

Legal and Ethical Guidance for the Provision of Distance Counseling/Teletherapy – A Work in Progress

Julie A. Jacobs, Psy.D., J.D.

It is hard to imagine going through a day in the modern world without utilizing several types of telecommunication technology. Text messages, emails and videoconferencing have replaced much of our former face-to-face communications. We as a society have integrated these technologies into our daily lives, and the mental health professions are following suit. However, regulation has lagged behind the use of such technologies.

Many mental health providers are interested in using videoconferencing technology in their practices, and they often have questions about how to use technologies in compliance with relevant regulations and ethical codes. These questions relate to a variety of issues, including HIPAA compliance, interjurisdictional practice, and informed consent issues. There are no clear answers to many of these questions, but progress is being made. Regulations and guidance on issues related to teletherapy are being published in piecemeal fashion, and some of the relevant guidance will be summarized below.

On the issue of interjurisdictional practice, at least as it relates to psychologists, the Association of State and Provincial Psychology Boards introduced the *Psychology Interjurisdictional Compact (PSYPACT)*ⁱ in February 2015. PSYPACT would facilitate the practice of teletherapy across state lines and would provide official guidance for the practice of teletherapy. However, PSYPACT must be ratified by the legislatures of at least 7 states before it goes into effect and there is no way to predict when or if it will be adopted in Colorado. Currently, the safest course of action for Colorado licensees is to only conduct teletherapy with clients within Colorado.

DORA has published one relevant policy statement, *Guidance Regarding Psychotherapy Through Electronic Means Within the State of Colorado*,ⁱⁱ which has been adopted by the Colorado Boards of Psychologists, Licensed Professional Counselors, Social Workers, Marriage and Family Therapists, Addiction Counselors, and Registered Psychotherapists. Under this policy, providers are encouraged to conduct an initial face-to-face assessment with all clients before implementing therapy through electronic means. Providers are also encouraged to have periodic face-to-face contact with clients, even if teletherapy is the main mode of therapy. The policy outlines six specific issues that providers are expected to identify and address, including: agreeing upon means of communication between client and provider; written informed consent and proper disclosure; ensuring confidentiality and security of client information; rationale for choosing teletherapy; ensuring practice within the provider's scope of practice; and ensuring that teletherapy does not cause potential harm to clients. The policy also outlines potential challenges to providing teletherapy that providers need to be aware of and address appropriately. All mental health providers in Colorado who engage in teletherapy should be familiar with this policy statement and comply with its provisions, as this is the only guidance that has been formally adopted by DORA on this issue.

The American Psychological Association has also issued *Guidelines for the Practice of Telepsychology*ⁱⁱⁱ and psychologists should strive to comply with these guidelines. Although these do not have the force of law or officially adopted policy, APA guidelines are considered part of the “generally accepted standards”

of psychologists; failure to comply with generally accepted standards is considered a violation of the Mental Health Practice Act and grounds for disciplinary action. There are eight guidelines identified, broadly encompassing the following: competence; standards of care for delivering telepsychology; informed consent; confidentiality of data; security and transmission of data; disposal of data and information; testing and assessment; and interjurisdictional practice. Psychologists should review this guidance closely and make all reasonable efforts to comply with the guidelines.

The American Counseling Association has also adopted guidance regarding distance therapy in the *2014 ACA Code of Ethics*.^{iv} The 2014 Code has an entire section, Section H, dedicated to “Distance Counseling, Technology and Social Media.” This section includes guidance on six topics: knowledge and legal considerations; informed consent and security; client verification; distance counseling relationship; records and web maintenance; and social media. As with the APA guidelines discussed above, compliance with the ACA Ethics Code is considered to be part of the “generally accepted standards” of practice for LPCs, and counselors should be familiar with and work to comply with Section H of the Code.

Other sources of guidance have been published by national organizations. The National Board for Certified Counselors issued a *Policy Regarding the Provision of Distance Professional Services*^v which contains twenty specific standards that National Certified Counselors are required to comply with in order to retain their certifications. The American Telemedicine Association published the *Practice Guidelines for Video-Based Online Mental Health Services*^{vi} in May 2013, and the Federation of State Medical Boards issued a *Model Policy for the Appropriate Use of Telemedicine Technologies in the Practice of Medicine*^{vii} in April 2014. All of these documents address issues related to appropriateness of teletherapy, informed consent, privacy and security issues, dealing with emergency situations, and other important aspects of providing distance counseling services. These documents can provide additional guidance to all types of mental health providers regarding such services.

Based on the above, there are several things that mental health providers engaging in teletherapy should do in order to comply with existing and emerging standards of practice:

- Develop an informed consent form that addresses issues specific to teletherapy;
- Develop and document a plan for dealing with emergency/crisis situations in teletherapy;
- Identify and implement safeguards for privacy and security of client information;
- Choose HIPAA-compliant teletherapy platforms (even if you are not a covered entity under HIPAA);
- Understand issues related to interjurisdictional practice.

The absence of one clear set of standards for the provision of teletherapy does not eliminate our ethical obligations to our clients, and by taking the above steps providers can feel confident that they are making a good-faith effort to comply with the standards of their professions. For additional information on complying with this guidance, please feel free to contact me or consult with an attorney familiar with mental health practice issues.

ⁱ Association of State and Provincial Psychology Boards (2015). Psychology Interjurisdictional Compact. Retrieved on July 15, 2015 from

http://c.ymcdn.com/sites/www.asppb.net/resource/resmgr/Docs/Psychology_Interjurisdiction.pdf.

ⁱⁱ Colorado Department of Regulatory Agencies (2011). Teletherapy Policy – Guidance Regarding Psychotherapy Through Electronic Means Within the State of Colorado. Retrieved on July 15, 2015 from

<http://cdn.colorado.gov/cs/Satellite/DORA-Reg/CBON/DORA/1251632089838>.

ⁱⁱⁱ American Psychological Association (2013). Guidelines for the Practice of Telepsychology. Retrieved on July 15, 2015 from

<http://www.apa.org/practice/guidelines/telepsychology.aspx>.

^{iv} American Counseling Association (2014). 2014 ACA Code of Ethics. Retrieved on July 15, 2015 from

<http://www.counseling.org/resources/aca-code-of-ethics.pdf>.

^v National Board for Certified Counselors (2012). National Board for Certified Counselors (NBCC) Policy Regarding the Provision of Distance Professional Services. Retrieved July 28, 2015 from

<http://www.nbcc.org/Assets/Ethics/NBCCPolicyRegardingPracticeofDistanceCounselingBoard.pdf>.

^{vi} American Telemedicine Association (2013). Practice Guidelines for Video-Based Online Mental Health Services.

Retrieved on July 15, 2015 from <http://www.americantelemed.org/docs/default-source/standards/practice-guidelines-for-video-based-online-mental-health-services.pdf?sfvrsn=6>.

^{vii} Foundation of State Medical Boards (2014). Model Policy for the Appropriate Use of Telemedicine Technologies in the Practice of Medicine. Retrieved on July 15, 2015 from

http://www.fsmb.org/Media/Default/PDF/FSMB/Advocacy/FSMB_Telemedicine_Policy.pdf.