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.

• YOUR PART: You are encouraged to seek specific advice from your specific legal, regulatory, ethical and malpractice bodies before offering any online services or programs to consumers. Get all such opinions in writing, and have your informed, trusted, local, legal counsel review them for their full significance.
We Are Re-tooling
Types of Health Care Technology

With permission from Teri Louden of the Louden 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

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.
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
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 Psychological Association. (2010). Ethical principles of psychologists and code of conduct
- British Psychological Society. (2009). The Provision of Psychological Services via the Internet and Other Non-direct Means
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 ...

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
• 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

• 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

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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
Clinic 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 working 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
Military & Veteran’s Administration
Questions?

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

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