

# The Six Keys of Distance Therapy: Essentials of Ethical and Legal Telehealth Practice

(Knoxville Area Psychological Association, 1.5 CE hrs.)

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# Introduction

## About this seminar/webinar

Dealing with ethical issues can be challenging and confusing. When those issues involve the rapidly developing world of distance therapy/telepsychology, or technology in general, they can be especially daunting and anxiety-provoking. This can be especially true when there additional legal, clinical or other issues are involved. Counseling and behavioral health professionals can be left with more questions than answers and without a clear method for navigating these waters.

# Introduction (cont'd)

## Learning objectives

At the conclusion of this program, participants will be able to:

1. Identify the Six Keys to providing ethical and legal distance therapy (i.e., telehealth) services.
2. Describe the unique ethical and legal challenges that can occur when using distance therapy (i.e., telehealth).
3. Determine and practice ethical and legal courses of action for vignettes involving distance therapy-related (i.e., telehealth-related) situations.

# Introduction (cont'd)

## Disclaimer & important notes

- The presenter is not an attorney and none of the information or comments in this seminar is intended to provide legal advice.
- Caution! **Laws, rules and regulations vary significantly from one state to another** and can change without notice.
- Legal situations are often highly individualized and may require the assistance of a qualified attorney who is licensed in your state and has appropriate expertise in mental health issues.

# Part 1

## Navigating Distance Therapy/Telehealth Ethical & Legal Issues

# The Role of National Professional Organizations in Technology Issues

# National Professional Organizations and Technology Issues

Most national professional organizations (e.g., APA, ACA, NASW, AAMFT) have addressed technology issues a variety of ways. Typically, this has included #1 and/or #2 below:

1. **Additions to the organization's code of ethics.** (Adopted for use by some state licensing boards\*)

- Additions to the Code's fundamental principles (found in the Code's preamble or equivalent) (e.g., NASW, 2017; AAMFT, 2015)
- Addition of specific new technology-related standards (e.g., ACA, 2014 Section H)

2. **Establishment of technology-related guidelines.** These guidelines are separate from the organization's code of ethics. (e.g., APA, 2013; NBCC, 2016)

\*Note: Remember that not every state has adopted into use the codes of ethics from the above organizations. If a state has developed its own codes for each type of license the code may or may not specifically address technology issues.





# The APA and Telepsychology

The APA's Guidelines for the Practice of Telepsychology (2013) states,

*“These guidelines are designed to address the developing area of psychological service provision commonly known as telepsychology. Telepsychology is defined, for the purpose of these guidelines, as the provision of psychological services using telecommunication technologies, as expounded in the Definition of Telepsychology section of these guidelines. The expanding role of technology in the provision of psychological services and the continuous development of new technologies that may be useful in the practice of psychology present unique opportunities, considerations, and challenges to practice. With the advancement of technology and the increased number of psychologists using technology in their practices, these guidelines have been prepared to educate and guide them.” (APA, 2013)*

# The ACA and Technology



## The American Counseling Association

In 2014 the ACA devoted an entire new major section (H), “Distance Counseling, Technology, and Social Media” stating,

*“Counselors understand that the profession of counseling may no longer be limited to in-person, face-to-face interactions. Counselors actively attempt to understand the evolving nature of the profession with regard to distance counseling, technology, and social media and how such resources may be used to better serve their clients. Counselors strive to become knowledgeable about these resources. Counselors understand additional concerns related to the use of distance counseling, technology, and social media and make every attempt to protect confidentiality and meet any legal and ethical requirements for the use of such resources.” (ACA, 2014)*

# The AAMFT and Technology

## The American Association of Marriage & Family Therapy

The AAMFT Code of Ethics (2015) Standard VI states,

*“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.” (AAMFT, 2015)*

# The NASW and Technology

The NASW (2017) addresses the issue of technology in the preamble section of its Code of Ethics stating,

*“With growth in the use of communication technology in various aspects of social work practice, social workers need to be aware of the unique challenges that may arise in relation to the maintenance of confidentiality, informed consent, professional boundaries, professional competence, record keeping, and other ethical considerations. In general, all ethical standards in this Code of Ethics are applicable to interactions, relationships, or communications, whether they occur in person or with the use of technology. For the purposes of this Code, “technology-assisted social work services” include any social work services that involve the use of computers, mobile or landline telephones, tablets, video technology, or other electronic or digital technologies; . . . (cont’d)*



## NASW (cont'd)

*... this includes the use of various electronic or digital platforms, such as the Internet, online social media, chat rooms, text messaging, e-mail, and emerging digital applications. Technology-assisted social work services encompass all aspects of social work practice, including psychotherapy; individual, family, or group counseling; community organization; administration; advocacy; mediation; education; supervision; research; evaluation; and other social work services. Social workers should keep apprised of emerging technological developments that may be used in social work practice and how various ethical standards apply to them.”*



# Federal Laws and Technology Issues

# Federal Laws and Technology Issues

Federal laws pertaining to personal records and privacy

(See previous descriptions)

HIPAA – healthcare records & other private client/patient information

FERPA - education records & other private student information from educational institutions which receive federal funding.

42 CFR Part 2 – substance use disorder patient records of facilities/institutions which receive federal funding.

# Federal Laws and Technology Issues (cont'd)

## HIPAA and related Rules and Acts (HHS, 2017)

The **HIPAA Privacy Rule** establishes national standards to protect individuals' medical records and other personal health information and applies to health plans, health care clearinghouses, and those health care providers that conduct certain health care transactions electronically.

The **HIPAA Security Rule** deals with electronic Protected Health Information (ePHI), which is essentially a subset of what the HIPAA Privacy Rule encompasses.

The **HIPAA transaction and code sets standards** create a uniform way to perform electronic data interchange (EDI) transactions for submitting, processing, and paying claims.

**The Health Information Technology for Economic and Clinical Health (HITECH) Act**, enacted as part of the American Recovery and Reinvestment Act of 2009, was signed into law on February 17, 2009, to promote the adoption and meaningful use of health information technology. (U.S. ONC, 2018)



# Guidance Resources for HIPAA and Technology Issues

Key terms related to technology and resource links:

**Overall HIPAA guidance for health care professionals:** Go to the official governmental site: <https://www.hhs.gov/hipaa/for-professionals>

**Covered Entities** (i.e., individuals and organizations that must comply with HIPAA)  
Summary: <https://www.hhs.gov/hipaa/for-professionals/covered-entities/index.html>

**PHI & ePHI** (i.e., protected health information & electronic protected health information), HIPAA Help Center, 2017.

## **Guidance Resources for HIPAA and Technology Issues (cont'd)**

### **Privacy Rule**

Summary: <https://www.hhs.gov/sites/default/files/privacysummary.pdf>

### **Business Associates & Business Associate Agreements (BAA)**

Summary: <https://www.hhs.gov/hipaa/for-professionals/privacy/guidance/business-associates/index.html>

### **Security Rule**

Summary: <https://www.hhs.gov/hipaa/for-professionals/security/laws-regulations/index.html>

### **HIPAA & FERPA**

<https://www.hhs.gov/hipaa/for-professionals/faq/ferpa-and-hipaa>

## Guidance Resources for HIPAA and Technology Issues (cont'd)

### **HIPAA & mental health**

<https://www.hhs.gov/hipaa/for-professionals/faq/mental-health>

### **Personal representatives** (e.g., parents, guardians of minors)

<https://www.hhs.gov/hipaa/for-professionals/privacy/guidance/personal-representatives/index.html>

### **Health information technology**

<https://www.hhs.gov/hipaa/for-professionals/special-topics/health-information-technology/index.html>

## **Guidance Resources for HIPAA and Technology Issues (cont'd)**

### **Cloud computing** (e.g., practice management software)

<https://www.hhs.gov/hipaa/for-professionals/special-topics/cloud-computing/index.html>

### **Authorizations** (i.e., to release PHI or EPHI)

<https://www.hhs.gov/hipaa/for-professionals/faq/mental-health>

# Practice Management Systems

There is now a selection of many practice management products available for private practices and healthcare organizations of all sizes and type that will address many (if not all) of the practitioner's or organization's technology needs. For example, **many have built-in video counseling platforms.**

Where do you start your search?

Below are examples of websites can be of great assistance to providers in determining their needs and comparing products and services among practice management system and EMR vendors.

- <https://www.capterra.com/mental-health-software/>
- [technologyadvice.com/mental-behavioral-health-software/](https://technologyadvice.com/mental-behavioral-health-software/)

# Practice Management Systems (cloud-based)

## Practice Management Systems (cont'd)

What can these system do?

Typical features of practice management systems

- ✓ Cloud-based with remote access at any time (use a secure connection, not open WIFI)
- ✓ Secure client records (intake forms, progress notes, etc.)
- ✓ **Secure on-line video counseling platform**
- ✓ Secure client scheduling & automatic appointment reminder messaging
- ✓ Electronic insurance claim submission
- ✓ Secure email or messaging with clients
- ✓ Client accounts & billing
- ✓ and more

Note: All of the above features are impacted by HIPAA and related laws because they involve electronic protected health information (ePHI).

## Practice Management Systems (cont'd)

### HIPAA compliant products & services

All practice management systems handle client records (i.e., *Electronic Protected Health Information* [ePHI]) and therefore the companies that offer them must become *Business Associates* (see below) of the providers (*Covered Entities*) that purchase their products/services. As a result, the companies must be compliant with HIPAA regulations. So, the company should be quick to point out in its advertising that its products, services and processes are fully HIPAA compliant.

### Business Associate Agreements (BAA)

Before seriously considering a practice management system or EMR providers should also inquire with the vendor about a *Business Associate Agreement (BAA)* which substantially protects the provider against breaches of ePHI [electronic protected health information] caused by the *Business Associate*. A vendor's representative should be immediately familiar with the term "BAA." If not, you should probably consider using a different company's services.



## Practice Management Systems (cont'd)

There are numerous advantages to subscribing to a quality, cloud-based practice management or EMR system. Some are practical and efficiency-related advantages. However, perhaps the most important advantage involves clients' Protected Health Information.

**When a provider subscribes to a practice management system, a Business Associate Agreement (BAA) is signed between the provider and the practice management system company (i.e., the vendor). By becoming a Business Associate of the provider most of the liability for security and confidentiality of client records shifts to the vendor. This decreases the provider's ethical and legal exposure and, in turn, frees the provider to focus on other activities.**

# Distance Therapy/Telehealth

(aka, telepsychology, distance counseling, etc.)

# Telepsychology in Tennessee

*TCA 63-11-203. Practice of psychologist.*

*(a)*

*(1) “Practice of psychologist” means the observation, description, evaluation, interpretation and modification of human behavior by the application of psychological principles, methods and procedures for the purpose of assessing, preventing or eliminating symptomatic, maladaptive or undesired behavior and of enhancing interpersonal relationships, work and life adjustment, personal effectiveness, behavioral health and mental health.*

*(2)(A) “Practice of psychologist” includes, but is not limited to:*

- (i) Psychological testing and the evaluation or assessment of personal characteristics, such as intelligence, personality, abilities, interests, aptitudes and neuropsychological functioning;*
- (ii) Counseling, psychoanalysis, psychotherapy, hypnosis, biofeedback and behavior analysis and therapy;*
- (iii) Psychological diagnosis and treatment of mental, emotional and nervous disorders or disabilities, alcoholism and substance abuse, disorders of habit or conduct, as well as of the psychological aspects of physical illness, accident, injury or disability;*
- (iv) Case management and utilization review of psychological services;*

## TCA 63-11-203. Practice of psychologist. (cont'd)

*(v) Psychoeducational evaluation, therapy, remediation and consultation;*

*(vi) Forensic evaluation; provided, that a person licensed under this chapter performing forensic evaluation is considered to be acting within their lawful scope of practice and the practice of forensic evaluation is not exclusive to individuals licensed under this chapter;*

*(vii) Parent coordination; provided, that a person licensed under this chapter performing parent coordination is considered to be acting within their lawful scope of practice and the practice of parent coordination is not exclusive to individuals licensed under this chapter; and*

***(viii) Telepsychology, which means the practice of psychology via electronic communications technology by persons licensed under this chapter [emphasis added]***

(LawServer Online, 2021)

[https://www.lawserver.com/law/state/tennessee/tn-code/tennessee\\_code\\_63-11-203](https://www.lawserver.com/law/state/tennessee/tn-code/tennessee_code_63-11-203)

## The Six Keys to Navigating Distance Therapy

Key #1 - Compliance with federal privacy laws & technology standards

Key #2 - Interjurisdictional practice

Key #3 - Competency

Key #4 - Informed consent

Key #5 - Policies & procedures

Key #6 - Insurance related issues.

## The Six Keys to Navigating Distance Therapy

### **Key #1 – Compliance with federal privacy laws & technology standards**

#### **A. Technology platform**

The audio/visual technology platform used to conduct the distance therapy must meet the requirements of the relevant federal privacy & related laws (e.g., HIPAA, FERPA, 42 CFR Pt.2)

## Key #1 - Compliance with federal laws that regulate privacy (cont'd)

### Technology platform (cont'd)

For example, under HIPAA, to ensure adequate security of clients' ePHI providers who are required to comply with HIPAA (i.e., *covered entities*) must meet these requirements:

1. Use only HIPAA-compliant companies and technology for conducting distance therapy.
2. The company/vendor providing the technology must become a *Business Associate* of the provider (*covered entity*) and a *Business Associate Agreements* (BAA) must be in place between the provider and the company.

## Key #1 - Compliance with federal laws that regulate privacy (cont'd)

### Technology platform (cont'd)



#### *Why You Should Not Use SMS, Skype or Email for Telemedicine* (HIPAA Journal, 2020)

*When **ePHI** created by a medical professional or a healthcare organization [a covered entity] is stored by a third party, the covered entity is required to have a **Business Associate Agreement (BAA)** with the third party storing the data. This **BAA** must include methods used by the third party to ensure the protection of the data and provisions for regular auditing of the data's security.*

*As copies of communications sent by SMS, Skype or email remain on service providers' servers, and contain individually identifiable healthcare information, it would be necessary for the covered entity to have a **BAA** with (e.g.) Verizon, Skype or Google in order to be compliant with the HIPAA guidelines on telemedicine.*

*As (e.g.) Verizon, Skype and Google will not enter into **BAAs** with **covered entities** for these services, the **covered entity** is liable for any fines or civil action should an unauthorized disclosure of **ePHI** occur due to the third party's lack of HIPAA-compliant security measures [emphasis added].*

(HIPAA Journal, 2020), <https://www.hipaajournal.com/hipaa-guidelines-on-telemedicine/#spu-9471>





## **Key #1 - Compliance with federal laws that regulate privacy (cont'd)**

### **Technology platform (cont'd)**

#### **Temporary suspension of penalties for use of non-HIPAA-compliant technology during the national emergency (COVID-19)**

From: U.S. Department of Health & Human Services (March 30, 2020a)

<https://www.hhs.gov/hipaa/for-professionals/special-topics/emergency-preparedness/notification-enforcement-discretion-telehealth/index.html>

*The Office for Civil Rights (OCR) at the Department of Health and Human Services (HHS) is responsible for enforcing certain regulations issued under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended by the Health Information Technology for Economic and Clinical Health (HITECH) Act, to protect the privacy and security of protected health information, namely the HIPAA Privacy, Security and Breach Notification Rules (the HIPAA Rules).*

*During the COVID-19 national emergency, which also constitutes a nationwide public health emergency, covered health care providers subject to the HIPAA Rules may seek to communicate with patients, and provide telehealth services, through remote communications technologies. Some of these technologies, and the manner in which they are used by HIPAA covered health care providers, may not fully comply with the requirements of the HIPAA Rules.*

## Temporary suspension of HIPAA technology requirements ... (cont'd)

*OCR will exercise its enforcement discretion and will not impose penalties for noncompliance with the regulatory requirements under the HIPAA Rules against covered health care providers [i.e., covered entities] in connection with the good faith provision of telehealth **during the COVID-19 nationwide public health emergency** [emphasis added]. This notification is effective immediately.*

*A covered health care provider [i.e., covered entity] that wants to use audio or video communication technology to provide telehealth to patients during the COVID-19 nationwide public health emergency **can use any non-public facing remote communication product** that is available to communicate with patients. **OCR is exercising its enforcement discretion to not impose penalties for noncompliance with the HIPAA Rules** in connection with the good faith provision of telehealth using such **non-public facing** audio or video communication products **during the COVID-19 nationwide public health emergency. This exercise of discretion applies to telehealth provided for any reason**, regardless of whether the telehealth service is related to the diagnosis and treatment of health conditions related to COVID-19 [emphasis added].*



*(cont'd on next slide)*

## Temporary suspension of HIPAA technology requirements ... (cont'd)

*For example, a covered health care provider in the exercise of their professional judgment may request to examine a patient exhibiting COVID- 19 symptoms, using a video chat application connecting the provider's or patient's phone or desktop computer in order to assess a greater number of patients while limiting the risk of infection of other persons who would be exposed from an in-person consultation. Likewise, a covered health care provider [i.e., a covered entity] may provide similar telehealth services in the exercise of their professional judgment to assess or treat any other medical condition, even if not related to COVID-19, such as a sprained ankle, dental consultation or psychological evaluation, or other conditions.*

*Under this Notice, **covered health care providers may use popular applications** that allow for video chats, including Apple FaceTime, Facebook Messenger video chat, Google Hangouts video, Zoom, or Skype, to provide telehealth **without risk that OCR might seek to impose a penalty for noncompliance with the HIPAA Rules** related to the good faith provision of telehealth during the COVID-19 nationwide public health emergency [emphasis added]. Providers are encouraged to notify patients that these third-party applications potentially introduce privacy risks, and providers should enable all available encryption and privacy modes when using such applications [emphasis added].*

*Under this Notice, however, Facebook Live, Twitch, TikTok, and similar video communication applications are **public facing, and should not be used in the provision of telehealth by covered health care providers** [emphasis added]. (U.S. Department of Health & Human Services, March 30, 2020a)*





## HIPAA compliant distance therapy platforms

From: U.S. Dept. Health & Human Services (March 30, 2020a)

<https://www.hhs.gov/hipaa/for-professionals/special-topics/emergency-preparedness/notification-enforcement-discretion-telehealth/index.html>

*Covered health care providers that seek additional privacy protections for telehealth while using video communication products should provide such services through technology vendors that are HIPAA compliant and will enter into HIPAA business associate agreements (BAAs) in connection with the provision of their video communication products. The list below includes some vendors that represent that they provide HIPAA-compliant video communication products and that they will enter into a HIPAA BAA.*

- *Skype for Business / Microsoft Teams*
- *Updox*
- *VSee*
- *Zoom for Healthcare*
- *Doxy.me*
- *Google G Suite Hangouts Meet*
- *Cisco Webex Meetings / Webex Teams*
- *Amazon Chime*
- *GoToMeeting*
- *Spruce Health Care Messenger*



(Cont'd on next slide)

## HIPAA compliant distance therapy platforms (cont'd)

*Note: OCR has not reviewed the BAAs offered by these vendors [listed above], and this list does not constitute an endorsement, certification, or recommendation of specific technology, software, applications, or products. There may be other technology vendors that offer HIPAA-compliant video communication products that will enter into a HIPAA BAA with a covered entity. Further, OCR does not endorse any of the applications that allow for video chats listed above.*

***Under this Notice, however, OCR will not impose penalties against covered health care providers for the lack of a BAA with video communication vendors or any other noncompliance with the HIPAA Rules that relates to the good faith provision of telehealth services during the COVID-19 nationwide public health emergency [emphasis added].***

(U.S. Dept. Health & Human Services, March 30, 2020a) <https://www.hhs.gov/hipaa/for-professionals/special-topics/emergency-preparedness/notification-enforcement-discretion-telehealth/index.html>





## What is a "**non-public facing**" remote communication product? (U.S. Dept. of Health & Human Services [HHS], 2020c)

*A "non-public facing" remote communication product is one that, as a default, allows only the intended parties to participate in the communication.*

*Non-public facing remote communication products would include, for example, platforms such as Apple FaceTime, Facebook Messenger video chat, Google Hangouts video, Whatsapp video chat, Zoom, or Skype. Such products also would include commonly used texting applications such as Signal, Jabber, Facebook Messenger, Google Hangouts, Whatsapp, or iMessage. Typically, these platforms employ end-to-end encryption, which allows only an individual and the person with whom the individual is communicating to see what is transmitted. The platforms also support individual user accounts, logins, and passcodes to help limit access and verify participants. In addition, participants are able to assert some degree of control over particular capabilities, such as choosing to record or not record the communication or to mute or turn off the video or audio signal at any point.*

## Key #1 - Technological standards must be met (cont'd)

### B. Secure connection to the internet

A secure connection (i.e., one that meets HIPAA standards) should always be used when accessing or transmitting clients' ePHI. The concern is the others might be able to intercept the connection or otherwise tap into internet connection being used and see ePHI. In general, secure connections include:

- **Secure WIFI** – If using WIFI **always be sure to use a secure WIFI connection**. **Never use open WIFI** to access or transmit ePHI (or for that matter, any other private information such as bank accounts).
- **Smart phones** – Using a smart phone to access the internet is usually sufficiently secure to avoid others being able to intercept one's signal and see ePHI.
- **Hot spots** – A hot spot uses a smart phone's signal to access the internet and then provide a secure signal which works like a secure WIFI signal within a very limited distance (usually just a few yards). As a result, another device (e.g., laptop computer) can use the hot spot signal to securely access the internet.



# Key #1 - Technological standards must be met (cont'd)

## B. Secure connection (cont'd)

- **VPNs (virtual private networks)** – *VPNs offer several advantages for accessing and transmitting ePHI. A VPN creates a secure connection between you and the internet. When you connect to the internet through a VPN, all your data traffic is sent through an encrypted virtual tunnel. This has multiple advantages:*
  - ✓ *You'll be more anonymous on the internet: your IP address and location won't be visible to just anyone anymore.*
  - ✓ *You'll be safer on the internet: the encrypted tunnel will keep away hackers and cybercriminals and your device won't be as vulnerable to attacks.*
  - ✓ *You'll be more free on the internet: by using different IP addresses, you'll be able to access websites and online services that would otherwise be blocked.*

(VPNoverview, 2020) <https://vpnoverview.com/vpn-information/what-is-a-vpn/>



# Distance Therapy / 6 Keys (cont'd)

## **Key #2 - Interjurisdictional practice** (providing services across state lines)

### Important legal issues

1. Interjurisdictional practice is primarily a legal issue at the state level. Remember that laws take precedence over codes of ethics which states have adopted from national professional organizations (e.g., APA, ACA, NASW, etc.).
2. Licenses for mental health providers are issued only by states (not the federal government). These state licenses are limited to authorizing the mental health professional to provide state-regulated healthcare services (i.e., psychotherapy, psychological testing, etc.) when the provider is physically/geographically within the state of licensure at the time the services are rendered and to provide these services only to clients/patients who are physically/geographically within the state of licensure.
3. A state only has jurisdiction regarding healthcare services which are rendered to a patient/client who is within that state. No state has the legal authority/jurisdiction to authorize a provider licensed in that state to provide services to a client/patient who is physically in a different state.



## Key #2 - Interjurisdictional practice (cont'd)

4. An increasing number of states, under specific conditions and limitations, have enacted laws (or temporary executive orders during a disaster/emergency) which allow a provider who is licensed in another state to **temporarily provide services to a client/patient who is in their state**. However, importantly, many states have no such provisions and the provisions that do exist vary significantly from one state to the next.

5. Interstate compacts. Compacts are contracts among states, which permit certain types of healthcare professionals who are licensed in a compact member state to practice in other compact member states (either physically/in-person or **through telehealth**) without need for being licensed in both states. The compact is designed to reduce regulatory barriers and increase access to mental health care.

PSYPACT is a compact that allows psychologists from participating states to practice telepsychology to a client who is physically within a compact-participating state or to offer temporary, in-person services from within the participating state. (Note: TN joined PSYPACT in May, 2021.)

PSYPACT update as of June 21, 2021:

According to PSYPACT (2021), 25 states plus Washington, D.C. have enacted PSYPACT. States that have recently enacted PSYPACT legislation include Tennessee (5/15/21), West Virginia (4/23/21), Ohio (4/29/21), Kansas (5/17/2021), and Maryland (5/19/2021).

**(See supplemental resource section for more information about PSYPACT.)**

## Key #2 - Interjurisdictional practice (cont'd)

6. Special cases (e.g., closed federal systems). In a few special cases, state licensing rules regarding mental health care services do not apply as they normally would. This occurs within closed U.S. federal systems such as the Veterans' Administration (VA), the Department of Defense/Military and the Federal Bureau of Prisons but only when both the provider and the patient/client are within the closed system. For example, a psychologist who is employed by the VA is permitted to provide distance therapy to a VA patient who is physically within another state irrespective of state laws and licensing rules in either state.



## Interjurisdictional practice (cont'd)



Explanatory statement from the APA Legal & Regulatory Affairs Staff, Dec. 15, 2016:

(Note: In general, this statement is applicable to all types of mental health provider license types, not solely psychologists.)

*Typically, when providing health care services, a psychologist sees his or her patients in a private office or other clinical setting. The assumption is that the psychologist is licensed in the state or jurisdiction where he or she practices and therefore, is permitted by law to provide those services.*

*What happens when the patient is somewhere else? Perhaps the patient is moving out of state or headed to college in another state. Maybe the patient has a temporary out-of-state job placement or is taking care of a family member elsewhere. What if the patient wants to continue therapy from a new location, either by phone, video conferencing or other digital means?*

## Interjurisdictional practice (cont'd)



(Quote cont'd from previous slide)

*... In most cases, the psychologist who has an established therapeutic relationship with the patient would like to honor the patient's request. Yet, what if the psychologist is not licensed in the state or jurisdiction where the patient will be?*

*The psychologist's license to practice does not grant the authority to provide services to patients wherever the patient may be. A psychology license is not like a driver's license, where an eligible driver obtains a license in his or her state of residence and is permitted to drive anywhere throughout the U.S. using that license. To the contrary, the psychology **license only permits the psychologist to practice in the state or jurisdiction that issued the license.** [emphasis added]*

(APA Practice Organization Legal & Regulatory Affairs, 2016)

**Important note: For information about PSYPACT, an interstate compact see:**

**<https://www.apaservices.org/practice/legal/technology/psypact-licensure-requirements>**

PSYPACT  
interstate  
compact

## Interjurisdictional practice (cont'd)

Practicing across state lines – 3 scenarios (see following graphics)

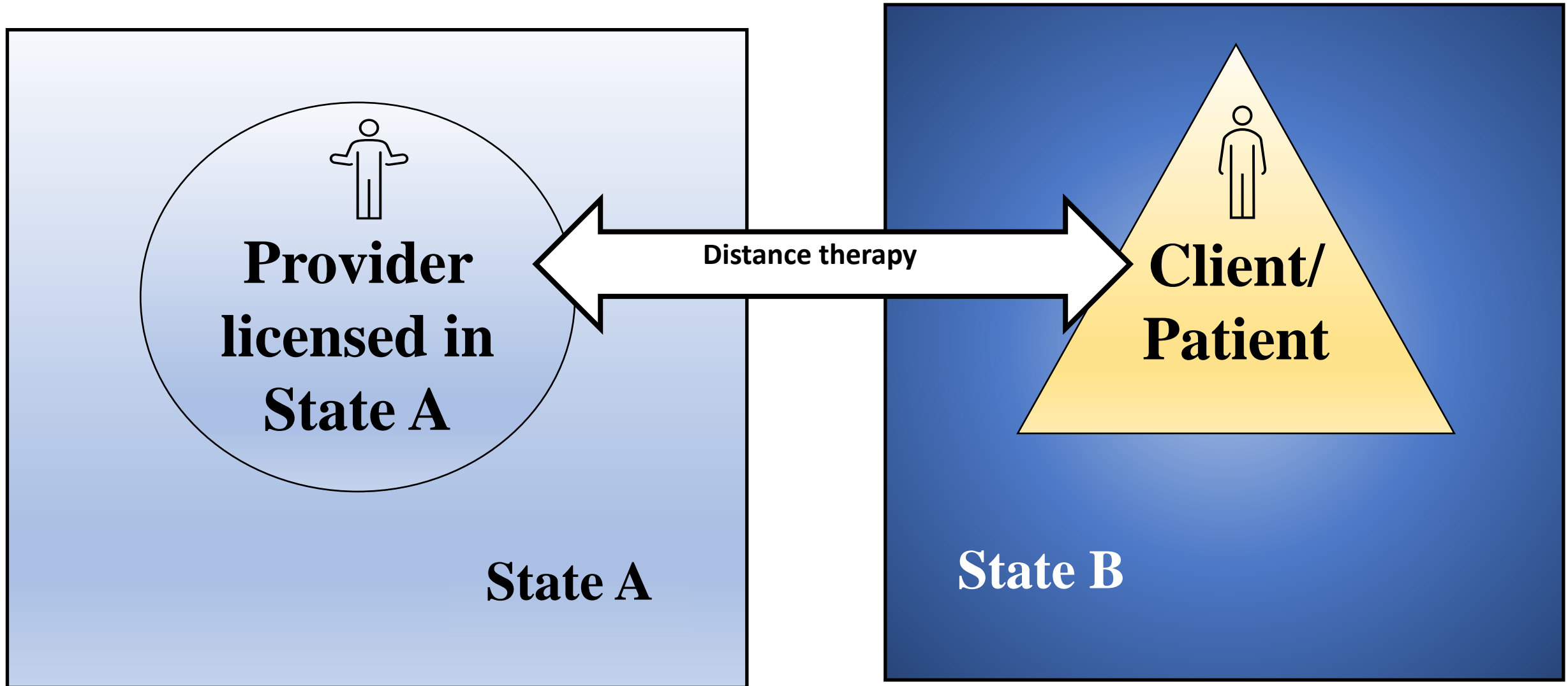
State laws vary considerably regarding the circumstances under which a mental health provider who is licensed in one state is legally allowed to do the following:

Scenario #1 – Provider is physically in the state where she/he is licensed to practice. Client/patient is physically in another state in which the provider is NOT licensed to practice.

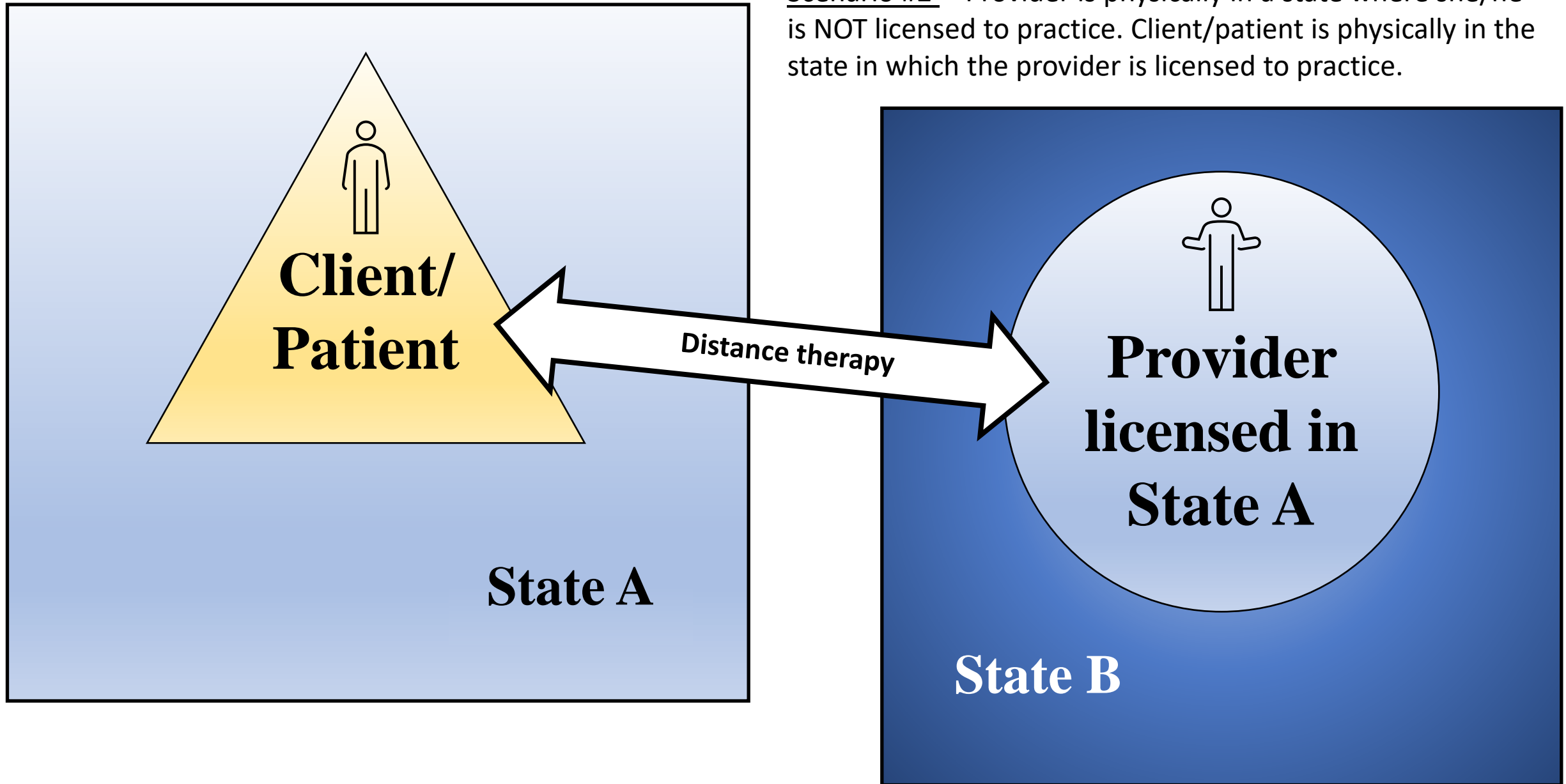
Scenario #2 -- Provider is physically in a state where she/he is NOT licensed to practice. Client/patient is physically in the state in which the provider is licensed to practice.

Scenario #3 -- Provider is physically in a state where she/he is NOT licensed to practice. Client is also physically in a state in which the provider is NOT licensed to practice.

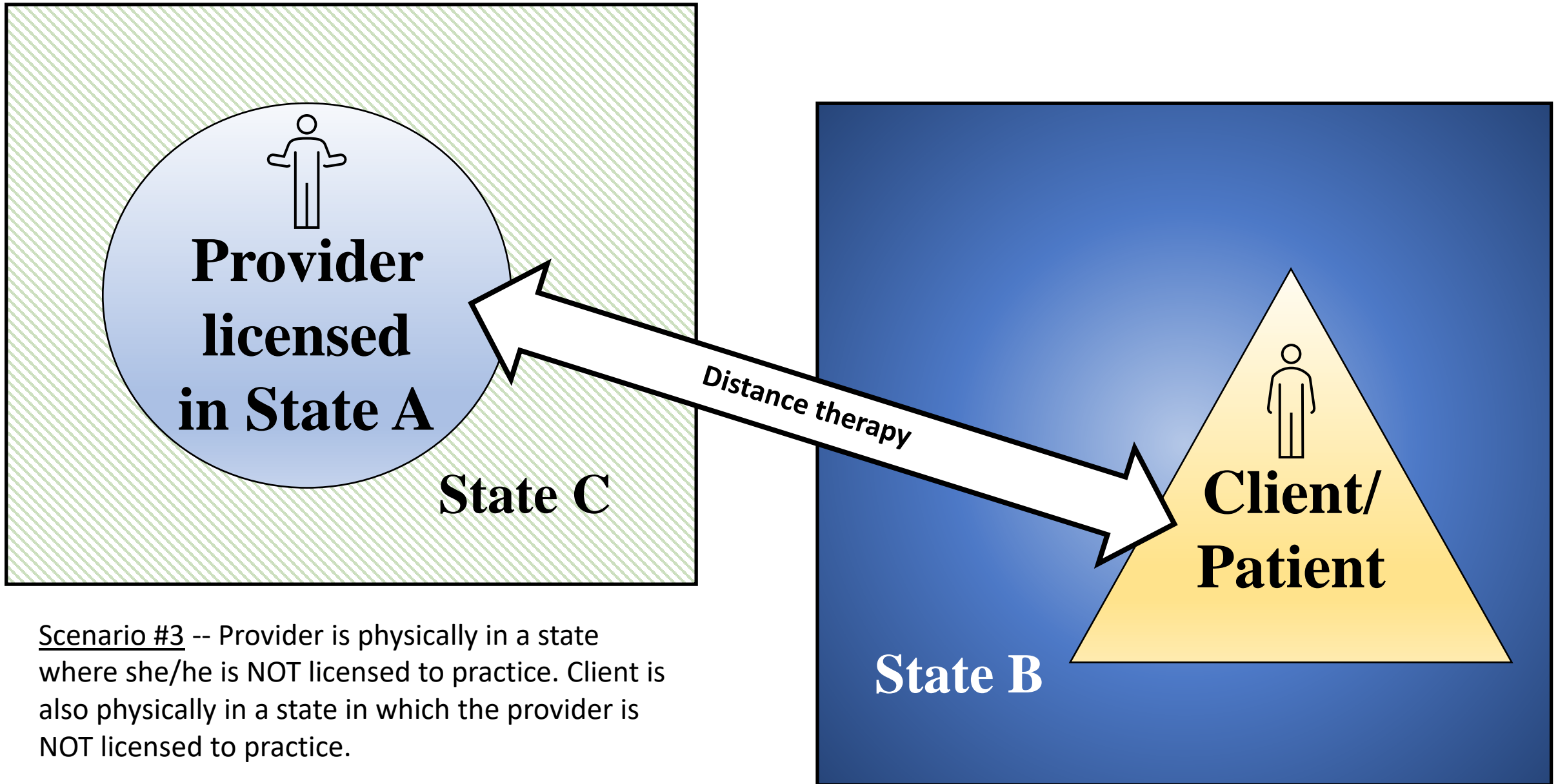
Scenario #1 – Provider is physically in the state where she/he is licensed to practice.  
Client/patient is physically in another state in which the provider is NOT licensed to practice.



Scenario #2 -- Provider is physically in a state where she/he is NOT licensed to practice. Client/patient is physically in the state in which the provider is licensed to practice.







Scenario #3 -- Provider is physically in a state where she/he is NOT licensed to practice. Client is also physically in a state in which the provider is NOT licensed to practice.

## Interjurisdictional practice (cont'd)



APA's Guidelines for the Practice of Telepsychology (APA, 2013) states:

*“Guideline 8. Psychologists are encouraged to be familiar with and comply with all relevant laws and regulations when providing telepsychology services to clients/ patients across jurisdictional and international borders.*

*Rationale. With the rapid advances in telecommunication technologies, the intentional or unintentional provision of psychological services across jurisdictional and international borders is becoming more of a reality for psychologists. Such service provision may range from the psychologists or clients/patients being temporarily out of state (including split residence across states) to psychologists offering their services across jurisdictional borders as a practice modality to take advantage of new telecommunication technologies. . . Psychologists should make reasonable efforts to be familiar with and, as appropriate, to address the laws and regulations that govern telepsychology service delivery within the jurisdictions in which they are situated and the jurisdictions where their clients/patients are located.”*

## Interjurisdictional practice (cont'd)

The ACA Code of Ethics (2014) emphasizes the need for counselors to know and follow the laws of the states involved in distance therapy and social media.

### H.1.b Laws and Statutes

*Counselors who engage in the use of distance counseling, technology, and social media within their counseling practice understand that they may be subject to laws and regulations of **both the counselor's practicing location and the client's place of residence**\* [emphasis added]. Counselors ensure that their clients are aware of pertinent legal rights and limitations governing the practice of counseling across state lines or international boundaries."*

**\*NOTE:** This unfortunate wording may be the source of some misunderstandings regarding where a client lives/home address (i.e., residence) as opposed to where he/she is physically located when services are provided. Rather than "the client's place of residence," a more accurate wording would be "client's physical location."

## Interjurisdictional practice (cont'd)

**How does a provider determine if another state allows the provider to provide services to a client/patient while that client/patient is in the other state?**

- **Excellent resource!** -- The Telemental Health Laws app for Android and iPhone. This app is a comprehensive resource that covers all 50 states plus Washington D.C. and Puerto Rico. It contains current information regarding the limitations of provision of mental health services by multiple mental health license types via telemental health/distance therapy, including services provided by professionals who are licensed in another state (i.e., interjurisdictional practice). The app is updated through 2019 and also contains COVID-19 updates from 2020. The 2019 app is free and is available at: <https://www.ebglaw.com/telemental-health-laws-app/> (Epstein, Becker, & Green, P.C., 2020)
- Telehealth guidance by state during COVID-19 (APA, 2020). Go to: <https://www.apaservices.org/practice/clinic/covid-19-telehealth-state-summary>
- Telepsychology 50-State Review (APA Practice Organization Legal & Regulatory Affairs, 2013) – <http://www.apapracticecentral.org/update/2013/10-24/telepsychology-review.aspx>

## Licensing Requirements

Are there any licensing requirements specific to telemedicine/telehealth (e.g., requirements to be licensed in the state where the patient is located)?

Yes, Massachusetts licensure is required, with limited exceptions.

The Massachusetts Board of Registration of Allied Mental Health and Human Services Professionals has issued a "Policy on Distance, Online, and Other Electronic-Assisted Counseling" that provides the following:

"Distance delivery of counseling and therapy is considered to occur in two locations: where the client is located and where the clinician is located."

"[T]he provision of counseling and/or therapy to individuals located within Massachusetts at the time services are occurring, are considered to fall under the jurisdiction of the Board, regardless of

"[T]he provision of counseling and/or therapy to individuals located within Massachusetts at the time services are occurring, are considered to fall under the jurisdiction of the Board, regardless of the location of the provider."

"Mental health professionals licensed by any jurisdiction other than Massachusetts, and not licensed by any Massachusetts Board or not eligible for an exception to Massachusetts licensure, are considered unlicensed by this Board for practice in Massachusetts."

"Mental health professionals licensed by other jurisdictions who wish to provide services to clients within Massachusetts, are encouraged to apply for Massachusetts licensure."

"Licensees are encouraged to carefully review the way in which the structure of their relationships with clients will be impacted by distance-therapy or counseling to ensure compliance with Board regulations and standards of practice."

"The following are some areas of practice that licensees should carefully consider:

- a. Informed consent
- b. Confidentiality
- c. Basis for making clinical judgments
- d. Areas of competence
- e. Avoiding harm
- f. Fees and financial arrangements
- g. Advertising
- h. Abandonment of clients
- i. Handling requests for obtaining clinical records"

Massachusetts Board of Registration of Allied Mental Health and Human Services Professionals, *Policy on Distance, Online, and Other Electronic-Assisted Counseling*



## Telemental Health Laws App (Epstein Becker & Green, P.C., 2020)

Example of one type of information available in the app; in this case from the state of Massachusetts.

Note: The section at the end is a link to additional information regarding distance therapy from the state of MA.



## Interjurisdictional Practice (cont'd)

Distance counseling/telepsychology rules, state **example** below (APA Practice Organization, Legal & Regulatory Affairs, 2013).

STATE	Telehealth/ Telepsychology Statutes and/or Regulations	Practice of Psychology defined to include specifically telepsychology?	Licensing Board Advisory Opinions	Telehealth Coverage Mandate	Temporary / Guest Practice Provision	Penalties for Unauthorized practice of psychology without a license
	<a href="#">a/files/Psychology_Newsletter_-_March_2012.pdf</a>  <a href="http://www.indianapsychology.org/pdf/newsletters/newsletter_sept_12.pdf">http://www.indianapsychology.org/pdf/newsletters/newsletter_sept_12.pdf</a>				A psychologist may practice under a limited scope psychology permit not more than 30 days every 2 years.	
IOWA	NO	NO	NO	NO  But Iowa has developed a state-based telecommunications network that may be used for telemedicine purposes See Iowa Code § 8D.1 et seq.; 751 IAC 7.1 ; 751 IAC 7.11	Iowa Code § 154B.3(5) 645 IAC 240.8  Licensed out-of-state psychologists may practice for a period not to exceed 10 consecutive business days or 15 business days in any 90 day period  Must file a summary of intention to practice in IA & licensure verification in advance with the board  Licensure requirements in the psychologist's home state must be equivalent to or exceed IA's licensing	Iowa Code § 147.83 -- Permanent Injunction; Iowa Code § 147.86; Iowa Code § 903.1 (1)(b)  Serious Misdemeanor: Possible fine of \$315\$1,875 &/or imprisonment up to 1 year

## Interjurisdictional practice (cont'd)

Examples of state law regarding practice by mental health professionals who are not licensed in the state.

### **Example** #1 -- *Tennessee Board of Examiners of Psychology (TCA 63-11-211(b)(5))*

*“ . . . a license issued by the Tennessee Board of Examiners of Psychology is required, **with limited exceptions**. The Tennessee Psychology Practice Act provides that “[t]he board may permit a psychologist licensed in good standing in another state, who meets standards acceptable to the board, to perform the functions of §§ 63-11-203 [defines practice of a psychologist] . . . and practice as a psychologist in Tennessee without possessing a current license for a period of time, **not to exceed twelve (12) days per year**, for such purposes as **special training or consultation, special evaluation and/or intervention or serving as an expert witness**. Nothing in this section shall be construed to permit the regular, repetitive or ongoing provision of psychological services, the supervision of psychological services or the solicitation or advertisement of services to the general public, all of which are governed by the usual and customary processes of licensure for psychologists.”* [emphasis added]

(LawServer Online, 2021; see also State of Tennessee, Feb 2020)

## Interjurisdictional practice (cont'd)

### Example #2 – Colorado (re: psychologist, LCSWs, LPCs, LMFTs & other licenses)

*“. . . a license issued by the State Board of Psychologist Examiners is required, with limited exceptions.”*

*“Any person who practices or offers or attempts to practice as a psychologist, social worker, marriage and family therapist, licensed professional counselor, psychotherapist, or addiction counselor without an active license, registration, or certification issued under this article **commits a class 2 misdemeanor and shall be punished**” [emphasis added]. (State of Colorado, 2016)*

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*Colorado allows an out-of-state psychologist, social worker, marriage and family therapist, licensed professional counselor, psychotherapist, or addiction counselor to practice under the following restrictions. . . The provisions of this article shall not apply to a person who resides in another state and who is currently licensed or certified as a psychologist, marriage and family therapist, clinical social worker, professional counselor, or addiction counselor in that state to the extent that the licensed or certified person performs activities or services in this state, if the activities and services are:*

- *Performed within the scope of the person's license or certification;*
- *Do not exceed twenty days per year in this state;*
- *Are not otherwise in violation of this article; and*
- *Disclosed to the public that the person is not licensed or certified in this state.*

(State of Colorado, 2016)

## Summary of circumstances for legally practicing across state lines (i.e., interjurisdictional practice)

General: Both the **originating state** (i.e., the physical location of the provider when the services are being rendered) and **destination state** (i.e., the physical location of the client/patient when the services are being rendered) must have a legal provision of some type that authorizes the provider to render the services. See types of provisions below.

Types of legal provisions:	<u>Licensure in Both States</u>	<u>State Statute</u>	<u>Executive Order</u>	<u>Interstate Compact</u>	<u>Closed Federal System</u>
	The provider is licensed in both the originating state and the destination state. (This is the best case scenario.)	The state in which the provider is <u>not</u> licensed (whether the originating state or the destination state) has a statute which allows limited/temporary practice by a provider who is acceptably licensed in another state.	The state in which the provider is <u>not</u> licensed (whether the originating state or the destination state) has a temporary executive order in place during an emergency (e.g., COVID-19 pandemic) which allows limited temporary practice by a provider who is acceptably licensed in another state.	<u>All</u> states involved (i.e., provider's state of licensure, originating state, & destination state) have enacted legislation to participate in an interstate compact. (For example, PSYPACT.)	Certain federal systems (e.g., VA, DOD, Federal Bureau of Prisons) operate apart from jurisdictions of the originating state and destination state.



## **Key #3 - Competency**

APA's Guidelines for the Practice of Telepsychology (APA, 2013) speaks to competency:

### *“Competence of the Psychologist”*

*Guideline 1. Psychologists who provide telepsychology services strive to take reasonable steps to ensure their competence with both the technologies used and the potential impact of the technologies on clients/patients . . .*

*Rationale. Psychologists have a primary ethical obligation to provide professional services only within the boundaries of their competence based on their education, training, supervised experience, consultation, study, or professional experience. As with all new and emerging areas in which generally recognized standards for preparatory training do not yet exist, psychologists utilizing telepsychology aspire to apply the same standards in developing their competence in this area.”*

## Competency (cont'd)

Two descriptions of competency:

(1) True competency - The provider actually possesses sufficient knowledge and skills to provide the services within the standards expected by the profession. Competency occurs along a continuum or range. It is not a dichotomy of competent or incompetent. Judgment regarding whether a licensed provider is sufficiently competent lies with the provider him/herself in most circumstances.

(2) Meeting state training requirements designed to result in the provider being competent - The provider has met the state's formal training requirements (if such requirements exist) to provide the service in question (e.g., distance therapy). Note that meeting the state's training requirement does not guarantee actual competency as described in #1.

## Competency (cont'd)

**Caution!** Increasingly, states are requiring special training or certification for those providers who wish to use distance therapy.

### Example: Professional Counselors in Georgia

- To practice telemental health Professional Counselors must complete 6 CE in telemental health.
- To provide distance clinical supervision Professional Counselors must have an additional 3 CE in online supervision.

(Online Therapy Institute, 2015)

## Key #3 - Competency (cont'd)

### **Distance therapy training**

#### Examples of topics typically covered in distance therapy trainings

- ❑ How to establish a protocol for distance therapy sessions. The protocol would likely include (e.g.):
  - ✓ At the beginning of each session, asking the client where she/he is physically/geographically located and documenting the client's response. This helps avoid unintentionally practicing across state lines.
  - ✓ At the beginning of each session, both provider and client rotate their cameras through a 360° rotation of their respective rooms. This shows the other party if anyone else is in the room.
- ❑ Clinical considerations (e.g., clinical suitability of a client for distance therapy)
- ❑ Reviews of federal and states laws relevant to distance therapy.
- ❑ Development of an informed consent process specific to distance therapy.
- ❑ Ethical requirements and considerations.

## Key #4 - Informed consent

APA's Guidelines for the Practice of Telepsychology (APA, 2013) addresses informed consent:

“Guideline 3. Psychologists strive to obtain and document informed consent that specifically addresses the unique concerns related to the telepsychology services they provide. When doing so, psychologists are cognizant of the applicable laws and regulations, as well as organizational requirements, that govern informed consent in this area.

Rationale. The process of explaining and obtaining informed consent, by whatever means, sets the stage for the relationship between the psychologist and the client/patient. Psychologists make reasonable efforts to offer a complete and clear description of the telepsychology services they provide, and they seek to obtain and document informed consent when providing professional services”

## Informed consent (cont'd)

The ACA Code of Ethics (2014) addresses informed consent issues in some detail as they relate to distance counseling and other types of technology. The section below provides a possible starting point for determining what to include in a provider's informed consent process.

### H.2.a. Informed Consent and Disclosure

*“In addition to the usual and customary protocol of informed consent between counselor and client for face-to-face counseling, the following issues, unique to the use of distance counseling, technology, and/or social media, are addressed in the informed consent process:*

- *distance counseling credentials, physical location of practice, and contact information;*
- *risks and benefits of engaging in the use of distance counseling, technology, and/or social media;*
- *possibility of technology failure and alternate methods of service delivery;*
- *anticipated response time;*
- *emergency procedures to follow when the counselor is not available;*
- *time zone differences;*
- *cultural and/or language differences that may affect delivery of services;*
- *possible denial of insurance benefits; and*
- *social media policy.”*





## Key #5 - Policies and procedures

Organizational policies and procedures should be in place regarding the use of distance therapy. This is emphasized in the APA's Guidelines for the Practice of Telepsychology (APA, 2013):

*“Guideline 5. Psychologists who provide telepsychology services take reasonable steps . . . [i.e., establish policies & procedures] . . . to ensure that security measures are in place to protect data and information related to their clients/patients from unintended access or disclosure.*

*Rationale. The use of telecommunication technologies in the provision of psychological services presents unique potential threats to the security and transmission of client/patient data and information.”*

## Policies and procedures (cont'd)

### Suggestions of some policies and procedures to consider:

1. Adopt a set of recognized formal distance therapy guidelines that the practice or organization will follow. Note that this is would be an addition to the applicable code(s) of ethics. For example:
  - The American Psychological Association's Guidelines for the Practice of Telepsychology (APA, 2013)
  - The National Board of Certified Counselors Policy Regarding Practice of Distance Professional Services (NBCC, 2016)
2. Set the criteria and process for determining if distance therapy is appropriate to offer. For example:
  - The minimum number of conventional face-to-face that are required prior to determining whether distance therapy services are appropriate to offer to the client/patient.
  - Clinical considerations regarding (e.g.) the client's presenting problem, diagnosis, and/or safety.

## Policies and procedures (cont'd)

3. Establish a required supplemental informed consent process that is specific to distance therapy and is in addition to the regular, initial informed consent forms. Suggestion: The policy for this process should cite the appropriate sections from the applicable code(s) of ethics and licensing rules which pertain to the provider(s) in the practice or organization.
4. Identify limitations of distance therapy services. For example:
  - ❖ Under what circumstances (if any) is distance therapy offered when clients are physically in another state.
  - ❖ Scheduling issues such as days and times when distance therapy is available. Consider time zone differences.
  - ❖ Payment method. Clients must agree to pay at the time of services using an secure on-line payment method.

## Key #6 - Insurance Related Issues

1. Clients' health insurance policies. There are myriad variables regarding clients' health insurance coverage. In some situations, clients' health insurance policies may not reimburse for treatment provided via distance therapy/telemental health. For policies that do, the amount of coverage (i.e., payment) can vary from zero coverage to coverage that is equivalent to face-to-face treatment sessions. Be sure to review this with clients during in the informed consent process. **Caution!** Commercial insurance is regulated primarily by state laws. These laws can differ significantly from state to state.
2. Providers' professional liability insurance. Providers should check with their professional liability insurance company to determine if their policy covers distance therapy in general and, in specific, distance therapy that occurs across state lines.

*Before you offer virtual health care, check with your [professional liability] insurance company to make sure they cover telehealth. In some cases . . . you may need to purchase supplemental coverage (HHS, 2020b; <https://telehealth.hhs.gov/providers/legal-considerations/>).*

## Insurance Related Issues (cont'd)

3. States' business and commerce laws typically regulate commercial health insurance entities (e.g., insurance companies, managed care companies). Insurance is regulated separately by each state and states have differing laws about how commercial insurance companies are required to operate. A mental health provider who accepts patients/clients' insurance and also provides distance therapy (telehealth) should be aware of the relevant statutes of her/his state. Depending upon the specific state, these statutes may address a variety of issues.

For example:

- Definitions of key terms pertaining to health insurance coverage

Example: *"Qualified site" means the office of a healthcare services provider, a hospital licensed under title 68, a facility recognized as a rural health clinic under federal Medicare regulations, a federally qualified health center, any facility licensed under title 33, or any other location deemed acceptable by the health insurance entity; . . . (State of Tennessee, 2017b)*

- The circumstances under which an insurance company would be required to provide coverage for healthcare services provided via telehealth;
- Special requirements regarding how insurance companies reimburse providers for telehealth services.

## Insurance Related Issues (cont'd)

### 4. Government related health insurance

Note: A full discussion of Medicare, Medicaid and telehealth (distance therapy) is beyond the scope of this training. Below is a summary of major points to keep in mind.

- ❑ The **Centers for Medicare and Medicaid Services** (CMS) is the overseeing federal agency for Medicare and Medicaid. However, Medicaid rules and laws vary significantly from state to state.
- ❑ **Medicare** - A federal health insurance program that provides health coverage if you are 65+ or under 65 and have a disability, no matter your income (Medicare Interactive, 2020).
- ❑ **Telehealth/distance therapy**: The only Medicare-eligible licensed mental health providers that typically provide psychotherapy/distance therapy are licensed psychologists and licensed clinical social workers.
- ❑ **Practicing across state lines**: Most states have existing (or temporary COVID-19 national emergency-related) legal provisions that allow Medicare providers who are licensed in another state to provide telehealth services to Medicare beneficiaries who are physically within their states; making it possible for distance therapy to occur across state lines. See HHS statement below.

*CMS announced a waiver allowing doctors to furnish telehealth and other services using communications technology wherever the patient is located, including at home, even across state lines. **However, it's only legal to practice across state lines if the states have also waived practice acts** [emphasis added]. The Federation of State Medical Boards provides a list of the [states that have modified in-state licensure requirements](#) for telehealth in response to COVID-19 (HHS, 2020b).*

## Insurance Related Issues (cont'd)

### Government related health insurance (cont'd)

- ❑ **Medicaid** - A state and federal program that provides health coverage if you have a very low income (Medicare Interactive, 2020). Medicaid rules vary from one state to the next.
- ❑ **Practicing across state lines**

Unlike Medicare, Medicaid is state-specific. Medicaid providers are usually licensed only in the state of the specific Medicaid program. However, exceptions or special allowances may exist in some states, especially during the COVID-19 National Emergency. **Resource:** A comprehensive list is maintained by the Federation of State Medical Boards (updated as of May 25, 2020) at <https://www.fsmb.org/siteassets/advocacy/pdf/states-waiving-licensure-requirements-for-telehealth-in-response-to-covid-19.pdf>

Alternatively, see the updated Telehealth Guidance by State During COVID-19 (APA, 2020b) at <https://www.apaservices.org/practice/clinic/covid-19-telehealth-state-summary>.



# Part 3

## Vignettes



## Distance Therapy-Related Vignettes

Lyons (2015), Salo (2015) and others have suggested the benefits of using cases as a vehicle for training in ethical decision-making. The following vignettes are designed to assist mental health professionals in applying the in situations regarding distance therapy.

## Vignette #1 – Kyle’s New Distance Therapy Office

Kyle received his Tennessee license as a psychologist/HSP three months ago and has recently opened a solo private practice. One of his first steps was to subscribe to a popular and highly recommended practice management system that includes a video counseling feature. As a new business owner, Kyle is keenly aware of the need to keep his operating expenses as low as possible while he builds his practice, so he co-leases an office with Julia, a friend and colleague and begins providing both traditional counseling sessions and distance counseling from the office. One day while in his favorite coffee shop, Kyle realizes that his favorite corner nook seems sufficiently isolated and quiet to potentially double as his “office” on the days when Julia is using the office they share. Using a headset with microphone he begins conducting occasional distance counseling sessions in the coffee shop by accessing his practice management system through the WIFI available to customers. Kyle feels a sense of satisfaction that he has discovered a way to increase his number of weekly counseling sessions without additional office rental expenses.



## Vignette #1

- Do you feel uncomfortable about anything Kyle is doing?
- If he consulted with you about what he is doing, what would you tell him?
- Apply the Multiple Perspective Model to this vignette. Are there any issues or problems related to the five perspectives?
  - Ethical
  - Legal
  - Clinical/therapeutic
  - Institutional policies
  - Therapist's issues and variables

## Vignette #2 - Distance Therapy Dilemma

For 15 years Joyce, an LSPE, has worked in a community mental health center in Tennessee. She noticed that people in her area had difficulty accessing therapy due to the time and distance involved. To address this problem, she opened a part-time private practice with a goal of making distance therapy available. She posts information about her practice and distance therapy services on her personal Facebook (FB) page. Teresa, a former client from the community mental health center messages Joyce through FB inquiring about beginning distance therapy. Teresa soon becomes a client and through the video feature on Joyce's practice management system they have five distance therapy sessions over the next 12 weeks. During the sixth session Teresa mentions that she will be in the town where Joyce has her office the following week and would like to have a in-person session. Joyce is puzzled because she assumed that Teresa lived at the address she provided at intake. She discovers that Teresa has been living part-time in the nearby adjacent state with her ill mother and that their distance therapy sessions have occurred while Teresa was in the other state. Teresa plans to spend even more time with her mother and is counting on the distance therapy continuing.



## Vignette #2

- Which of the Six Keys to distance therapy apply to this scenario?
- Apply the Multiple Perspective Model to this vignette. Are there any issues or problems related to the five perspectives?
  - Ethical
  - Legal
  - Clinical/therapeutic
  - Institutional policies
  - Therapist's issues and variables
- Why do you think Joyce was surprised that her client had been out of state during the counseling sessions?
- How might her client react if she is told that Joyce can no longer continue with her in distance therapy as long as the client is in the other state?

## Vignette #3 – Alyssa's Trip: Working out of state

Alyssa (25) is working toward her Tennessee license as an LPC/MHSP. She works along with another 20 therapists and interns of different license types for a private non-profit counseling center. The counseling center has recently implemented a new policy which permits its therapists to provide a portion of their client sessions via distance therapy from another approved location. Alyssa decides that she will visit her sister who lives out of state and provide distance therapy sessions as needed to her clients back home while she is at her sister's house. When Alyssa returns the following week to the counseling center she mentions her trip and distance therapy sessions to her clinical supervisor, Dr. Miller, Licensed Psychologist/HSP and Counseling Center Director. Alyssa is perplexed when Dr. Miller tells Alyssa that they will need to meet later that day in Dr. Miller's office.



## Vignette #3

- Which of the Six Keys to distance therapy apply to this scenario?
- Apply the Multiple Perspective Model to this vignette. Are there any issues or problems related to the five perspectives?
  - Ethical
  - Legal
  - Clinical/therapeutic
  - Institutional policies
  - Therapist's issues and variables
- If you were Dr. Miller, how would you handle this situation? . . . What policy changes might you make?



## Vignette #4 – The University Student Client



Dr. Allen is an experienced Licensed Psychologist/HSP in private practice in Tennessee. She has learned that due to the national emergency caused by the COVID-19 pandemic, the federal government has suspended the requirement to use only HIPAA-compliant technology for distance therapy. As a result, she has begun conducting much of her therapy with clients through Skype. One of Dr. Allen's existing clients, Brianna, is a university student who has been living on campus in the same city where Dr. Allen has her practice. However, due to the pandemic, the university has recently closed its dorms and shifted all its classes to on-line. As a result, Brianna has returned to her parents' home in another state. In the past, Brianna has always had in-person therapy sessions at Dr. Allen's office so Dr. Allen texts Brianna to tell her that they can continue therapy sessions via Skype while Brianna is back home and return to in-person sessions, hopefully, next semester when she returns to the university.

## Vignette #4

- Which of the Six Keys to distance therapy are relevant in this scenario?
- Apply the Multiple Perspective Model to this vignette. Are there any issues or problems related to the five perspectives?
  - Ethical
  - Legal
  - Clinical/therapeutic
  - Institutional policies
  - Therapist's issues and variables
- What two issues does Dr. Allen seem to be confusing?

# Part 4

## Strategies for Avoiding Problems related to Distance Therapy/Telehealth

## Strategies for Avoiding Technology-related Ethical Problems (cont'd)

1. Use caution if accessing your cloud-based practice management system in public spaces (e.g., airport, coffee shop, etc.). Do not use “open WIFI” to access your practice management system or any ePHI. Instead, consider (1) investing in a secure hotspot function for your smart phone or other device to use for remote access and (2) use your smart phone rather than laptop or tablet as it is more difficult for passers-by to read what is on a small screen.
2. Obtain continuing education regarding your state’s laws and licensing rules regarding distance therapy (and technology, in general) at least every other year. Go beyond the minimum that may be required by your state’s licensing rules (3 hours of continuing education every two years is probably not sufficient to keep a provider up-to-date).
3. Maintain membership in a state professional organization. These organizations are typically aware of up-coming changes at the state level that are relevant to technology/distance therapy or other professional issues. They also typically have an ethics committee which can serve as an objective source for consultations.

## Strategies for Avoiding Ethical Problems (cont'd)

4. Download the Telemental Health Laws app for your smart phone. The app is a comprehensive resource covering all 50 states plus Washington D.C. The app contains current information regarding the limitations of provision of mental health services by multiple mental health license types via telemental health/distance therapy, including services provided by professionals who are licensed in another state (i.e., interjurisdictional practice. The app is updated through 2019 and also contains COVID-19 updates from 2020. The 2019 app is free and is available at: <https://www.ebglaw.com/telemental-health-laws-app/> or go directly to the on-line Google Play Store (Android) or the App Store (iPhone).

5. Invest in obtaining advanced training/certification in distance therapy from a respected source. There are a number of such sources, for example:

- ▶ PESI offers a certification in Telehealth for Mental Health Professionals. Go to: <https://catalog.pesi.com/item/60648>
- ▶ NBCC, offers the Board Certified Telemental Health (BC-TMH) credential (go to: <https://www.nbcc.org/resources/nccs/newsletter/the-board-certified-telemental-health-provider-bc-tmh-credential>)
- ▶ The Telebehavioral Health Institute offers various certificate levels (See [Telehealth.org](https://www.telehealth.org), Telebehavioral Health Institute, 2020)

## Strategies for Avoiding Ethical Problems (cont'd)

6. Look for technology-related educational and risk-management resources available through your professional liability insurance company's website. Professional liability insurance companies often provide risk-management resources because it is in their best interest to help you avoid incidents that result in claims. Many even offer discounted rates for completing their risk-management educational materials.
7. Distance therapy and technology change rapidly. Devote (e.g.) one afternoon per month to policy development and maintenance, especially regarding policies that are technology related.
8. Be sure that you have current Business Associate Agreements (BAA) with all your technology-related vendors (e.g., distance therapy vendor, practice management software company, etc.). Free BAA templates are available on-line. For example, see the ComplyAssist website at: <https://www.complyassistant.com/resources/tools/business-associate-agreement/>.

## Strategies for Avoiding Ethical Problems (cont'd)

9. Establish criteria and a process for determining if distance therapy is clinically (and otherwise) appropriate to offer to a client or potential client. Refer to this policy in the informed consent process.
10. In addition to the regular informed consent process and documents, have a supplemental document and process specific to distance therapy. Consider posting this on your website.
11. Verify clients' insurance benefits regarding distance therapy before beginning distance therapy with a client. Make sure that your informed consent process states that you can make no guarantees an insurance policy will pay for services, including distance therapy/telehealth.
12. **Recommendation:** When starting distance therapy services, spend at least the first six months providing distance therapy only to clients who are physically within the state in which you are licensed. During this time, research which other states would most easily allow you to provide limited distance therapy services to clients who are physically in those states. Then expand your cross-state services one state at time.



# Part 5

## Supplemental Resources

# PSYPACT

Material below retrieved from <https://www.apa.org/monitor/2017/05/ce-corner>

*How to make the most of telepsychology and steer clear of pitfalls*

*Practitioners who want to provide telepsychology services can get the guidance they need from APA*

*Cross-jurisdictional practice. Psychologists must comply with laws and regulations in the states, provinces or countries where their clients are, the guidelines note. While the Department of Defense and Department of Veterans Affairs have policies that govern cross-jurisdictional services, states, provinces and countries vary. For [some psychologists] that has meant getting licensed in [all the] states where [the psychologist] provides telepsychology services—an expensive, time-consuming process, thanks to the lack of uniformity in requirements. ... (cont'd on next slide)*

(Clay, 2017)

(cont'd from previous slide)

*The Association of State and Provincial Psychology Boards is trying to solve the interjurisdictional practice problem by developing the Psychology Interjurisdictional Compact (PSYPACT), which would allow licensed psychologists to offer telepsychology services in participating states without having to get licensed in those additional states. "Licensing requirements across states vary," says Janet Orwig, MBA, PSYPACT's executive director. "PSYPACT levels requirements across states and sets a bar." Arizona has already enacted PSYPACT legislation, and several more states have introduced legislation to adopt the compact, says Orwig. PSYPACT will become operational once it is enacted in seven states, something Orwig hopes will be achieved by year's end.*

(Clay, 2017)

# PSYPACT

Statement from APA (2020)

By Rebecca A. Clay

Date created: May 22, 2020

*Approved in 2015 by the Association of State and Provincial Psychology Boards (ASPPB), PSYPACT is an interstate agreement that allows psychologists to practice telepsychology or offer temporary, in-person services across participating state boundaries without having to get licensed in other states. The compact is designed to reduce regulatory barriers and increase access to mental health care.*

*PSYPACT legislation has been enacted in 14 states: Arizona, Colorado, Delaware, Georgia, Illinois, Missouri, Nebraska, Nevada, New Hampshire, Oklahoma, Texas, and Utah. Pennsylvania and Virginia have also joined the ranks, enacting PSYPACT legislation within the past two months.*

(cont'd from previous slide)

*Bills have been considered in 14 other jurisdictions this year: Alabama, the District of Columbia, Hawaii, Indiana, Iowa, Kentucky, Michigan, North Carolina, Ohio, Rhode Island, **Tennessee**, Washington, Wyoming, and West Virginia.*

*Psychologists in PSYPACT states will have to apply to the PSYPACT commission to get approved for interstate practice. After obtaining authorization to practice under PSYPACT, psychologists can offer services to patients in participating states without having to get licensed in those states [emphasis added], says Alex M. Siegel, JD, PhD, director of professional affairs at ASPPB. That means not just increased access to care but also continuity of care, he says.*

(cont'd on next slide)

## PSYPACT (cont'd)

*If you're working with a teen who is headed off to college in a different state and still wants to see you, for example, under the PSYPACT agreement, you no longer have to become licensed in that state or get permission from that state's licensing board [emphasis added], Siegel points out.*

*The same is true for patients who travel frequently for work. PSYPACT will allow psychologists in participating states to continue providing services to patients in participating states. PSYPACT will also help improve access in areas that have too few psychologists or psychologists offering specialized services.*

Note: According to American Psychological Association (2020a), CMS now recognizes PSYPACT licensure requirements for interstate practice. Retrieved from <https://www.apaservices.org/practice/legal/technology/psypact-licensure-requirements>

## PSYPACT (cont'd)

### PSYPACT update as of June 21, 2021

For a current map of the status of PSYPACT legislation in all states/jurisdictions, go to <https://psypact.site-ym.com/page/psypactmap> (PSYPACT, 2021).

According to PSYPACT (2021), 25 states plus Washington, D.C. have enacted PSYPSCT. States that have recently enacted PSYPACT legislation include:

- West Virginia (4/23/21)
- Ohio (4/29/21)
- **Tennessee** (5/15/21)
- Kansas (5/17/2021)
- Maryland (5/19/2021)



Ethical decision-making in the areas of distance therapy, technology, and the related area of boundaries, has been addressed by numerous authors. Examples are below. Full citations may be found in the bibliography. A few additional sources are provided below for those who wish to begin a further exploration of these issues.

- Mahue, Drude, Merrill, Callan & Hilty (2019)
- Martin, Millán & Campbell (2020)
- McCord, Bernhard, Walsh, Rosner & Console (2020)
- Jenius, M. (2015)
- Richards and Vigano (2013)
- Clay (2017)
- Lyons (2015)
- Haberstroh, Barney, Foster, & Duffey (2014)
- National Alliance on Mental Illness (2014)

# Part 5

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