Avoiding a disconnect with telemental health

New technologies are increasing access to mental health care and helping psychologists run their practices more smoothly and efficiently than ever before. But these benefits come with ethical, legal and clinical challenges.

By Jeffrey E. Barnett, PsyD, and Keely Kolmes, PsyD
Telehealth offers psychologists a tremendous opportunity: the ability to increase access to psychological care for people who, for a variety of reasons, are not able to meet with a practitioner face-to-face.

Most commonly, telehealth services include providing crisis intervention to clients over the telephone in between in-person sessions, delivering clinical services across long distances via interactive videoconferencing to clients who would not otherwise be able to receive treatment, and using smartphone apps to augment and enhance treatment services provided.

Unfortunately, the great benefits that can come with telehealth also introduce a number of ethical, legal, and clinical challenges. In this article, we present two cases that highlight the benefits and risks of telehealth.

Case #1: Unforeseen ethics concerns
Dr. Ino Vater, a licensed psychologist, sees telehealth as a potentially lucrative way to expand her private practice. She develops a business plan that includes advertising her services via the Internet to tap into new markets. She plans to begin offering email counseling with a guaranteed 24-hour response time at a rate of $25 per email. She also plans to offer online individual and group psychotherapy via Skype.
Dr. Vater announces these new services on her website, stressing her qualifications as a licensed practitioner with over 30 years of experience. Being somewhat technologically savvy, she already has her standard informed consent form on her website for new clients to review and sign electronically. She also has an electronic calendar on her website so new clients can schedule their initial appointment with her directly. Payments are easily accepted via PayPal, so clients can pay in advance for services.

Word spreads quickly and numerous new clients schedule appointments with her for email and videoconference counseling. She is thrilled that people from around the world are seeking treatment from her. She is also excited to see that the clients present with so many different problems. Pleased with all the new business, Dr. Vater continues accepting all new clients and is very gratified that the new business plan she developed is working so well.

Has Dr. Vater overlooked any important ethical, legal and clinical issues? In short, yes. While telemental health can be helpful to many individuals, how it is applied requires careful forethought.

As a starting point, practitioners must understand that all requirements of their profession’s ethics code apply to the provision of telemental health services. For example, APA’s Ethics Code applies to all professional services provided by psychologists, regardless of their type and whether they are delivered in person, over the phone, via the Internet, or in other ways.

As a result, before Dr. Ino Vater launched her new business plan, she should have considered her:

Competence in telemental health: Competence requires practitioners to possess the knowledge and skills needed to ensure they meet (and hopefully, exceed) the minimum expectations for the quality of professional services provided. Before providing any telemental health services, practitioners should familiarize themselves with relevant guidelines for this practice area, such as those available through the Tele-Mental Health Institute at http://telehealth.org/ethical-statements. APA has also published guidelines at www.apapracticecentral.org/ce/guidelines/telepsychology-guidelines.pdf.

While guidelines do not contain enforceable standards, they represent each profession’s consensus statement on telemental health best practices.

Technological competence: In addition to clinical competence, practitioners should also be knowledgeable about the various technologies used in telemental health practice, such as the hardware, software, type of Internet connection, privacy safeguards and security precautions needed to help ensure client privacy. Practitioners should be familiar enough with the systems so that they can adjust the auditory and visual quality of the technology as needed. They should be able to address difficulties that may arise, including the loss of an Internet connection or other interruptions of service, and have a backup plan for making contact should that happen.

Practitioners should also be familiar with the strengths and weaknesses of the software programs they use for clinical services. For example, while Dr. Vater may have over 30 years of clinical experience and may use certain technologies in her personal life, her failure to take courses on telemental health and her use of text-based therapy as an alternative suggests that her professional understanding of telemental health may be limited. In addition, her choice of a nonsecure video platform is inappropriate since Skype is not compliant with the Health Insurance Portability and Accountability Act (HIPAA). Only products that are HIPAA-compliant and meet federal requirements for protecting each client’s privacy should be used. Examples of such platforms include Vyzit, VSee, Zoom, Regroup Therapy and Breakthrough.

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videoconferencing for providing psychotherapy and counseling to a wide range of clients. Research has shown that the therapeutic alliance in psychotherapy via videoconferencing is comparable to the alliance found in in-person treatment.

There is also a broad literature on the effectiveness of videoconferencing in treating a wide range of mental health issues and concerns. It has been shown to be helpful in treating individuals, couples, families and groups for issues such as anxiety disorders including generalized anxiety disorder, post-traumatic stress disorder and panic disorder (e.g., Germain, Marchand, Bouchard, Drouin, & Guay, 2009; Spence, Holmes, March, & Lipp, 2006; Wims, Titov, Andrews, & Choi, 2010); depression and grief (e.g., Dominick et al., 2009; Ruwaard et al., 2008); and addictions (e.g., Merzelstein & Turner, 2006; Riper et al., 2009); among others. Mental health clinicians should familiarize themselves with this extensive and rapidly expanding literature to ensure that treatments offered have empirical support.

An important aspect of competence requires practitioners to be able to determine which telemental health services and treatment modalities may be appropriate for which clients. Telemental health would be inappropriate, for example, with clients with serious mental illness, including serious depression, suicidality and impulse control difficulties, such as violence and homicidalty. Unfortunately, Dr. Vater is welcoming all prospective clients into her telemental health practice, regardless of their needs or circumstances. While some clients may benefit from counseling services offered via telephone or email, some will need videoconferencing treatment, others will need in-person treatment and still others may benefit from a combination of these services. These decisions should be made after carefully screening each potential client to determine the seriousness of a diagnosis, whether or not the client is in crisis, the level of rapport, and the client’s motivation for therapy. Screening should also explore whether the client has a support system, whether the client can find competent clinician services, and whether the client has access to a secure and private space for participating in the telemental health services.

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The clinician should document the rationale for concluding that a particular client is suitable for telemental health services. Ideally, clinicians will also begin with cases that present the best chance of success from receiving distance services, such as clients who already have an established and positive treatment relationship with the clinician or who are temporarily traveling. Potential clients outside of one's local area who, after careful screening, are deemed to be best served by in-person treatment should be referred to others.

**Multicultural competence:** Mental health clinicians who provide services via the Internet may easily find themselves violating professional expectations for multicultural competence. For example, since Dr. Vater is accepting clients from around the world, she will be interacting with people from different cultural, ethnic and linguistic backgrounds. Failing to give careful consideration to each client’s individual differences may result in more harm than good.

When treating clients from around the world, it is not realistic to expect them to all speak English fluently. Yet, the ability to communicate effectively is essential for counseling to be successful. Similarly, clients may come from a wide range of cultural backgrounds. Even if there are no language barriers, practitioners should possess the necessary multicultural competence to ensure sensitivity to clients’ beliefs and practices so these are not misinterpreted or violated.

**Clinical competence and telemental health:** It may be tempting to accept new clients, regardless of their problems, but of course clinicians should not provide assessments and treatments via telemental health if they are not competent to provide them in person. Mental health services must
be provided in accordance with the requirements of the each professional’s code of ethics. As a result, if Dr. Vater is conceptualizing her email communications with clients as “advice giving” or “a helping conversation,” she may be overlooking clients’ treatment needs and expectations. She may also be misrepresenting the needs she is providing as something other than psychotherapy. Or she may be calling it overlooks clients’ treatment needs and expectations. She may also be misrepresenting the needs she is providing as something other than psychotherapy. Or she may be calling it psychotherapy when she is providing something else.

Informed consent process: Informed consent is designed to ensure that prospective clients get the information they need to make an educated decision about participating in the services offered. As APA’s Ethics Code states, psychologists are required to “inform clients/patients as early as is feasible in the therapeutic relationship about the nature and anticipated course of therapy, fees, involvement of third parties, and limits of confidentiality and provide sufficient opportunity for the client/patient to ask questions and receive answers.”

Practitioners who provide telemental health services will need to modify the informed consent procedures they typically use for in-person treatment for several reasons. For one, it is important to discuss openly with clients the options and alternatives available to them — including in-person treatment and the range of telemental health services — to help them decide which is most appropriate for them. Dr. Vater lists only two telemental health modalities on her website and both appear to be unacceptable forms of treatment for a clinician who is interested in evidence-based or HIPAA-compliant treatment. If clients’ treatment needs won’t be met by these modalities, she should refer these clients to other competent professionals who can provide the needed services.

In addition, Dr. Vater should discuss her fees up front, including any charges for contact between regularly scheduled appointments, such as phone calls, emails and texts. It also should be made clear whether insurance will cover the services provided. Clinicians need to be aware of appropriate billing codes for telemental health services so they are not inadvertently engaging in insurance fraud by billing these services the same as face-to-face services. Often there is a GT code signifier to show that the service took place via phone or video, although noting phone or video next to the code is recommended so as not to unintentionally mislead the insurance company.

The issues of confidentiality and its limits are especially relevant for clients considering telemental health. The informed consent agreement should cover these issues so that prospective clients understand that absolute confidentiality can never be guaranteed. Clinicians can help protect confidentiality by using encrypted email communications, virus and malware protection, firewalls, passwords and secure Internet networks. Clinicians should inform clients about the factors that can trigger an exception to confidentiality and to whom and in which state information will be released. The informed consent agreement should also include emergency contact information, as well as procedures to follow when interruptions in telehealth communication occur.

Also, since not all individuals have the legal right to give consent to treatment, the provider should first obtain proof that the prospective client is legally an adult and has the right to consent to treatment. In addition, clinicians have a duty to put procedures in place to ensure that someone does not pose as a client to gain access to someone else’s psychotherapy — for example, the client and provider can use an agreed upon password exchanged through encrypted media.

Practitioners should see informed consent as an ongoing process. They must obtain a client’s informed consent at the outset of the professional relationship, but also continually update it as circumstances change. Any substantive change to how treatment is provided, the risks involved in participating in it, fees or financial arrangements, and the like, should be discussed with clients before changes are made. So, if a client has agreed to videoconferencing for treatment, and over time the practitioner decides that a different treatment modality would be preferable, the informed consent should be updated to discuss the reasons for the change, the other options available, and the risks and benefits of each option.

Case #2: Legal issues and requirements

Dr. Roule Breyker is a licensed psychologist in Montana, practicing in one of the state’s four urban areas. Montana is a rural state with an average of only 6.4 persons per square mile. Many of its counties have no mental health professionals.

Dr. Breyker has decided to begin offering telemental health to residents throughout the state to better meet the need for services. His expansion is going so well that he has begun receiving inquiries from potential clients who live in the surrounding states of Wyoming, North Dakota, Idaho and South Dakota as well as from the neighboring Canadian provinces of Alberta, Saskatchewan and British Columbia. He is excited about how word of his telemental health services is spreading and he is gratified to know that he is helping to meet the significant mental health treatment needs of rural communities.

When he shares the news about his expanding work at a meeting with several Montana colleagues, he is shocked to hear their concerns about his interjurisdictional practice. Dr. Breyker states that he is helping people who would not otherwise be able to receive mental health treatment and he expresses dismay at his colleagues’ concerns. He abruptly leaves the meeting, chalking it up to his colleagues’ professional jealousy.

As noble as Dr. Breyker’s intentions are, practitioners who provide telemental health services must be sure that they follow the requirements of licensing laws and regulations of the jurisdictions where they work and where their clients live. Crossing state and national boundaries creates several important legal issues and challenges. They include:
**Licensing issues:** When using telemental health services to provide treatment to clients within one’s state, province or territory, the practitioner follows the dictates of his or her license. But licensure requirements may be less clear when a client lives in another jurisdiction — and so far, not all jurisdictions have addressed this issue in their licensing laws and regulations. In addition, decisions about what is appropriate are subject to idiosyncratic jurisdictional authorities.

This can create a tremendous challenge for practitioners who want to engage in interstate or international practice. An important first step for practitioners is to research the licensure laws and regulations in the jurisdiction where each client is located. If these documents lack clarity on interjurisdictional practice, the practitioner should submit a written request for clarification to that jurisdiction’s licensing board. For jurisdictions that require in-state licensure, the practitioner could seek licensure in that state (which may be time-consuming, expensive and impractical) or practice in the other jurisdiction without being licensed there, an option that can place the professional at significant legal risk. Some states will permit clinicians to practice short-term (e.g., a period of 30 days) in a state in which the clinician is unlicensed, if she or he is licensed in another state. Some of these provisions can be found at www.apapracticecentral.org/advocacy/state/telehealth-slides.pdf.

APA and the Association of State and Provincial Psychology Boards are working to resolve the challenge of interjurisdictional practice. They also are attempting to develop interstate compacts similar to those of the nursing profession, which allow nurses to practice in other states with their license from their home state if they follow the laws and regulations of the local jurisdiction. Until such an arrangement is adopted, mental health professionals must be cautious and keep in mind that legal and regulatory requirements may vary from state to state.

The same issues are relevant when providing mental health services across international borders. It is each clinician’s responsibility to research any applicable licensing laws and regulations prior to providing professional services in those jurisdictions.

**Duty to report:** What should Dr. Breyker do if a client in Wyoming discloses in a telemental health session that she is physically or sexually abusing her child? Should he follow the laws in Montana? Or, those in Wyoming (and does he even know them)? Or, should he attempt to follow both states’ laws? If he is licensed in both jurisdictions, there may be different requirements.

An important study by Maheu and Gordon (2000) found that of the mental health professionals providing telemental health services whom they surveyed:
- 75 percent reported providing services across state lines.
- 60 percent inquired about each client’s state of residence.
- 74 percent were uncertain or incorrect about each state’s telehealth laws.
- 50 percent made advance arrangements for responding to emergencies or crises.
- 48 percent used a formal informed consent procedure prior to providing online services.

It is vital that Dr. Breyker research the laws relevant to the mandatory reporting of suspected abuse and neglect of minors in each state in which he provides services. But, as is highlighted in the Maheu and Gordon study, one must first find out where potential clients live. Even if Dr. Breyker becomes licensed in the surrounding states or obtains temporary licensing permission to offer telemental health services in these states, he still needs to be knowledgeable about the laws in these states relevant to his role as a treating clinician. In addition, clinicians should be aware that when one reports across state lines, one loses immunity. (Interstate licensure compacts may, however, more formally address this issue.)

While every state has laws regarding the mandatory reporting of suspected abuse and neglect of minors, the laws differ with regard to how abuse and neglect are defined, the threshold to be followed for making reports, in which jurisdiction the report should be filed, the age of majority in that state, and more. Failure to know and follow these laws can place minors at risk unnecessarily. Understanding these laws also is necessary so that practitioners can address these potential limits to confidentiality as part of the informed consent process.

Similarly, all jurisdictions have laws that address mandatory reporting requirements for the suspicion of harm to other vulnerable individuals, such as some older adults and developmentally delayed adults. Yet each jurisdiction’s laws are different. Some have focused on different definitions of what it means to be a vulnerable adult; some have different definitions

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of abuse, neglect, self-neglect and exploitation; and some have different reporting thresholds. Once again, possessing knowledge of these laws in the jurisdictions where clients reside is essential for fulfilling both ethical and legal obligations.

**Dangerousness and the duty to warn, protect or treat:**

Based on the landmark *Tarasoff v. Regents of the University of California* legal decisions (1974/1976), many jurisdictions have laws regarding the requirement to take action when a client discloses an imminent threat to do harm to an identifiable victim or group of victims. Yet, these laws vary significantly. Some jurisdictions have duty-to-warn laws and some have duty-to-protect laws. Others have duty-to-warn, protect, and treat laws and some have none of these requirements. As a result, a clinician’s good-faith effort to protect others from harm may result in inappropriately violating the client’s confidentiality and violating state law.

When practicing telemental health across national borders, the issue is further complicated since these issues may be addressed quite differently in another country — or may not be addressed at all.

It is essential that mental health professionals who practice telemental health cross-jurisdictionally be familiar with the laws in the jurisdictions where the clients reside. Yet, in a study by Pabian, Welfel, & Beebe (2009), 76.4 percent of clinicians surveyed “were misinformed about their state laws, believing that they had a legal duty to warn when they did not, or assuming that warning was their only legal option when other protective actions less harmful to client privacy were allowed.” This failure to know and follow these laws can have lethal and tragic consequences. Similar to other reporting requirements, knowledge of these laws affects the informed consent agreement with regard to the limits to confidentiality that exist in the treatment relationship.

Issues regarding both voluntary and involuntary hospitalization across state lines are quite complex. In addition to understanding state laws where the client resides, it would be wise to have handy the numbers for local police and the address for the nearest ER when a client engages our services from another location.

**Recommendations for telemental health practice**

In summary, to practice telemental health in an ethical, legal and clinically effective manner, we recommend that clinicians:

• Follow all requirements for ethical conduct from your profession’s code of ethics regardless of the telemental health medium used.
• Become familiar with and be guided by relevant telemental health practice guidelines.
• Learn and follow the relevant telemental health laws in all jurisdictions where clients reside.
• To practice effectively, be familiar with the laws in the jurisdictions where clients reside.
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jurisdictions in which you will be providing clinical services.

- Assess each potential client’s treatment needs to ensure the appropriateness of participating in telemental health and that the most appropriate medium is used. Make referrals to other competent professionals when in the client’s best interest.

- Use a comprehensive informed consent process that addresses all issues relevant to the practice of telemental health.

- Take all reasonable actions and use all readily available technology to protect each client’s confidentiality, such as the encryption of email communications.

- Only use HIPAA-compliant software programs to provide video conferencing with clients.

- Only provide clinical services that you are competent to provide based on your education, training and relevant clinical experience.

- Before providing telemental health services, develop competence regarding all hardware and software you will be utilizing to communicate with clients.

- Ensure multicultural competence and attend to linguistic and other diversity issues in your online interactions with clients.

- Learn about and follow all duty to warn and mandatory reporting requirements in the jurisdictions where you are providing telemental health services.

- Before providing telemental health services, learn about resources in each client’s local area and make arrangements there for emergency and crisis situations.

- Document all telemental health services provided just as you would document in-person mental health services, ensuring that all records are stored securely so that each client’s confidentiality is preserved.

- When unsure if a client should be treated via telemental health, utilize an ethical decision-making model and consult with experienced colleagues.

- Maintain appropriate liability insurance coverage and confirm that your malpractice insurance policy covers the provision of telemental health services.

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