Ethical & Regulatory issues in Distance Counseling:

Confessions of a Digital Immigrant

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Counseling without Boundaries / Borderlines!

Or “We are all just one Borderline away from losing our licenses!” ~ Zur
Hot Topics Overview

- Ethical Considerations
- Legal Considerations
- Regulatory Considerations
- Digital Practice Issues in Counseling
Right & Wrong were lost in the law long ago  ~ unknown

LEGAL CONSIDERATIONS
Legal Considerations

- HIPAA
- Legal Issues
- Nomenclature
- What to ask?
Only 2 types of attorneys
HIPAA

- Goal
- Audit
- BBA any entity
- Risk Management Plan
HIPAA HITECH & Risk Management Plan Questions

1. What is your Risk Analysis?
2. What is your Risk Management Program?
3. How have (will) you document it?
4. How have you (will) Implemented it?
5. How have you (will) reevaluated it?
HIPAA HITECH Rule (2009)

- What is your plan to prevent or in the case of a Breach?
- Notice
  - Description of what happened
  - Description of types of info
  - Steps for the client
  - Description of the Counselor’s actions
  - Contact info for the client
Other HIPAA Issues (where’s a techie …?)

My Gateway 2000
486 DX2-66!
In my day, 10 megabits per second was considered fast.
Other HIPAA Issues (where’s a techie ...?)

- Capacity!
- Bandwidth
- Encryption
- Security
- Backup? Breakdown?
Legal

- The goal of your state’s board of examiners?
- Most States …short periods
- FixLicensure.org (who is this?)
- APA Resources
- Modality & Scope of practice
- Notify your insurance provider
Marjorie & Quita’s cocktail party and “I don’t call myself…”

NOMENCLATURE
Nomenclature

- See you as a friend
- Coaching
- Educational / Psycho-education
- Consultation
- Practice Law? Title Law? Both?
We’re from the government, we’re here to help.   ~ Chief Alotta Bull

QUESTIONS FOR THE BOARD
Questions for the Board

- Scope of practice of LPC’s to practice distance counseling?
- Initial face-to-face assessment?
- Must the clinician obtain consent to treatment for each session or just the first session?
- If the client requests using an unsecure communication method?
- Can the clinician be out of state while conducting a session with a client within your state?
- Can a clinician, licensed in your state, use their license to practice in another state, … for a limited amount of time?
Questions for the Board

- CE hours in distance counseling required?
- Client n a supervised site?
- Can you refer me to the laws …mandated reporter and report a homicidal threats.
- Other limitations?
- Are electronic signatures accepted?
- Clinicians required to verify the client’s identity…?
- Need to see in person to sign involuntary commitment?
When I’m good, I’m very good… ~ Mae West

ETHICAL CONSIDERATIONS
Ethical Considerations

- Zur Ethical Resource summary
- ACA Ethics
- NBCC & Other resources
Zur Ethics Resource

- American Association of Marriage and Family Therapists
- American Counseling Association Code of Ethics
- American Medical Association
- American Mental Health Counselors Association
- American Psychiatric Association
- American Psychological Association
- American Telemedicine Association
- Association of Social Work Boards
- Australian Psychological Society

- California Association of Marriage and Family Therapists
- California Board of Behavioral Sciences
- Canadian Psychological Association
- iHealth Coalition
- National Association of Social Workers
- National Board for Certified Counselors
- Ohio Psychological Association
- Online Therapy Institute
- MISSING:
- AAPC, AACC, SAMHSA
Ethical Considerations (Wheeler & Bertram)

- How to secure accurate client identities
- How to deal with confidential info over internet, phone etc
- How to intervene if a client is at risk
- How to handle licensing across state & national borders
Ethical Summary ACA

- B.3.e Transmitting Confidential Information*
- Section H: Distance Counseling, Technology, & Social Media
  - H.1. Knowledge and Legal Considerations
  - H.1.a. Knowledge and Competency
  - H.1.b. Laws and Statutes
  - H.2. Informed Consent and Security
  - H.2.a. Informed Consent and Disclosure
  - H.2.b. Confidentiality Maintained by the Counselor
  - H.2.c. Acknowledgment of Limitations
Ethical Summary ACA (continued)

- H.2.d. Security*
- H.3. Client Verification
- H.4. Distance Counseling Relationship
  - H.4.a. Benefits and Limitations
  - H.4.b. Professional Boundaries in Distance Counseling
  - H.4.c. Technology-Assisted Services
  - H.4.d. Effectiveness of Services
  - H.4.e. Access
  - H.4.f. Communication Differences in Electronic Media
Ethical Summary ACA (continued)

- H.5. Records and Web Maintenance
  - H.5.a. Records
  - H.5.b. Client Rights
  - H.5.c. Electronic Links
  - H.5.d. Multicultural & Disability
- H.6. Social Media
  - H.6.b. Social Media as part of Informed Consent
  - H.6.c. Client Virtual Presence
  - H.6.d. Use of Public Social Media
Ethical Summary ACA (continued)

- Note B.3.e. & H.2.d. HIPAA conflict? Counselors “ensure the confidentiality” whereas per HIPAA client may request through any media if they accept the risk.
NBCC Policy Highlights

- Qualifications & Credentialing (1 & 10)
- Current Regulatory standards 4
- Back-ups and Retention 6, 18, 19
Informed Consent

- Client’s have the right to choose
- Need adequate info
- Counselor must review rights & responsibilities of both
- Ongoing!
- Include: credentials/verification
- State affiliations
- Benefits / Risks & no guarantees
Informed Consent

- Expectations of client participation
- Confidentiality of records
- Records retention
- Client’s own privacy obligations
- Communication: structure & mediums
- Technology explanation
- Contact info and response time
- Nature of the Professional Relationship
Informed Consent

- Procedure for identity verification
- Emergency procedures
- Emergency contacts
- Safety plan? No extra meds or firearms
- Agree where the client will be in the session (verify location each time?)
- No recordings by client
- Statements on couples or group counseling
Informed Consent

- Cost of sessions & billing
- Statement on ethics, client welfare, safety, & *How to file a complaint*
- Cancellation policy
- Authorization to begin TX
- Signature w dates for both
Now you’ve done it! ~ Stan Laurel

REGULATORY CONSIDERATIONS
Just when I am making ends meet.....
Regulatory Considerations (McAdams & Wyatt)
TADP (Technology Assisted Distance Practice)

- Level of Regulation – specialty
- Limits of Authorization – special circumstances
- Legal Accountability – all states
- Specialized Training required
- Informed Consent
- Standards of Practice – adopting ACA, NBCC & others
- Reimbursement - comparable
So . . . . if I text or email a client, am I engaged in TADP?
Regulatory Considerations

- A rapidly shifting goal line
- Keep it Broad
- Clarify Language
- Inform the public re regulation
- Short Term providership
- Know 2 (?) sets of regulation
Distance Counseling where art thou?

- Where does the client reside?
- CA regulation 2005
- Regulation’s goal
  - Abandonment
  - Access to care
- A Specialty?
Open Discussion
References


Center for Substance Abuse Treatment, Considerations for the Provision of E-Therapy. HHS Publication. No. (SMA) 09-4450. Rockville, MD: Center for Substance Abuse Treatment, Substance Abuse and Mental Health Services Administration.


