The Telepsychology Ecosystem: Ethics and Risk Management in a Connected World

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Leisl M. Bryant, PhD, ABPP, is a licensed clinical, forensic, and consulting psychologist, and is board-certified in Forensic Psychology by the American Board of Professional Psychology. She has sustained a distinguished career in clinical and forensic practice for more than two decades, while also building a national and international presence in leadership training, consultation, and mentorship. She is a Risk Management Consultant for The Trust, where she provides ethics and risk management consultation for providers nationwide. She has held key executive leadership roles and served on her state ethics committee for over ten years. She is currently chair-elect of the APA Committee on Professional Practice Standards (COPPS) and a Fellow of both the APA (Division 42) and AAFP. Dr. Bryant is widely respected for her sophisticated expertise and her warmth and compassion in addressing complex human challenges.

Disclosures/Conflicts of Interest

Dr. Bryant has no conflicts of interest to disclose. Generative AI was not used for the development or content of this presentation.

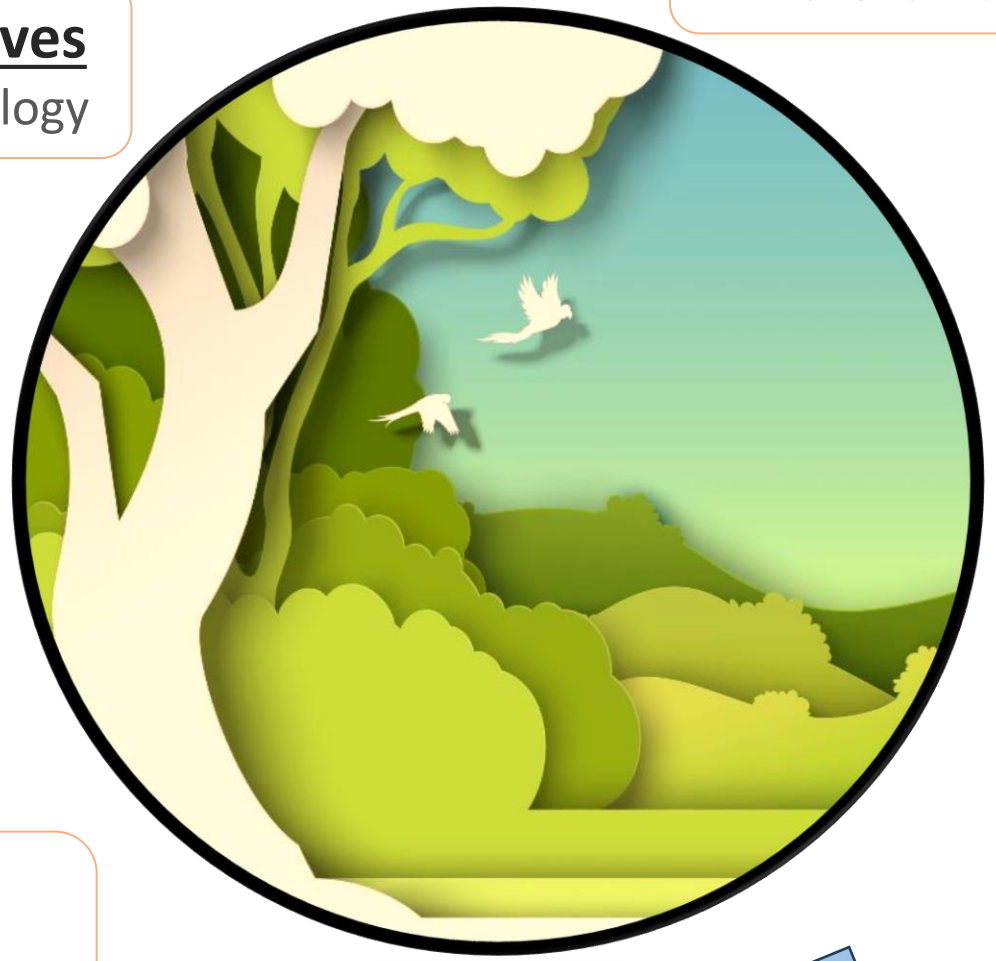
Learning Objectives

- Describe the telepsychology ecosystem as an interconnected system of ethical, regulatory, technological, clinical and societal domains, and explain how changes in one area can create ripple effects across others.
- Identify common areas of risk in telepsychology and recognize how these risks interact across domains.
- Apply structured decision supports (e.g., decision guides, frameworks, case-based analyses) to evaluate complex telepsychology scenarios where multiple factors must be weighed simultaneously.
- Identify at least three risk management strategies for effectively managing real-world telepsychology decisions.

Agenda: The Telepsychology Ecosystem

Layer 4: Canopy
Client + Clinical Considerations

Layer 3: Branches & Leaves
Digital Security + Technology



Layer 5: Weather & Climate
External Forces + Emerging Risks

Layer 2: Trunk
Professional Competence + Informed Consent

Layer 1: Roots & Soil
Ethical Foundations + Regulatory Landscape

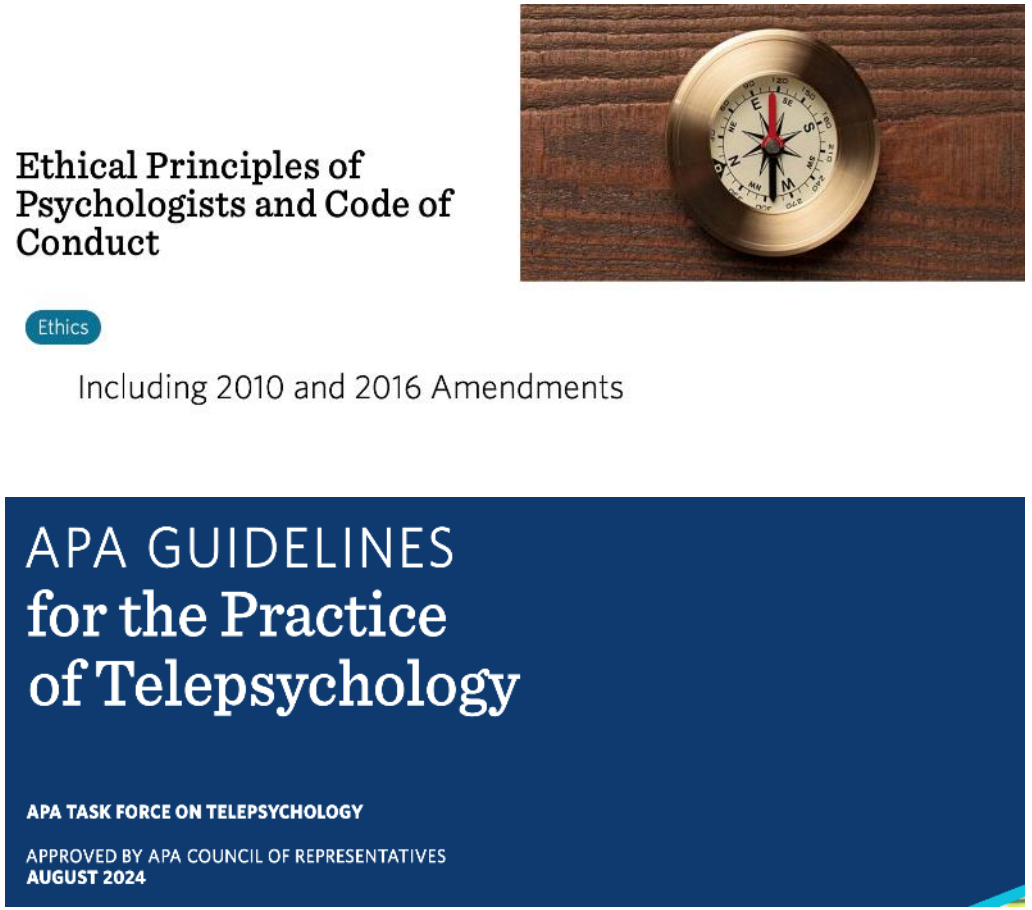
Layer 1: Roots & Soil

Ethical Foundations +
Regulatory Landscape

Ethical Foundations

- APA Ethics code (2017)
  - https://www.apa.org/ethics/code

- APA Guidelines for the Practice of Telepsychology (2024)
  - https://www.apa.org/practice/guidelines/telepsychology-revision.pdf
  - Compendium for the @024 Guidelines for the Practice of Telepsychology: Guideline Applications and Resources https://pubmed.ncbi.nlm.nih.gov/40875352/



Legal Foundations

- What regulations apply?
  - The laws/regulations in your state and the patient's/client's state
  - PSYPACT regulations
  - Temporary practice laws
  - Out of state telehealth laws (e.g., FL, AZ)
  - State telepsychology guidelines (e.g., NY, CA)
  - State licensing board advisories
  - Case law (e.g., Tarasoff)
  - International laws, regulations, or guidelines

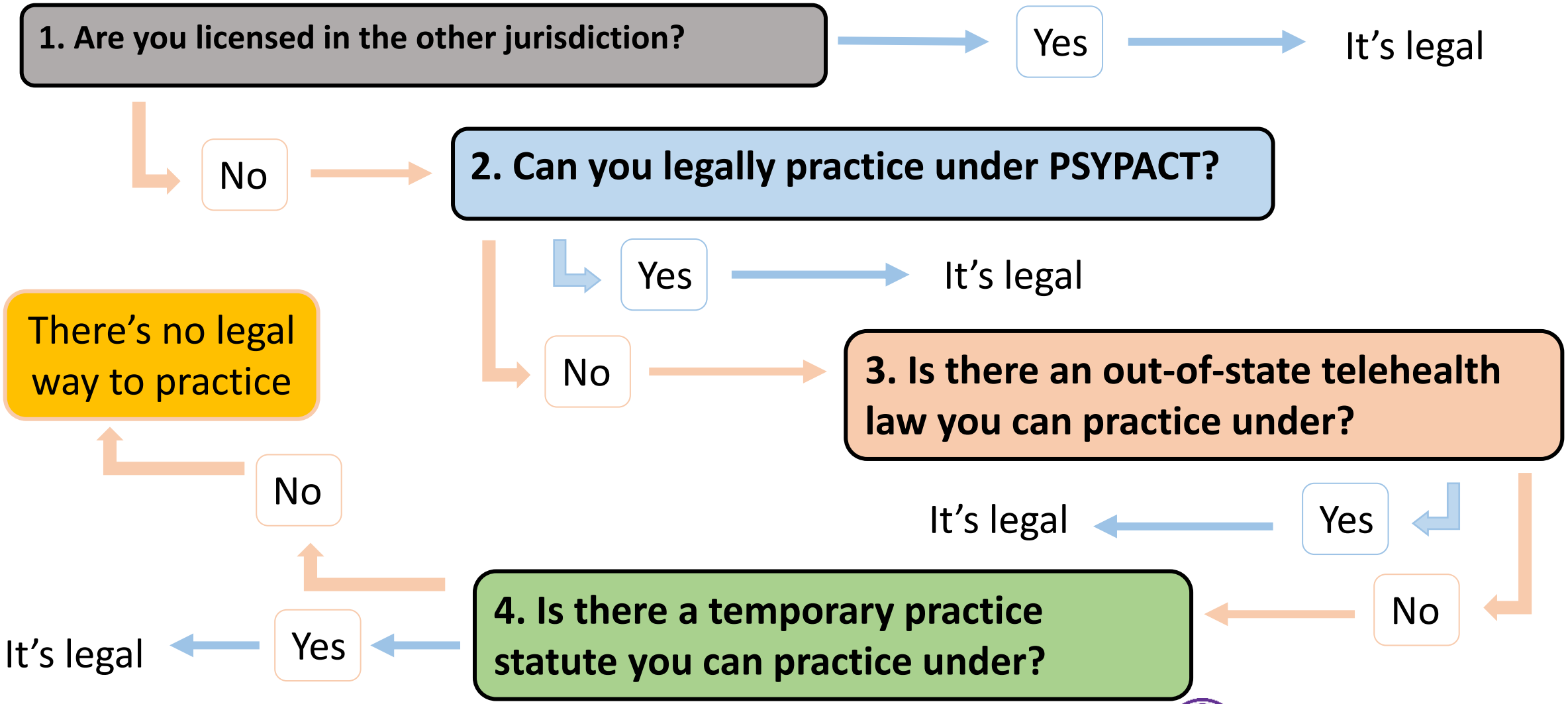
  - Mandated reporting laws
  - Minor laws
  - Record keeping, record release laws
  - Etc., etc., etc.

Legal Foundations

The California Board of Psychology is in the process of adopting telehealth regulations that will expand on statutory consent requirements and address intra- and inter-jurisdictional practice for CA psychologists (CCR §1396.8).
https://www.psychology.ca.gov/laws_regs/ telepsychology_modtext.pdf

The New York Psychology Board issued an advisory regarding telepractice, which included guidelines regarding record keeping, social media, data security, and legal issues, among other things.
http://www.op.nysed.gov/prof/psych/psychtelepracticealert.htm

Is It Legal?



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Sources for Locating State Laws

- PSYPACT state resources page:
  - https://psypact.org/page/BDcontact
- State licensing board websites
- Epstein Becker Green's Telemental health Laws app
  - https://www.ebglaw.com/telemental-health-laws-app
- State Psychological Associations, including their Ethics Committees**
- Mental health attorney local to the state
- 800-Advocate Service, The Trust
  - 800.637.9700

*****Use caution with artificial intelligence*****

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Risk Management Strategies

- Dedicate time to learn the laws of ***<u>each</u>*** jurisdiction into which you practice
- Go slowly when moving your practice into multiple states

- Diligently foster professional connections in ***<u>each</u>*** state you practice
  - Facilitates ready consultation to understand relevant laws and how the state(s) interpret them
  - Places you in a position to be notified when new laws go into effect
  - Assists in identifying emergency services and clinical coverage

What About Crisis Calls When It is Not Legal?

- Positions the law and ethics in direct conflict

<u>Ethics Code</u>:

- ***1.02 Conflicts Between Ethics and Law, Regulations, or Other Governing Legal Authority***
  If psychologists' ethical responsibilities conflict with law, regulations, or other governing legal authority, psychologists clarify the nature of the conflict, make known their commitment to the Ethics Code, and take reasonable steps to resolve the conflict consistent with the General Principles and Ethical Standards of the Ethics Code. Under no circumstances may this standard be used to justify or defend violating human rights.

No one right answer

- It will vary per patient, situation, and clinician
- Should be a case-by-case decision and you should prepare for this event ***<u>in advance</u>***

What About Crisis Calls When It is Not Legal?

Example Legal Risks:

- Potential for licensing board complaint/sanction or even criminal charge
- Potential that liability insurance (which requires legal practice) will not cover you
- Potential for ***permanent*** loss of PSYPACT privileges

Example Ethical Risks:

- Potential harm to patient
- Potential betrayal of therapeutic alliance and ineffective care
- Potential abandonment of patient

Risk Management Strategies

- Plan in advance
- Inform patients ***in advance*** of your licensure limits and include language in your informed consent that specifically clarifies you may be unable to provide services when you and/or the patient are out-of-state
- Be thoughtful about what constitutes a true 'crisis' and discuss this with patients ***in advance***
- Consider limiting services to true emergencies when not legally permitted
- Proactively develop robust clinical back-up plans for when you and/or the patient leave states of legal practice
- Develop relationships with licensed colleagues in states where your patients are located who can provide back-up coverage

Risk Management Strategies

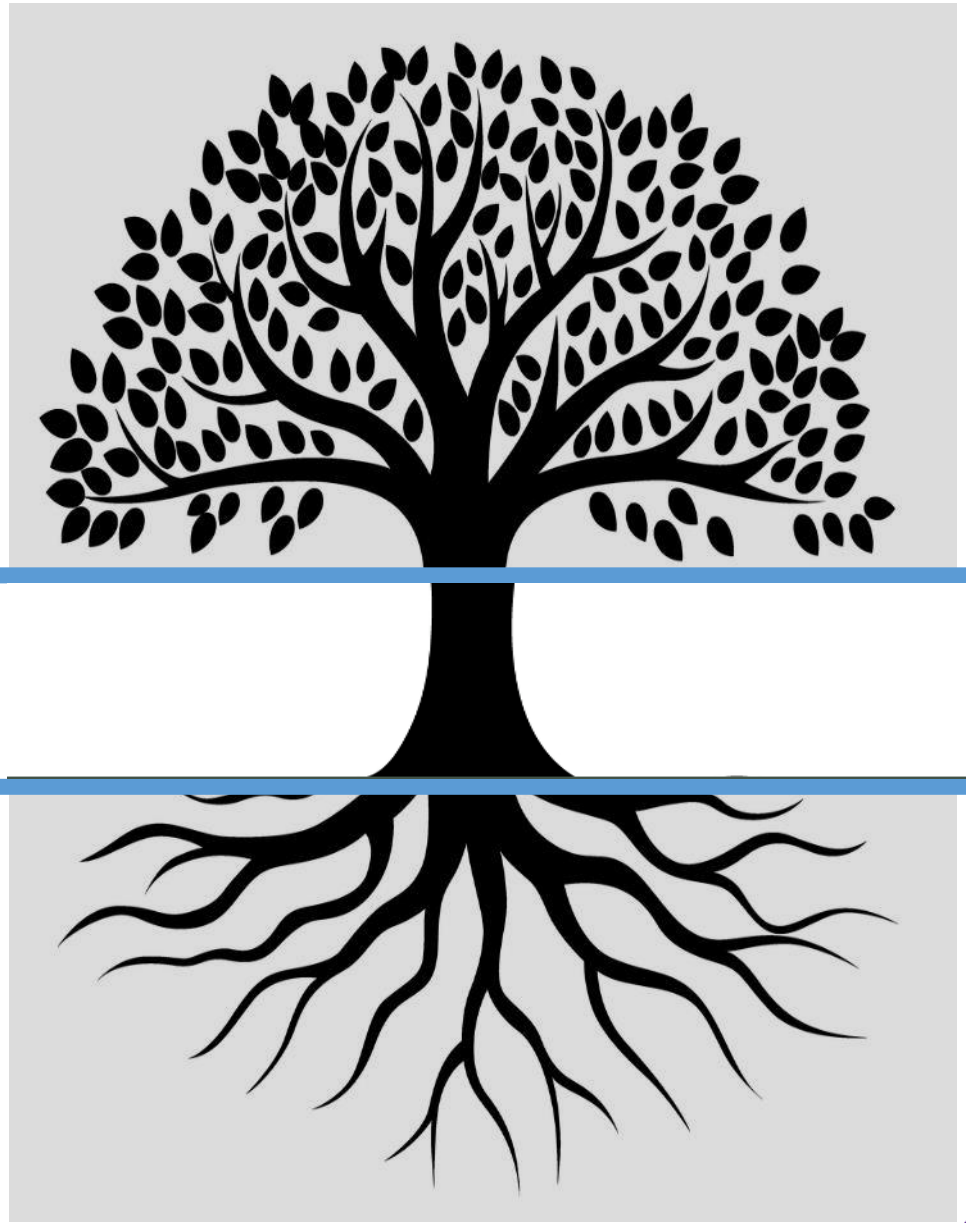
Some clinicians may at times decide to prioritize ethical duties over the law and provide services even when it is not legal to do so.

In this context:

- Be aware of both the legal & ethical risks
  - Having an ethical/clinical rationale does not mean there won't be legal consequences
- Limit these sessions to true emergencies; keep them brief
- Thoroughly document your rationale for why it was necessary and the risks of not providing the services

Layer 2: Trunk

Professional Competence
+ Informed Consent



Professional Competence

Informed Consent

- Clinical
- Technological
- Ongoing development
- Self-care
- Supervisory readiness

Professional Competence

Clinical

- Clinical standard of care for telepsychology is no less than that for in-person (Barnett, et al., 2024)
- When uncertain, consult (Knapp, et al., 2013)

Technological

- Hardware/software
- Security/privacy
- HIPAA security protocols
- Consult with colleagues…
- BUT… do your own homework (!)

Self-care

- "…a human requisite, a clinical necessity, and an ethical imperative." (Norcross & VandenBos, 2018)
- Avoid isolation
- Tech fatigue
- Colleague support




Professional Competence

Examples:

- Research on efficacy and effectiveness
- Differences between TT and in-person encounters
- Care considerations and adaptations
- Ethical considerations
- Legal factors
- Safety planning
- Practice logistics
- Advocacy
- Population-specific info

Life-long learning

Examples:

- CEs
- Pee-reviewed literature
- Guidelines, advisories
- Consultation
  - Including IT consults
- Etc.

Supervisory Readiness

Telepsychology Specific Informed Consent

At a minimum:

- Risks, benefits, and limitations of telehealth
- Privacy/security considerations
  - Including use of AI and opt out options
- Contingency planning (e.g., technical failures, emergencies, jurisdictional limitations)
- Client understanding and capacity to consent
- **State specific** information

*****Informed consent is an *ethical dialogue*, not simply paperwork*****

- Dynamic, ongoing process vs. one-time signature
- Updated with technological/regulatory changes

RESOURCES:

- Sample TT informed consent templates
  - https://www.trustinsurance.com/continuing-education/resource-center/document-library-quick-guides/
- Informed consent self-assessment checklist
  - https://psycnet.apa.org/record/2020-20929-001
- Prudent to have a local mental health attorney review your informed consent documents (including state specific information)

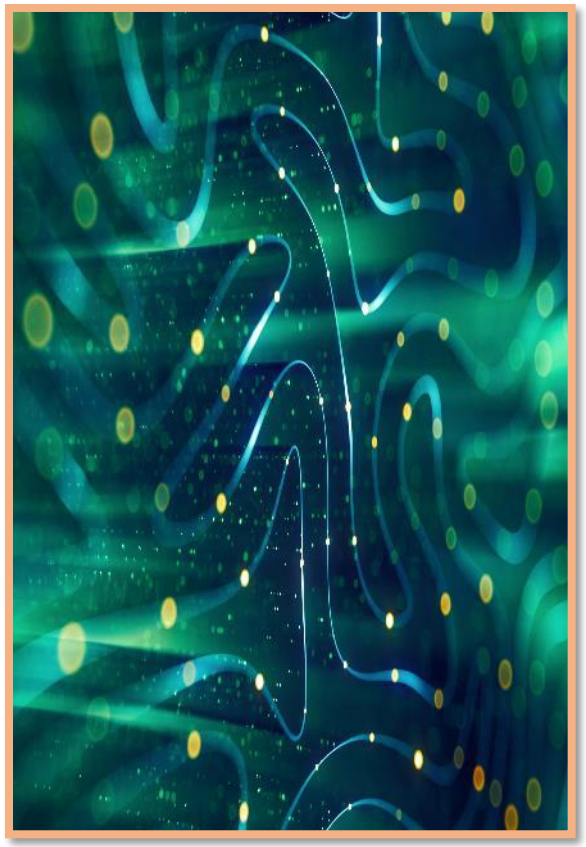
Electronic Communications Policy:

- https://www.trustinsurance.com/continuing-education/resource-center/document-library-quick-guides/

Layer 3: Branches & Leaves

Digital Security + Technology

Digital Security + Technology



- Minimally: HIPAA compliance and encryption
  - Administrative, physical, and technical safeguards
  - HIPAA Security Risk Assessment (SRA) Tool
    - https://www.hhs.gov/hipaa/for-professionals/security/guidance/guidance-risk-analysis/index.html
  - If working internationally carefully consider issues of data storage and transfer; also be aware there may be conflict between HIPAA and GDPR or other international rules
- Minimally: Read and understand all Terms of Service (TOS), Business Associates Agreements (BAA), and End-User License Agreements (EULA)

Digital Security & Privacy

- Things like: firewalls, intrusion prevention, malware protection, multi-factor authentication, encryption (256-bit preferred), VPNs for public wi-fi, etc.

Guidance available from the National Institute of Standards and Technology (NIST) and

the National Cybersecurity Center of Excellence

- Cross-border practice must account for data residency laws
- Web tracking/ad-tech/meta data risks
- AI risks





Digital Security & Privacy

IT consultants

- Very prudent to make use of these
- Healthcare/mental healthcare specific
- Get a BAA if they will have access to PHI

Layer 4: Canopy

Client + Clinical Considerations

Canopy

Clinical Suitability Assessments

Cross-Jurisdictional Decision Making

Documentation

Clinical Suitability

- Essential to actually assess and document this
- Must be a case-by-case assessment and decision-making
  - Weighing benefits vs. risks for each patient/client, considering efficacy, and documenting rationale
- Key assessment areas:

Patient/client Factors

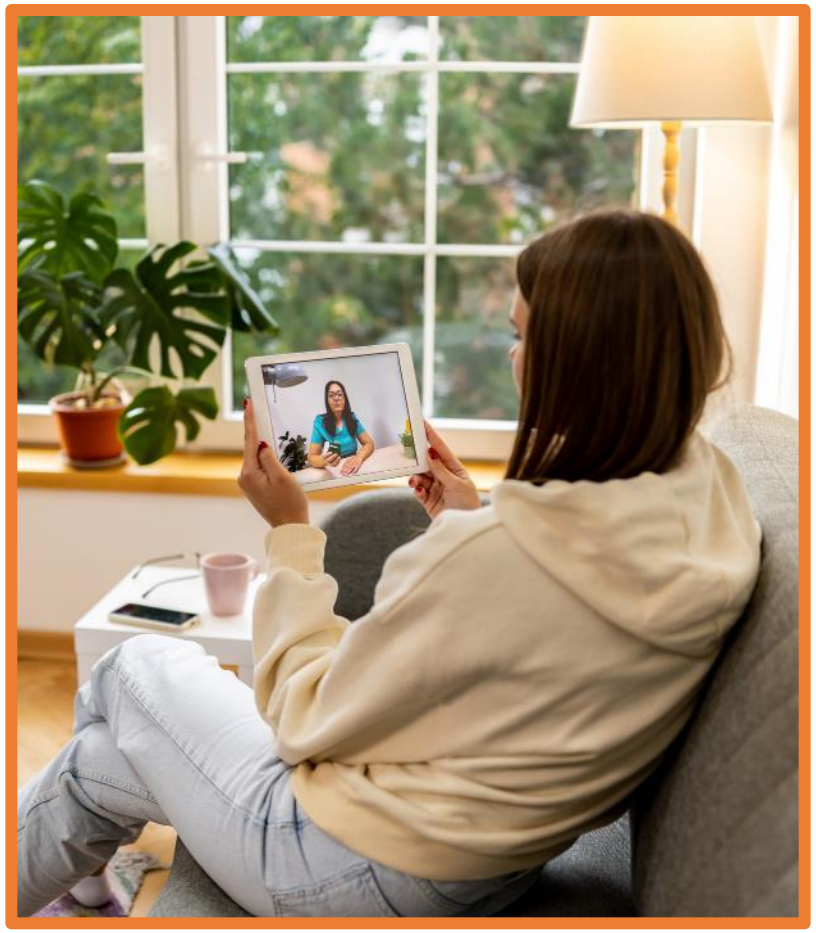
Environmental Factors

Length/Purpose of Treatment

Ongoing Monitoring

Sample Patient/Client Factors

- Technological competence
- Clinical diagnosis
- Medical condition
- Language and other diversity variables
- Boundary concerns
- ER resources/supports in remote location
- High risk patients/clients



Additional Example Clinical Suitability Factors

Situational/Environmental Factors:

- Discuss and understand the parameters of patient's/client's remote situation
- Know the availability of any emergency, technical, or other supports
- Be aware of any threats to privacy and confidentiality
- Risk of distractions
- Inability to control environment

Length and purpose of treatment:

- Lower risk with shorter term treatments or 'bridge sessions'

Ongoing monitoring and Assessment:

- **Regularly assess progress or lack thereof**
- **Take appropriate steps to adjust and/or re-evaluate the suitability of remote care**
- **If remote care is no longer beneficial or is harmful, discuss with patient/client, and appropriately consider in person services, transfer care or terminate**

Take Note: Some states have their own specific criteria

Maryland §10.36.10 Telepsychology:

A. Before engaging in the practice of psychology using telepsychology, a psychologist or psychology associate shall evaluate the client **to determine that delivery of telepsychology is appropriate** considering at least the following factors:

(1) The client's: (a) Diagnosis; (b) Symptoms; (c) Medical and psychological history; and (d) Preference for receiving services via telepsychology; and

(2) The nature of the services to be provided, including anticipated: (a) Benefits; (b) Risks; and (c) Constraints resulting from their delivery via telepsychology.

B. The client evaluation set forth in §A of this regulation **shall take place at an initial in-person session, unless the psychologist or psychology associate documents in the record the reason for not meeting in person.**

Cross-Jurisdictional Decision Making Matrix

1	2	3	4	5
				
Regulatory	Clinical Suitability	Safety/ER Planning	Cultural or Regional Differences	Service Reimbursement

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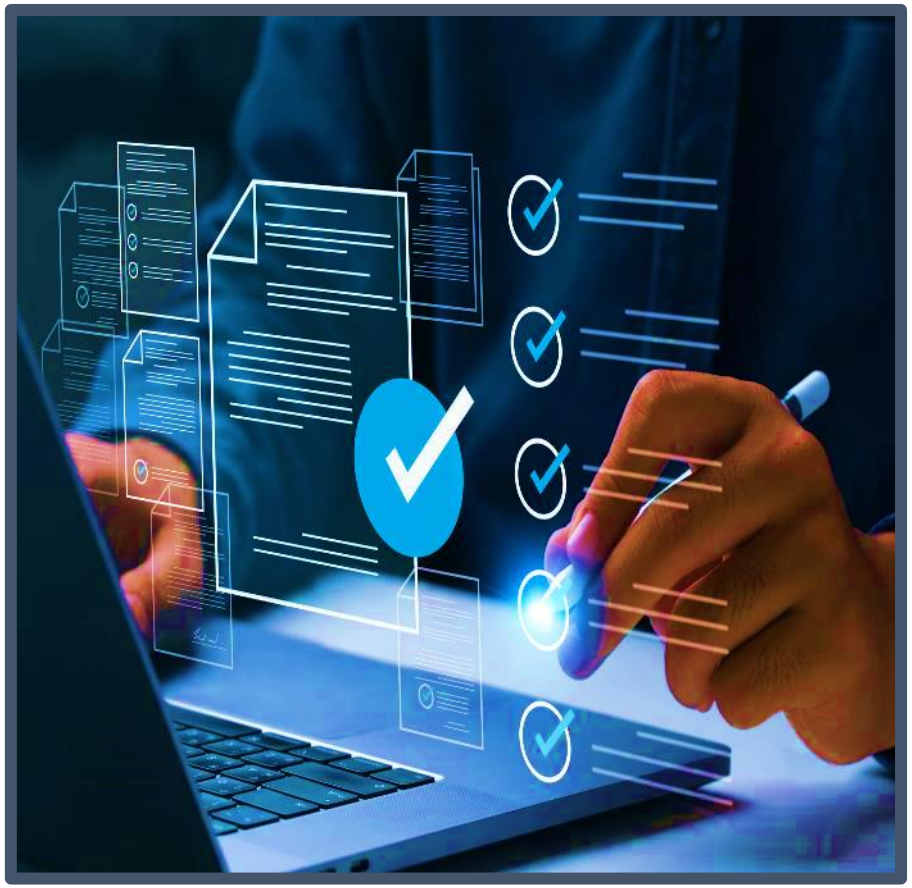
Cross-Jurisdictional Decision Making Matrix

Safety/ER Planning

In Advance:

- Identify ER resources in patient/client location
- Address any lack of resources
- Know relevant laws of both jurisdictions (e.g., mandatory reporting, Tarasoff, involuntary hospitalization)
- Consider signed ROI for ER contact done in advance
- Document emergency plans
- Plan for crisis calls (as discussed earlier)

Documentation



Standard documentation plus:

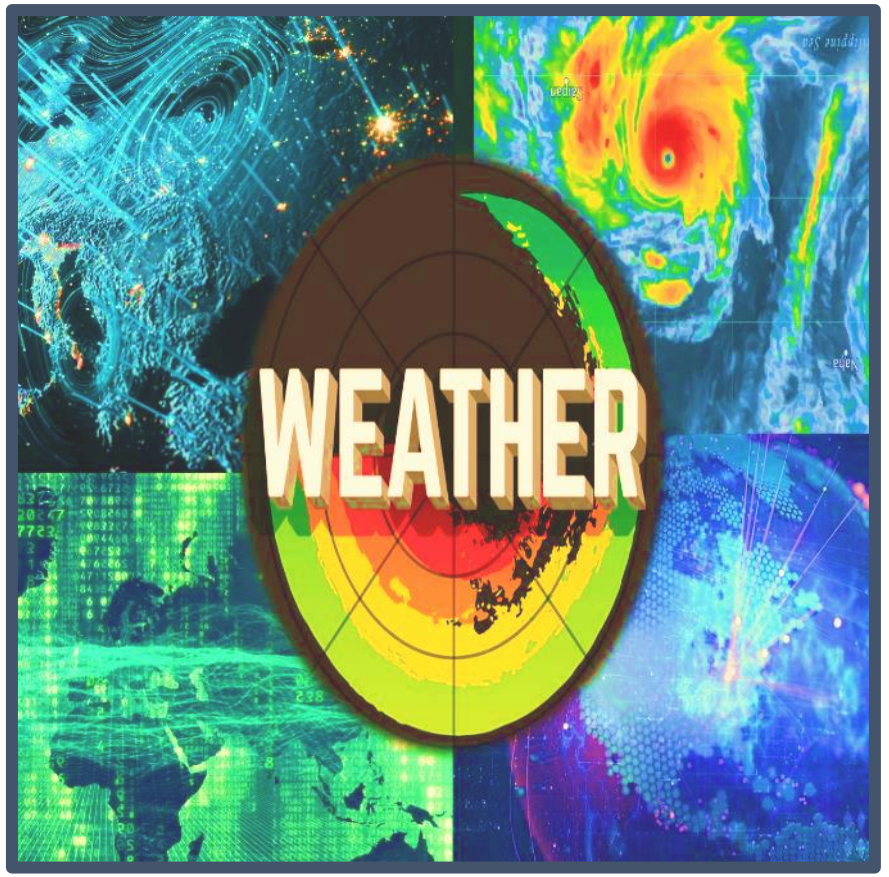
- Teletherapy specific informed consent, including state specific information
- For each session:
  - Patient's location, phone number, anyone else present, any unusual events
- Health insurance coverage details
- Maintain copies of digital communications
- HIPAA Security Rule risk assessment
- Procedures for secure deletion of digital communications/records

Layer 5: Weather & Climate

External Forces +
Emerging Risks

External Forces + Emerging Risks

- Rapid changes
- Examples:
  - Regional/political differences leading to changing laws
    - (e.g., abortion, gender affirming care)
  - New and emerging tech and security issues
    - Artificial Intelligence (AI)
- It is *critical* that you stay up-to-date
  - (E.g., CE's, APA, SPTAs, colleagues, The Trust)
- Consult regularly and with a low threshold
  - Don't weather the storms alone
  - Stay open to what you do not know (!)
- Also includes the 'weather' of your own professional context and personal lives



External Forces + Emerging Risks

Context/situational dimensions with heightened risk:

- Acting as primary *supervisors*
- Becoming or are *isolated*
- Experiencing *personal* losses, health compromises, life challenges
- Inefficient self-care
- Experiencing excessive positive or negative counter-transference
- Working with highly attractive or wealthy patients
- *Uncertainty/ambiguity*

Inherent dimensions with heightened risk:

- Judgement/decision making biases, such as:
  - Confirmation
  - Availability
  - Representativeness
  - Anchoring
  - Affect heuristic (emotional state)
- Personality traits (e.g., greater narcissism)

Q&A

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