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## Office of the Professions

### Telepractice

*Advisory Notice: The following advisory constitutes a general discussion of the issues that may arise when a licensee provides professional services. The discussion is intended to alert practitioners to questions and concerns that they may want to consider with their legal counsel, if necessary, and are not to be construed as a directive or other requirement to take any particular action. The Advisory cannot be used as the basis for a charge of professional misconduct. The statements are generally based upon statutory and regulatory provisions relating to the practice of psychology, social work, creative arts therapy, marriage and family therapy, mental health counseling, and psychoanalysis, but are not legal interpretations of any of these provisions. The citations to the provisions of law, regulation and Regents Rules are included to add clarity to the discussion.*

#### What is Telepractice?

Telepractice includes the use of telecommunications and web-based applications to provide assessment, diagnosis, intervention, consultation, supervision, education and information across distance. It may include providing non-face-to-face psychological, mental health, marriage and family, creative arts, psychoanalytic, psychotherapy and social work services via technology such as telephone, e-mail, chat and videoconferencing.

Telecommunications and Electronic Medical Records (EMRs) may include computer files, documents, e-mails, interactive media sessions, CD's, audio-tapes, video-tapes, fax images, phone messages and text messages.

#### Telepractice Issues

Telepractice issues of concern to practitioners include the therapeutic relationship, specifically, one's ability to maintain an effective working relationship in spite of physical distance. Potential licensure and jurisdiction issues mean that practitioners should become familiar with and abide by competency and licensure requirements when practicing across state and national borders. In order to practice in a safe, legal, and confidential manner, it is important for licensed mental health professionals to understand the technology and potential limitations to confidentiality of both the software and hardware they are using. In order to ensure confidentiality, encryption and other technologies should be used whenever possible. Guidance regarding specific telepractice issues appears below.

To the extent it involves providing professional services in a jurisdiction other than the one in which the practitioner is physically located, telepractice raises the issue of the jurisdiction or jurisdictions in which the practitioner must be licensed. In New York State, a practitioner must hold a New York license, or be otherwise authorized to practice, when providing professional services to a patient located in New York or when the practitioner is located in New York.

#### EMRs: Same Responsibilities as any Other Medical Record

EMRs are subject to the same confidentiality and privilege as any other medical record. Privacy and security should be maintained and, to ensure this, encryption or password-restricted access may be necessary. It is necessary that EMRs can be reproduced if requested by patients or by court order and that fees charged for such reproduction are consistent with New York laws and regulations. Practitioners should also be aware that they are responsible for maintaining the confidentiality of the records of their patients and, therefore, must ensure that the billing or storage vendors engaged by them agree to follow all relevant privacy and security rules regarding medical records, and that the records will not be destroyed or released unless so directed by the licensee.

#### Cautions Regarding e-Data

One must remain cognizant of the fact that cell phones, e-mail, and text messages may not be secure modes of communication, specifically recognizing the question of who has access to the communication device and/or communication. Web-based applications vary in the level of security that is provided. In

addition, digital storage devices (including computer hard drives) and fax and copy machines can retain images unless they are electronically wiped. Before disposing of a computer, it is the licensed professional's responsibility to ensure that all patient information is securely deleted. It is strongly recommended that once the memory is cleared of patient information, the device should be destroyed in a secure manner. It is important that patients are informed that there are risks to electronic communication. In addition, one should have a contingency plan in the event that telecommunications fail (i.e., another way to contact patient). Finally, one must be aware that there is always a potential for an individual to misrepresent his/her name, presenting problem or other information when engaging in electronic communications and the licensee bears responsibility for assuring the identity of the client.

### Social Media Telecommunications

Social Media has great potential as a public education tool that can be used to reach a wide audience with information about mental health. One should, however, remain aware that a professional web presence must be consistent with laws and regulations related to advertising and engaging in professional relationships. A personal web presence can potentially involve issues of boundary violations and should not allow client access.

Example: Friend requests on social media sites should be confined to friends and colleagues, while not accepting such requests from clients or potential clients.

An individual licensed under Title VIII of the Education Law may be charged with unprofessional conduct under section 29.1 of the Rules of the Board of Regents for advertising that is not in the public interest if he/she engages in advertising on web-postings that are fraudulent, false, deceptive or misleading, to the same extent as advertising in more traditional media.

While a licensed professional cannot be responsible for the client's social media interactions, when appropriate, the licensee should provide information to patients or discuss with them some of the pitfalls of social media as it may relate to the receipt of professional services. Due to the persistent stigma about mental illness and treatment, the licensed professional may want to point out to the client that certain activities may provide more information than the client is comfortable with sharing in the social media community, such as:

- posting a status update of "waiting in Dr. Smith's office for my weekly psychotherapy session" or
- allowing the GPS device in his/her smart-phone, tablet or computer to identify his/her location as the office of "Dr. Jones, Psychotherapist."

The licensee may be wise to consider including similar examples as a cautionary note to be discussed as part of the informed consent process, to avoid unfortunate, accidental disclosures of information.

### Videoconferencing

Videoconferencing includes varied points of delivery, including hospitals/ER's, Community Mental Health Centers (CMHCs), doctors' offices, institutional settings (e.g., nursing homes, prisons, schools), and clients' homes

Clinical applications of videoconferencing include clinical interviews for intake and diagnosis, consultation with other providers including the referring provider and with family members, emergency pre- and post-hospitalization evaluations, outpatient psychotherapy (scheduled and crisis), medication management or consultation, and professional consultation.

Videoconferencing may include supervision and consultation. A licensed professional who is consulting with other health professionals or, if allowed by State law and regulation, receiving supervision through video technology, should exercise caution in these interactions, in order to ensure the confidentiality of patient information. A licensed professional remains responsible for the security of patient communications and information to the same extent as if the session or consultation were occurring with all parties in the practitioner's office. Prior to using any videoconferencing technology, the licensed professional should verify the encryption and security of data to protect the confidentiality of patient information.

Potential benefits of videoconferencing may include that it:

- can reduce costs to both client and practitioner,

- can reach individuals who might not otherwise have access to treatment,
- has overall empirical support for outcomes similar to traditional psychotherapies, and
- clients report positive experiences with videoconferencing.

Concerns regarding videoconferencing include whether practitioners are:

- ensuring that clients are able to adequately participate and understand the appropriate uses of videoconferencing (Informed Consent);
- whether videoconferencing technologies that are used are secure;
- whether the empirical validation of this methodology is sufficient; and
- whether individual states require that practitioners are qualified and licensed to practice within that state.

If using telecommunications, it is recommended that patients are informed there are risks to electronic communications. Clinicians should also have a contingency plan for telecommunications failures (e.g., a back-up way of contacting the patient). Patients should be informed as to how they can verify the clinician's professional license (the license status of all New York licensees can be ascertained [here](#)), and clinicians should be aware of the potential for patient misrepresentation.

### Avatars & Virtual Environments (VE)

Avatars and virtual environments (VE) are increasingly being researched for clinical application possibilities. Applications being investigated include treatment of depression, eating disorders, social anxiety and other phobias, autism spectrum disorders, PTSD and schizophrenia.

Avatars are used to create a virtual representation of the client, the practitioner (agent) or both; however, it may be unclear whether the "agent" is an actual trained clinician or a computer programmer.

*Professional services must be rendered only by those authorized to do so.* VEs are used to create planned and controlled environments that allow the client to be exposed to a situation or to explore an environment that relates to the issues of focus.

The potential benefits of avatars and VEs include some empirical support for the effectiveness of these techniques, reduction of costs to both client and practitioner, and greater accessibility to environments for exposure therapies.

Concerns regarding avatars and VEs include determining who the virtual therapeutic agents are, ensuring that they are authorized to provide professional services, ; defining the roles and training of virtual therapeutic agents; and determining whether these techniques are safe and effective, whether the technologies used are secure, and whether each client knows how to exit the program if under duress (e.g., during an immersion).

### Effective & Legal Telepractice

Telepractice should be considered a modality and applied only as appropriate to address the client's needs. In order to engage in telepractice in an effective, safe and legal manner, licensed mental health professionals should:

- Develop procedures for and obtain informed consent prior to providing remote services.
- Ensure that informed consent includes both benefits and risks.
- Conduct an initial assessment of each client to determine whether the telepractice modality is appropriate, given the client's treatment needs. If not, determine available alternatives and consider referrals.
- Learn relevant telepractice laws across all jurisdictions in which they will be providing online services before such services are provided.
- Not practice outside the scope of their license and training.
- Attend to issues of danger to self or others in duty to warn and protect situations, and to mandated reporting requirements in accordance with law.
- Make arrangements, as appropriate, in the consumer's local area to address emergency and crisis situations that may arise, and be knowledgeable of community resources that may be accessed in such situations.
- Ensure the accuracy of advertising and public statements about telephone and online services offered without making statements that imply a level of treatment or effectiveness that is beyond

what is actually provided.

- Remain aware of the limitations of the online services provided and the technology used to offer these services.
- Evaluate online services offered to ensure their effectiveness and to modify them, as needed, on the basis of outcome data to most effectively meet client needs.
- Stay within one's scope of practice and limits of competence. As with all emerging areas of practice, one should use caution to ensure competence of the practitioner and the protection of clients.
- Attend to cultural, ethnic, language and other differences that may impact on their ability to effectively communicate with and treat clients.
- Employ professional standards of practice that include adequate documentation and record keeping, adherence to termination and abandonment guidelines, and appropriate practices for fees and financial arrangements.
- Verify the client's state of residence prior to providing telepractice services, as this may dictate those states in which a practitioner must be licensed.
- Possess the technological competence and clinical competence necessary to provide services via the online modality offered.
- Consult knowledgeable colleagues, relevant statutes, applicable ethical codes and available professional standards when unsure of any of the above.
- Consult with an attorney specifically experienced in these matters when legal questions arise.

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[Previous](#) | [Contents](#)

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