

The Trust Ethics and Risk Management Workshop Sequence VIII: Ethics and Risk Management in a Digital World 2.0

6 Hours CE Credit

Agenda

Slides

Introduction

1-7

Risk Management 101

8-25

The Psychology-Technology Interface

26-34

Record-Keeping

35-91

Morning Break

Record-Keeping (continued)

35-91

Lunch

Telepsychology

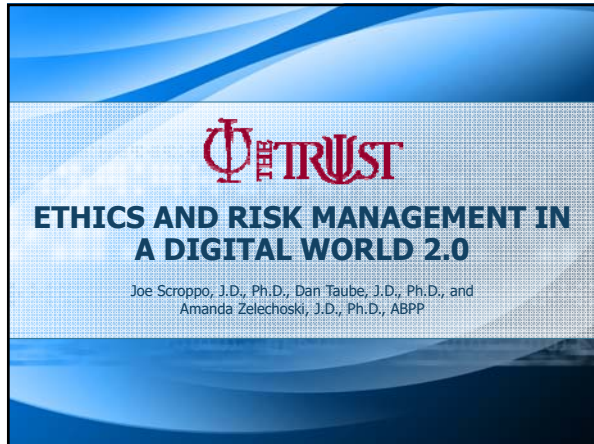
92-129

Afternoon Break

Data in Motion & Electronic Communication

130-196

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Objectives

- Examine areas in which evolving technology will impact psychologists
- Identify risk management issues at various points in the psychology-technology interface
- Discuss strategies for managing risk and maximizing rewards when utilizing technology

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Why This? Why Now?

- Electronic revolution
 - Communication
 - Record keeping
 - Marketing
 - Privacy and security
- Evolving healthcare delivery systems and formats
 - Telepsychology
 - Electronic health records
 - Integrated and managed care

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WHY THIS? WHY NOW?

Risks

- Rapidly emerging area
 - Adapt and be proactive
- Lack of clear guidance
- Inevitability
- Constraints

Rewards

- Rapidly emerging area
 - Opportunity, growth
- Ability to set the standard
- Independence
- Potential

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Hypothetical Scenarios to Frame the Issues

- *You are contacted by I-Need-A-Shrink—an online video chat-based counseling business. They advertise that you can fill those vacant hours with credit card-paying clients, remove the hassle of insurance, and broaden your practice to worldwide access...*
- This service exemplifies a trend in recent years where online businesses “provide an online means through which clients can find, pay for, and then engage in clinical interactions with psychotherapists”
- What are some of the ethical, legal, and risk issues?

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Hypothetical Scenarios to Frame the Issues

For example:

- Clinician competence to provide online services generally
- Whether the service allows direct contact between the client and the therapist (i.e., contact not controlled by the service)?
- By whom and how is consent obtained?

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(Scropo & Taube, 2016)

Hypothetical Scenarios to Frame the Issues

For example:

- Who keeps the records and maintains their confidentiality?
- Whether and how potential clients are screened?
- How, if at all, are cross-jurisdictional issues addressed?

(Scroppo & Taube, 2016)

Risk Management 101

Assessing and Managing Risk in Psychological Practice (2nd ed.)

The Trust Risk Management Program

- Workshops
- Advocate consultation program: (800) 477-1200
- *Assessing and Managing Risk in Psychological Practice (2nd ed.)*
- www.trustinsurance.com
 - Document templates
 - Articles and resources
- Case review program
- Policy enhancements
 - Deposition representation
 - Regulatory coverage including Medicare & Medicaid audits



The Trust Risk Management Team

- Leisl Bryant, Ph.D., ABPP
- Julie Jacobs, Psy.D., J.D.
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The Trust Risk Management Program

- The Trust Coverage Policy
 - Coverage for interstate psychological services for malpractice and licensing board complaints
 - Coverage for coaching
 - No coverage for criminal prosecutions for unlicensed practice

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What is Risk Management?

- The prospective assessment of retrospective evaluation
- Requires:
 - Evaluation of benefits to patient/client
 - Evaluation of risk to professional and patient/client
- Decision-making based upon a risk/benefit analysis

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What is Risk Management?

- Enables psychologist to:
 - Provide the best, most appropriate care to patient:
 - Increases likelihood of positive outcome
 - Creates good alliance with patient
 - Allows patient to participate in decision-making
 - Minimizes anger when the unexpected happens
 - Bases treatment plan on client's identified problems
 - Demonstrate that good care was provided
 - Demonstrate that psychologist is a competent, ethical, and prudent professional
- Risk management is a business decision, but grounded in ethical principles and standards.

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Risk Management Basics

- Judicial:
 - How similarly qualified practitioners would have managed the patient's care under the same or similar circumstances.
 - Must have and use the knowledge ordinarily possessed by members of the profession in good standing
- Ethical:
 - Reasonable** = the prevailing professional judgment of psychologists engaged in similar activities in similar circumstances, given the knowledge the psychologist had or should have had at the time.


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Risk Management Basics

Standard of Care ➡

Ordinary,
Reasonably
Prudent
Psychologists in a
Similar
Situation


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Risk Management Basics

- In responding to a licensing board complaint, (and other adversarial contexts) your ability to demonstrate:
 - Knowledge and application of basic ethical principles,
 - Your clinical plan, and
 - Your risk analysis (as evidenced in your documentation and consultation)
- is often more important than the clinical outcome


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Risk Management Basics

- Have a good working knowledge of ethics code and legal standards governing practice
- Conduct a conservative evaluation of your competence to perform
 - Intellectual competence
 - Technical competence
 - Emotional competence
 - Cultural competence
- Keep your knowledge base up to date
- Avoid professional isolation

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Risk Management Basics

- Identify high risk patients and high risk situations
 - Worst case thinking
- Assess relationship with client
 - Longevity
 - Alliance
- Assess your "Personal Tool Box"
- Take patient dissatisfaction and complaints seriously


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What Happens When We are Negligent?




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The Trust Risk Management Model

- Patient risk characteristics
- Situation or contextual risk
- Therapist's "personal toolbox" characteristics
- Potential disciplinary consequences

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High Risk Patients

- Cluster B Personality Disorders (Borderline/Narcissistic/Antisocial)
- Dissociative Identity Disorder (DID/MPD)
- PTSD (complex)
- Patients who were abused as children or are in abusive relationships
- Potentially suicidal patients
- Potentially violent patients
- Patients involved in unrelated lawsuits
- Patients with recovered memories of abuse

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High Risk Situations

- Child custody-related cases
- Third party evaluations
- Supervision
- Isolated, vulnerable, or narcissistic therapists
 - Excessive positive or negative counter-transference
 - Attractive or wealthy patients

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Ethics Fundamentals

- Beneficence
- Nonmaleficence
- Autonomy
- Justice
- Rules for Professional-Patient Relations
 - Fidelity
 - Veracity
 - Confidentiality
 - Privacy

(Beauchamp & Childress, 2008)
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Risk Management: “The Keys to Success”

- Provide comprehensive informed consent
- Develop good record keeping practices and strategies
- Seek appropriate consultation
- Pay attention to client relationships
- Understand that you are in a business and will need efficient practices and procedures which interface well with your revenue sources
- Participate in your professional community

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Things to Remember

- You will make mistakes.
- You cannot help everyone.
- You will not know everything.
- You cannot go it alone.
- Technological developments will continue to present opportunities and challenges.
- Humility and a sense of humor are as crucial to risk management as they are to all other aspects of life.

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THE PSYCHOLOGY- TECHNOLOGY INTERFACE

The Scope of the Issue



The Scope of the Issue

- "There are officially more mobile devices than people in the world. The world is home to 7.2 billion gadgets, and they're multiplying five times faster than we are..." (Boren, 2014)
- Machine learning and self-programming
 - https://www.ted.com/talks/jeremy_howard_the_wonderful_and_terrifying_implications_of_computers_that_can_learn?language=en#t-98531
- "Elon Musk launches Neuralink, a venture to merge the human brain with AI"
 - <https://www.theverge.com/2017/3/27/15077864/elon-musk-neuralink-brain-computer-interface-ai-cyborgs>

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STEM-CELLPHONE RESEARCH

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AMERICAN PSYCHOLOGICAL ASSOCIATION

ABOUT APA TOPICS PUBLICATIONS & DATABASES PSYCHOLOGY HELP CENTER NEWS & EVENTS SCIENCE

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COVER STORY

(Dis)Connected

Psychologists' research shows how smartphones are affecting our health and well-being, and points the way toward taking back control

By Kirsten Weir
March 2017, Vol. 48, No. 3
Print version: page 42

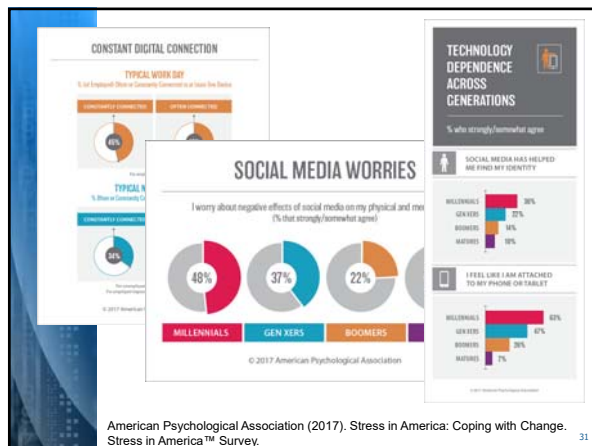
Apple introduced its iPhone in 2007 and the world has never been the same. Though the iPhone wasn't the first internet-enabled "smartphone," its touchscreen technology and built-in app library made it the first to gain mass-market appeal—and it sparked a revolution. Now, wireless mobile devices have found their way into millions of pockets, functioning not just as phones but as internet browsers, messaging services, calendars, cameras, alarm clocks, road maps and video players.

By 2015, 72 percent of U.S. adults reported owning a smartphone, according to a study by the Pew Research Center (Pew, 2016). Smartphones undoubtedly make our lives easier, says Elizabeth Dunn, PhD, a psychology professor at the University of British Columbia, who studies the ways that mobile technology can support or undermine well-being. "Having the entire store of human knowledge at our fingertips is pretty useful," she quips. But there may be trade-offs for that convenience. Mobile technology also has the power to negatively influence our health and happiness, she says. "Our job has gone from looking for pros, but in general we keep finding cons."

At their worst, research finds smartphones can mess with our sleep, stress us out and monopolize our attention. But psychology may hold the key to helping people take control of this technology to prevent such negative effects and even enhance our well-being. Tech developers aren't in the business of promoting well-being, Dunn says, but that

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The Scope of the Issue

- Insurance plans are increasingly reimbursing telehealth, with 32 states having laws or policies supporting coverage (NCSL, 2016)
- Health “app” availability doubled between 2013 and 2015 (now up to 165,000)
- Most are fitness, wellness, and stress-related (60+%), but mental health apps lead as the most common condition-specific apps

Initial Considerations

- How much do I know about the technology?
 - What is the benefit of using technology?
 - What are the risks of using technology?
 - Are there better or safer or more effective alternatives?
- How competent am I to use this technology?
 - Have I used it before?
 - Have I been trained in using it?
 - Have I checked the research/literature?
 - Have I consulted?

Initial Considerations

- How competent is the client with this technology?
- Can I provide adequate informed consent?
- Can I anticipate and manage technical problems?
- How will emergencies be managed?
- What are the risks to privacy?
- What are the risks to the psychologist?

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RECORD KEEPING

Clinical Record

Psychotherapy Notes

Voicemails


Records = Data

Emails

Audio Files

Text Messages

Video Files




Data Considerations

Data at rest

- Intentionally gathered information about your client
 - For example, intake information
- Information documented and stored digitally
 - For example, a progress note kept on a computer
- Unintentionally gathered and stored information
 - For example, unsolicited phone calls with numbers stored on your cell phone, voicemails, etc. ("meta-data")
- Backed up digital information—locally or cloud-based

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Data Considerations

Data in motion

- Transmitting information digitally
 - e.g., sending PHI to someone
- Receiving such data
 - Intentionally (e.g. a text)
 - Unintentionally (location based services)
- Physically transporting digital information
 - For example, via cell phones, tablets, laptops, media drives

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Uses of Electronic Data

For a range of purposes:

- To communicate clinically
- To communicate administratively
- To supervise
- To consult with colleagues
- For social networking
- For private activities

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Relevant Standards

- APA Ethics Code
- APA Record Keeping Guidelines
- HIPAA Privacy, Security, and BNR Rule
- State Regulations
- Professional Guidelines and Standards

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APA Ethics Code (2010)

- We are, of course, required to document our professional services (EC 6.01) for a variety of reasons.
 - The choice about where/how is still left up to the clinician or organization, but there is increasing pressure and movement toward using digital record keeping methods
- EC 6.02 requires the confidential maintenance and disposal of these records.
 - As record keeping shifts to digital formats, the privacy/security of maintaining and disposing of records are clearly ethical—as well as technical—issues

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APA Record Keeping Guidelines (RKGs) and Digital Media

- APA RKGs (2007) are undergoing the final stages of revision, but can still be helpful
- In addition to updating previous materials, it will add guidelines related to the use of social media
- But the current guidelines do have material relevant to the digital world

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APA Record Keeping Guidelines

(with The Trust additions)

Balancing systemic demands with client's privacy

- The idea is to provide only the necessary information
- And strike a balance between client privacy and the detail necessary for:
 - continuity of care
 - ethical mandates
 - legal and RM needs
 - insurance requirements

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APA Record Keeping Guidelines

(with The Trust additions)

Maintaining records

- Recall that RKG recommends 7 years or 3 years after age of majority
 - But, the law governs here, and federal and state variations that may require more (e.g., Medicare Advantage requires 10 years)
- Digital records must be kept as long as paper records
- A psychologist makes efforts to see that legible and accurate entries are made in client records as soon as is practicable after a service is rendered.

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APA Record Keeping Guidelines

(with The Trust additions)

Maintaining records (cont.)

- A current challenge: converting paper-to-digital records:
 - Can we scan documents into our digital devices?
 - May we then destroy the paper records?

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APA Record Keeping Guidelines

(with The Trust additions)

Maintaining records (cont.)

- Digital/electronic data allows greater access by others in institutional settings
- This has risks and benefits; for example:
 - Team members have access to important information regarding patients needs
 - But they may have ethical or legal duties that conflict with psychologists' standards (e.g., MDs and nurses-but not psychologists—may have to report domestic violence)
 - And how does an independent contractor maintain access to electronic access following the end of a contract?

APA Record Keeping Guidelines

(with The Trust additions)

Digital Challenges with Multiple Clients


- For example,
 - Under whose name is couples therapy recorded in an EHR?
 - Who has access?
 - Psychologists should address these issues in informed consent.
 - Managing expectations of privacy and access with collateral contacts.
 - The importance of collateral agreements when working with multiple clients, where the main focus is on a particular patient.

Relevant Standards

- APA Ethics Code
- APA Record Keeping Guidelines
- HIPAA Privacy, Security, and BNR Rules
- State Regulations
- Professional Guidelines and Standards

Does HIPAA Apply to You?

- Are you a covered entity or business associate?
 - Decision tool: www.cms.gov
- KEY ELEMENT: One or more covered electronic transaction since 2003
- HIPAA Primers from APAPO and The Trust
 - <http://www.apapracticecentral.org/business/hipaa>
 - <https://www.trustinsurance.com/Resources/Download-Documents>




Federal Attempts to Address Healthcare Privacy/Security

- The HIPAA Original (2003) and "Final" Privacy Rule (2013)
- Security Rule (2005; updated 2013)
- Breach Notification Rule (2009)

HIPAA Clinical Record


- HIPAA describes the following as information that would be part of the **clinical record** (having ordinary privacy protections):
 - Medication prescription and monitoring
 - Session start and stop times
 - Modalities and frequencies of treatment
 - Results of clinical tests (including raw test data)
 - Summaries of:
 - Diagnosis
 - Functional status
 - Treatment plan
 - Symptoms
 - Prognosis
 - Progress to date



Two Methods for Enhancing Patient Confidentiality

- Psychotherapy notes
- Minimum Necessary Disclosure rule

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HIPAA Psychotherapy Notes

"Notes recorded (in any medium) by a healthcare provider who is a mental health professional documenting or analyzing the contents of conversation during a private counseling session or a group, joint or family counseling session and that are separated from the rest of the individual's medical record."

- Additional commentary:
 - Contain particularly sensitive information
 - Personal notes of therapist, intended to help him/her recall the therapy discussion
 - Are of little to no use to others not involved in the therapy
 - Not intended to communicate to, or even be seen by, persons other than the therapist
 - Does not refer to the medical/clinical record

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Can They be Used to Protect ePHI from Prying Eyes?

- Three types of "prying eyes":
 - Insurance companies,
 - other healthcare providers,
 - and possibly clients themselves
- Psychotherapy notes, perhaps on paper, can increase the level of protection psychotherapy patients may have from both perceived and real exposure of sensitive issues (though there are limits to this protection)

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Can They be Used to Protect ePHI from Prying Eyes?

Additional considerations:

- Have to put all important information in clinical EHRs
- Only use psychotherapy notes for particularly sensitive personal information, speculations, session quotes, etc.
- Clarify the limits of protection offered by these notes—good informed consent is necessary
- Asserting the Minimum Necessary Rule and keeping separate psychotherapy notes has helped to reduce the intrusiveness of information requests by 3rd party payers

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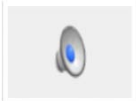
Should You Keep Psychotherapy Notes?

- Depends on balancing:
 - Are psychotherapy notes confidential under state law?
 - How important is limiting **client's** access to records?
 - What negative consequences might withholding access create?
 - How much administrative burden is created?
- Remember, psychotherapy notes:
 - Must be kept separately from the clinical record
 - Are not a substitute for individual session notes
 - Individual session clinical record must be adequate to survive audit and communicate all information that might be needed by other healthcare providers (clinical, as well as medical)
 - Cannot be released without separate patient authorization

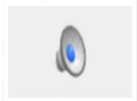
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Minimum Necessary Disclosure Rule

- Make reasonable efforts to limit disclosure to the "minimum necessary" to accomplish the intended purpose
- Insurance company information requests
 - What if the entire record is requested?
 - Baloo Method (Jungle Book)
 - Borg Method (Star Trek)



VS



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Minimum Necessary Disclosure Rule

Our perspective:

- Psychotherapy notes may be protective and are worth considering (depending on your state; note e.g., no protection in MN, but heightened protections in IL)
- It is crucial to inform client that whatever information an insurer requests in order to process claims (*other than psychotherapy notes*) must be given to obtain reimbursement.
 - This release of information to an insurer does not require authorization, but clients should still be informed of this fact.

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Business Associate Agreement (BAA)


- What is a BAA?
 - It is a contract between a HIPAA covered provider or organization and another business in order to protect private healthcare information
- Once BAA is signed, the business associate becomes subject to laws and penalties for breach, just like psychologists.

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Business Associate Agreement (BAA)

- The PHI is appropriately released by a CE to those who are not bound by HIPAA—such as
 - Billing & claims processing
 - Practice management software providers
 - Audiovisual communications platforms
 - Computer techs, lawyers, etc.
 - EVEN for encrypted data cloud backup
 - Non-mental health professional legal representative
 - Does not include carriers of information, ISPs, banks, post office

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Wireless Health Services Provider Settles HIPAA Violations with OCR for \$2.5 Million

POSTED BY HIPAA JOURNAL ON APR 24, 2017

2016 was a record year for HIPAA settlements, but 2017 is looking like it will see last year's record smashed. There have already been six HIPAA settlements announced so far this year, and hot on the heels of the \$31,000 settlement announced last week comes another major HIPAA fine. A \$2.5 million settlement has been agreed with CardioNet to resolve HIPAA violations. CardioNet is a Pennsylvania-based provider of remote mobile...

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Raleigh Orthopaedic Clinic Settles for 750K for Lack of BAA

POSTED BY HIPAA JOURNAL ON APR 20, 2016


The Department of Health and Human Services' Office for Civil Rights (OCR) has announced a settlement has been reached with Raleigh Orthopaedic Clinic, P.A., of North Carolina over alleged violations of HIPAA Rules. Raleigh Orthopaedic has agreed to pay OCR \$750,000 for failing to enter into a business associate agreement (BAA) with a vendor before handing over the protected health information (PHI) of 17,300 patients in 2013. OCR...

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Implementation Considerations

BAA Data Storage

- Changed by the American Recovery and Reinvestment Act of 2009
 - Vendors must comply with contracts
 - Have HIPAA compliant safeguards in place
 - Report all breaches to you
 - Account for all disclosures
 - Destroy PHI at end of contract
 - Vendors can be disciplined for breaches



Vendor Examples

- <http://www.carbonite.com/>
- <http://www.mozy.com/>
- <http://www.backblaze.com/>
- <http://www.crashplan.com/>
- <http://go.iomega.com/>
- <http://www.ironmountain.com/>

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HIPAA Security Rule

- Focuses only on electronically transmitted or stored PHI
 - Distinguished from **Privacy Rule**, which applies to **all PHI**
- Electronic transmission includes:
 - Internet, extranets, dial-up lines (not phone calls), computer-generated faxes (not traditional paper-to-paper faxes), private networks, and ePHI that is physically moved from one location to another

HIPAA Security Rule

As DHHS has summarized, this rule was intended to:

1. Ensure the confidentiality, integrity, and availability of all e-PHI they create, receive, maintain, or transmit;
2. Identify and protect against reasonably anticipated threats to the security or integrity of the information;
3. Protect against reasonably anticipated, impermissible uses or disclosures; and ensure compliance by their workforce.”

HIPAA Security Rule

Consists of 3 types of security safeguards:

- Administrative Standards
 - Includes office policies and procedures for compliance, including training
- Physical Standards
 - Procedures for limiting access to the places where the information is stored
- Technological Standards
 - Technological requirements for protection of data

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Implementation Considerations

- Required vs Addressable
 - Addressable:
 - Implement the standard as is
 - Implement an alternative method
 - Choose not to implement it, provided that there is a documented and reasonable rationale
- Scalability
 - Size, complexity, capabilities, or practice
 - Technical infrastructure, hardware, and software security capabilities
 - The costs of security measures
 - The probability and degree of potential harm from potential risks to electronic confidential information

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Implementation Considerations


- Conduct a **documented risk analysis**
 - Confidentiality of ePHI
 - Integrity of ePHI
 - Information is not changed or altered or lost in storage or transmission
 - Availability of ePHI
 - Information is accessible to the appropriate people when needed
- See <https://www.hhs.gov/hipaa/for-professionals/security/laws-regulations/>
- Appoint someone who is responsible for security and compliance (for solo practitioners—it's you)
- Periodically review risk analysis policies and procedures, and modify as necessary.

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Implementation Considerations

- Do you have your own policies and procedures?
- Is your electronic data secure?


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Implementation Considerations

- External Hard Drive
- Flash Drives
- Backup Drives
 - Tape
 - Flash Memory


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Physical Safeguards: Mobile Device Example

- Assess what PHI could be developed, stored, sent or received on the device
 - e.g., email, text, healthcare apps
- What are the risks of compromise of those data?
 - Loss, theft, viewing by unauthorized people, interceptions, etc.
- How likely are those risks to occur, and what would be their impact?
 - Study by Consumer Reports found that 5.2 million smartphones were lost or stolen in the U.S. in 2014, the numbers may be decreasing, and what would be the impact?
- What security controls can be used?
 - e.g., secure email systems with device-based app; device encryption, secure remote erasure

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Implementation Considerations

Yes, you should encrypt!

- Despite the fact that it is not technically required, The Trust strongly recommends encryption of all electronically stored information where possible
 - All devices
 - Using secure methods of communication
- Failure to encrypt subjects you to HIPAA "breach notification requirements" (described below).
- See "*Choosing Encryption Software*" on The Trust website (under the "Resources" menu click on "Education") to obtain assistance in finding appropriate encryption for your devices.


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Implementation Considerations

- DON'T USE TrueCrypt (<http://www.truecrypt.org/>)
- See article: "Choosing Encryption Software"
 - <https://www.trustinsurance.com/Resources/Articles/ID/10/Choosing-Encryption-Software>
- BestCrypt Enterprise
 - <http://www.jetico.com/data-protection-encryption-bestcrypt-enterprise>
- PGP Whole Disk Encryption
 - <http://www.symantec.com/index.jsp>
- Trade off of price vs ease of use


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Enforcement and Penalties

- Previously was complaint driven—but second stage of active enforcement began 2015
- Initial enforcement was educational
- Moving now more to fines and civil penalties (albeit slowly)
- Real risk for civil lawsuits if data is lost, stolen, or otherwise compromised.
- More clients will threaten to complain about violation
- Licensing board complaints will probably not be a major problem for practitioners who make a good faith effort to comply.

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Breach Notification Rule (BNR)

- HITECH Act (2009) required DHHS to put breach notification in force
- Breach:
 - Someone using, getting access to, or disclosing
 - Protected health information (PHI)
 - In violation of HIPAA
- Unless--the covered entity or business associate can demonstrate that there is a low probability that the PHI has been compromised based on a risk assessment

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Breach Notification Rule (BNR)

- Maximum of 60 days to notify clients if there is a breach (DHHS expects that it be completed more quickly)
- Applies to work settings (e.g., other staff and providers) and health insurance companies

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BNR Considerations

- There is **no breach if the PHI is secured (e.g., using encryption methods approved by DHHS)**
- Safe Harbor Provision
 - We can claim "safe harbor" (no need to notify clients) if *we can demonstrate* there is no **"significant risk of harm."**

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BNR Considerations

- If cannot reasonably conclude that there was no significant risk of harm:
 - Notify client within 60 days of discovering the breach
 - Notify DHHS within 60 days if >500 clients affected; otherwise, w/in 60 days of end of calendar year
 - <https://www.hhs.gov/hipaa/for-professionals/breach-notification/>
 - Notify media (if >500 clients affected)

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Enforcement and Penalties

- The Final Rule creates a system of civil penalties
 - Minimum penalties increase as the willfulness of the violation increases, and when it's not promptly fixed
- If you have made a good faith effort to comply and the non-compliance is not serious, small fine, or maybe just education
- In cases of "willful neglect," where the violation is not corrected in 30 days, the minimum penalty is \$50,000 per violation
 - Willful neglect includes a reckless indifference to the need to comply

Relevant Standards

- APA Ethics Code
- APA Record Keeping Guidelines
- HIPAA Privacy, Security, and BNR Rule
- State Regulations
- Professional Guidelines and Standards

State Regulations

- State regulations
 - Example: *California Health and Safety Code 123149* requires that psychologists who maintain patient records on computers without duplicate hard copy records must safeguard confidentiality, make offsite backups, scan signed documents, and make records unalterable after being entered into the computer.
- State licensing boards
- State guidelines (e.g., NY, OH)
- Legislative actions
- Civil case law
 - Standard of care argument

Compliance Problems

How confident are U.S. hospitals, nursing homes, and physicians' offices that their staff would appropriately deny patient information to an unknown caller?

Some General Compliance Reminders

- Destroy records when no longer needed (and maintenance period has run)
- Take proactive steps to ensure confidentiality of electronic devices
- Control access to confidential information on all tech devices
- Use secure methods of disposing of and erasing electronic data (don't forget copiers!)
- Describe to clients the confidentiality risks accompanying various forms of communication

Some General Compliance Reminders

- Install and enable encryption (as noted previously)
- Use a password or other user authentication
- Install and activate wiping, remote disabling, or both to erase data on lost, stolen, or discarded devices (but note possible limitations)
- Disable and do not install or use file-sharing applications
- Install and enable a firewall to block unauthorized access
- Research mobile applications before downloading

Some General Compliance Reminders

- Install and enable security software to protect against malicious applications, viruses, spyware, and malware-based attacks
- Keep security software up to date
- Maintain physical control of mobile devices
- Use adequate security to send or receive health information over public WiFi networks

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Practice Software vs Electronic Health Record Systems (EHRs)


- Digital data can be in many forms and on many devices.
 - For example, a private practitioner may use practice management software on a single laptop computer to keep his or her clinical materials.
- In contrast, an EHR is a digital record keeping built to share information with other healthcare providers and organizations – such as laboratories, specialists, medical imaging facilities, pharmacies, emergency facilities, and school and workplace clinics – so they contain information from all clinicians involved in a patient's care.

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Am I Required to Use EHRs?

- HIPAA does **not** require the use of either digital records or EHRs for solo practitioners
- Thus, if you keep only paper records, EHRs, and digital systems have little direct impact on you—at least for now
- Still, there has been a push to use some kind of digital method of keeping records


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EHRs

- Electronic records, of course, must be appropriately maintained and protected
- Varying mediums for record keeping:
 - Paper records
 - Paper and electronic records
 - Records kept on computer
 - Electronic record keeping and billing products (e.g., TherapyNotes)
 - EHRs


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EHRs

- Though EHRs have been a key feature of the ACA, most healthcare organizations have adopted these systems, whether ACA survives or not
- EHR positives include:
 - A presumption that they are better at facilitating more integrated, efficient, effective, and safer treatments
 - More effective referral processes
 - Easy integration with billing processes for more efficient payment and collections
 - Better communication with clients

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EHRs

Negatives include:

- These systems are expensive, and
- Non-MD professionals have not been given grants/incentives to pay for these systems
- Confidentiality concerns that arise with broader access to a patient's PHI ("oversharing")
- Breaches of large amounts of "secure" data posed by data concentration risks
- "Cut and paste" problems; that is, using material from other patients or the current patient that is not really applicable

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EHR Risks

Examples:

- September 2011-Scientific Data in San Antonio reported a breach of 4.9 million military patient records, including SSNs and health records
- Community Health Systems (TN); hackers infiltrated system server compromising SSNs, names, addresses of 4.5 million patients (August, 2014)

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TELEPSYCHOLOGY

Example

Dr. Digital developed a method of treating alcohol problems on an outpatient basis which relies on client participation in a 12-step based experience combined with some techniques which she developed based on her long experience as a provider. Her role will be a mixture of psychoeducational and therapeutic and is designed based on an assessment of each individual's needs which is conducted collaboratively by state of the art audio visual technology. Dr. Digital is going to create a virtual community that will involve teleconferencing and email communications, as well. As Dr. Digital becomes nationally known, she expects to have participants from many different states and even nations.

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What is Telepsychology?

Definition of Telepsychology

Telepsychology is defined, for the purpose of these guidelines, as the provision of psychological services during telecommunication technologies. Telecommunication is the preparation, transmission, communication, or related processing of information by electronic, electro-magnetic, electrochemical, electro-optical, or other means. **Telecommunication technologies include but are not limited to: telephone, mobile devices, interactive videoconferencing, e-mail, chat, text, and Internet (e.g., weblogs, websites, blogs, and social media).** The information that is transmitted may be in writing or include images, sounds, or other data. These communications may be synchronous, with multiple parties communicating in real time (e.g., interactive videoconferencing, telephones), or asynchronous (e.g., e-mail, online bulletin boards, storing and forwarding of information). Technologies may augment traditional in-person services (e.g., psychoeducational materials posted online after an in-person therapy session) or be used as stand-alone services (e.g., therapy or leadership development provided over videoconferencing). Different technologies may be used in various combinations and for different purposes during the provision of telepsychology services. For example, videoconferencing and telephone may also be utilized for direct service, while e-mail and text are used for ancillary services (e.g., scheduling). Regardless of the purpose, psychologists strive to be aware of the potential benefits and limitations in their choices of technologies for particular clients in particular situations.

"...the provision of psychological services using telecommunication technologies. Telecommunications is the preparation, transmission, communication, or related processing of information by electrical, electromagnetic, electromechanical, electrooptical, or electronic means."

-APA (2013), p. 792

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What is Telepsychology?

- Includes a broad range of methods and technologies
- May be synchronous or asynchronous
- May be within or between states


(Our gratitude to the ASPPB and Alex Siegel, J.D., Ph.D. for permitting us to use and adapt this slide)

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The Scope of the Issue

- Online healthcare is becoming a mainstream industry
 - 2012: 10% growth in telemedicine annually
 - Now: between 18% and 32% annually
 - 2011: \$500 million a year spent in U.S. on telehealth
 - Current predictions are that by 2018, it will be up to \$38.5 billion
- Insurance reimbursement
- Emerging technology (e.g., over 170,000 health apps, with MH apps being the most common condition-specific applications)

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DEPARTMENT OF HEALTH AND HUMAN SERVICES
Centers for Medicare & Medicaid Services

Official CMS Information for Medicare Fee-For-Service Providers

Telehealth Services

RURAL HEALTH FACT SHEET SERIES

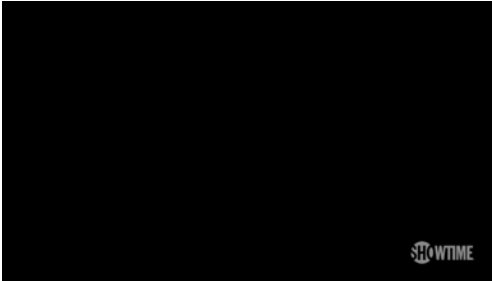


Originating Sites

An originating site is the location of an eligible Medicare beneficiary at the time the service being furnished via a telecommunications system occurs. Medicare beneficiaries are eligible for telehealth services only if they are presented from an originating site located in a rural Health Professional Shortage Area or in a county outside of a Metropolitan Statistical Area. Entities that participate in a Federal telemedicine demonstration project approved by (or receiving funding from) the Secretary of the Department of Health and Human Services as of December 31, 2000, qualify as originating sites regardless of geographic location.

This information does not constitute an offer.

Web Therapy: The 3-Minute Session



How Did We Get Here?

- Widespread internet access
- Many psychologists have begun to engage in telepsychology—even if not in a high tech way (e.g., clients traveling and engaging in phone sessions)
- Many other disciplines are well ahead of psychology in developing legal avenues to practice cross jurisdiction

Basic Questions

- Are there standards that can provide guidance?
- Is it permissible?
- Is it effective?
- Is it reimbursable?
- What risks does it present to the client?
- What risks does it present to the provider?
- How does one develop competence?

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[illegible]

Guidelines for the Practice of Telepsychology

Ann Elin Davis for the Development of Telepsychology Guidelines for Psychologists

These guidelines are designed to address the developing nature of the field and to encourage growth and innovation in the practice of telepsychology. They are intended to provide the profession with a set of guidelines that will help to ensure the quality and effectiveness of telepsychology services. The guidelines are organized into four main sections: (a) General Principles, (b) Professional Standards, (c) Ethical Standards, and (d) Implementation. The guidelines are intended to be used as a guide for the development of telepsychology services and to provide a framework for the evaluation of telepsychology services.

General Principles

Telepsychology is defined as the delivery of psychological services to clients through the use of electronic communication technologies. The guidelines are intended to apply to all forms of telepsychology, including videoconferencing, computer-mediated communication, and telephone-based services. The guidelines are intended to be used as a guide for the development of telepsychology services and to provide a framework for the evaluation of telepsychology services.

Professional Standards

Telepsychology services should be provided by psychologists who are licensed to practice in the state in which the service is provided. The guidelines are intended to ensure that the services are provided in a manner that is consistent with the standards of the profession. The guidelines are intended to ensure that the services are provided in a manner that is consistent with the standards of the profession.

Ethical Standards

Telepsychology services should be provided in a manner that is consistent with the ethical standards of the profession. The guidelines are intended to ensure that the services are provided in a manner that is consistent with the ethical standards of the profession. The guidelines are intended to ensure that the services are provided in a manner that is consistent with the ethical standards of the profession.

Implementation

Telepsychology services should be provided in a manner that is consistent with the implementation standards of the profession. The guidelines are intended to ensure that the services are provided in a manner that is consistent with the implementation standards of the profession. The guidelines are intended to ensure that the services are provided in a manner that is consistent with the implementation standards of the profession.

Who Regulates Practice?

- Regulation of professions is assigned to states, including:
 - Education and training
 - Privacy and confidentiality
 - Disciplinary procedures and perspectives
 - State may have specific requirements for intra-state Telepsych (e.g., CA)
- Where does a transaction take place when, for example, the client is in Florida, the provider is in Montana, and they are using an Internet-based video chat program?
 - Where client resides?
 - Where clinician resides?
 - In cyberspace?

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Who Regulates Practice?

Many states have taken the position that the transaction takes place in the forum state (where the client is located)

- But, state licensing boards will have difficulty with enforcement against clinicians not licensed by that board.
- 47 states have temporary practice provisions.

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Legal/Jurisdictional Questions

Federal perspective

- Federal government has recognized the importance of use of electronic technology and provision of telehealth services.
 - Federal agencies efforts to promote telehealth
 - Federal benefits created for some remote services for Medicare
 - Interstate practice is essential for full benefits
 - Best way to accomplish this is by voluntary compact between state licensing boards
 - Grants for medical and nursing boards

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Legal/Jurisdictional Questions

Federal vs state conflict

- State licensing authority cannot interfere with the regulatory authority of the federal government such as interstate commerce or an effective military.
- States are typically responsible for regulating the profession, but there is increased federal oversight when it comes to these cross-jurisdictional issues.
- "In the absence of specific agreements... states may not discipline healthcare professionals not licensed in their state if patient harm occurs as the result of the provision of healthcare services by an out of state practitioner."*(HRSA)

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Personal Jurisdiction Questions

What if the transaction is deemed to have taken place where the clinician resides (it generally isn't)?

- Is physically located in a state where he/she is licensed.
- Has not set foot in the consumer's state.
- Has not attempted to do business there.
- If the consumer's state tries to take jurisdiction, the promise of the internet as a force for good is diminished.
- Practitioners can be regulated by the state where they are licensed or on interstate basis.

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Personal Jurisdiction Questions

Federal vs State Conflict → **Minimum Contacts Rule**

- Under certain circumstances, a forum state (where the patient resides) may be able to reach out-of-state providers for malpractice suits (see Wright vs Yackley (1972), 459 F. 2nd United States Court of Appeals, Ninth Circuit, 1971).
- In other cases, though, the federal courts have found that states don't have jurisdiction (Prince vs Urban, 1996)
- Complex rules make it difficult to generalize what the courts will decide

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Legal/Jurisdictional Questions

How are other professions handling this?


- Nursing
 - National Licensing Compact is accepted in 27 states
 - National credential
 - Allows interstate practice
- Medicine
 - Prescribing makes issues more complicated
 - Many states have passed laws further restricting interstate practice
 - AMA has created the American Telemedicine Society to develop policies and create a model statute

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Legal/Jurisdictional Questions

Psychology

- Efforts underway to promote and regulate interstate practice
 - ASPPB
 - Interjurisdictional Practice Certificate
 - E-Passport
 - PSYPACT
 - Model Licensing Law
 - APA
 - Telepsychology Guidelines



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Legal/Jurisdictional Questions

Psychology Interjurisdictional Compact (PSYPACT)

- Interstate compact → enforceable contracts between states
- Goal is to develop agreements between states that allow the remote practice of psychology
 - Also permits temporary face-to-face practice in states that join the compact
- Current status
- Barriers to overcome

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ASPPB MOBILITY PROGRAM E.PASSPORT OVERVIEW

E.Passport Info


The E.Passport promotes standardization in the criteria of interjurisdictional telepsychology practice and facilitates the process for licensed psychologists to provide telepsychological services across jurisdictional lines in jurisdictions that accept the E.Passport. The E.Passport also provides more consistent regulation of interjurisdictional telepsychology practice and allows consumers of psychological services to benefit from regulated practice.

Applying for the E.Passport

Application for the E.Passport can be made through the ASPPB Mobility Program. Eligibility requirements can be found on Page 2. Please make sure to read the ASPPB Mobility Program Policies and Procedures for a comprehensive look at the Mobility Program and certificate requirements.

Renewing the E.Passport


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Hypothetical Example (This Is NOT Currently The Case)

- Dr. Digital is licensed in Georgia, which has a (hypothetical) compact with 8 states, including NC.
- Dr. Digital can practice, of course, in GA.
- But with an ePassport and IPC, he can do remote services in any of the 8 other states, including NC and practice in person in those states for up to 30 days.
- If there's a complaint in NC about his practice there, he can have his ePassport or IPC affected.
- If he's just visiting GA, and is not licensed there or in one of the other 8 states, he's not permitted to practice either remotely or in-person in those jurisdictions.

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Legal/Jurisdictional Questions

PSYPACT IS NOT YET IN EFFECT

- So in the interim, interstate practitioners should be familiar with the laws in the forum state and abide by them to the extent possible.
- And consider clinical, ethical, legal, and risk dimensions of this work

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Legal/Jurisdictional Questions

Tentative conclusions:

- Even if a psychologist actively promotes services in an interstate manner, forum state licensing boards may be unable to gain jurisdiction (though arguably, a court in that state could).
- Psychologists who actively market non-therapeutic services such as coaching, with appropriate disclaimers, appropriate case selection, and appropriate referrals when issues require therapy will also be safer, provided that their language describes what they actually do.
- Psychologists who provide services across state lines will be subject to review by their own state licensing boards.

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Risk Management

Ethical & Risk Management Questions

- Competency
- Efficacy
- Cost/benefit remote vs in-person
- Informed consent
- Safety concerns
 - Emergencies
 - Resources
- Confidentiality
- Service reimbursement

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Risk Management

Recall the Trust Risk Assessment Model:

- Patient risk characteristics
- Situation or contextual risk
- Therapist's "personal toolbox" characteristics
- Potential disciplinary consequences

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Risk Management

Are you technologically and clinically competent to do the proposed intervention?

- Education and training
- Experience and familiarity with technology
 - Digital immigrants vs digital natives
 - Privacy
 - How to use
 - What can go wrong and how to fix it
- Aware that area is evolving
- Familiar with existing guidelines
- Availability of consultants who can help with potential deficiencies

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Risk Management

Is remote service equivalent?

- Intuitively, to most practitioners, in-person therapy is superior because of the importance of non-verbal cues and other non-quantifiable relationship superiorities.
- Some research shows that the closer a communication is to in-person, the more efficacious it is, but there is evidence that supports efficacy of voice and text only.

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Risk Management

Is remote service equivalent?

- There is considerable research that establishes equivalency in terms of outcomes and consumer satisfaction—and some emerging studies showing similar results in remote family and group therapy, as well as psychological evaluation.

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Risk Management

Some sample publications that include comparisons to in vivo treatment:

- Morland, L. A., Mackintosh, M., Rosen, C. S., Willis, E., Resick, P., Chard, K., & Frueh, B. C. (2015). **Telemedicine versus in-person delivery of cognitive processing therapy for women with posttraumatic stress disorder: A randomized noninferiority trial.** *Depression And Anxiety*, 32(11), 811-820. doi:10.1002/da.22397

120

Risk Management

Some sample publications that include comparisons to in vivo treatment:

- Reese, R. J., Slone, N. C., Soares, N., & Sprang, R. (2015). **Using telepsychology to provide a group parenting program: A preliminary evaluation of effectiveness.** *Psychological Services, 12*(3), 274-282. doi:10.1037/ser0000018
- Simpson, S. G., & Reid, C. L. (2014). **Therapeutic alliance in videoconferencing psychotherapy: A review.** *The Australian Journal Of Rural Health, 22*(6), 280-299. doi:10.1111/ajr.12149

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Risk Management

Can you provide the client with appropriate informed consent?

- Telepsychology is an innovative treatment.
- What are the limitations of using technology?
- What are the known differences and pitfalls between electronic communication and in-person communication?
- What are the security measures?
- What other means of communication are available as backup?
- What happens if there is an emergency?
- Include all the other elements of informed consent.

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Risk Management

Risk-Benefit Analysis:

- What are the proposed benefits of the remote intervention?
- What are the risks to the client of the proposed intervention?
- What are the risks to the psychologist?
 - Will forum state temporary practice laws permit the intervention?
- Is a referral for in-person services an equal or preferable option?

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Quality of the relationship between client and provider

- Importance of evaluative information
- Some in-person meetings
- Information about the individual from other sources
- Assessment instruments
- Local contacts with other professionals
- Closeness of the technology to in-person
- Lack of in-person alt's
- Pre-existing relationship
- Special expertise
 - Training
 - Experience
- Lack of providers
- Client preferences

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Risk Management

- Is it coaching or psychotherapy?
 - ICF certification?
- Regulatory problems for board
 - The Duck Test
 - Harris-Younggren Risk Continuum
 - Client's reasonable perception
 - Subject matter
 - Techniques
 - Client vulnerability
 - Marketing

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Risk Management

- Risk Management
 - Informed consent-disclaimer
 - Good case selection
 - Competence
 - Carefully documented rationale

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Case Example #1

- You have been working for eight years with a patient with borderline personality disorder, the victim of serious trauma. She has worked hard, is highly functional, and has a very responsible job. She has been in a DBT support group for two years. She suffers greatly when she is alone and has no real support system. She has had 3 previous hospitalizations for suicide attempts. One was potentially lethal.
- She has gotten transferred to a job in Santa Fe, New Mexico. She says that she needs to keep working with you and will turn down the job, despite the fact that you both think that it will be helpful to her career and mental state.

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Case Example #2

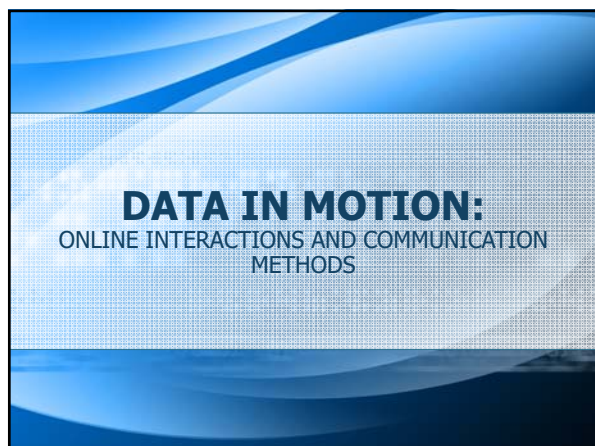
- You have been doing therapy with a 30-year-old male client for two years. He has regularly attended therapy throughout that time, is very busy and has a high powered job.
- He will be in:
 - A different part of your state
 - Another state
 - A foreign country
- He will be there for:
 - Three months
 - One year
 - Forever


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Case Example #2

- You have been doing therapy with a 30-year-old male client for two years. He has regularly attended therapy throughout that time, is very busy and has a high powered job.
- His diagnosis or problem is:
 - Bipolar 2 with borderline features
 - Anxiety disorder
 - V code
 - Couples therapy
- You are working with him:
 - Existentially
 - Psychodynamically
 - Behaviorally
 - Analytically
 - Coaching
 - Collaterally around his children

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Types of Electronic Communication: Uses and Issues

- Provision of Direct Care to clients
 - Telepsychology and e-therapy (including VideoChat services)
 - Coaching and consulting
 - Assessment
 - I/O consultations
 - Forensic
- Adjunctive Services Issues
 - Consultation and supervision
 - Psycho-educational services
 - MH apps
 - Recording of sessions for patient review
 - Homework assignments

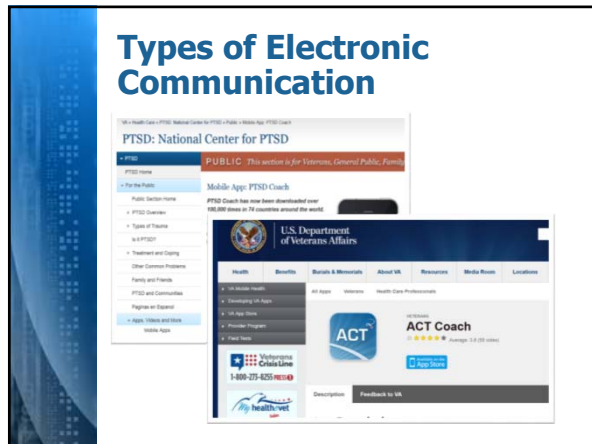
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Types of Electronic Communication: Uses and Issues

- Administrative and Business Management
 - Billing: Insurance and otherwise
 - Scheduling
 - Record keeping and other documentation

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Types of Electronic Communication

Forensic Case Example

- You are a forensic psychologist who is approached about testifying as an expert in a major class action suit. The plaintiffs live across the country. You will be expected to evaluate them in person in the state in which they reside. The evaluation will be done through audio visual technology.

Audio-Visual Communications: Practical, Ethical, & Legal Issues

- Resolution/picture quality
- Real-time audio?
- Reliability
- Ease of use
- Cost
- Differences from in-person
- Privacy

Audio-Visual Communications: Practical, Ethical, & Legal Issues

- “Skype may disclose personal information to respond to legal requirements, to protect Skype’s interests, to enforce our policies or to protect anyone’s rights, property, or safety...[I]n order to provide you with the Skype products you have requested, Skype may sometimes, if necessary, share your personal and traffic data with Skype’s group companies.”
- BUT—Skype for Business may provide better security and a BAA (see VA review, 2015-2016)

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Skype Alternatives

VSee: www.vsee.com
Doxy.me: www.doxy.me
GoToMeeting: www.gotomeeting.com

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Audio-Visual Communications: HIPAA and the MAC World

- The VA has approved the use of FaceTime with “constraints” meaning they require additional steps be taken because of “known security vulnerabilities”
 - <https://www.va.gov/TRM/ToolPage.aspx?tid=7953&tab=2>
- There are instructions available on other websites that suggest it can be HIPAA compliant under some conditions
 - <http://www.zdnet.com/article/facetime-calls-are-encrypted-and-hipaa-compliant-when-using-proper-encryption>
- But, some commentators are still less than enthused
 - <http://blog.padii.la/apple-facetime-telemedicine-and-hipaa>

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Write an article

Is FaceTime HIPAA Compliant?

May 20, 2015 | 5,829 views | 71 Likes | 20 Comments

In the first part of this series we wanted to address one of the most common questions we get asked: "Is FaceTime a HIPAA compliant solution?" If one was to search the internet for this answer, you'd come across a lot of mixed answers and confusion. FaceTime is such an easy tool to use when it comes to video conferencing, so it's only natural for us to want to use it, but with all the rules and regulations regarding HIPAA, healthcare professionals want to make sure they are compliant. We decided to do a deep dive into FaceTime, looking for any information that not only answers this question, but gives us resourceful information to make a conclusion ourselves. In this report, we are going to cover what it means to be HIPAA compliant, how FaceTime works under the hood, and how FaceTime is currently being used in the healthcare industry.

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OTHER ELECTRONIC COMMUNICATION METHODS: TEXT MESSAGING, EMAIL, VOICEMAIL, & TELEPHONE

Audio-Visual Communications: Practical, Ethical, & Legal Issues

- Communication Mediums
 - Voicemail
 - Websites
 - Email
 - Text Messaging
 - Note that one model administrative communication notifies the clinician via text
 - Another model is iMessage (e.g., in an or interact with each
 - Beware the perils

I'm dreadfully dirty, but I have to cancel our appointment today. Home from work with a migraine. I emailed with more info and some possible times to reschedule. Again, I'm terribly sooty.

iMessage

Send

Audio-Visual Communications: Practical, Ethical, & Legal Issues

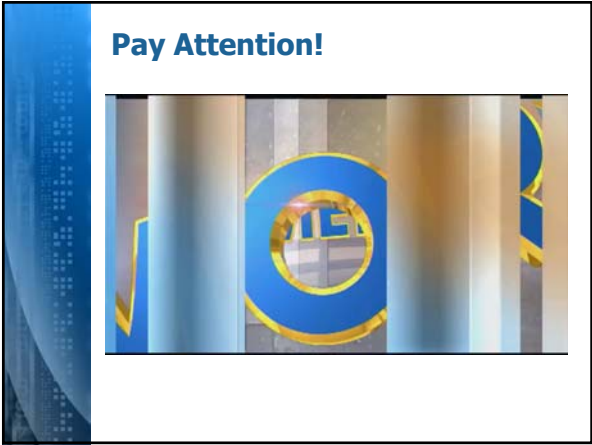

- Communication Mediums (cont.)
 - Social Networking
 - Facebook
 - Twitter
 - Youtube
 - Instagram
 - Blogging
 - Virtual worlds

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- # Audio-Visual Communications: Practical, Ethical, & Legal Issues
- Communication Mediums (cont.)
 - Social Networking
 - Facebook
 - Twitter
 - Youtube
 - Instagram
 - Blogging
 - Virtual worlds
- 142

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Pay Attention!



Electronic Communication

End-to-end encryption has become available for some very common text messaging apps, including—but do your research!!

- WhatsApp (<https://www.whatsapp.com/> though note recent questions have arisen as to its security)
- Signal (<https://whispersystems.org/>)
- Silent phone (<https://www.silentcircle.com/>)
- Wickr (<https://www.wickr.com/>)
- Threema (<https://threema.ch/en/>)
- Chatsecure (<https://chatsecure.org/>)

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Electronic Communication

Ongoing Challenges:

- It's wise to keep texts as part of the clinical record, but sometimes it can be challenging to copy them with all the time and date data preserved
- Some apps (e.g., Wickr) have texts that self-destruct, and no copies of texts are maintained on the servers
- Others do not allow screen shots
 - See Confide: <https://getconfide.com/>
- Thus, imagine a client who texts a threat to kill her employer, the clinician does a *Tarasoff*—but the text disappears and the client makes a board complaint...

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Holmes vs Petrovich (2011)

- Gina Holmes sued her employer based on allegations of pregnancy disability discrimination.
- Holmes forwarded e-mails from her employer to her lawyer, and sent documents through the company's fax machine.
- The Court reasoned that e-mails sent through her company computer were "akin to consulting her lawyer in her employer's conference room, in a loud voice, with the door open, yet unreasonably expecting that the conversation... would be privileged."

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Holmes vs Petrovich (2011)

- But the Court emphasized that e-mail communication **does not lose its privileged character solely because it is communicated by electronic means** (that is, over the Internet), or because Internet providers might have access to its content; it was Holmes' use of employer email, computers, and faxes that was problematic.

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Must Emails be Secure?

- HIPAA allows the use of non-secure emails (and texts, presumably—though DHHS is not as clear in that regard), so long as the client has agreed, and has been advised in general about the risks.
- If the provider believes the client does not understand the risks of unsecured email, or is concerned about liability, she/he should alert the client to those risks, and let the client decide.

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Must Emails be Secure?

- Nonetheless, if it's more than appointment reminders, cancellations, and other administrative activities, or the emails contain PHI, the provider still must use appropriate protections—so providers are still responsible for privacy, at least on their end of the conversation.

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Secure Email Examples

Hushmail (www.hushmail.com)
 Enigmail (www.enigmail.net)
 ProtonMail (www.protonmail.com)

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To Summarize Security with Data in Motion

- Using a wide range of technologically based-methods to communicate and provide services is allowed.
- This ranges from phone to video-chat to emails to texts...
- BUT providers must attend to the privacy and security of the communication methods
 - e.g., assuring that VTC is secure; using secure email for sending PHI; informing clients of the risks of open emails and obtaining consent from clients to use such non-secure methods (but note limits).

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To Summarize Security with Data in Motion

- Note that cell phone calls have some risks, as well, though phone communications appear to be permitted by HIPAA as long as "reasonable safeguards" are used.



WEBSITES



Websites

Benefits

- Administrative, clinical, marketing, and educational purposes can all be accomplished in one place
- Client access to information
 - Bibliotherapy
 - Downloads
- Efficient means of contacting you
- Access to documentation
- Increased exposure
- Effective promotion of therapist's skills, experience, and competencies/specialties

Websites

Risks

- Accepting invisible clients (active/passive/hybrid sites)
- Client self-diagnosis
- Client self-treatment
- Boundary concerns
- Blogging and confidentiality
- Use of non-secure sites to exchange sensitive clinical information
- Potential for inappropriate marketing (though this is not restricted to websites)

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Case Example

- **Dr. Jeff's Blog:** There is a wealth of literature available that indicates that exposure to a feared object is quite helpful in reducing the ability of that object to make you afraid. The old adage of facing one's fears truly has scientific merit but should be done in a controlled and gradual way and if the fears are disabling, you should consider professional help.
- **From Chrissy:** Dear Dr. Jeff, since I left your office yesterday, I have been making good progress in facing my problems. Thanks for being the angel that you are and for helping me make progress. Oh, it sure is nice to touch base with you in this way.
- **Dr. Jeff's Blog:** Chrissy, glad I could help and looking forward to seeing you next week.


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Blogs

Clients "following" a psychologist's blog:

- Blogs can be very useful ways to market, provide information to the public, and connect with people
- But, clients may feel obligated to follow a clinician's post
- And doing so, if the client has an email address that includes their names, can compromise their privacy
- So can commenting on a blog, if the psychologist permits (as in the example above)
- It can also easily slip into clinical interactions—which are public


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Suggestions for Professional Web Use

- Use a secure means of communication that is linked to your site (or provide only your practice number)
- Review any potential links to other sites before adding them, and routinely check to see if they've been hijacked by other businesses (e.g., links regarding sexual health getting "hijacked" by pornography sites)
- Have a disclaimer that says that no patient-
psychologist relationship is implied or exists by virtue of visiting the site or contacting you via email or any other means, to set up an appointment.

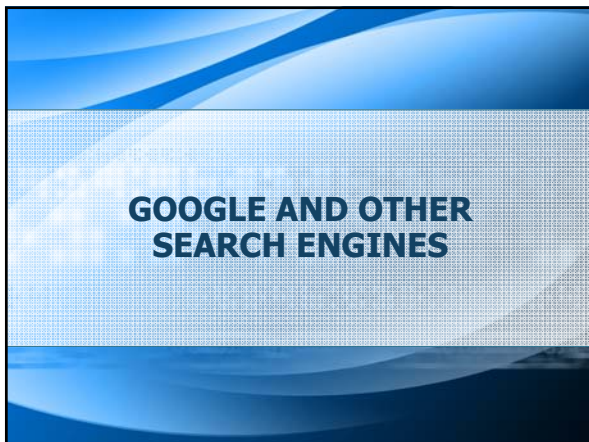
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Suggestions for Professional Web Use

- Include another disclaimer stating you are not responsible or liable – directly or indirectly – for any form of damages resulting from the use or misuse of information contained on your site, implied by the site, or linked to it.
- Stay on the "passive" side of the continuum of sites—just providing information—at least for now

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GOOGLE AND OTHER SEARCH ENGINES

Professional vs Private Conduct

- "This Ethics Code applies only to psychologists' activities that are part of their scientific, educational, or professional roles as psychologists...[t]hese activities shall be distinguished from the purely private conduct of psychologists, which is not within the purview of the Ethics Code."

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PPS Directory of Mental Health Professionals

www.courts.state.ny.us... Judiciary of New York

Joe Boragie, Ph.D., J.D., Shelli R. Sigalov, Ph.D., Theodore Stolz, Ph.D., Kelly Syles, Ph.D., Peggy Thompson, Ph.D., Luc Turello-Morales, Ph.D., Andrea Vaccaro

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UCA - Ethical and Legal Issues for Medical Data Mining

www.scribbr.com/essays/taubel-2012-04-11.html

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Taubel Daniel O. Buckwalter S. Ethical and legal risks associated with archival research Ethics Behav 1997;7:69-87 Baker R, Shalit C, Stevenson K, Fraser R ...

Effects of limited psychotherapeutic privacy on patient disclosure of ...

www.psychiatryonline.org/doi/10.1093/ipsy/10.1.103

Taubel, Daniel O. - Drexel University

image: library.drexel.edu/2002/search=0019/Taubel%20

50+ items - Nearby Authors are: Result Page Print Next Save marked ...

Taub Shella - Recovered memories of child sexual abuse - psychological ...

Taubel Daniel O. Effects of limited psychotherapeutic privacy on patient ...

Daniel O. Taubel

www.scribbr.com/essays/taubel-2012-04-11.html

Aug 1, 2012 - You are here: Scientific Experts > USA > Alliant International University >

Search Engines

Recent survey explored whether clients searched for a psychotherapist's information online (Kolmes & Taube, 2016)

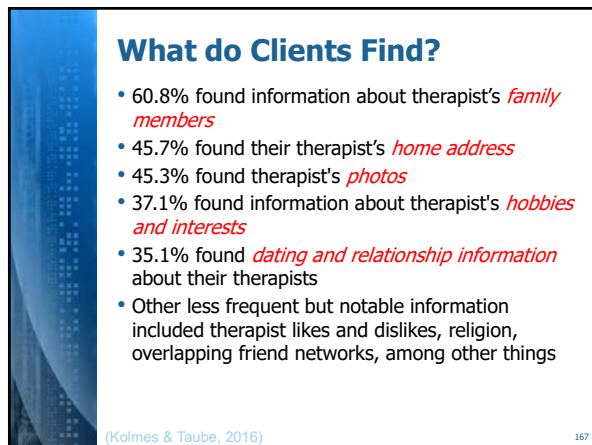
- Online survey of a convenience sample of 332 current and past psychotherapy clients

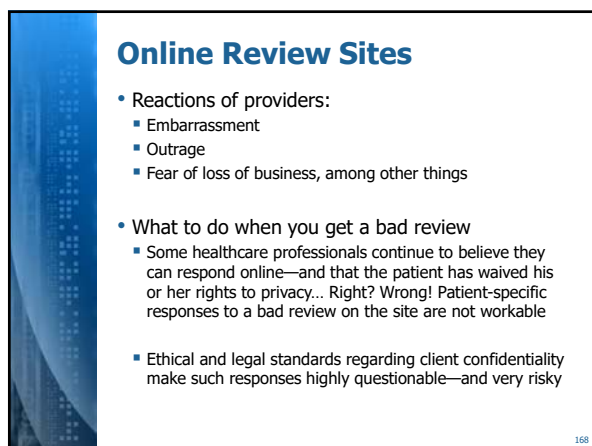
Of the respondents who took the survey:

- Almost 70% reported finding personal information about their therapist on the Internet
- Most (87%) of these participants sought it *intentionally*; only 13% found it accidentally
 - 78% found the information via Google
 - 42% found it via Facebook
 - 17% found information on LinkedIn
 - 10% found it on a blog

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Online Review Sites

- Read the terms and conditions of the review site
 - if the posting violates those, you may have some luck in getting the review removed (e.g., patently false, racist language, etc..)
- Otherwise, though you can attempt to persuade a site administrator to take down posts, those that state opinions usually will not be removed
- You can sue the person who made the post, but this is probably not a good strategy—it will most likely result in an online backlash.
- Yelp will encourage you to solicit the clients who are satisfied with your services to post favorable reviews; but remember our Ethics Code's prohibitions (EC Standard 5.05)

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Online Review Sites

- Keep your response on the review site **general**—do not refer to the patient or any specific statements about the treatment
- Provide positive information, with a positive tone
 - e.g., "I take all feedback and experiences of clients very seriously, but I honor confidentiality and due to ethical constraints, I cannot respond to any feedback on this site. Please speak to me directly if you have any concerns."
- If you can, open an account on the review site and link your professional site, saying something like "If you'd like to learn more about my practice, please click here..."

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Online Review Sites

- Hire a reputation protection company
 - e.g., Reputationdefender.com; but note that there are no guarantees this will work
- Solicit your colleagues to post positive reviews
- Create positive reviews yourself and post them (remember though, that integrity and fidelity are important ethical principles)
- Monitor your web identity (for example, use Google alerts)

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Online Review Sites

- Don't try to prevent them through contractual provisions that provide heavy penalties for breach of contract—it has been tried and doesn't work
- Though you could hire a lawyer and demand that they be taken down by the website or you will sue for libel and slander, this is not likely to be effective (see next slide)

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Dear Attorney,

We are in receipt of your letter regarding the review of Dr. Alinskosky on Yelp.com. We have examined the reviews in question and after careful evaluation, we have left them intact. If a review appears to reflect the personal opinion and experiences of the reviewer while adhering to our review guidelines (www.yelp.com/faq/great_review) it is our policy to allow the reviewer to stand behind his or her review.

While we share your concern about the possibility of defamatory reviews on our site, we have no way of assessing the validity of your claims vs. those of the reviewers. Congress acknowledged this quandary by passing legislation that provides statutory immunity to online service providers such as Yelp. See 47 U.S.C. s. 230. The case law is legion and unanimous in support of online service providers because of concerns that they would otherwise be forced to remove third party posts every time someone raised issue with their contents. That said, we will promptly remove the reviews in question upon receipt of a judicial determination that the contents are defamatory and will take appropriate action with respect to the users responsible for the reviews.

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.

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Online Review Sites

- Understand that **the internet has radically changed the nature of the way in which people search for services** and the services that they want
- Marketing consultants believe that the only effective way to deal with negative internet reviews is to have a positive strategy for branding oneself which will produce positive information about you that will either bury or contextualize the negative reviews
 - The assumption is that survival is based on positive marketing
 - "What Brand is My Therapist?" (New York Times, 2012)

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If You Can't Lick Them...

Develop an active/positive online presence

- Do things that get picked up by Google in a positive way
- Have a professional website
 - Use negative reviews to highlight your website...
- Blogging
- Testimonials (and the challenges they pose)
- Information resources
- Using our own client satisfaction surveys

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If You Can't Lick Them...

Risk Management Issues

- Don't damage your professional reputation. The most successful practices will still need good word of mouth and a referral network of professionals
- All branding/marketing strategies have potential risks, particularly for those who are not internet competent
- Use the smell test
- Consult with colleagues
- Don't make promises you can't keep
- Remember, the internet has the half-life of the Dead Sea Scrolls

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What Can We Do?

- Google yourself often and as mentioned above, set up Google alerts
- Make corrections when you can
 - Go to the source of the information
- Be thoughtful about what you post on personal pages/walls, tweets, etc.
 - What effect might it have if your most fragile, distressed, or angry client sees it?
- Set appropriate privacy controls on all personal and professional sites
 - But, be aware of our ultimate *lack of* control
- Take control of your digital footprint
- Invite the conversation with your clients

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Reminders

- Your clients will Google you
- Your clients will use review sites and other means of electronic criticism, up to and including cyber attacks
- Use informed consent to set appropriate limits

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What About Psychologists Searching for Clients on the Internet?

Earlier studies of graduate students:

- 22% of 193 clinical psychology graduate students googled their clients (Martin, 2010).
- Lal and Asay (Martin, 2010) found that **22%** of 193 psychology grad students had Googled their clients.
- 27% of psychology grad students reported seeking online information about clients (Lehavot et al., 2010).
- DeLillo and Gale (2011) surveyed 854 doctoral students in psychology and **97.8%** had reported using social networking sites to find client information.

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What About Psychologists Searching for Clients on the Internet?

Kolmes & Taube (2014):

- 227 clinicians (including licensed) surveyed
- "How often and in what context have you searched for client information on the internet?"
 - Approx. **49% of the sample** purposefully searched for client information on the internet
 - Only **8%** searched due to an **emergency**
 - Mostly it was due to *curiosity*; not clear clinical need or motivation
- "Did you inform clients ahead of time, or discuss it with clients?"
 - Few informed clients of such searches.

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To Search or Not To Search?

- Integrity and consistency are crucial to treatment
- Safety and control issues
- Honoring autonomy and respecting individuals
- Inform clients of policy regarding searching for them on the internet
- Emergencies and recovering contact information are likely exceptions

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SOCIAL MEDIA AND NETWORKING

Social Media and Networking

Includes such things as

- "Social networking (Facebook, MySpace, Google+, Twitter, [Instagram]), professional networking (LinkedIn), media sharing (YouTube, Flickr), content production (blogs [Tumblr, Blogger] and microblogs [Twitter]), knowledge/information aggregation (Wikipedia), virtual reality and gaming environments (Second Life)" (Ventola, 2014)


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Social Media: Ethical and Legal Risks

- Confidentiality
 - Privilege limitations – discoverable
 - Client confidentiality issues
- Security issues (we do not own data on social media)
- Retention of files
- Friending
- Friends of friends boundary issues
- Fan (or “Like”)?
- Harassment/stalking
- Failure to terminate

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RISK MANAGEMENT FOR DATA IN MOTION AND ELECTRONIC COMMUNICATION



Digital Risk Management

From Gabbard Et Al (2011) And Barnett (2008)

- Consider the impact of online relationships on the professional relationship.
- Ensure that the client understands the risk of online disclosures (e.g., following a blog by one’s therapist) in a therapy relationship.
- Mental health professionals who use social networking sites should use all available privacy settings.
- Web searches should be conducted on oneself periodically to monitor false information or photographs of concern. If these items are discovered, the website administrator can be contacted to remove problematic information.

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Digital Risk Management

From Gabbard Et Al (2011) And Barnett (2008)

Do NOT include the following information in blogs or networking sites:

- Patient information and other confidential material.
- Disparaging comments about colleagues or groups of patients.
- Any comment on lawsuits, clinical cases, or administrative actions in which one is involved, because they can potentially compromise one's defense.
- Photographs and video clips that may be perceived as unprofessional (e.g., sexually suggestive poses or drinking/drug use).

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Digital Risk Management

From Gabbard Et Al (2011) And Barnett (2008)

- Avoid becoming "Facebook friends" or entering other dual relationships on the internet with patients.
- One must not assume that anything posted anonymously on the Internet will remain anonymous, because posts can be traced to their sources.
 - "...[Professionals] who wish to post their availability on online dating sites are free to do so but must be fully prepared for the possibility that patients will see them and have intense reactions."

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Digital Risk Management

From Gabbard Et Al (2011) And Barnett (2008)

- Training institutions should educate their trainees about professionalism and boundary issues as part of their professionalism curriculum and assist them in their mastery of technology... and develop policies for handling breaches of ethics or professionalism through Internet activity.
- Psychotherapy training should include consideration of the clinical dilemmas presented by social networking sites, blogging, and search engines, as well as potential boundary issues.

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Developing Organizational Policies

- Create office/organizational policies
 - e.g., <http://www.trustinsurance.com/download.aspx?item=SampleElectronicCommunicationPolicy.doc>
 - Will you “friend” or follow clients?
 - Will you google clients?
 - Will you engage in digital exchanges (e.g., text messaging, social media messaging, email)?
- The nature of your work setting will matter—so these policies are best crafted to fit particular practices and settings (e.g., private practice vs community clinics vs prison services vs college counseling center vs integrated healthcare centers, etc.)

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The Trust

Sample Electronic Communication Policy*

In order to maintain clarity regarding our use of electronic modes of communication during your treatment, I have prepared the following policy. This is because the use of various types of electronic communications is common in our society, and many individuals believe this is the preferred method of communication with others, whether their relationships are social or professional. Many of these common modes of communication, however, put your privacy at risk and can be inconsistent with the law and with the standards of my profession. Consequently, this policy has been prepared to assure the security and confidentiality of your treatment and to assure that it is consistent with ethics and the law.

If you have any questions about this policy, please feel free to discuss this with me.

Email Communications

I use email communication and text messaging only with your permission and only for administrative purposes unless we have made another agreement. That means that email exchanges and text messages with my office should be limited to things like

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Additional Case Examples

- You have written a book on pain reduction through the use of various exercises. Someone contacts you through your website. They want you to provide help to them.
- You provided services to a couple 15 years ago. They have moved to another state and they approach you about providing remote sessions to them.
- Same case. They want to repair a declining relationship with their children and want you to do a family intervention with the two adult children (who each live in different states).

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Additional Case Examples

- You have lectured extensively on a particular specialty that you have developed. Your latest book has been a great success. Many potential clients are contacting you to provide services to them through your website.
- You are a parent coordinator who is approached by an attorney to work with a very difficult couple who live in different states. Neither of them can travel to your office.

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Additional Case Examples

- You have been certified as an ICF Master Coach. Your specialty is divorce coaching. An attorney in California who has read about your work calls and asks you to work remotely with a couple in which he represents one of the parties.
- You are a sports psychologist who has been hired by a college team to be the team psychologist. When the team travels to play other colleges, you are required to be on call and you provide certain team members with specific appointment times in preparation for each game. On occasion you even travel with the team for out-of-state games.

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Workshop Summary

- The emerging challenges of a digital, interconnected world will require thoughtful, thorough ethical analyses
- Regular consultation
- An understanding of and appreciation for risk management ideas will also be needed
- It will open up new opportunities
- And spur/demand legal change (e.g., interstate compacts).

"Intelligence is the ability to adapt to change."
Stephen Hawking

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