

Best Practices for Successful Legal and Ethical Telemental Health

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Disclaimer

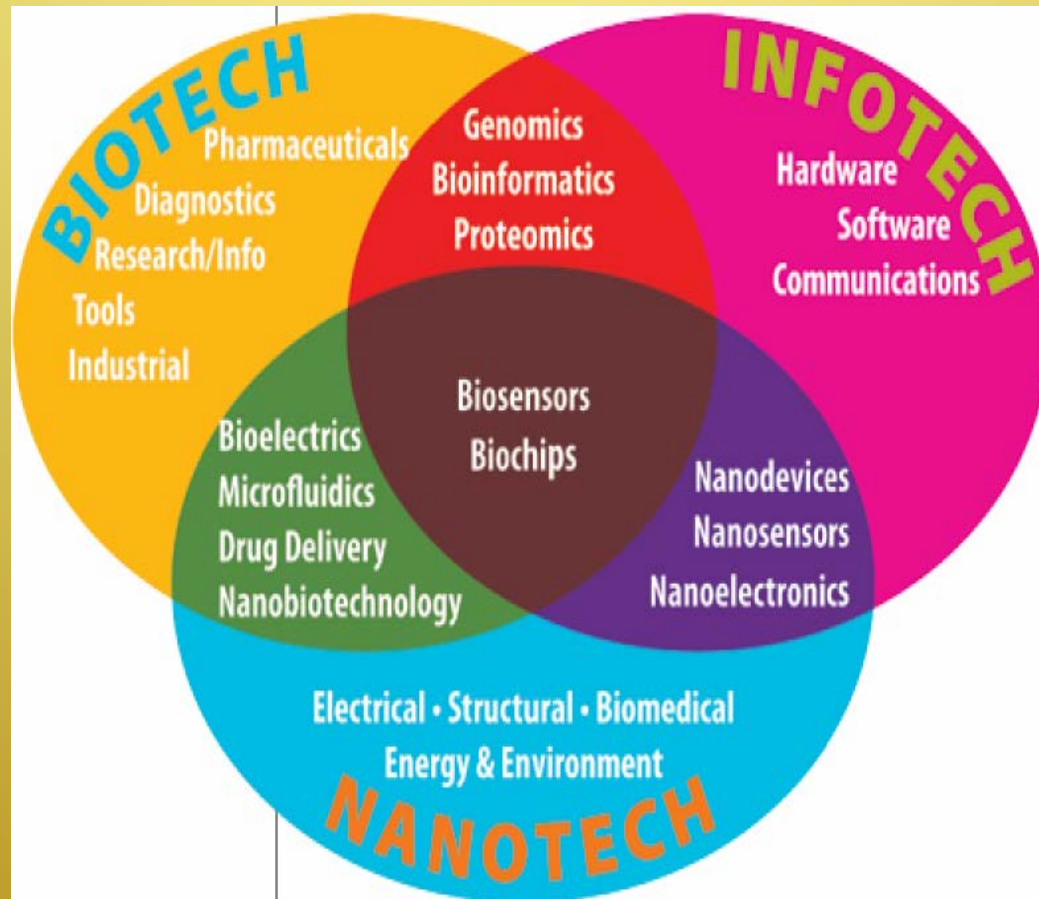
- WHO I AM: I am a licensed psychologist, not an attorney, physician, marketing or information technology (IT) professional.
- MY GOAL: My goal is educational only. I will outline the issues and alert you to what's happening in a way to help think through the issues, help you move forward, and protect yourself as well as your clients or patients. I hope to inspire you to use technology in ways that help you, your clients and our profession. *No warranty, guarantee, or representation is made as to the accuracy or sufficiency of the information contained in my presentation for your specific circumstance. I assume no responsibility in connection therewith your choices.*
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We Are Re-tooling

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Types of Health Care Technology



With permission from Teri Loudon of the Loudon Network and Adapted from: *Biology, Bioconvergence, Information and Enterprise: Taking the Broad View*, May 20, 2004, Alan Barrel

Telemental Health

- Telemedicine
- Telehealth
- Ehealth
- Behavioral Telehealth
- Telemental Health
- Telepsychology
- Online Counseling
- Online Therapy
- mHealth



Modalities

- Blogging / Websites/
Social Media (Google,
Facebook)
- Email
- Chat
- Text Messaging
- Telephone / VoIP
- Video Chat (Skype)
- Smartphone
- Tablet PC
- Peripherals
- VPN / Cloud Video





Video Teleconferencing (VTC)



Primary Focus: Not the *technology*, but rather, the *service* we deliver



However, Different Modalities
Require Different Skill Sets

- In-person
- Text (email, chat, texting)
- Audio
- Video

The Is Video Teleconferencing (VTC) Effective?

- Yes
 - Medicare & Medicaid required to pay
 - Outcomes are relatively comparable, especially for follow-up care (intakes are still a matter of state law)
 - Literature for specialty groups is sparser, but positive (pediatrics)
 - Also effective for supervision
 - Can improve some ways service is rendered
 - See www.telehealth.ORG/bibliography
- BUT, traditional VTC isn't the same as Skype

Benefits of Traditional Video-Based Telehealth*

- Increased client satisfaction
 - Decreased travel time
 - Decreased travel, child & elder-care costs
 - Increased access to underserved populations
 - Improved accessibility to specialists
 - Reduced emergency care costs
 - Faster decision-making time
 - Increased productivity / decreased lost wages
 - Improved operational efficiency
-
- Maheu, Pulier, Wilhelm, McMenemy & Brown-Connolly. (2004). The mental health professional and the new technologies. Erlbaum, New York.



All Existing
Legal
& Ethical
Rules
Apply

Risk-Management
Involves Following
These Rules

SAFETY FIRST

APA Standard 10: Informed Consent

- 3.10 Informed Consent
 - (d) Psychologists appropriately document written or oral consent, permission, and assent.
 - <http://www.apa.org/ethics/code/index.aspx>

OCPM Step 3 Legal Issues: Which Technologies to Use?

- No Guesswork Needed
 - HIPAA “compliant” or “compatible”
 - Practitioners need to be compliant, not technology
 - Look for documentation of compatibility with HIPAA standards





Practicing Over State Lines

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Licensure Requirements

- We need to be licensed in our state(s) to practice mental health
- Common: We need to be licensed in the state of residency of the patient (e.g., Florida, Texas, Utah, Vermont)
- Also Possible: Both laws may exist



Question

- I'm ok if my malpractice carrier says they cover me online, right?



Is Skype a
video
platform
or a social
media
platform?

Duty to Report / Duty to Warn

California State Law

- (v) Failing to comply with the child abuse reporting requirements of Section 11166 of the Penal Code.
- (w) Failing to comply with the elder and adult dependent abuse reporting requirements of Section 15630 of the Welfare and Institutions Code. CA Business and Professions Code Sections 4989.54 (cont.)



Guidelines as a Shortcut to the Literature

- American Medical Association. (2000). Guidelines for Patient-Physician Electronic Mail
- American Counseling Association. (1999) (2005). ACA Code of Ethics
- American Mental Health Counselors Association. (2000). Code of Ethics of the American Mental Health Counselors Association, Principle 14, Internet On-Line Counseling
- American Psychological Association. (1997). APA Statement on Services by Telephone, Teleconferencing, and Internet, A statement by the Ethics Committee of the American Psychological Association
- American Psychological Association. (2010). Ethical principles of psychologists and code of conduct
- American Telemedicine Association. (2009). Evidence-Based Practice for Telemental Health
- American Telemedicine Association. (2009). Practice Guidelines for Videoconferencing-Based Telemental Health
- Australian Psychological Society. (2004). Guidelines for Providing Psychological Services and Products on the Internet
- British Psychological Society. (2009). The Provision of Psychological Services via the Internet and Other Non-direct Means
- Canadian Psychological Association. (2006). Ethical Guidelines for Psychologists Providing Psychological Services via Electronic Media
- Federation of State Medical Boards of the United States, Inc., Report of the Special Committee on Professional Conduct and Ethics. (2002) Model guidelines for the appropriate use of the Internet in medical practice
- National Association of Social Workers. (1999) (2008). Code of Ethics
- National Board for Certified Counselors and Center for Credentialing and Education, (2001). The Practice of Internet Counseling. (2001)
- New Zealand Psychological Psychologists Board (2011). Draft Guidelines: Psychology services delivered via the internet and other electronic media
- Ohio Psychological Association. (2010). Telepsychology Guidelines
- American Psychological Association. (2013). Telepsychology Guidelines.



Boundaries of Competence

Racial, Linguistic, Gender, Religious & Cultural Diversity

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Online Norm vs. Standard of Care

- Mostly Email & Chat vs. Video
- Anonymity / No Patient Records
- Avoid Responsibility w/ Website Disclaimers
- No Clear Channels for Mandated Reporting

Online Norm vs. Standard of Care

- No Contact with Other Treating Clinicians
- No Authentication of Consumer / Professional
- No Emergency Backup Procedures
 - Misunderstanding of Clinical Processes (suicide)
 - Scant Research for Unsupervised Settings

Australian Psychological Society

(2011 revision of Internet Guidelines)

- Research-based protocols
 - 1.6 “*Psychologists* using the internet to provide a *psychological service* should be aware of the extent to which therapeutic interventions via the internet are supported by research or may be contra-indicated”

Client & Patient Selection

- Study the evidence base (research)
- People with almost all diagnostic symptoms have been treated with traditional telehealth
- Treatment to the home has not yet identified which groups are too risky
- Understand differences between treatment of individuals in 1 setting vs, another (hospital vs. car, park, bed etc.)
- Consider compliance problems

APA Ethical Standard 6: Record Keeping

- 6.01 Documentation of Professional and Scientific Work and Maintenance of Records

Psychologists create, and to the extent the records are under their control, maintain, disseminate, store, retain and dispose of records and data relating to their professional and scientific work ...

- <http://www.apa.org/ethics/code/index.aspx>

APA Ethical Standard 9: Assessment

- 9.01 Bases for Assessments
- 9.02 Use of Assessments
- 9.03 Informed Consent in Assessments
- 9.04 Release of Test Data
- 9.05 Test Construction
- 9.06 Interpreting Assessment Results
- 9.09 Test Scoring and Interpretation Services
- 9.10 Explaining Assessment Results
- 9.11 Maintaining Test Security

APA Ethical Standard 2: Research-based Protocols

- 2.04 Bases for Scientific and Professional Judgments

Psychologists' work is based upon established scientific and professional knowledge of the discipline.

OCPM Step 6: Direct Clinical Care

- ◆ Contract for short, protocol-driven tx
- ◆ Authenticate & set ground rules at every session
- ◆ Enforce boundaries (privacy, family, social media)
- ◆ Evaluate at regular intervals
- ◆ Have backup emergency plan

American Telemedicine Association

Videoconferencing Guidelines – Emergencies

(2009)

- A patient site assessment shall be undertaken, including obtaining information on local regulations & emergency resources, and identification of potential local collaborators to help with emergencies
- Emergency protocols shall be created with clear explanation of roles & responsibilities in emergencies

American Telemedicine Association

Videoconferencing Guidelines – Emergencies (2009)

- Determine outside emergency coverage
- Establish guidelines for determining at what point other staff and resources should be recruited to help manage emergencies
- Be familiar with local civil commitment regulations and have arrangements where possible to work with local staff to initiate/assist with civil commitments

OCPM Step 6: Direct Clinical Care

- ◆ Explain & sign informed consent document
- ◆ Conduct a formal intake – no shortcuts
 - ◆ Meet in-person or video (allowed in 12 states for medicine)
 - ◆ Take a full history, medications, illnesses, abuse, stressors, support system, use of other technology, drug/alcohol use, suicide/homicide intent, mental status
 - ◆ Decide *if*, then *which* technology is appropriate
 - ◆ Obtain names & contact information for all other key providers, get all appropriate releases to contact them

Risk Management: Research-based Protocols & HIPAA-compliant Platforms



1000+ Reference
Bibliography

<http://telehealth.org/bibliography>

Video Platforms

<http://telehealth.org/video>

Risk Management

- Save all proof of training or consultation to prove you've "sought the advice of your peers"
- Record Keeping:
 - Document, document, document
 - Protocols Followed
 - Time in, time out
 - Dropped connections
 - Intrusions
 - Lighting
 - Adaptive Equipment
 - Assess progress
- Have an addendum to your informed consent
 - Include a social media policy
- Communicate often in writing to your local, state and national professional associations



CLINICAL MODELS SUPPORTED BY THE EVIDENCE BASE

Coming next...

Which models
should we follow?

Migration Model

- Start with your current clients
- Select those who are reliable, have good support systems and with whom you have a good workign relationship
- Consider their diagnosis
- Take the time to prepare them
- Plan in-person sessions at regular intervals
- Do not work through their secretaries or others

- Nursing Homes



Schools



Hospitals





Rural
Hospitals

Correction Facilities



Home Health



Military & Veteran's Administration



Questions?



Go to <https://telehealth.org/GT2012>
for a special BONUS

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