


# Reach Out and Shrink Someone

## Pamela H. Harmell Ph.D.



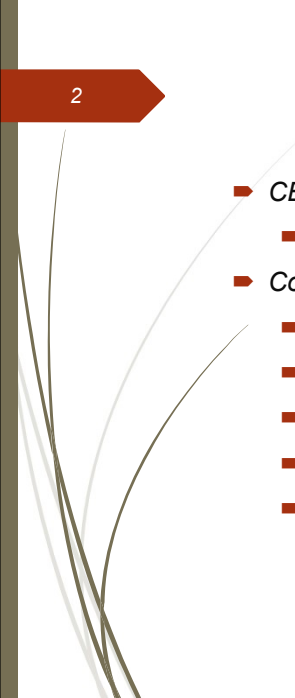
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Pamela H. Harmell, Ph.D.

Legal and Ethical Considerations

Psychotherapy in the Age of Technology

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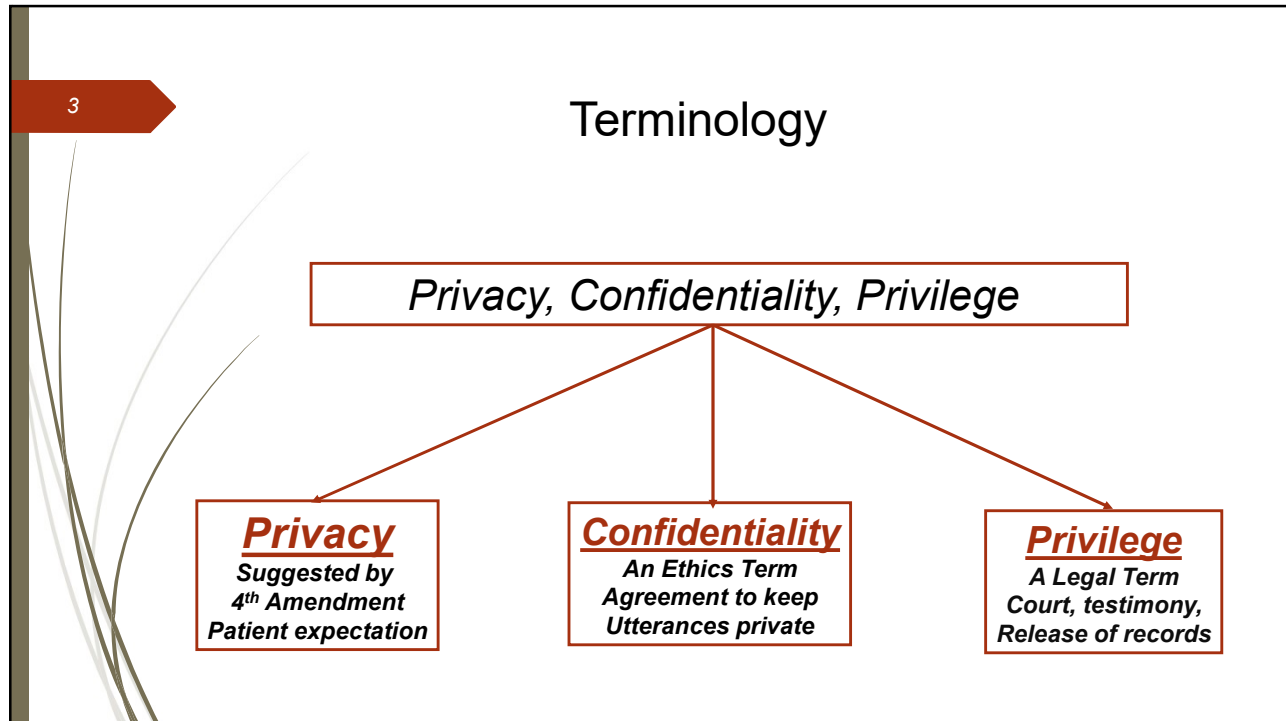
## Law and Ethics

- ▶ *CE – refresher of what you already know*
  - ▶ *Confidence builds competence and vice versa*
- ▶ *Competence – Learning new skills*
  - ▶ *Hopefully this workshop has both*
  - ▶ *My perspective...*
  - ▶ *The “law of no surprises”*
  - ▶ *Bibliography at end of each section*
  - ▶ *Slide numbers won't match yours*

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## World of Technology

- *NOTE: The formal literature hasn't completely 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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Telepsychology Definition  
Campbell & Norcross, 2018

*“Telepsychology is defined as an extension of traditional practice and research rather than a specialty area” p. 1*

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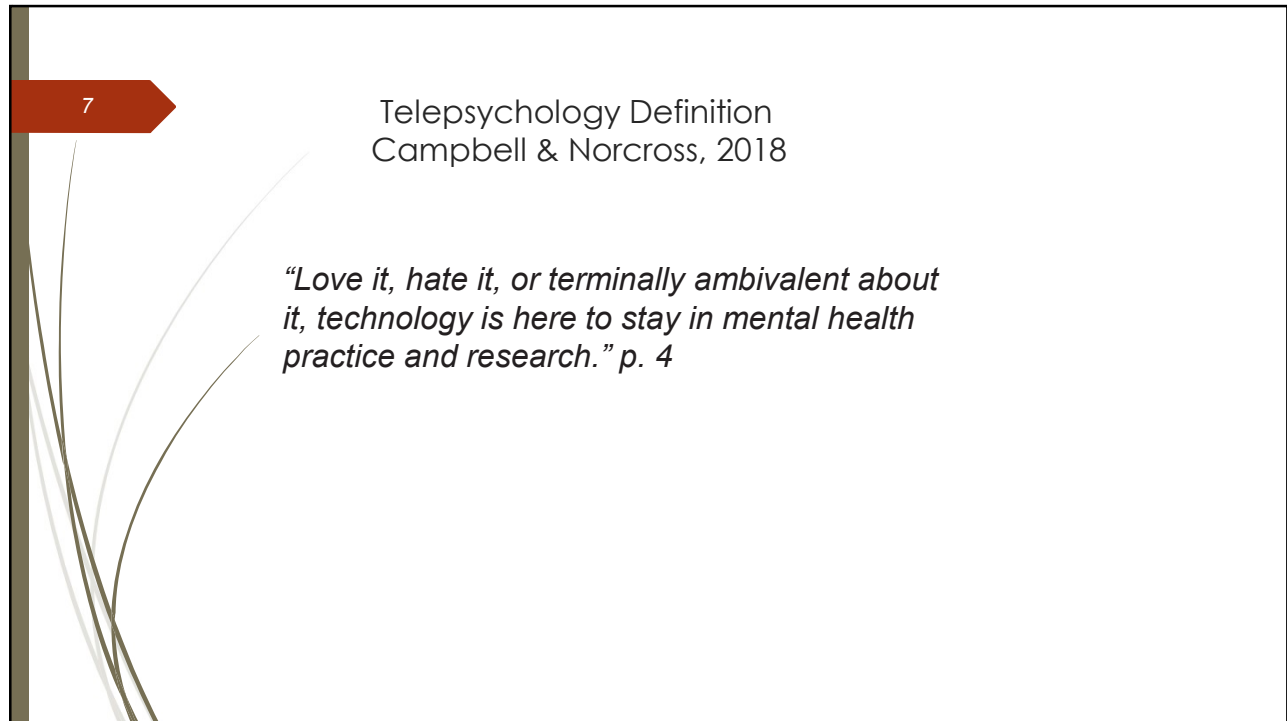
A Therapist's Guide to Ethical Social Media Use  
Raypole, 2019

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

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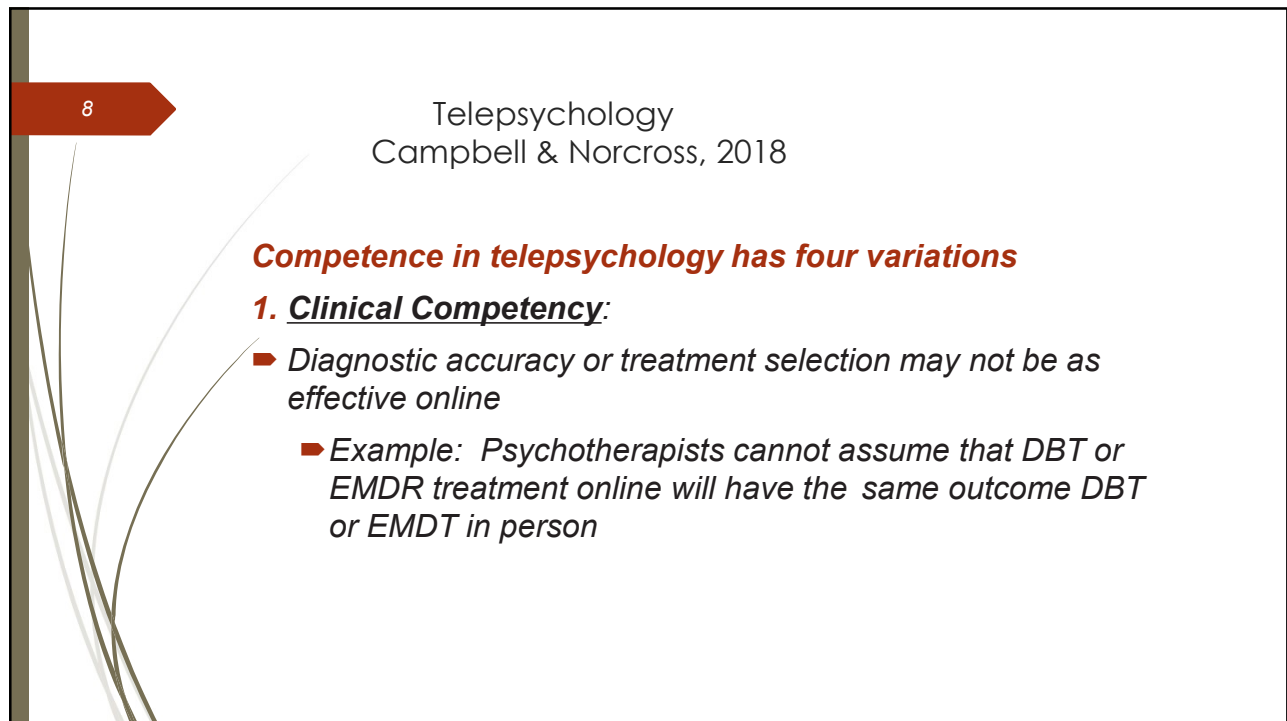


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Telepsychology Definition  
Campbell & Norcross, 2018

*“Love it, hate it, or terminally ambivalent about it, technology is here to stay in mental health practice and research.” p. 4*

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Telepsychology  
Campbell & Norcross, 2018

**Competence in telepsychology has four variations**

**1. Clinical Competency:**

- ▶ *Diagnostic accuracy or treatment selection may not be as effective online*
  - ▶ *Example: Psychotherapists cannot assume that DBT or EMDR treatment online will have the same outcome DBT or EMDT in person*

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Telepsychology  
Campbell & Norcross, 2018

***Competence in telepsychology has four variations***


**2. Technology Competency:**

- ▀ *Psychotherapists are responsible for acquiring competence in:*
  - ▀ *Technology hardware*
  - ▀ *Soft-ware*
  - ▀ *Encryption*
  - ▀ *Record security*
  - ▀ *Effectiveness of evidence-based treatment online*

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***Marlene M. Maheu*** is an American telehealth strategist, technologist and clinical psychologist. She founded and is currently the Executive Director of the Telebehavioral Health Institute, now known as Telehealth.org. Maheu is the founder of the Journal for Technology in Behavioral Health



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Telepsychology  
Campbell & Norcross, 2018

***Competence in telepsychology has four variations***

***3. Client/patient Competency:***

- Psychotherapists are not responsible for teaching clients about technology*
- They should be confident clients possess skills to participate*

***4. Cultural Competency:***

- Psychotherapists must assess the effect of working online with:*
  - Language; Family involvement; Cultural practices*

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Ethical Arguments in Favor of Online Psychotherapy  
Stell, et al, 2020

***Therapy Benefits and Enhancements in Communication***

***Increased Access, Availability, and Flexibility***

- Telehealth improves access to evidence-based health care*
- Increases access for rural, remote and underserved populations*
- Anytime access*
  - Enables immediate and timely care*
  - Facilitates more frequent contact*

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Ethical Arguments in Favor of Online Psychotherapy  
Stell, et al, 2020

**Therapy Benefits and Enhancements in Communication**

- ▶ *It is as efficient, effective, efficacious as traditional therapy*
- ▶ *Multiple therapeutic orientations can be used*
- ▶ *Cognitive behavioral approaches are easiest to transfer*

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Ethical Arguments in Favor of Online Psychotherapy  
Stell, et al, 2020

**Therapy Benefits and Enhancements in Communication**

- ▶ *Can be used as a supplement to in-person treatment*
- ▶ *Affords new opportunities for creative approaches*
- ▶ *Websites, videos, are easily integrated into therapy*

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Ethical Arguments in Favor of Online Psychotherapy  
Stell, et al, 2020

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### **Client Characteristics**

- *Especially useful for clients living in remote, rural, or otherwise underserved areas*
- *Where client has psychiatric condition such as
  - *Agoraphobia, anxiety, restriction in physical mobility**
- *Appropriate for patients with mild or moderate symptoms*
- *Might be a tool for patient in acute crisis with no immediate in-person care*

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Ethical Arguments in Favor of Online Psychotherapy  
Stell, et al, 2020

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### **Convenience, Satisfaction, Acceptance, and Increased Demand**

- *Is considered convenient and comfortable*
  - *Has gained increasing acceptance*
- *Provides greater flexibility in terms of location and time*
- *Unsurprisingly, demand and interest is increasing*

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Ethical Arguments in Favor of Online Psychotherapy  
Stell, et al, 2020

**Economic Advantages**

- ▶ Reported to be more cost-efficient
- ▶ Decreased fuel costs
- ▶ Can reduce healthcare costs for patients, therapists, and society
- ▶ A single therapist can reach more patients
- ▶ Long waiting lists for face-to-face treatment can be reduced

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Ethical Arguments in Favor of Online Psychotherapy  
Stell, et al, 2020

**Anonymity and Privacy:**

- ▶ Patients are not seen entering and exiting the office
- ▶ Enhances the patient's sense of anonymity and privacy
- ▶ May reduce inhibition and lead to greater openness in discussing emotional topics

**Unethical Not to Provide Online Psychotherapy:**

- ▶ Failure to provide online psychotherapy to vulnerable people can be seen as **unethical**
  - ▶ For example, patients living in rural or remote areas with few local options

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Ethical Arguments in Favor of Online Psychotherapy  
Stell, et al, 2020

**Freedom for Therapists**

- More professional opportunities
- Better balance between professional and private life

**Social Media**

- Unprecedented opportunities for access and connecting with others
- Aids in receiving continuing education

**Diminishing Intimacy**

- Reduces the risk of patient-therapist (sexual) intimacy or multiple relationships

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Online Reviews  
Kolmes & Taube, 2019

*“Although the relationship between online consumer reviews and business success is not a simple one, the general assumption is that those businesses with high marks will gain advantages and those with low marks will lose business. For example, one need only search Yelp or Healthgrades to find information about thousands of mental health providers across the United States.... 72% of patients use online reviews as an initial part of seeking a new health care provider.” p. 1-2*

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### Online Reviews


Kolmes & Taube, 2019

**Suggestions for Psychotherapists from Kolmes & Taube**

- ▶ Introduce electronic and social media policies at the outset of treatment
- ▶ Let clients share anything they find online that could affect the clinical relationship
  - ▶ News articles, online reviews, work events, speaking engagements
- ▶ Normalize online discoveries as part of contemporary life
- ▶ Note on website and social media that online contact does not form a duty of care
- ▶ Maintain competency in all “red flag” areas for online therapy:
  - ▶ Tarasoff
  - ▶ Child, elder, dependent abuse
  - ▶ Record keeping
  - ▶ Confidentiality
  - ▶ Suicide

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### Therapist Self Care and Self Empathy

**Self-awareness** should beget self-compassion: the capacity to notice, value, and respond to our own needs as generously as we attend to the needs of others (Murphy & Dillon, 2002). Many psychologists blame themselves for feeling drained and then, to complicate the drain, berate themselves for feeling that way. Please develop self-empathy, taking the time and space for yourself without feeling indulgent, guilty, or needy.

Jake S. Ziede & John C. Norcross (2020): *Personal Therapy and Self-Care in the Making of Psychologists*, *The Journal of Psychology*, DOI: [10.1080/00223980.2020.1757596](https://doi.org/10.1080/00223980.2020.1757596)

Murphy, B. & Dillon, C. (2002). *Interviewing in action: Process and practice* (2<sup>nd</sup> ed) Wadsworth

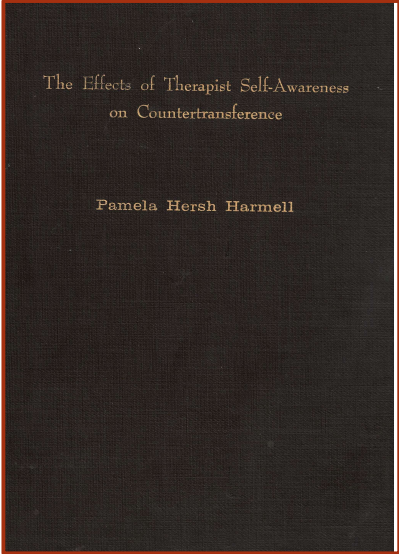
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Countertransference: An "oldie but a goodie"  
Harmell, 1987



The Effects of Therapist Self-Awareness  
on Countertransference

Pamela Hersh Harmell

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Technology  
Lustgarten, S. D., & Elhai, J. D. (2018)

*Competencies for Technology Use in Practice*

**1. Legal**

- ▶ Two regulatory frameworks exist
  - ▶ Health Information Portability and Accountability Act (1996; HIPAA) and
  - ▶ Health Information Technology for Economic and Clinical Health Act (HITECH Act, 2009).
  - ▶ Each act details specific standards that providers are expected to follow when using technology in service delivery
  - ▶ **More later....**

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Technology  
Lustgarten, S. D., & Elhai, J. D. (2018)

### Competencies for Technology Use in Practice

#### **2. Welfare**

- *Welfare is mentioned numerous times in all Ethics Codes*
- *“Respect students, research participants, patients, and others when using technology...”*
- *Messaging can further treatment*
  - *Check in regarding progress*
  - *Provide support in urgent situations*
  - *Maintain sobriety*

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Technology  
Lustgarten, S. D., & Elhai, J. D. (2018)

### Competencies for Technology Use in Practice

#### **3. Confidentiality and Privilege**

- *Confidentiality: “protecting patient information or data from unauthorized disclosures to third parties”*
  - *Technology is susceptible to interception, hacking, etc.*
- *Encryption helps ensure confidentiality*
- *But...software can become infected by viruses and other malware which compromises privacy*
- ***More later....***

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Technology

Lustgarten, S. D., & Elhai, J. D. (2018)

### Competencies for Technology Use in Practice

#### **4. Boundaries**

- ▶ Computers and devices can function at all hours of the day
- ▶ Calls, texts, and emails are sent and received at any point
- ▶ Responding after business hours via text message might be a boundary crossing
- ▶ Emails, texts from patients in the middle of the night, with the threat of suicide, activates a response in ways not previously anticipated
- ▶ Malpractice considerations are not well defined legally
- ▶ **More later...**

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Example: California Board of Psychology  
Guidelines for Consumers

#### **Posted On California BOP: Guidelines for Consumers**

- 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

*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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### 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.”

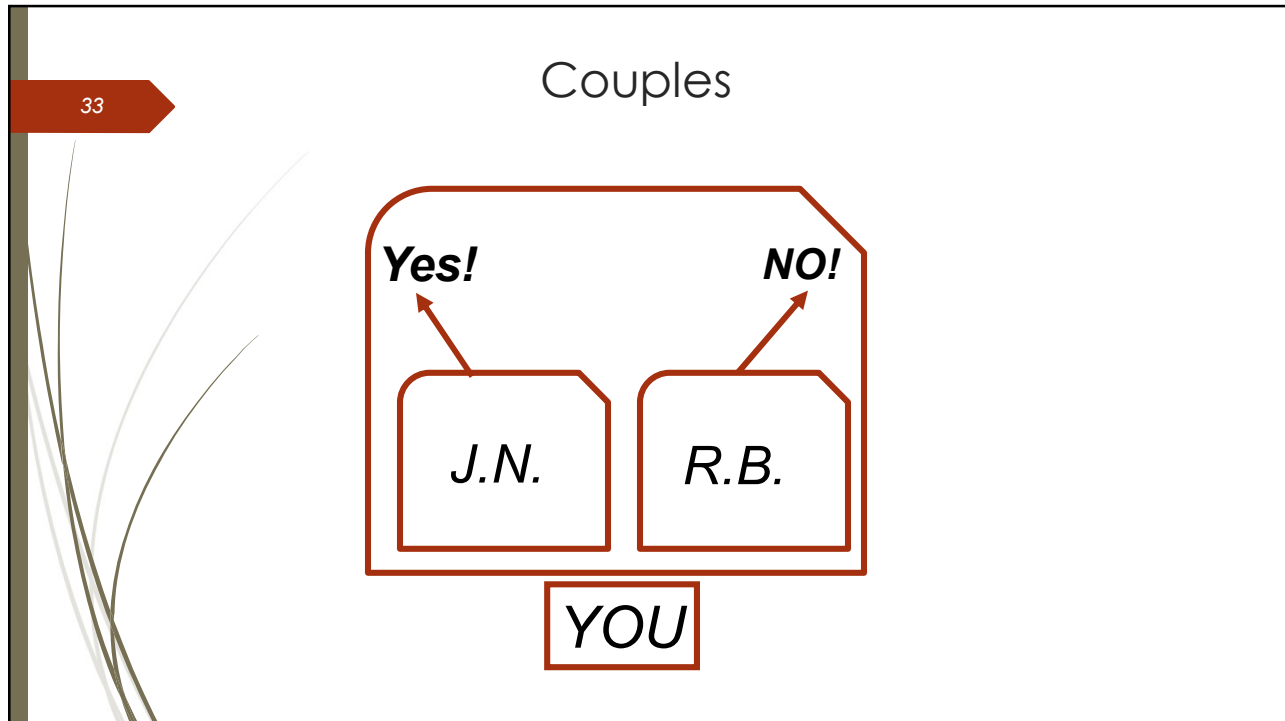
See also:  
The 3<sup>rd</sup> Party Doctrine in the Digital Age, John P. Collins NY Law School 2012  
[https://web.archive.org/web/20170214223733/http://www.nyls.edu/documents/justice-action-center/student\\_capstone\\_journal/cap12collins.pdf](https://web.archive.org/web/20170214223733/http://www.nyls.edu/documents/justice-action-center/student_capstone_journal/cap12collins.pdf)

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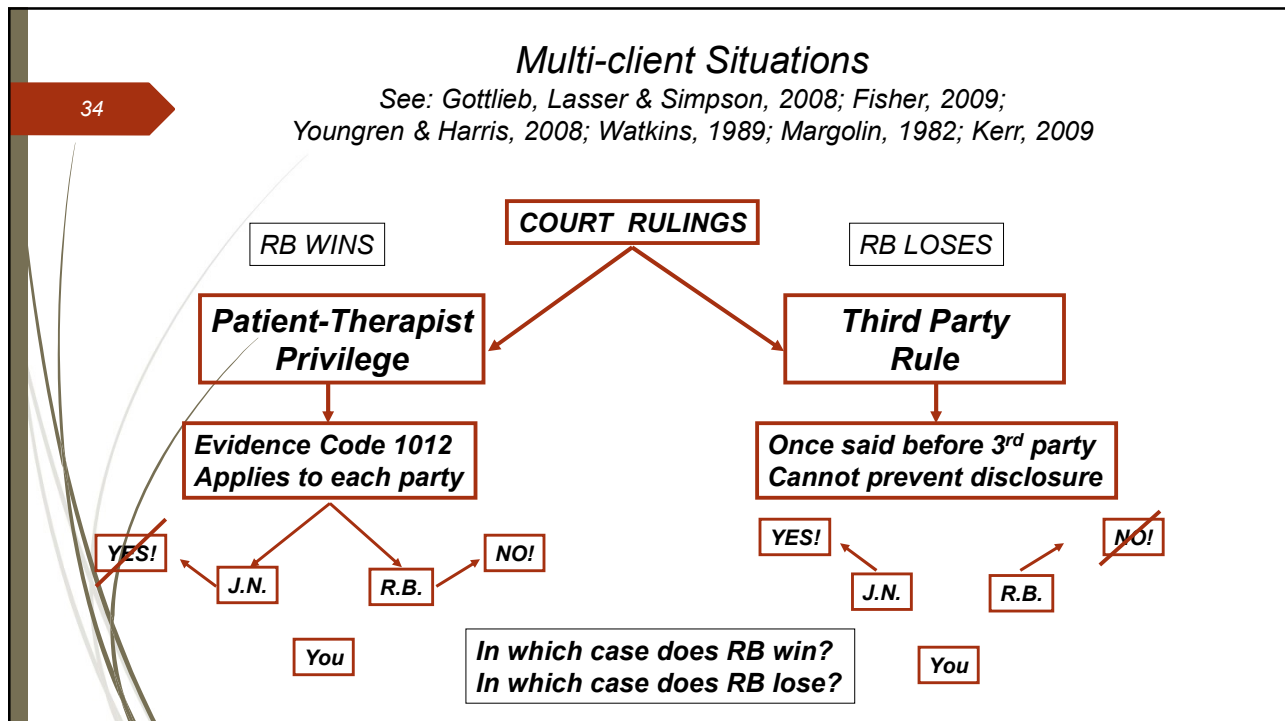


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*Date created: January 15, 2021*  
*By APA's Office of Legal and State Advocacy and the*  
*California Psychological Association*

***What to know about doing telehealth***  
***in a different state***  
***TWELVE FREQUENTLY ASKED QUESTIONS***

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FAQ Working Across State Lines  
APA, 2021

**FAQ ONE:** *My patient will be temporarily visiting another state. Can I provide services to that patient via telehealth while they are out of the state where I am licensed?*

**ANSWER:**

- *You should be licensed to practice in the states where you and your patient are physically located if possible*
- *If your patient is temporarily in another state, you may be legally permitted to practice there under temporary practice laws*
  - *However, not all states allow for temporary practice*
  - *Contact the state's licensing board*

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FAQ Working Across State Lines  
APA, 2021

**FAQ TWO:** *My patient moved to another state permanently. Can I continue to provide services to that patient via telehealth when I am not licensed in the new state?*

**ANSWER:**  
*If a patient is moving permanently out of state, they may benefit from transitioning their care to a psychotherapist in their new state. The therapist should be licensed in the state in which the patient's feet are located!*

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FAQ Working Across State Lines  
APA, 2021

**FAQ THREE:** *Can I continue to provide services to a patient who is either temporarily or permanently in another country?*

**ANSWER:**

- You should be licensed to practice both where you and where your patient are located, including internationally
- Checking with the [relevant national psychology association](#) is a good place to start
  - Will the time difference make treatment inconvenient?
  - Will cultural issues be an important factor?
  - What are the local crisis resources?
  - How to handle mandated reporting issues: child, elder, dependent
  - Are there patient data privacy requirements that must be followed in that country?
  - Could be practicing without a license?

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### FAQ Working Across State Lines APA, 2021

**FAQ FOUR:** *A patient who lives in another state wants to initiate treatment with me via telehealth. Can I provide treatment to that patient? What if I have special expertise that they cannot access in their area?*

**ANSWER:**

- *Most states do not have a specific requirement that care must be initiated in person*
- *Or must be initiated in the same state where their therapist is located*
- *Expertise may be a clinical reason for initiating treatment with out of state patient*
- *If appropriate services are available, a patient may benefit from working with a local in-person therapist rather than online with someone out of state*

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### FAQ Working Across State Lines APA, 2021

**FAQ FIVE:** *I will be temporarily out of state (e.g., for vacation, business, or a family visit). Can I provide services to my patients who are still in my home state via telehealth?*

**ANSWER:**

- *You should be licensed both where you and where your patient are physically located BUT this is clearly not completely possible*
- ***Most states clearly consider you to be practicing psychology where the patient is located***
- *Some states also consider you to be practicing psychology where you are located BUT it is difficult to get licensed everywhere*
- *Check with the relevant state's board of psychology to find out its rules in this situation.*

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FAQ Working Across State Lines  
APA, 2021

**FAQ SIX:** *I will be moving permanently from state A to state B. Can I continue to work via telehealth with patients in state A when I am living in state B?*

**ANSWER:**

- *You could be considered to be practicing where you are located, even if your patients are in a different state from where you are licensed*
- *If you are permanently living in a new state, it may be worthwhile to get licensed in that state*
- *It also allows you to treat patients who live in your new state*

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FAQ Working Across State Lines  
APA, 2021

**FAQ SEVEN:** *Can trainees provide telehealth services across state lines?*

**ANSWER:**

**Typically, no.** *Temporary practice laws generally require you to have a license to practice psychology in the other state.*

**FAQ EIGHT:** *Were the rules different during the COVID-19 public health emergency?*

**ANSWER:**

*Some states temporarily relaxed their rules about interstate practice during the pandemic which vary by state*

*See telehealth guidance by state during COVID-19 and confirm current rules with the relevant licensing boards*

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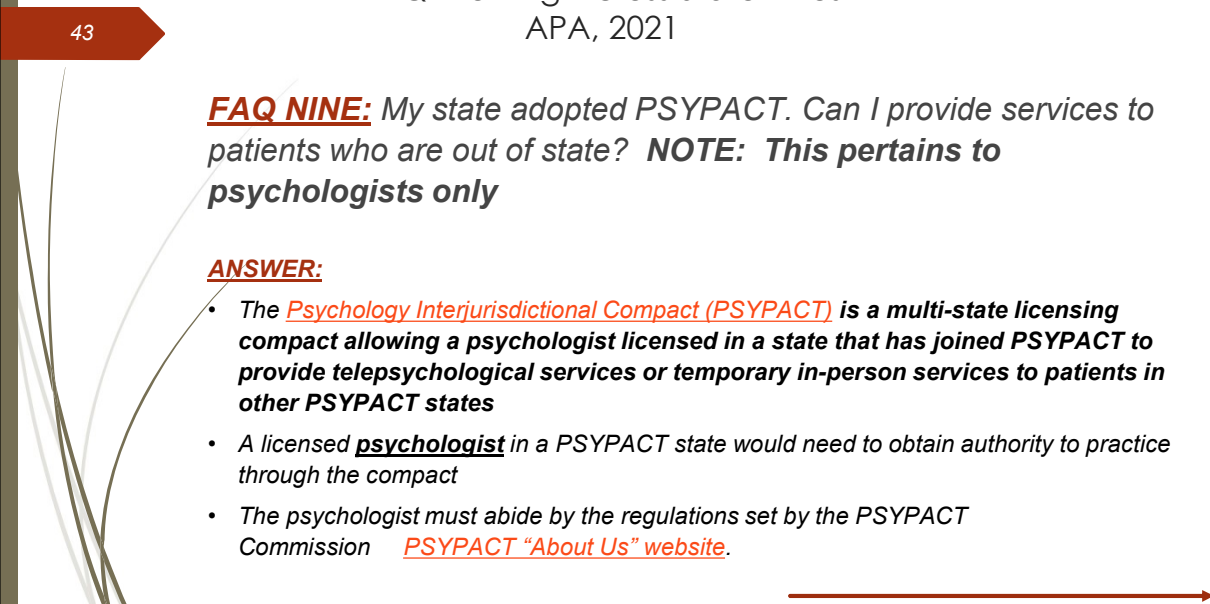
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FAQ Working Across State Lines  
APA, 2021

**FAQ NINE:** *My state adopted PSYPACT. Can I provide services to patients who are out of state? NOTE: This pertains to psychologists only*

**ANSWER:**

- The [Psychology Interjurisdictional Compact \(PSYPACT\)](#) is a multi-state licensing compact allowing a psychologist licensed in a state that has joined PSYPACT to provide telepsychological services or temporary in-person services to patients in other PSYPACT states
- A licensed **psychologist** in a PSYPACT state would need to obtain authority to practice through the compact
- The psychologist must abide by the regulations set by the PSYPACT Commission [PSYPACT "About Us" website.](#)



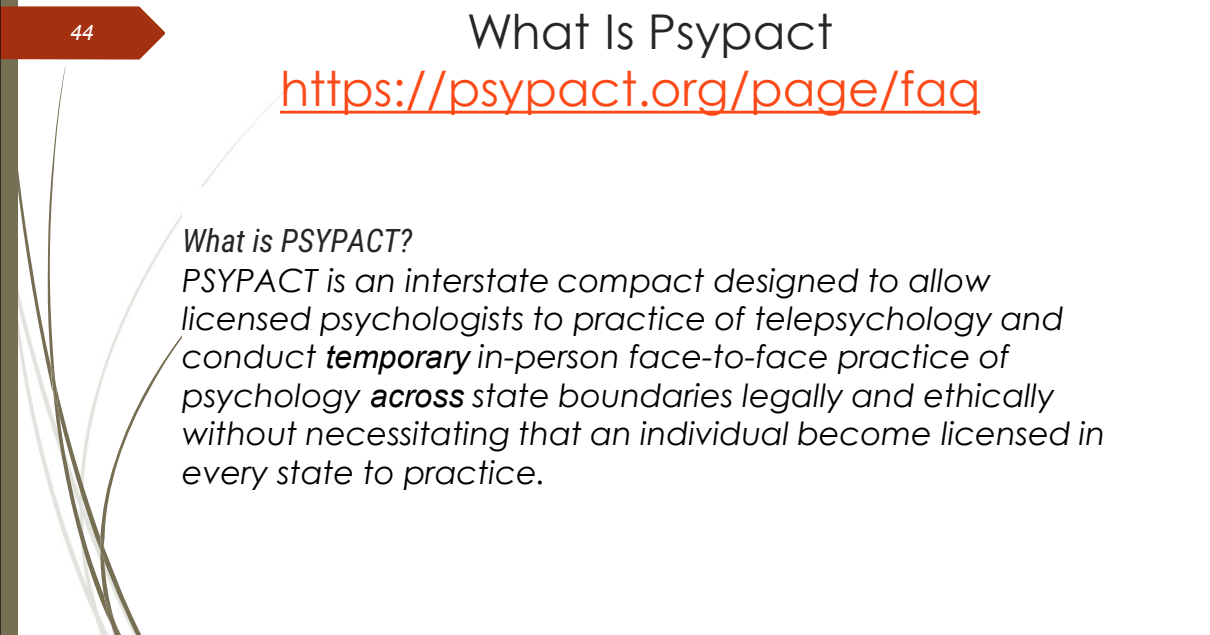
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### What Is Psypact

<https://psypact.org/page/faq>

**What is PSYPACT?**  
PSYPACT is an interstate compact designed to allow licensed psychologists to practice of telepsychology and conduct **temporary** in-person face-to-face practice of psychology **across** state boundaries legally and ethically without necessitating that an individual become licensed in every state to practice.



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How Does Psypact Work

<https://psypact.org/page/faq>

As a licensed psychologist, how do I utilize PSYPACT?

Psychologists licensed in PSYPACT states can apply for the Authorization to Practice Telepsychology (APIT) and Temporary Authorization to Practice (TAP), which are required to practice telepsychology and/or temporary in-person, face-to-face practice in PSYPACT states through the following steps:

To practice telepsychology:

- Licensed psychologists (who are licensed in PSYPACT states only) can apply to the PSYPACT Commission for their Authority to Practice Interjurisdictional Telepsychology (APIT).
- Psychologists must obtain an E.Passport Certificate from ASPP
- In order to conduct temporary practice in PSYPACT states, licensed psychologists (who are licensed in PSYPACT states only) can apply to the PSYPACT Commission for their Temporary Authorization to Practice (TAP).
- One required component of this TAP granted from the PSYPACT Commission is that psychologists must obtain an Interjurisdictional Practice Certificate (IPC) from ASPPB.

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Telehealth by State: APA

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

View your state's actions

• <a href="#">Alabama</a>	• <a href="#">Illinois</a>	• <a href="#">Montana</a>	• <a href="#">Rhode Island</a>
• <a href="#">Alaska</a>	• <a href="#">Indiana</a>	• <a href="#">Nebraska</a>	• <a href="#">South Carolina</a>
• <a href="#">Arizona</a>	• <a href="#">Iowa</a>	• <a href="#">Nevada</a>	• <a href="#">South Dakota</a>
• <a href="#">Arkansas</a>	• <a href="#">Kansas</a>	• <a href="#">New Hampshire</a>	• <a href="#">Tennessee</a>
• <a href="#">California</a>	• <a href="#">Kentucky</a>	• <a href="#">New Jersey</a>	• <a href="#">Texas</a>
• <a href="#">Colorado</a>	• <a href="#">Louisiana</a>	• <a href="#">New Mexico</a>	• <a href="#">Utah</a>
• <a href="#">Connecticut</a>	• <a href="#">Maine</a>	• <a href="#">New York</a>	• <a href="#">Vermont</a>
• <a href="#">Delaware</a>	• <a href="#">Maryland</a>	• <a href="#">North Carolina</a>	• <a href="#">Virginia</a>
• <a href="#">District of Columbia</a>	• <a href="#">Massachusetts</a>	• <a href="#">North Dakota</a>	• <a href="#">Washington</a>
• <a href="#">Florida</a>	• <a href="#">Michigan</a>	• <a href="#">Ohio</a>	• <a href="#">West Virginia</a>
• <a href="#">Georgia</a>	• <a href="#">Minnesota</a>	• <a href="#">Oklahoma</a>	• <a href="#">Wisconsin</a>
• <a href="#">Hawaii</a>	• <a href="#">Mississippi</a>	• <a href="#">Oregon</a>	• <a href="#">Wyoming</a>
• <a href="#">Idaho</a>	• <a href="#">Missouri</a>	• <a href="#">Pennsylvania</a>	

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**PSYPACT – Working Across State Lines**  
**California has NOT joined**

[https://cdn.ymaws.com/psypact.org/resource/resmgr/handouts/psypact\\_what\\_happens\\_next\\_-\\_pdf](https://cdn.ymaws.com/psypact.org/resource/resmgr/handouts/psypact_what_happens_next_-_pdf)

### PSYPACT MY STATE ENACTED PSYPACT

#### What Happens Next?

**01. Understanding PSYPACT**  
Your state has officially enacted PSYPACT legislation. What happens next? In many states, legislation may become effective at a later date after it has been enacted. Check with your state to find PSYPACT's effective date! Once effective, this means you as a psychologist licensed in your state can now apply to practice telepsychology and/or temporary in-person, face-to-face practice under the authority of PSYPACT into other PSYPACT participating states.

**02. Choosing your Practice Type**  
You can apply to practice telepsychology and/or to conduct temporary in-person, face-to-face practice under the authority PSYPACT. You can choose to practice one or both but each practice type requires a separate application. To practice telepsychology, you will need to obtain two credentials - the ASPPB EPassport and the Authority to Practice Interjurisdictional Telepsychology (APIT) from the PSYPACT Commission. To practice temporarily, you will need to obtain two credentials - the ASPPB Interjurisdictional Practice Certificate (IPC) and the Temporary Authorization to Practice (TAP) from the PSYPACT Commission.

**03. Starting your Application(s)**  
Before starting your applications, visit [www.psypact.org](http://www.psypact.org) to review application information and requirements. To start your application(s), visit PSYPACT ([www.psypact.org](http://www.psypact.org)) and login or create an account. After logging in, select either "Practicing Telepsychology under PSYPACT" or "Practicing Temporarily under PSYPACT" (depending on your practice type above) from the Select an Activity on the right navigation panel of your My Activity Summary homepage. You will then be taken to an informational page followed by a payment page. The EPassport has a \$400 application and \$100 annual renewal fee and the APIT has a one-time \$40 application fee. The IPC has a \$200 application fee and \$50 annual renewal fee and the TAP has a one-time \$40 application fee. After paying, you will receive a welcome email with specific instructions for completing your application(s). An EPassport and/or IPC application checklist will appear on your My Activity Summary home page in your My Application History section. Select "edit" to access the EPassport and/or IPC application checklists and complete the required sections and save each section as complete once information has been entered. Don't forget! Request a copy of your official transcripts be sent directly from the institution to ASPPB at [transcripts@asppb.org](mailto:transcripts@asppb.org).

**04. Contacting Us**  
We are here to help guide you through the application process! Email us at [Info@psypact.org](mailto:Info@psypact.org) with any questions you have. Additionally, visit [www.psypact.org](http://www.psypact.org) for FAQs, handouts and additional information to help assist you in completing your application(s).

Psychology Interjurisdictional Compact (PSYPACT) [www.psypact.org](http://www.psypact.org)

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## PSYPACT States for Psychologists Only

Alabama	Nebraska
Arizona	Nevada
Arkansas	New Hampshire
Commonwealth of the Northern Mariana Islands	New Jersey
Connecticut	North Carolina
Colorado	Ohio
Delaware	Oklahoma
District of Columbia	Pennsylvania
Georgia	Rhode Island
Idaho	Tennessee
Illinois	Texas
Indiana	Utah
Kansas	Virginia
Kentucky	Washington
Maine	West Virginia
Maryland	Wisconsin
Michigan	Wyoming
Minnesota	
Missouri	

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FAQ Working Across State Lines  
APA, 2021

**FAQ TEN:** *My state has not adopted PSYPACT. Can I provide services to a patient who is in a PSYPACT state?*

**ANSWER:**

- *PSYPACT facilitates interstate practice among those states that have joined the compact*
- *Both the psychologist and the patient have to be in PSYPACT states*
- *Otherwise, the psychologist will need to comply with the other state's temporary practice law, if any*

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FAQ Working Across State Lines  
APA, 2021

**FAQ ELEVEN:** *What if it's an emergency?*

**ANSWER:**

- *Your professional and ethical duties to protect the patient from harm are paramount*
- *Prompt action to address the emergency comes first*
- *Reasonable steps to comply with jurisdictional rules should then be taken*



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*Marlene M. Maheu is an American telehealth strategist, technologist and clinical psychologist. She founded and is currently the Executive Director of the Telebehavioral Health Institute, now known as Telehealth.org. Maheu is the founder of the Journal for Technology in Behavioral Health*

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FAQ Working Across State Lines  
APA, 2021

**FAQ TWELVE:** *How risky is practice across state lines?*

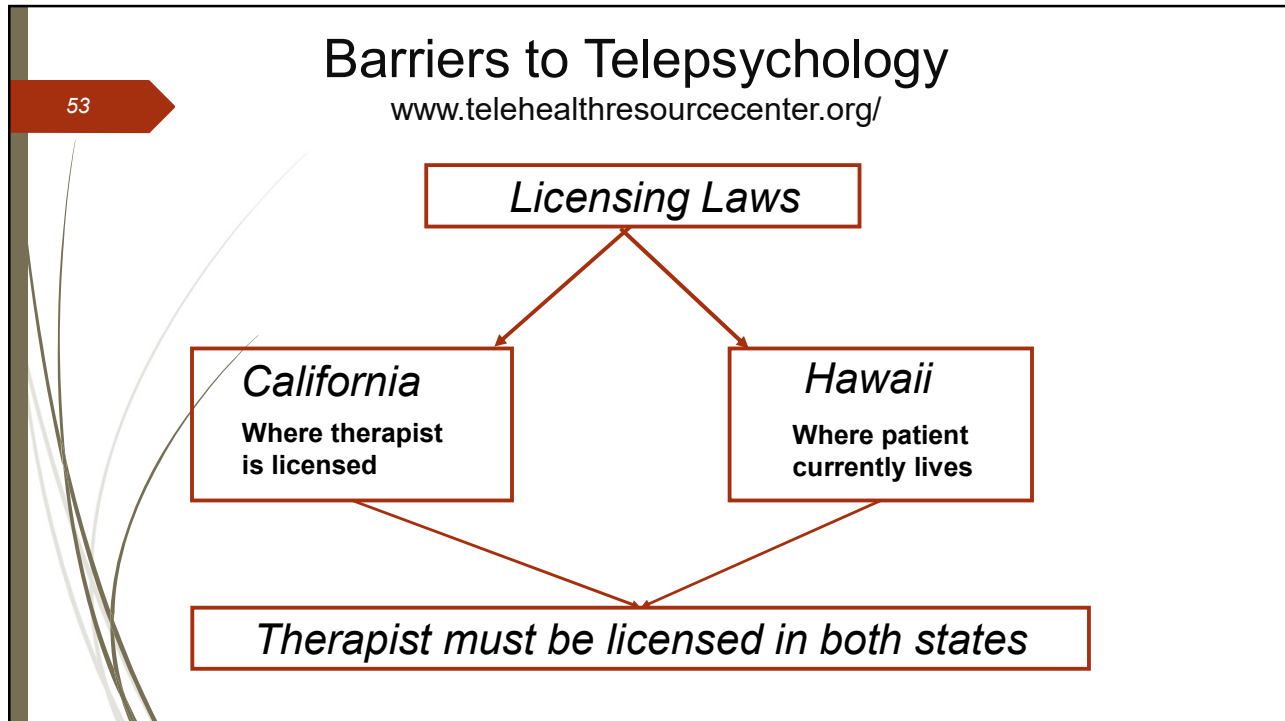
**ANSWER:**

- *The risks of engaging in temporary interstate practice may be low, especially when such services are brief and clinically indicated*
- *However, if there is a complaint and you have not complied with the relevant interstate practice rules, you could be accused of practicing without a license*
- *It is recommended that you consult with your professional liability company about risk management guidance*

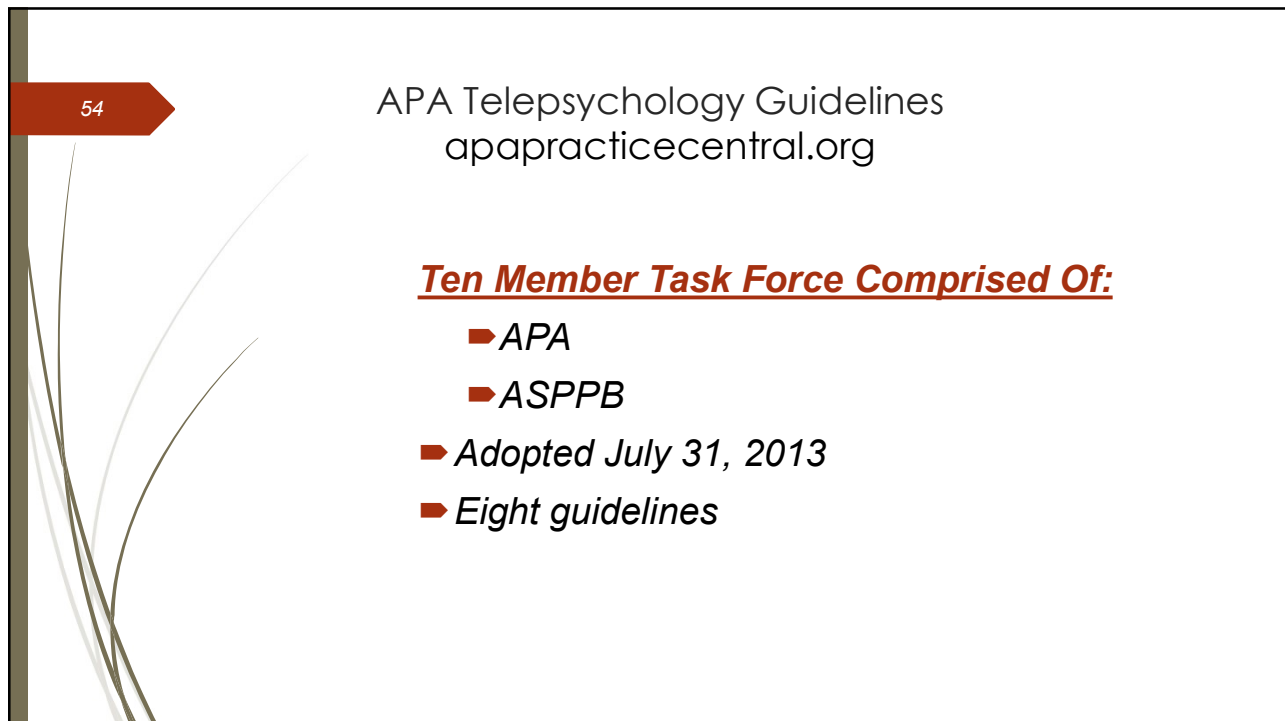
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AMERICAN PSYCHOLOGICAL ASSOCIATION

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

***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 Online**

- ▶ The federal government has **identified psychologists** as critical, essential workers in the U.S. response to COVID-19
- ▶ **MAIN FINDING: 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 Online

- ▶ 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>

#### MFT-Providing Services 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>

#### **MFT Providing Services 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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### 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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### 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*
  - *California recently passed a 3-hour requirement*
- *Gain competence and knowledge about using technology*
- *Recognize the risks and benefits*

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### Tran-Lien, 2020

<https://www.camff.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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### To See Your State's Action or Policy

**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](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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### Informed Consent for Telehealth

*To Reduce Anxiety...*

*“Telehealth Informed Consent” will be presented now*

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[www.camft.org/Portals/0/PDFs/Sample\\_Telehealth\\_Consent\\_Form.pdf?ver=2020-04-29-121645-790](http://www.camft.org/Portals/0/PDFs/Sample_Telehealth_Consent_Form.pdf?ver=2020-04-29-121645-790)

#### **Telehealth Informed Consent**

*The sample which follows is one example of what might be included in an agreement for Telehealth services. This form should be used in conjunction with a traditional Informed Consent Agreement or Disclosure Statement. Therapist may adopt some or all of it to meet their particular needs. This document is provided for informational and educational purposes only and should not be considered legal advice.*

*I, [Name of Patient] (Patient) hereby consent to engage in Telehealth with [Therapist's Name, License] (Therapist).*

*I understand that Telehealth is a mode of delivering health care services, including psychotherapy, via communication technologies (e.g. Internet or phone) to facilitate diagnosis, consultation, treatment, education, care management, and self-management of a patient's health care.*

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[www.camft.org/Portals/0/PDFs/Sample Telehealth Consent Form.pdf?ver=2020-04-29-121645-790](http://www.camft.org/Portals/0/PDFs/Sample_Telehealth_Consent_Form.pdf?ver=2020-04-29-121645-790)

### Telehealth Consent Form

**By signing this form, I understand and agree to the following:**

- 1. I have a right to confidentiality with regard to my treatment and related communications via Telehealth under the same laws that protect the confidentiality of my treatment information during in-person psychotherapy. The same mandatory and permissive exceptions to confidentiality outlined in the [Informed Consent Form or Statement of Disclosures] I received from my therapist also apply to my Telehealth services.*
- 2. I understand that there are risks associated with participating in Telehealth including, but not limited to, the possibility, despite reasonable efforts and safeguards on the part of my therapist, that my psychotherapy sessions and transmission of my treatment information could be disrupted or distorted by technical failures and/or interrupted or accessed by unauthorized persons, and that the electronic storage of my treatment information could be accessed by unauthorized persons.*

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### Telehealth Consent Form

- 3. I understand that miscommunication between myself and my therapist may occur via Telehealth*
- 4. I understand that there is a risk of being overheard by persons near me and that I am responsible for using a location that is private and free from distractions or intrusions*
- 5. I understand that at the beginning of each Telehealth session my therapist is required to verify my full name and current location.*
- 6. I understand that in some instances Telehealth may not be as effective or provide the same results as in-person therapy. I understand that if my therapist believes I would be better served by in-person therapy, my therapist will discuss this with me and refer me to in person services as needed.*
- 7. I understand that while Telehealth has been found to be effective in treating a wide range of mental and emotional issues, there is no guarantee that Telehealth is effective for all individuals. Therefore, I understand that while I may benefit from Telehealth, results cannot be guaranteed or assured.*

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### Telehealth Consent Form

3. *I understand that miscommunication between myself and my therapist may occur via Telehealth.*
4. *I understand that there is a risk of being overheard by persons near me and that I am responsible for using a location that is private and free from distractions or intrusions.*
5. *I understand that at the beginning of each Telehealth session my therapist is required to verify my full name and current location.*
6. *I understand that in some instances Telehealth may not be as effective or provide the same results as in-person therapy. I understand that if my therapist believes I would be better served by in-person therapy, my therapist will discuss this with me and refer me to in person services as needed.*
7. *I understand that while Telehealth has been found to be effective in treating a wide range of mental and emotional issues, there is no guarantee that Telehealth is effective for all individuals. Therefore, I understand that while I may benefit from Telehealth, results cannot be guaranteed or assured.*

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### Telehealth Consent Form

8. *I understand that some Telehealth platforms allow for video or audio recordings and that neither I nor my therapist may record the sessions without the other party's written permission.*
9. *I have discussed the fees charged for Telehealth with my therapist and agree to them [or for insurance patients: I have discussed with my therapist and agree that my therapist will bill my insurance plan for Telehealth and that I will be billed for any portion that is the patient's responsibility (e.g. co-payments)], and I have been provided with this information in the [Informed Consent Form or Name of Payment Agreement Form].*
10. *I understand that my therapist will make reasonable efforts to ascertain and provide me with emergency resources in my geographic area. I further understand that my therapist may not be able to assist me in an emergency situation. If I require emergency care, I understand that I may call 911 or proceed to the nearest hospital emergency room for immediate assistance.*

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### Telehealth Consent Form

*I have read and understand the information provided above, have discussed it with my therapist, and understand that I have the right to have all my questions regarding this information answered to my satisfaction.*

*[For conjoint or family therapy, patients may sign individual consent forms or sign the same form.]*

#### **Verbal Consent Obtained**

*Therapist reviewed Telehealth Consent Form with Patient. Patient understands and agrees to the above advisements, and Patient has verbally consented to receiving psychotherapy service from Therapist via Telehealth.*

*Patient Signature and 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*
- ▶ *Check liability insurance for coverage*
- ▶ *Check ethics codes of your license*
- ▶ *Discuss HIPAA compliant payment methods*

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

### **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 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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### Are You a Covered Entity?

#### To Be a Covered Entity, Ask Yourself Three Questions:

- (1) are you a health care provider?
- (2) do you transmit information electronically? and,
- (3) do you conduct covered transactions?

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### Note Keeping

#### Process Notes

##### **HIPAA: "Psychotherapy Notes"**

- Hunches
- Insights
- Intuitions
- Hypotheses
- Impressions
- Ideas

#### Progress Notes

##### **SOLID treatment plan**

- Public record
- Protection in court
- Goals set...goals met
- Concrete treatment plan
- Available to patient
- Available to insurance

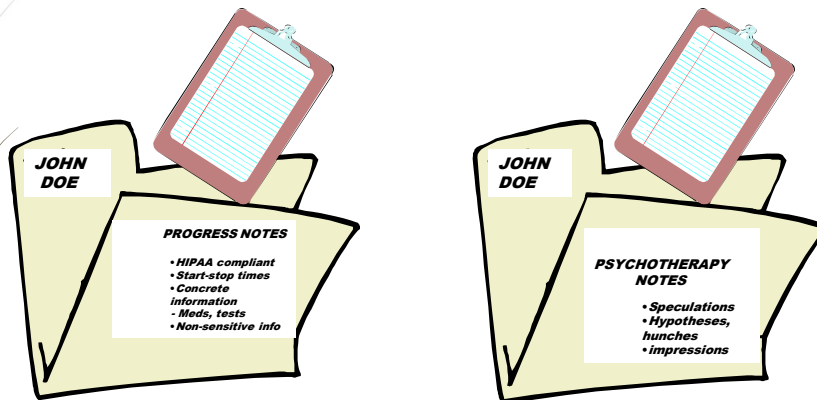
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### Dual Note Keeping



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### HIPAA and Encryption

<https://thehcbiz.com/is-encryption-required-by-hipaa-yes/>

#### **HIPAA Compliance required ENCRYPTION**

The **HIPAA** regulation requires the **encryption** of patient information when stored on disk, on tape, on USB drives, and on any method of storage. This is called **encryption** of data at rest. ... If it is “electronic protected health information”, or ePHI, it must be protected using encryption

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### What is Encryption?

#### **Oxford Dictionary:**

- ▶ *The process of converting information or data into a code, especially to prevent unauthorized access.*
- ▶ *The conversion of something to code or symbols so that its contents cannot be understood if intercepted. When a confidential email needs to be sent and you use a program that obscures its content, this is an example of encryption.*

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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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Skype and HIPAA  
The HIPAA Journal, 2019

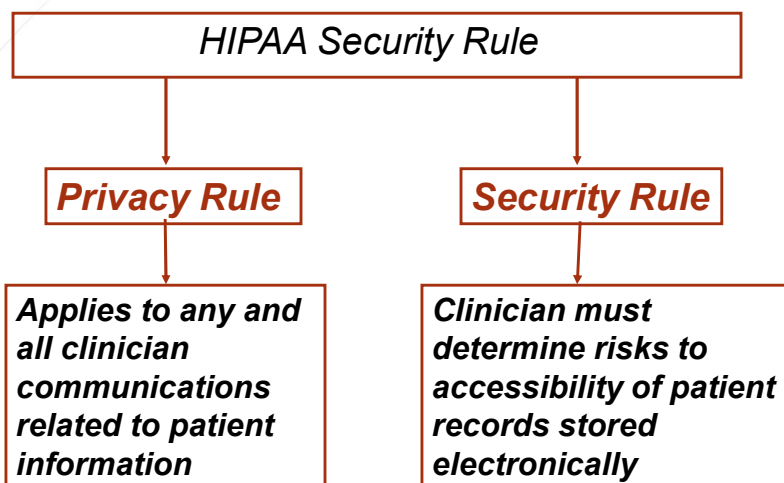
## HIPAA Laws

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

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HIPAA Issues  
The HIPAA Journal, 2019; Knapp et al., 2013



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### QUESTION: Is Consumer Focused SKYPE HIPAA Compliant?

The HIPAA Journal, 2019; Greevy, 2015, 2017

#### IN TRANSIT

*Skype meets HIPAA security requirements while in transit. Skype provides encryption for messages between client and chat service used.*

#### CLOUD STORAGE

*Skype cannot meet HIPAA security requirements in cloud storage. Skype does not explicitly state they provide “at rest” encryption.*

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Skype and HIPAA  
The HIPAA Journal, 2019

#### What is a BAA?

- ▶ **A BAA is a Business Associate Agreement.** The **HIPAA** regulations call it a Business Associate Contract. ... BAAs satisfy **HIPAA** regulations, and create a bond of liability that binds two parties. If one member violates a **BAA**, the other has legal recourse.

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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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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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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**

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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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### Updates to Record Keeping

Electronic Records

CURES Act

Open Notes

ONC

Office of National Coordinator for  
Health Information Technology

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### The CURES Act and Open Notes

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#### Bibliography

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Heath, S. (2020). *The patient access to clinical notes mandate in the 21<sup>st</sup> Century cures Act will go into effect on November 2, 2020*. retrieved 3/30/21

<https://www.icanotes.com/2020/11/20/21st-century-cures-act-goes-into-effect-april-2021/>

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### The CURES Act and Open Notes

#### Bibliography

#### **Open Notes: Questions and Answers Website**

<https://www.opennotes.org/effects-of-opennotes-faqs/>

Sandy, (2020). *Upcoming 21<sup>st</sup> Century Cures Act Changes*. Retrieved 3/30/21

<https://www.icanotes.com/2020/11/20/21st-century-cures-act-goes-into-effect-april-2021/>

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### 21<sup>st</sup> Century CURES Act (2016, 2021) The OPEN NOTES Policy

#### **Two Primary Elements**

**Immediate  
Patient  
Access**

**No  
Blocking  
Policy**

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### The CURES Act and Open Notes

#### Federal Government Mandate 4/6/21

- ▶ *Eliminates any type of information blocking*
- ▶ *Primarily meant for medical records*
- ▶ *Includes therapy clinical notes*
- ▶ *Patients get IMMEDIATE access to digital data*
- ▶ *Generally via a patient portal*

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### The CURES Act and Open Notes

#### Types of Records for IMMEDIATE Access

*Consultation notes*

*Discharge summary notes (termination)*

*Progress notes*

*Psychotherapy notes are NOT included here*

*Providers may still withhold these notes*

*History (and physical for MDs)*

*Imaging and laboratory reports (for MDs)*

*Pathology and procedure notes (for MDs)*

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### The CURES Act and Open Notes

#### Cures Act Requires OPEN NOTES

- *Philosophy that all have access to clinician notes*
- *Currently 50 million patients access Open Notes*
- *Initially strong resistance*
- *Patients will misunderstand terminology*
- *Patients will be confused*
- *Currently*
  - *96% of patients using Open Notes understand the records*
  - *7% asked for help if they failed to understand*

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### The CURES Act and Open Notes

#### Cures Act Requires OPEN NOTES

- *SAHM – SOCIETY FOR ADOLESCENT HEALTH AND MEDICINE*
- *How does CURES Act and OPEN NOTES deal with minors*

*Understanding specific state minor consent laws as well as state and federal confidentiality laws is essential both for implementation of the Privacy exception in the Final Rule of the CURES Act and for the development of institutional policies that protect adolescents' confidential information within the EHR.*

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### The CURES Act and Open Notes

#### Implementing OPEN NOTES

1. *Be clear and succinct*
2. *Respectfully address concerns*
3. *Use supportive language*
4. *Agency will use FHIR*
  - *New standard for sharing information*
  - **Fast Healthcare Interoperability Resources**
    - *This is how patient accesses records and data*

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### 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*

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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?**

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FaceTime and HIPAA  
The HIPAA Journal, 2019  
[www.hipaajournal.com/hipaa-conduit-exception-rule](http://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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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](http://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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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*

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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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106

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 (4<sup>th</sup> Cir. 1997)*

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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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108

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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109

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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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*

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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***

111

112

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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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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114

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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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*

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116

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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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***

117

118

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

<b>W</b>	<b>Why</b>
<b>A</b>	<b>Am</b>
<b>I</b>	<b>I</b>
<b>T</b>	<b>Talking/Posting</b>

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120

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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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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122

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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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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124

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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### 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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### 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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127

### 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*

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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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130

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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131

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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132

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*

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### Practice Vignette

#### **Psychotherapist Asks For Online Consultation**

*"I am working with an 8 year old girl who attends 2<sup>nd</sup> 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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### 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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### 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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### 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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### 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)*

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### 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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### 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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### 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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### 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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### 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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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

**Before Posting – Ask These Questions**

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

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### Social Media

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#### **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?*

145

### Unethical Project: The Three Christs of Ypsilanti, Michigan

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#### **DELUSION: A firmly held false belief**

<https://www.thedailybeast.com/three-christs-the-curious-case-of-three-men-who-thought-they-were-jesus-christ>

- *Dr. Rokeach got the idea from an article describing two women who both believed they were the Virgin Mary. After being assigned as psychiatric hospital roommates, one of the women recovered from her delusion as a result of conversations with the roommate and was discharged*
- *As a similar study of delusional belief systems, Rokeach brought together three men who each claimed to be Jesus Christ and confronted them with one another's conflicting claims, while encouraging them to interact personally as a support group*
- *Rokeach also attempted to manipulate other aspects of their delusions by inventing messages from imaginary characters. He did not, as he had hoped, provoke any lessening of the patients' delusions, but did document a number of changes in their beliefs*

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Unethical Project: The Three Christs of Ypsilanti, Michigan

147

### **DELUSION: A firmly held false belief**

<https://www.thedailybeast.com/three-christs-the-curious-case-of-three-men-who-thought-they-were-jesus-christ>

- *The graduate students who worked with Rokeach on the project have been strongly critical of the morality of the project because of the amount of dishonesty and manipulation by Rokeach and the amount of distress experienced by the patients*
- *Rokeach added a comment in the final revision of the book that, the experiment did not cure any of the three Christs*
- *Some people say they maintained their delusion by stating they were the “trinity”*
  - *“One was the father, one was the son, and one was the holy ghost”*

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### Sum Up Question

*What is a “digital native?”*

**ANSWER:**


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## Sum Up Question

***What are the Two Primary Elements of The 21<sup>st</sup> Century Cures Act***



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## Sum Up Question

*If you join PSYPACT you can work across state lines no matter where you are licensed.*

**ANSWER:**

TRUE                      FALSE



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## SUM UP QUESTION

*The primary ethical issue working across state lines is:*

**ANSWER:**

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## SUM UP QUESTION

*What is a BAA with regard to encryption?*

**ANSWER:**

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## Sum Up Question

*What is the “third party rule?”*

**ANSWER:**

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References Specific to Technology  
Next Six Slides

Bibliography Follows

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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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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://security.uwmedicine.org/guidance/technical/encryption/mobiledevice_encryption/default.asp)
    - [https://www.apple.com/business/docs/iOS\\_Security\\_Guide.pdf](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>

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### E-mail

- ▶ [http://www.pcworld.com/article/254338/how\\_to\\_encrypt\\_your\\_email.html](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>

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1. *APA to states, insurers: Provide access to mental health care during COVID-19 public health crisis, (March 24, 2020)*
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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### General Bibliography for Workshop

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