B-66

FaceTime and HIPAA
The HIPAA Journal, 2019; Kanga, 2016

Is Consumer Focused Apple Facetime HIPAA Compliant?

- *Apple refuses to sign a BAA*
- *However, “**conduits**” are considered HIPAA Compliant*

Is Apple Facetime Considered a Conduit?

66

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B-67

FaceTime and HIPAA
The HIPAA Journal, 2019
www.hipaajournal.com/hipaa-conduit-exception-rule

What is a "Conduit"

- ▶ *It does not matter if the service provider says they do not access transmitted information. To be considered a **conduit**, the service provider:*
 - ▶ *Must not have access to PHI, AND*
 - ▶ *Must store transmitted information **ONLY** temporarily as a **conduit** to other HIPAA permanent storage, AND*
 - ▶ *Should not be able to unlock encrypted data*
- ▶ **It is our job to check on this**

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B-68

Is Facetime Considered a Conduit?
HIPAA Journal, 2019

Consumer Focused Apple Facetime and HIPAA Compliance

- ▶ *Since Apple refuses to sign a BAA, compliance depends entirely on whether **Facetime is a conduit of ePHI***
- ▶ *FaceTime could be classed a "conduit" of information if:*
 1. *It does not **permanently** store or have access to any ePHI*
 2. *It does not have the key to unlock encryption*
- ▶ **However**, *not everyone agrees with this analysis*
 - ▶ *SEE www.hipaajournal.com/hipaa-conduit-exception-rule*

Conclusion: *it may be best to use one of those business solutions rather than the consumer-focused FaceTime and err on the side of caution*

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B-69

FaceTime and HIPAA
The HIPAA Journal, 2019; Kanga, 2016

When FaceTime is HIPAA Compliant... Consider....

- Because **video** is involved, there are many mistakes that could be made that would make FaceTime non-compliant

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B-70

FaceTime and HIPAA
The HIPAA Journal, 2019; Kanga, 2016

When FaceTime is HIPAA Compliant... Consider....

- "Background Noise"
- Medical charts in plain view
- Patients in a waiting room
- Conversations about patients

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B-71

iMessage and HIPAA Compliance
The HIPAA Journal, 2019; Greevy, 2017

iMessages

- *iCloud is not HIPAA compliant*
- *Since iMessage is folded into iCloud, iMessage is also not HIPAA compliant.*
- *Apple makes NO mention of its ability to sign a BAA for any of its cloud-based services.*

Conclusion

- ***Apple iMessage is not HIPAA compliant currently***

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B-72

Reputation Protection...

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B-73

Damaging Online Reviews

Campbell et al, 2018

Vignette: Therapist Joan asks her risk management company this question:

“Terrible things have been posted about me by a former patient on a website called “Yelp.” I tried googling my name and this is the first thing that comes up about me. What can I do to stop this?”

Answer:

- *Strategies exist*
- *There is no complete remedy*

73

B-74

Damaging Online Reviews

Campbell et al, 2018

The “dreaded” Yelp.com

- *Yelp is a do-it-yourself Consumer Reports website*
 - *People report their experience*
- *Yelp takes no responsibility for questionable posts*
- *Legally*
 - *They are not required to do so*

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B-75

Damaging Online Reviews Campbell et al, 2018

When Attorneys Contact Yelp

- They may or may not respond
- Ohio Attorney Glennon Karr Reports:
"They (Yelp) more or less have complete immunity....and they are right. The law backs them up." (p. 1)
- See 47 U.S.C. Section 230
- See *Zeran v. America Online, Inc.* 129 F.2d (4th Cir. 1997)

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B-76

Damaging Online Reviews Campbell et al, 2018

Yelp's Response to Attorney's Request for Name of Person who Posted a Negative Review

"Regarding your request for user information, please note we do not freely disclose such information. We will respond to a properly issued subpoena, but reserve the right to object as necessary given the situation."
(p. 4)

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B-77

Damaging Online Reviews Campbell et al, 2018

L.A. Attorney Christopher Zopatti:

*"A lawsuit isn't a good idea. It could cost you upwards of \$100,000 in legal fees to sue them, and most of the time, these people don't have any money anyway."
(p. 2)*

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B-78

Damaging Online Reviews Campbell et al, 2018

David Ballard, Asst. Exec. Director for Marketing and Business Development at APA:

"An explicit response from a therapist would be acknowledging the therapeutic relationship." (p. 2)

- *Could breach confidentiality*
- *May not disclose Yelp reviewer was ever a patient*

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B-79

Law360.com

Patient Privacy

- *Example: Patient may post every detail about his or her sobriety*
- *Professional may NOT re-post, re-tweet or “re-gram”*
- *Under HIPAA:*
 - *Breaches by fellow employees must be reported*

79

B-80

Protocol for Client Telehealth
Luxton et al, 2016; Palomars et al, 2016

Precautions for Client Telehealth

- *Lack of “strong” literature confirming efficacy*
 - *Although some early literature does support*
- *Will client’s insurance reimburse*
- *Lack of “recognized” assessment and intake tools*
- *Place all texts and emails with “substantive” information in patient chart*

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B-81

Protocol for Client Telehealth
Luxton et al, 2016; Palomars et al, 2016

Precautions for Client Telehealth

- *Conduct a formal intake with no shortcuts*
 - *Meet in-person or video at least once*
 - *Full history and intake*
 - *Assess suicide/homicide intent, Tarasoff, mental status*

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B-82

Protocol for Client Telehealth
Luxton et al, 2016; Palomars et al, 2016

Precautions for Client Telehealth

- *Appropriateness for each patient*
- *Obtain names of all other providers*
- *What are emergency or crisis services where client lives*

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B-83

A Therapist's Guide to Ethical Social Media Use Raypole, 2019

"It's almost impossible to succeed as a business without some sort of social media use."

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A Therapist's Guide to Ethical Social Media Use Raypole, 2019

Setting Boundaries in a Digital World

- *Social media helps gain visibility*
- *Over 2 billion people worldwide use Facebook*
- *Twitter has more than 300 million monthly users*
- *Keep professional and personal websites separate*
- *Use privacy tools*
- ***"Friends only" is ineffective today***

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Reach Out and Shrink Someone...

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B-85

A Therapist's Guide to Ethical Social Media Use
Raypole, 2019

Setting Boundaries in a Digital World

- *Use professional language*
- *Tell clients your “friending” policy*
- *Keep posts business-appropriate*
- *Avoid personal photos*

85

B-86

A Therapist's Guide to Ethical Social Media Use
Raypole, 2019

Marketing Your Practice on Social Media

- *Facebook and twitter are a “business card”*
 - *Your introduction to potential clients*
- *Remember the “third party doctrine”*
 - *No expectation of privacy*
 - *Anything you post is public*

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B-87

A Therapist's Guide to Ethical Social Media Use
Raypole, 2019

When a Person in Therapy Sends a Friend Request

- *No ethics code forbids accepting “friends” request*
 - *Confidentiality comes closest*
- *Ethics experts advise against friending clients*
- *Studies suggest therapists should NOT search clients **without their express consent***

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B-88

A Therapist's Guide to Ethical Social Media Use
Raypole, 2019

Making a Post You Later Regret

- *Therapists make mistakes*
- *Pause, take a step back before reacting*
 - *Put questionable posts into “drafts” first*
- *Consult prior to posting*
- *A simple apology is appropriate especially if the post was offensive*

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B-89

When it comes to putting something
questionable online, take a lesson from
AA...WAIT

W

Why

A

Am

I

I

T

Talking/Posting

89

B-90

The Online World
Lennin and Scott, 2014

*"Users are communicating in their virtual
underwear with few inhibitions."*

David Rothblum, 2006
IEEE Security and Privacy Conference

IEEE Xplore®
DIGITAL LIBRARY

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B-91

Telepsychology Challenges Asay & Lal, 2014

CHALLENGES

Unlimited methods to connect online

- Management of ways to interact

Invisibility of therapist

- Decreased personal communication

Keeping face-to-face therapy relevant

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B-92

Telepsychology Challenges Welfel, 2016; Asay & Lal, 2014

Use of search engines and privacy

- Googling is “10 minutes ago”
- Today: people search social networks
- Assumptions of privacy are mistaken

Acquisition of personal information

- Decreased therapist privacy
- Decreased patient privacy
- Decreased student privacy

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B-93

Telepsychology Challenges
Welfel, 2016; Asay & Lal, 2014

The Demise of “Intentionality”

- *Privacy is a thing of the past*
- Involuntary online disclosures:
 - *Political contributions*
 - *Home address*
 - *Family structure*
- *Facebook and LinkedIn*
 - *Suggest “people you may know...”*

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B-94

APA Telepsychology Guidelines
apapracticecentral.org

Ten Member Task Force Comprised Of:


- **APA**
- **ASPPB**
- **APAIT**
- **Adopted July 31, 2013**
- **Eight guidelines**

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AMERICAN
PSYCHOLOGICAL
ASSOCIATION

Adopted July 31, 2013

GUIDELINES FOR THE PRACTICE OF TELEPSYCHOLOGY

expounded in the "Definition of Telepsychology." The expanding role of technology in the provision of psychological services and the continuous development of new technologies that may be useful in the practice of psychology present unique opportunities, considerations and challenges to practice. With the advancement of technology and the increased number of psychologists using technology in their practices, these guidelines have been prepared to educate and guide them.

These guidelines are informed by relevant American Psychological Association (APA) standards and guidelines, including the following: *Ethical Principles of Psychologists and Code of Conduct* ("APA Ethics Code") (APA, 2002a, 2010), and the Record Keeping Guidelines (APA, 2007). In addition, the assumptions and principles that guide the APA's "Guidelines on Multicultural Training, Research, Practice, and Organizational Change for Psychologists" (APA, 2003) are infused throughout the rationale and application describing each of the guidelines. Therefore, these guidelines are informed by professional theories, evidence-based practices and definitions in an effort to offer the best guidance in the practice of telepsychology.

The use of the term *guidelines* within this document refers to statements that suggest or recommend specific professional behaviors, endeavors or conduct for psychologists. Guidelines differ from standards in that standards are mandatory and may be accompanied by an enforcement mechanism. Thus, guidelines are aspirational in intent. They are intended to facilitate the continued systematic development of the profession and to help ensure a high level of professional practice by psychologists. "Guidelines are created to educate and to inform the practice of psychologists. They are also intended to stimulate debate and research. Guidelines are not to be promulgated as a means of establishing the identity of a particular group or specialty

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B-96

Use of Computers

Welfel, 2016

Research

- *Psychotherapists rely on computers*
 - *Record keeping, connecting with clients*
- *Rate of usage increases annually*
- *Patient clinical information storage*

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B-97

Use of Computers

Sturm, 2012; Heinlen & Welfel, 2001

Precautions For Computerized Records

- *Use passwords not obvious*
 - *Change routinely*
- *Do not share computers- Use external drive*
- *Use encryption and code numbers to de-identify*
- *Maintain paper file with summary*
 - *- Most states: patient owns information in chart*

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B-98

Use of Computers

Sturm, 2012; Heinlen & Welfel, 2001

Precautions For Computerized Records

- *Update virus protection*
- *Do not store identifiable data on vulnerable items:*
 - *Tablets*
 - *Phones*
 - *Netbooks*

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B-99

How to Protect Your Patients and Your Practice APA, March 5, 2020

- *Prepare your patients*
 - *Finances, technology, emergencies*
- *Explore technology options*
 - *See previous slides*
- *Review malpractice policy*
- *Develop an emergency communication plan*
 - *How clients can stay in touch*

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B-100

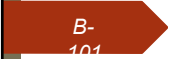
How to Protect Your Patients and Your Practice APA, March 5, 2020

- *Implement a plan for group practices*
 - *Make sure employees have updated information*
- *Promote hygiene*
 - *Safe office environment, hand washing, sanitizer in waiting room*
- *Make self care a priority*

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Sacramento Bee Report
January 31, 2008

News Report:

- *Psychologist's laptop with raw data for 441 applicants for CHP was stolen*
- *Psychologist unaware of state requirement for encryption*
- *All clients were contacted*

101



E-mailing Your Client
Tran-Lien, 2012

Disclosure Statement about Email / TEXT

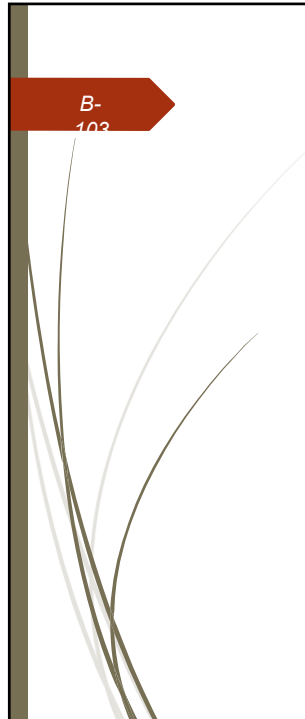
Prepare statement providing e-mail guidelines

- *Informed consent*
- *Turnaround times*
- *Crisis policy*
- *After hours response*

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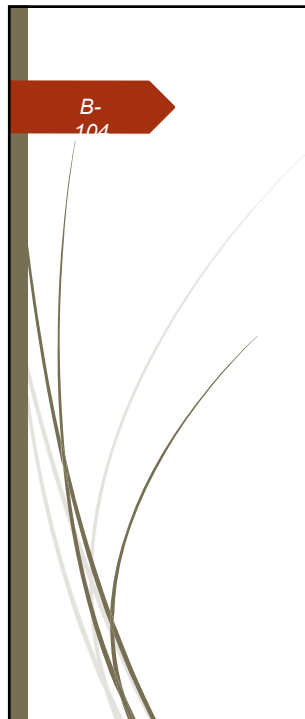


E-mailing Your Client
Tran-Lien, 2012

Recordkeeping

- *Many e-mails are part of patient record*
 - ***Put substantive clinical information in client record***
 - *Usually not appointment information*
 - *Place in electronic file*
 - *Print out for paper file*
- *Delete from inbox ASAP*
- *Use password and encryption*

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Text Messaging
Sude, 2013

Advantages of Text Messaging (TM)

- *Aids in relapse after termination*
- *Crisis intervention*
- *Time saved*
- *Most TM are related to coordination of services and meetings*

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B-105

Text Messaging
Sude, 2013

Disadvantages of Text Messaging (TM)

- *Inappropriate provision of clinical services*
- *Misinterpretation of texts*
- *Easier for clients to cancel or avoid therapy*
- *Confidentiality breaches*
- *Documentation and confidentiality*
- *Boundary violations*
- *Impulsivity – acting out*

105

B-106

Practice Vignette

Psychotherapist Asks For Online Consultation

“I am working with an 8 year old girl who attends 2nd grade at La Vista Elementary. She was physically abused by her lawyer father from age 2-6 and her mother is deceased. Resulting problems include enuresis, night terrors and poor grades due to lack of concentration...”

The listserv posting went on to ask questions about the best treatment methods.

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B-107

Practice Vignette

Ethical issues

- Confidentiality breach (TMI)
- Consultation is dynamic process
- Consultation is professional activity
 - Questions and issues emerge in discussion
 - Should not be public
 - Inadequate information to form opinions

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B-108

Internet

Lehavot, Barnett & Powers, 2011

Research – 302 Psychology Grad Students

- 7% had patients get information about them online due to “curiosity”
- 27% had sought information about patients online due to “curiosity”
- Many reported missing this opportunity to explore “trust” issues
- Critical to remain mindful of postings

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B-109

Internet

Lehavot, Barnett & Powers, 2011

Research – 302 Psychology Grad Students
Student therapists reported:

- Sought information on patients to “establish the truth”
- Failed to ask permission
- GET INFORMED CONSENT
- Failed to have “informed consent” for searching
- Many reported:
 - “I wouldn’t do it again”
 - “It was unhelpful and inconclusive”

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B-110

Internet

Lehavot, Barnett & Powers, 2011

Research – 302 Psychology Grad Students
Student therapists reported:

- It could be an opportunity to work collaboratively

“Accessing client information without their permission is a behavior that hold the potential to result in harm and an action that is clearly avoidable... when done collaboratively as part of the treatment plan, it can be very beneficial to the psychotherapeutic process.” (p. 165)

7/8
3:15

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B-111

Dr. Hashtag's Internet Disaster

Dr. Hashtag finally hired a technology grad student to set up his computer in order to start doing online therapy. With much work, he secured six new patients including Adam, a fragile, shy ballet dancer. It took Adam several months to get comfortable enough to start to discuss the primary reason he wanted to begin therapy. He had never discussed his "secrets" with anyone.

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B-112

Potential Internet Disasters

Adam had barely begun to discuss his "secret" when he began sobbing and having a panic attack such that he could not continue. It was at that moment that Dr. Hashtag's computer system crashed and went offline. It took Dr. Hashtag several hours to find a technician from the paper yellow pages who could make an emergency visit. He was horrified to discover that all his office information had disappeared! He was unable to find any billing or personal information for any of his patients, including Adam.

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B-113

Potential Internet Disasters

He also lost the presentation he was about to give at the annual convention, all his contacts, and current and past grades for all the doctoral students he was teaching. The worst was yet to come. The computer specialist told him his backup system was whiped out also. He wanted to contact Adam desperately but Adam only had a cell phone that was unlisted. In fact, Dr. Hashtag couldn't recall in which city Adam was living. When he consulted with his risk management carrier, they were not happy with Dr. Hashtag's lack of professionalism.

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B-114

Internet Issues

Pope & Vasquez, 2011

- *Who has access to computer*
 - *Is it left on after work or weekends*
 - *Password protection and encryption*
- *Protect contacts*
 - *Used by nefarious predators*
- *Good antivirus program*

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B-115

Social Media

Lehavot, 2009, p. 130

Graduate Student

A faculty member goes online and runs a search for her student's name. She discovers a link to her student's blog. While reading the blog, the faculty member learns that the student is struggling with alcohol and drug use and is engaged in some illegal activities such as selling alcohol to minors. The faculty member would like to call a faculty meeting, revealing what she has learned out of concern for the student.

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B-116

Social Media

Lehavot, 2009, p. 130

Student Therapist

A first-year clinical psychology graduate student is seeing clients through the program's clinic. His client, a young woman in her 20s finds her therapist's Facebook profile and blog, where she reads about her therapist's affair and resulting breakup with his girlfriend. The information leads the client to terminate with her therapist and file a complaint with the clinic regarding what she thinks is the therapist's inappropriate behavior of cheating on his girlfriend.

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Social Media

B-117

Before Posting – Ask These Questions

- a. *What are costs and benefits of posting certain information?*
- b. *Is there a high probability classmates, faculty, clients would be significantly and/or negatively impacted?*

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Social Media

B-118

Before Posting – Ask These Questions

- c. *How will the disclosure affect my relationship with those who see the posting?*
- d. *Does the disclosure threaten my credibility or undermine the public's trust in psychology?*

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B-119

Sum Up Question

What is a “digital native?”

ANSWER:

119

B-120

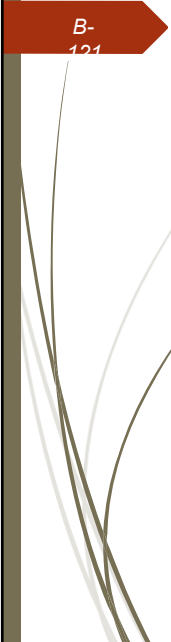
Sum Up Question

What is the “third party rule?”

ANSWER:

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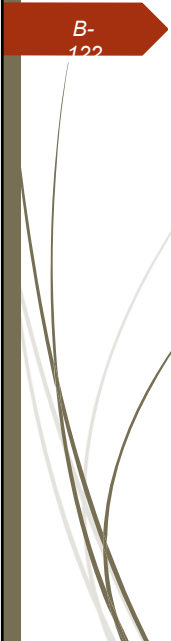
B-121

Sum Up Question

What is the best way to find out the laws/rules in your state regarding working across state lines in the COVID-19 pandemic?

ANSWER:

121



B-122

Sum Up Question

What is a BAA and why is it important for telehealth?

ANSWER:

122

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B-123

Sum Up Question

Is FaceTime HIPAA compliant? Name two primary concerns using FaceTime:

ANSWER:

123

B-124

Specific e-resources for Telehealth

NEW YORK
<http://www.op.nysed.gov/prof/psych/psychtelepracticealert.htm>
<https://www.governor.ny.gov/news/no-2025-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency>

FEDERATION OF STATE MEDICAL BOARDS
<https://www.fsmb.org/siteassets/advocacy/pdf/states-waiving-licensure-requirements-for-telehealth-in-response-to-covid-19.pdf>

CALIFORNIA
<https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/Immunization/ncov2019.aspx>

BBS
<https://www.bbs.ca.gov/consumers/coronavirus.html>

NASW
<https://www.nasw-pa.org/page/COVID-19>

APA
<https://www.apa.org/practice/guidelines/telepsychology>

More APA On next slides

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2. *5 Tips for transitioning your practice to telehealth*, (June 19, 2020)
3. *How to protect your patients and your practice* (2020)
4. *Informed consent checklist for telepsychological services* (March, 2020)
5. *Office and technology checklist for telepsychological services* (March, 2020)

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<https://www.guidancett.com/blog/transition-to-online-therapy-how-to-start-legal-and-ethical-concerns-products-and-documentation-2020>

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