Mobility Tool Kit Step 5B:
Assess facilitators and barriers to interjurisdictional practice
Practice across borders using technology
E-Practice Across State Lines

Sherrie L. Williams, LCSW
COO, Global Partnership for Telehealth
• From rural South Georgia
• 15ish years in direct service
• Hated the idea of telehealth in 2007
• Global Partnership for Telehealth since 2012
• Co-Authored ATA Pediatric Guidelines
• Passionate about telehealth
• Non-profit telehealth network
• Approx 700 partners
• Variety of applications
  • School Based telehealth Centers
  • Corrections
  • Large and small hospitals
  • SNFs
  • CSBs
  • FQHCs

• National School of Applied Telehealth
• Home of South Eastern Telehealth Resource Center
It is not the strongest of the species that survives, nor the most intelligent, but the one most responsive to change.

- Charles Darwin
Tamping Down Telehealth

Over-regulation is attempting to happen by special interest groups.

FEAR of losing ground is driving the regulation.

Patient demand is undermining the regulation.

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Not all telehealth is created equal

Telehealth Compliance
My Perspective

Clinical Presentation Site

Provider Site

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3 Common Pitfalls

1. HIPAA and HITECH Violations
2. Violations of state licensing laws
3. Failure to meet standards of practice
Take a Closer Look: HIPAA and HITECH Violations

Children's Medical Center of Dallas settles with feds over HIPAA violations

- NOT a telehealth breach per se
- Employee lost BlackBerry at DFW airport
- Contained approx. 3800 patient records
- Poor risk management procedures
- Fined $3.2M (6th largest fine in HIPAA history)

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Take a Closer Look:
HIPAA and HITECH Violations

Rural Hospital in GA

• Small hospital began an out-patient tele-psych/behavioral health program
• Used compliant telehealth network, software, hardware
• Placed outpatient clinic inside the ER....behind a curtain
• Issue was resolved before any complaints filed

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Risk Mitigation: HIPAA/HITECH

- Know the rules
- Don’t lose common sense when technology plugs in
- Policies and procedures mean nothing if they are not adhered to

“Texting my orders? No, I’m tweeting and updating my Facebook wall about this big Bozo I am treating.”
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- Will your telehealth platform sign a BAA?
- Do you have set rules with your patient/client that state:
  - Situate themselves in a private location during the session
  - Introduce every person present in the room during the session
- How will you share/gather PHI?
  - Texting is not compliant
  - Only email using a secure/encrypted system
  - Only use secure messaging
  - Old fashion faxing

- Policies and Procedures:
  - Do you have written P&P that govern your telehealth practice?
  - Are you billing insurance?
  - Does your website say you are “compliant”?

- Patient Consent for telehealth
  - How do you gather patient consent?
  - What does the particular state of practice require?
Take a Closer Look:
Failure to meet standards of best practices

- Cases are extremely minimal
- Recorded complaints cite neglecting to use telehealth when it was available
- Expect to see more cases as telehealth becomes more mainstream
What is Standard of Care?

In legal terms, it is the level at which the average, prudent provider in a given community would practice. In other words, it is how similarly qualified practitioners would have managed the patient’s care under the same or similar circumstances.


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When does telehealth become a “standard of care”?

- Malpractice Plaintiff must prove standard of care and demonstrate the breach of that care standard
- Telehealth broadens the “community” of care
  - Access to a variety of care experts
  - If telehealth was available and not used, then the provider may be found negligent

In short, telehealth broadens the standards for community care, improves quality, and enhances better outcomes.

Think: Who is your virtual community?

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Standard of Care Should not Change!

The standard of care in telemedicine is identical to the standard of care in an in-person office visit.

“These guidelines should not be construed to alter the scope of practice of any health care provider or authorize the delivery of health care services in a setting, or in a manner, not authorized by law. In fact, these guidelines support a consistent standard of care and scope of practice notwithstanding the delivery tool or business method used to enable practitioner-to-patient communications.”

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April 2, 2008 = more confusion

- Toughened restrictions and reporting requirements on Internet pharmacies.
- Prohibited the sale of controlled substances on the Internet without a valid prescription.
- Required an in-person medical evaluation of the patient as part of the definition of “valid prescription.”
- Provided for federal enforcement authority with respect to violations
Take a Closer Look:
Violation of State Licensing Law

Abraham v. Bureau of Professional and Occupational Affairs, Board of Psychology

Findings of Fact about the case:
1. Practitioner was not licensed in PA (licensed in Israel)
2. Operated a virtual counseling service in PA via the Internet

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A therapist in her 30s used Facebook to keep in touch with a former female patient of similar age who she took care of when she was practicing in another state a few years ago. They developed a level of trust that the patient said she had not had with anyone else. They now periodically exchange pleasantries on Facebook as a way of staying in touch, but lately the patient’s affect online appears different, worrying the therapist. She knows she probably shouldn’t be using Facebook because it may not be private, but she also doesn’t want to give the patient her personal email address. She also no longer has a license to practice in the state where the patient is located.
It isn’t so simple

• Some states only regulate telemedicine as it relates to the practice of medicine (at a distance). They do not address, for example, telepsychology or teletherapy.

• Legal definition rules are ambiguous as to who can practice and under what circumstances or constraints.

• In states where no statutes exist, medical or other regulatory boards have issued regulations. These have to be carefully consulted; one board’s policies may differ from another’s. Furthermore, there are states where there is no explicit regulation, which means one has to apply existing laws which preceded the development of the Internet.
Know the Guidelines (all of them!)

- Cross-reference federal, state, territorial, and professional guidelines
- Meet the most stringent of guidelines
Tele what? Tele who? Tele HELP!!!

**Georgia**
Telemedicine is the exchange of medical information for clinical care from one site to another via electronic communications to improve patient’s health status. It is the use of two-way, real time, interactive communication equipment to exchange the patient information from one site to another via an electronic communication system. This includes audio and video communications equipment.

**North Dakota**
Telehealth: (1) Means the use of interactive audio, video, or other telecommunications technology that is used by a health care provider or health care facility at a distant site to deliver health services at an originating site and that is delivered over a secure connection that complies with the requirements of state and federal laws. (2) Includes the use of electronic media for consultation relating to the health care diagnosis or treatment of a patient in real time or through the use of store-and-forward technology. (3) Does not include the use of audio-only telephone, electronic mail, or facsimile transmissions.”

**Oregon**
The use of medical information, exchanged from one site to another, via telephonic or electronic communications, to improve a patient’s health status.
The Differences Make a Difference

**Colorado**
Pre-existing relationship must exist first

**Louisiana**
Store and Forward not accepted

**Georgia**
Continuing Education hours in TH required

**Louisiana**
Group therapy not allowed

**California**
Client location must be confirmed and documented

**Texas**
Must present Code of Conduct and how to contact the licensing board

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Tri-State Effect

- Client lives in NM.
- Clinician lives in WA.
- Clinician in licensed in NM and WA.
- Client decides to go on vacation to HI.
- Now What?

Client's physical location dictates jurisdiction

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California Travel Warning

September 2016: CA Licensing Board (BBS) issued a warning regarding therapy with patients who travel out of state

CA Licensing Board (BBS) issued a warning regarding therapy with patients who travel out of state requiring that if a therapist (MFT, LCSW, LPC, LEP, etc.), treats in the state s/he is licensed in, and the client goes on vacation or business trip to another state, the therapist has an obligation to check with the state where the client is temporarily located to see if conducting phone or video-conferencing therapy is allowed.

This notice is essentially a travel warning to all current patients and to all California consumers seeking or receiving counseling or psychotherapy from any of these practitioners. The Board notifies California consumers that if they are traveling to another state and wish to engage in psychotherapy or counseling via the telephone (or the Internet) with their California-licensed therapist while they are away, their therapist needs to check with the state that the patient is temporarily located in to see if this is permitted. The State of California, through one of its many regulatory boards, is thus suggesting to patients who are already in treatment with their California-licensed practitioners that they may not be able to get continuing and necessary treatment from their therapists via telephone if they temporarily cross the borders of California!

-Richard Lesley, JD, Sep. 2016

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To Coach or Not to Coach?

• What is the difference between social work practice and life coaching?

• Will the licensing board differentiate? You may still be liable due to your license status.

• Life coaching usually isn’t regulated but your license is!
Technology moves faster than regulation

How fast?

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Telehealth as a practice or medicine as a practice using technology?

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One Last Thought...

- Determine when a therapist/patient relationship is established.
- Assure privacy of patient data.
- Guarantee proper evaluation and treatment of the patient.
- Practice within scope.

- Welfare and best interest of client first.
- Maintain acceptable and appropriate standards of practice.
- Adhere to recognized ethical codes governing the social work profession.
- Properly supervise clinicians.
- Protect patient confidentiality.

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References


3. American Telemedicine Association


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References


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