

TELEMENTAL HEALTH: ETHICAL CONSIDERATIONS

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DISCLAIMER

- I am not an expert, but have researched and am knowledgeable
- I have 37 hours in telemental health training, with BC-TMH certification*
- Review your own licensing board directives
- Review your own professional association ethical considerations and best practices mandates

* Replacing the DCC certification early 2018

GOALS OF THE DAY

- Become aware of new MFT rule for providing technology-assisted services in Texas.
- Provide an overview of telemental health in Texas and appropriate uses.
- Review state board guidelines for technology-assisted services.
- Review ethical considerations for telemental health providers through the Best Practices guidelines from AAMFT.

OVERVIEW OF TELEMENTAL HEALTH

- “Telemental health” has several names:
 - “technology-assisted services” in the Texas MFT Rules
 - “distance counseling” in the Distance Counseling Counselor certification
 - “telemedicine” in American Telemedicine Association
 - “distance professional services” in National Board of Certified Counselors
 - “online therapy” or “online psychotherapy” in AAMFT *Best Practices*
 - “telepractice” in the Texas Psychology Rules
 - “teletherapy”, “cybertherapy”, “direct-to-consumer online healthcare consultative services” in online websites
 -any others you’ve run across?

WHAT IS INCLUDED IN TELEMENTAL HEALTH?

- Video therapy
 - Telephone therapy
 - Email communications with clients
 - Texting communications with clients
- Note that licensing boards determine where counseling takes place*

NEED FOR REGULATION AND STANDARDIZATION

“Caldwell et al. (2017) note that most therapists are using ICTs[information communication technologies] before professional standards have been developed and state regulations have been settled -- or state regulations might be available -- but professionals are not aware of them. Issues of training, licensing, ethical principles, and other focal matters are far from being solved, while technology is rapidly evolving and the variety of ICTs make services more accessible to clients, even crossing state borders while complicating the legal situation even more.”

— Borsca & Pomini (2017)

TWO GOVERNMENT ACTS

- HIPAA (1996)
 - Health Insurance Portability and Accountability Act
- HITECH (2009)
 - Health Information Technology for Economic and Clinical Health
- <http://www.hipaasurvivalguide.com/> has good resources for both HIPAA and HITECH compliance/security

CERTIFICATIONS

- **DCC** – Distance Certified Counselor
 - Granted by the Center for Credentialing and Education (affiliated with NBCC)
 - Requires 15 hours of training
- Soon to be replaced by **BC-TMH** – Board Certified-Telemental Health Provider
 - Granted by the Center for Credentialing and Education (affiliated with NBCC)
 - Requires 12 hours of training

APPLICATIONS AND USES OF TELEMENTAL HEALTH

- Distance counseling
 - Individual, family, and group
- Distance supervision
 - Individual and group
- Distance collaboration
 - Telemedicine with other behavioral and medical settings

TWO PRIMARY PLACES TO LOOK FOR GUIDELINES

State Licensing Boards

Association Best Practices Expectations

TSBEP RULES 2017 (PROFESSIONAL COUNSELORS)

SUBCHAPTER C CODE OF ETHICS

■ §681.41 General Ethical Requirements

(g) Technological means of communication may be used to facilitate the therapeutic counseling process. Counselors engaging in interactive distance counseling must adhere to each provision of the rules and statutes of the board.

TSBEP RULES 2017 (PSYCHOLOGISTS)

■ 465.7. Display of License/Renewal Permit. Licensees must display the original license or an official duplicate issued by the Board and the current renewal permit in a conspicuous place in the principal office where the licensee practices. No unauthorized reproduction may be substituted or displayed. Licensees who provide psychological services through the internet or other remote or electronic means, must provide written notification of their license number and instructions on how to verify the status of a license when obtaining informed consent.

TSBSWE RULES (SOCIAL WORKERS)

▪ **§781.204. Relationships with Clients.**

(k) Electronic practice may be used judiciously as part of the social work process and the supervision process. Social workers engaging in electronic practice must be licensed in Texas and adhere to provisions of this chapter.

REGARDING STATE BOARD EXPECTATIONS...

Be current with what your licensing board states regarding telemental health practices.

TSBEMFT RULES (MARRIAGE AND FAMILY THERAPY)

▪ **Most extensive set of ethical expectations of the mental health provider licensing boards in Texas**

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§801.58. TECHNOLOGY-ASSISTED SERVICES

(a) Licensees who provide marriage and family therapy to clients or supervision to supervisees outside the State of Texas shall comply with the laws and rules of this board and of the out-of-state regulatory authority.

§801.58. TECHNOLOGY-ASSISTED SERVICES

(b) Licensees who provide treatment, consultation, and supervision using technology-assisted services shall meet the same standards of appropriate practice as licensees who practice in traditional (i.e., in-person) settings.

§801.58. TECHNOLOGY-ASSISTED SERVICES

(c) In accordance with Occupations Code, §502.251 (relating to License Required), a person may not practice as a marriage and family therapist unless the person holds a license under this chapter or is exempt under Occupations Code, §502.004 (relating to Application of Chapter).

§801.58. TECHNOLOGY-ASSISTED SERVICES

(d) Licensees may use technology-assisted services only after receiving appropriate education, training, and/or supervised experience in using relevant technology. A therapist who uses technology-assisted services must maintain documentation of academic preparation and supervision in the use of technology-assisted services as part of the therapist's academic program or the substantial equivalent provided through at least 15 hours of continuing education and 2 hours every subsequent renewal period. Licensees must comply with this subsection by January 1, 2018.

§801.58. TECHNOLOGY-ASSISTED SERVICES

(e) A licensee shall not render therapy using technology-assisted services without complying with the following at the onset of each session:

- (1) fully verifying the location and identity of the client, to the most reasonable extent possible;
- (2) disclosing the identity and applicable credentials of the licensee; and
- (3) obtaining appropriate consents from clients.

§801.58. TECHNOLOGY-ASSISTED SERVICES

(f) Before providing technology-assisted services, licensees shall determine whether a client is a minor. Upon determining that a client is a minor; and before providing technology-assisted services, licensees shall obtain required consent from a parent or guardian and shall verify the identity of the parent, guardian, or other person consenting to the minor's treatment.

§801.58. TECHNOLOGY-ASSISTED SERVICES

(g) The licensee shall determine if technology-assisted service is an appropriate delivery of treatment or supervision, considering the professional, intellectual, or emotional needs of the client or supervisee.

§801.58. TECHNOLOGY-ASSISTED SERVICES

(h) Informed consent shall include, at a minimum, information that defines electronic service delivery as practiced by the licensee and the potential risks and ethical considerations. The licensee shall obtain and maintain written and/or electronic evidence documenting appropriate client informed consent for the use of technology-assisted services. The licensee shall ensure that the informed consent complies with other informed consent requirements in this chapter and shall include the following:

§801.58. TECHNOLOGY-ASSISTED SERVICES

- (1) identification of the client, the therapist, and the therapist's credentials;
- (2) list of services provided by the licensee using technology-assisted services;
- (3) client agreement that the therapist determines on an on-going basis whether the condition being assessed and/or treated is appropriate for technology-assisted services;

§801.58. TECHNOLOGY-ASSISTED SERVICES

- (4) details on security measures taken with the use of technology-assisted services, as well as potential risks to privacy notwithstanding such measures;
- (5) information regarding secure protocols and back-up plans in case of technical failure;
- (6) the licensee's credentials or training to engage in technology-assisted services, physical location of practice, and contact information;

§801.58. TECHNOLOGY-ASSISTED SERVICES

- (7) risks and benefits of engaging in the use of technology;
- (8) emergency procedures to follow when the therapist is not available;
- (9) information collected and any passive tracking mechanisms used;
- (10) third-party websites or services used by the licensee to facilitate technology-assisted services; and
- (11) an explanation of how records are maintained electronically, including, but not limited to, encryption type and record security, and the archival storage period for transaction records.

§801.58. TECHNOLOGY-ASSISTED SERVICES

(i) Therapists who use technology-assisted services shall meet or exceed applicable federal and state legal requirements of health information privacy, including, but not limited to, compliance with the Health Insurance Portability and Accountability Act of 1966 (HIPAA), Public Law 104-191; The Health Information Technology for Economic and Clinical Health (HITECH) Act, 42 U.S.C. Chapter 156, Subchapter III; Health and Safety Code, Chapter 181 (relating to Medical Records Privacy); and state privacy, confidentiality, and security rules.

(j) Licensees must comply with this section by January 1, 2018.

**2015 AAMFT CODE OF ETHICS, STANDARD VI
TECHNOLOGY-ASSISTED PROFESSIONAL SERVICES**

Therapy, supervision, and other professional services engaged in by marriage and family therapists take place over an increasing number of technological platforms. There are great benefits and responsibilities inherent in both the traditional therapeutic and supervision contexts, as well as in the utilization of technologically-assisted professional services. This standard addresses basic ethical requirements of offering therapy, supervision, and related professional services using electronic means.

**2015 AAMFT CODE OF ETHICS, STANDARD VI
TECHNOLOGY-ASSISTED PROFESSIONAL SERVICES**

▪ 6.1 Technology Assisted Services.

Prior to commencing therapy or supervision services through electronic means (including but not limited to phone and Internet), marriage and family therapists ensure that they are compliant with all relevant laws for the delivery of such services. Additionally, marriage and family therapists must: (a) determine that technologically-assisted services or supervision are appropriate for clients or supervisees, considering professional, intellectual, emotional, and physical needs; (b) inform clients or supervisees of the potential risks and benefits associated with technologically-assisted services; (c) ensure the security of their communication medium; and (d) only commence electronic therapy or supervision after appropriate education, training, or supervised experience using the relevant technology.

2015 AAMFT CODE OF ETHICS, STANDARD VI
TECHNOLOGY-ASSISTED PROFESSIONAL SERVICES

■ 6.2 Consent to Treat or Supervise.

Clients and supervisees, whether contracting for services as individuals, dyads, families, or groups, must be made aware of the risks and responsibilities associated with technology-assisted services. Therapists are to advise clients and supervisees in writing of these risks, and of both the therapist's and clients'/supervisees' responsibilities for minimizing such risks.

2015 AAMFT CODE OF ETHICS, STANDARD VI
TECHNOLOGY-ASSISTED PROFESSIONAL SERVICES

■ 6.3 Confidentiality and Professional Responsibilities.

It is the therapist's or supervisor's responsibility to choose technological platforms that adhere to standards of best practices related to confidentiality and quality of services, and that meet applicable laws. Clients and supervisees are to be made aware in writing of the limitations and protections offered by the therapist's or supervisor's technology.

2015 AAMFT CODE OF ETHICS, STANDARD VI
TECHNOLOGY-ASSISTED PROFESSIONAL SERVICES

■ 6.4 Technology and Documentation.

Therapists and supervisors are to ensure that all documentation containing identifying or otherwise sensitive information which is electronically stored and/or transferred is done using technology that adhere to standards of best practices related to confidentiality and quality of services, and that meet applicable laws. Clients and supervisees are to be made aware in writing of the limitations and protections offered by the therapist's or supervisor's technology.

2015 AAMFT CODE OF ETHICS, STANDARD VI
TECHNOLOGY-ASSISTED PROFESSIONAL SERVICES

■ 6.5 Location of Services and Practice.

Therapists and supervisors follow all applicable laws regarding location of practice and services, and do not use technologically-assisted means for practicing outside of their allowed jurisdictions.

2015 AAMFT CODE OF ETHICS, STANDARD VI
TECHNOLOGY-ASSISTED PROFESSIONAL SERVICES

■ 6.6 Training and Use of Current Technology.

Marriage and family therapists ensure that they are well trained and competent in the use of all chosen technology-assisted professional services. Careful choices of audio, video, and other options are made in order to optimize quality and security of services, and to adhere to standards of best practices for technology-assisted services. Furthermore, such choices of technology are to be suitably advanced and current so as to best serve the professional needs of clients and supervisees.

2014 ACA CODE OF ETHICS – SECTION H

1. Knowledge and Legal Considerations
2. Informed Consent and Security
3. Client Verification
4. Distance Counseling Relationship
5. Records and Web Management
6. Social Media

2014 ACA CODE OF ETHICS REQUIRE COUNSELORS TO ...

- Be knowledgeable about the laws governing distance counseling and social media.
- Only utilize distance counseling after gaining competence through training and supervised experience in this specialty area.
- Inform clients about the limits of confidentiality and potential Internet interruptions due to the nature of technology.
- Understand the benefits and drawbacks related to distance counseling
- Utilize a professional presence if they choose to use social media platforms
- Avoid disclosing confidential information through social media.
- Utilize informed consent to explain the boundaries of social media.

AAMFT BEST PRACTICES SUMMARY

- Presented to the AAMFT Board in February, 2017
- Ben Caldwell, Richard Bischoff, Kathleene Derrig-Palumbo, and Jeffrey Liebert
- “MFTs who provide therapy online are subjecting themselves to an additional set of professional standards, not simply a different set.” (p. 8)

AAMFT BEST PRACTICES FOR THE ONLINE PRACTICE OF COUPLE AND FAMILY THERAPY

- | | |
|------------------------------|------------------------------|
| 1. Compliance | 6. Ongoing services |
| 2. Infrastructure | 7. Crisis management |
| 3. Advertising and marketing | 8. Failures and beaches |
| 4. Informed consent | 9. Accountability and review |
| 5. Initial assessment | |

AAMFT BEST PRACTICES
FOR THE ONLINE PRACTICE OF COUPLE AND FAMILY THERAPY

1. COMPLIANCE

- Follow applicable standards
- Role clarity
- Verification of licensure

AAMFT BEST PRACTICES
FOR THE ONLINE PRACTICE OF COUPLE AND FAMILY THERAPY

2. INFRASTRUCTURE

- Bandwidth
- Local network
- Hardware
- Software
- Encryption
- Therapist

AAMFT BEST PRACTICES
FOR THE ONLINE PRACTICE OF COUPLE AND FAMILY THERAPY

3. ADVERTISING and MARKETING

- Advertising
- Social media
- Web sites
- Content

AAMFT BEST PRACTICES
FOR THE ONLINE PRACTICE OF COUPLE AND FAMILY THERAPY

4. INFORMED CONSENT

- Risks and benefits
- Technology failure
- Alternate treatment
- Privacy and security
- Availability

AAMFT BEST PRACTICES
FOR THE ONLINE PRACTICE OF COUPLE AND FAMILY THERAPY

5. INITIAL ASSESSMENT

- Appropriateness for online services
- Verification of identity and age for non-anonymous services

AAMFT BEST PRACTICES
FOR THE ONLINE PRACTICE OF COUPLE AND FAMILY THERAPY

6. ONGOING SERVICES

- Client identity
- Client location
- Appropriateness for online services
- Monitoring progress
- Communication between sessions
- Access to records

AAMFT BEST PRACTICES
FOR THE ONLINE PRACTICE OF COUPLE AND FAMILY THERAPY

7. CRISIS MANAGEMENT

- Advance planning
- Coordination of care
- Reassessment

AAMFT BEST PRACTICES
FOR THE ONLINE PRACTICE OF COUPLE AND FAMILY THERAPY

8. FAILURES and BREACHES

- Significant technology failure
- Data breach
- Confidentiality breach

AAMFT BEST PRACTICES
FOR THE ONLINE PRACTICE OF COUPLE AND FAMILY THERAPY

9. ACCOUNTABILITY and REVIEW

- Annual review of technology and security protocols
- Regular evaluation of competency and effectiveness in online practice
