

Ethics & Telehealth (mental health care)

Lance T. Laurence, Ph.D.
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Disclosures

- No conflict of interest. No ownership, no payment of any sort for the presenting this workshop.
- Current employment: Self-employed, independent practice, Knoxville, Tennessee
- Former Relevant Employers: University of Tennessee-Knoxville (1981-2017). Associate Professor & Former Director UT Psychological Clinic. Taught several doctoral courses, including Ethical, Legal and Professional Practice Issues in Clinical Psychology. Retired 2017.
- Former Director of Legislative & Professional Affairs, Tennessee Psychological Association. Retired 2015.

Learning Objectives

- To review legal, ethical and professional guidelines available on tele-mental health
- To discuss risks of ethical compromises/mistakes in conducting tele-mental health
- To learn the components of informed consent required for tele-mental health
- To consider options for establishing an ethical tele-mental health practice

Caveats

- I am not a lawyer
- Mental health care in Tennessee is provided by the following: Psychiatrists, Psychologists, Social Workers, Senior Psychological Examiners, Psychological Examiners, Certified Psychological Assistants, Behavioral Analysts (licensed and certified), Licensed Professional Counselors, Licensed Marriage & Family Therapists, Licensed A& D counselors, Licensed Pastoral Therapists, Licensed Employee Assistants and perhaps others. The presenter is NOT an expert in the laws and rules and regulations governing all of these mental health professions.

Caveats

- Check your respective licensing board for the laws and rules and regulations governing your profession
- Many non-MD mental health professions have highly similar language and laws in their licensing statutes and similar concepts in their respective rules and regulations. Today's presentation will focus on telepsychology and while you may not practice telepsychology, your ethics, laws and guidelines highly likely to be similar to those that govern psychology
- We will also review the rules and regulations applicable to psychiatrists

Caveats

- Ethics and law and guidelines are NOT the same. Sometimes ethics and law cover the same territory (i.e., adherence to APA Ethical Code in Psychology Licensing Law) but not always
- Guidelines are aspirational suggestions and do not carry the same weight as standards in ethical code. You don't have to practice in accordance with Guidelines BUT....
- APA reviewing its Guidelines for Telepsychology at present. Last APA Guidelines for Telepsychology published in December 2013

Sources of Information

- Your licensing law and current rules and regulations of your licensing law
- APA Guidelines for the Practice of Telepsychology, 2013
- NASW Guidelines 2017
- AAMFT Guidelines 2015
- ACA Guidelines 2014
- If M.D., TCA 63-6-0882.02.16

Telepsychology Rules and Regulations Governing the Practice of Psychology

- Telepsychology added to scope of practice for Psychologists in 2015
- Rules and regulations six years in the making
- Passed in Spring of 2022 and passed Tennessee Government Operations Committee on 10/18/22
- Effective in law: 10/30/22

TCA 63-11. Rules 1180.02.07(2)

Telepsychology

- “Telepsychology means the practice of psychology via electronic communication by persons license under TCA 63-1-203. Electronic communication technology is information exchanged typically using audio or visual technology that are part of a plan of care during a scheduled or agreed upon time”.
- APA Definition: “Telepsychology is defined, for the purposes of these guidelines, as the provision of psychological services using telecommunication technologies”
- Note: Under 63-1-203. Psychologists only. Does not include senior psychological examiners, psychological examiners, certified psychological assistants, behavior analysts or students or interns in psychology

What 1180.02.07 (2) says:

- “When feasible use secure communications...secure websites or secure real-time video”
- “Licensees cannot provide telepsychology to patients domiciled or physically located in any jurisdiction other than Tennessee”UNLESS
- PSYPACT approved. Interjurisdictional practice agreements amongst member states. Must be an approved provider. PSYPACT only applies to Psychologists, not other providers in T.C.A. 63-11

1180.02.07 (2)

- “For those with face to face primary relationship, these telepsychology rules do not apply to electronic use for scheduled billing, establishment of benefits or making sure the patient is safe”
- Texting and telephone calls are NOT telepsychology


What 1180.02.07 (2) says:

- “Licenses should recognize that telepsychology is not appropriate for all psychological problems and patients, and decisions regarding the appropriate use are made on a case-by-case basis”
- “Should be aware of risks”
- Risks include patient variables, confidentiality risks, technology glitches and any other parameter that would negatively affect patient care

What 1180.02.07 (2) says:

- “Conduct a risk-benefit analysis and document findings specific to;
 - 1) Whether the patient’s presenting problems and apparent condition are consistent with the use of telepsychology to the patient’s benefit; and
 - 2) Whether the patient has sufficient knowledge and skill in the use of technology involved in rendering the service or can use a personal aid or assistive device to benefit from the service”

Continuing Education Finding

- Data shows the best outcomes for continuing education programs are those that involve interactive learning
- So.... 
- Write down patient populations you think might NOT be best served by telepsychology services

Ethical Considerations (from APA's Guidelines for the Practice of Telepsychology, 2013)

- Competency
- Standard of Care
- Informed Consent
- Confidentiality of Data & Information
- Security & Transmission of Data and Information
- Disposal of Data & Information and Technologies
- Testing & Assessment
- Interjurisdictional Practice

Competency

- Are you competent to provide telepsychology services
- Competency involves “clinical competency” and “technology competency”
- We all can't treat all people
- Do you have enough “technological competency” to use an electronic medium? Older people –are you sure? Do you know how to reconnect when a technology breach occurs?
- Do you know applicable laws, risks to confidentiality, and do you have the proper informed consent?

Standard of Care

- Here is where your Risk Assessment is important
- Risk: Clinical and Technological
- Clinically applies to the patient's condition and your ability to provide the care under this medium
- Technological: can the patient handle the technological demands of doing telehealth?
- Have you had any training in telepsychology? Some states are requiring continuing education in telepsychology. Not yet in Tennessee but it helps to say you attended a workshop like this one
- Document your contact with the patient, just like you do for an office appointment

Standard of Care

- Do I have to see the patient face-to-face before I offer telepsychology?
- If yes, seems to defeat of access to care for those who can't get to the office
- BUT...

Standard of Care

- T.C.A. 56-7-1002 (8/2022):
- “iii. the healthcare services provider makes use of HIPAA complaint real-time, interactive audio, video telecommunications or electronic technology, or store-and-forward telemedicine services to a patient within the scope of practice of the health service provider as long as the healthcare services provider, the healthcare services provider’s practice group, or the healthcare system has established a provider-patient relationship by submitting to a health insurance entity evidence of an in-person encounter between the health service provider, the health care provider’s practice group or the healthcare system and the patient within sixteen (16) months prior to the interactive visit”

Standard of Care

- Note: refers to insurance versus those who do not take insurance
- Says “telemedicine” but says “within the scope of practice of the health service provider” so probably every mental health provider who take insurance
- Suggests at least one in-person visit every 16 months or once a year

Risk Assessment

- Why do you think the patient is appropriate for telepsychology? Document why
- Any language, physical or cultural barriers?
- Using an adequate telehealth platform?
- Why not a good candidate for telepsychology?

Risk Populations & Telepsychology

- Psychotic Populations?
- Schizophrenia?
- Bipolar?
- Suicidal or Homicidal Folks?
- Kids?
- Adolescents?
- Borderlines?
- Complex PTSD?
- Neurocognitive Disorders?
- DID?
- Others?

Risk Populations

- Not so much the disorder per se but the qualitative features of the disorder
- No two borderlines alike. For one borderline telepsychology might be just fine; for another, no way.
- You have to make the clinical determination based on the patient's needs and character structure and based on the opportunities and limitations of technology as to whether telepsychology is a good choice for your patient.

Risk Populations

- Example of patient factors to consider:
 - (1) level of containment and control
 - (2) attachment capabilities and level of attachment to the therapist: connection
 - (3) core problem; some more severe than others
 - (4) comfortability with the medium; i.e., adolescents versus latency-aged or younger kids
 - (5) affect regulation and affective accompaniment (“therapeutic regression (Balient, 1939) versus decompensation or “regression going rogue”)
 - (6) type of therapy: supportive vs depth vs CBT, etc.

Informed Consent (from Tennessee Rules and Regulations)

- You **MUST** obtain a written informed consent with the patient **BEFORE** you start offering telepsychology
- Your informed consent document includes the following:
 - (1) addresses the limitations and innovative nature of this medium
 - (2) talks of the potential risks to confidentiality
 - (3) addresses the risks of sudden and unpredictable disruption and how an alternatives means of electronic communications or other connections will be used if this happens

Informed Consent

- (4) the time and manner you will respond to electronic messages
- (5) emergent circumstances when the patient and licensee will use alternatives means of communication
- (6) others who may have access to communications
- (7) specific methods to make sure only the patient's communications are directly only to the licensee
- (8) how the licensee stores electronic communications with the patient and that the material cannot be recovered once you dispose of any electronic equipment

Security & Transmission of Data

- HIPAA Security Rules apply (2005)
- Who else is listening? Some recommend you sweep the room showing the patient that you are in your office alone. And you ask them to sweep the room to show they are alone? Necessary or overkill? Perhaps enough to say “I am alone, are you” and let the patient affirm they are? Maybe depends on the patient too?
- Security of data when disposed. HIPAA Security Rules tells you to be careful to properly dispose of your computer (i.e., destroy your hard drive). Do you record? If so, how to insure destroy those videos? Many platforms do not record and destroy the communication immediately after the session (importance of Business Associate Contract)

Confidentiality of Data & Information

- You have your informed consent
- Private, quiet place. Not in the kitchen with the kids around
- Secure, internet connection. Not in Panera or an airport
- Not recorded (either by you or the patient)
- What is your backup plan if you get disconnected?
- What is your safety plan in the event of an emergency?

Speaking of Secure Transmission

- Is your medium HIPAA Complaint?
- If you are using a Practice Management System, make sure the on-line video platform is HIPAA complaint
- Virtual privateo networks best. They provide an “encrypted tunnel” (like banks do)
- DO NOT use Skype, Verizon or Google (facetime). They do NOT give you a Business Associates Contract so if a confidentiality breach occurs, that liability for a violation of the HIPAA Security Rules is yours. Business Associates Contract transfers the liability to the Associate, NOT you

Secure Platforms

- Skype for Business/Microsoft Teams
- Zoom for Healthcare
- Doxy.me
- Go to Meetings
- Federal Public Emergency Act on 3/20/22 suspended certain HIPAA requirements, making it okay to do Facetime. 90 day Extension of COVID emergency occurred on 10/13/22 so this time, still okay to do facetime, even if the absence of Facetime's BA Contract. You could always do Facetime but do know they have not given you a BAA so the liability is on you

For M.D.s: T.C.A. 63-6-0882.02.16

- “Telemedicine is the practice of medicine using electronic communication, information technology or other means between a licensee in one location and a patient in another location. Telemedicine is not an audio only telephone conversation, email/ instant messaging conversation or fax”
- Note: For all medicine, not just mental health care

“Clif Tennison, M.D. Method”

- Prepare some chart note statement that says the date of contact, type of contact (telemedicine), where you are, where the patient is, and statement about the competency of the patient to do telemedicine independent of others. Standard statement at the start of your note and then document the session
- Editorial Note: Cliff is the best! W.W.C.D.?

Interjurisdictional Practice

- You cannot treat a patient across state lines (you live and are licensed in Tennessee and the patient resides in another state) unless you are licensed in the state the patient is living in
- Except if you are part of an interstate agreement such as PSYPACT (passed in Tennessee 5/15/21)
- Those who practice in the VA System, Federal Prison System, Dept of Defense/Military are exempt for interjurisdictional restrictions

Telepsychology & Psychological Assessment

- Consider compromises to the usual and customary testing procedures
- Beware of Coaching
- Beware of Interruptions

- “Be Careful Out There” if you do assessment via telepsychology

So What Do I Do?

- If you do telehealth, do so with your eyes wide open
- Ask yourself, “am I clinically competent to do this service”?
- Ask yourself, “do I have the technological competency to do this service”?
- Conduct a good risk assessment
- Make sure you have the proper informed consent
- Am I using a secure platform?
- Are confidentiality risks covered?
- Are you familiar with all federal and state laws regarding telehealth, your licensing law & rules and regulations, and all applicable guidelines?
- Have I had any training in telehealth”

Thank You

- Questions? Comments? Ideas?
- Hope this workshop has been helpful. My best in your future endeavors.

LTL