

## **Summer 2022 *The Los Angeles Psychologist* Ethics Article**

### **Pandemics and Legal Mandates: Maintaining Clinical Competency and Ethics in Telepsychology Practice**

Margaret Hunt, Ph.D. and Anthony Zamudio, Ph.D.

Dr. A is opening a telepsychology private practice. Dr. A has rarely practiced psychotherapy using video, but figures he can sign up for a free teletherapy platform, and start seeing patients. He plans to use his personal email address to communicate with patients, and to exchange consent forms and other protected health information (PHI). A patient contacts Dr. A asking for help with depression and complex trauma that was never fully addressed in prior psychotherapy. The referral is concerned about how much time and money he will need to invest in further treatment.

Dr. A is feeling frustrated and overwhelmed with listserv exchanges regarding the January 2022 Federal Mandate, known as the No Surprises Act. Dr. A finds the conversation about this new law so confusing that he decides to simply wait and see what happens next year, rather than attempt to understand all the available material now. He figures that by next year the law will be well-understood and he can start implementing it in his practice then.

The above hypothetical contains dilemmas that nearly all California psychologists have, or will face, regarding competency. Providers in independent practice are responsible for staying abreast of changes to the American Psychological Association's Ethical Principles of Psychologists and Code of Conduct (hereinafter "Ethics Code:), the law, and best practices, all of which have seen recent changes.

Below is a look at the issues contained in the above hypothetical, broken down by dilemma:

#### **Competency Regarding Use of Technology in Clinical Practice**

Ethics Code Section 4.01 – Maintaining Confidentiality

- Dr. A must take precautions to ensure confidentiality when engaging in psychotherapy through virtual and telehealth platforms. Similar precautions are ethically required when delivering and receiving telepsychology consent forms (3.10 Informed Consent), patient screening forms, email exchanges, credit card methods, and storing psychotherapy records. HIPAA compliance includes using encryption for any PHI, which is not standard on personal accounts.

#### **Clinical Competency**

Ethics Code 2.01 – Boundaries of Competence

- Regardless of how long Dr. A has been providing inperson psychotherapy, the transition to telehealth requires a new body of knowledge. He will need to understand which telehealth platforms provide a Business Associate Agreement (BAA) to be HIPAA-compliant and which do not. Dr. A will need to establish policies that help Minimize Intrusions on Privacy (4.04) when conducting virtual psychotherapy sessions.

#### **General Professional Competency**

Ethics Code General Principle A – The General Principles of Beneficence and Nonmaleficence

- Dr. A will need to keep in mind that not all patients are appropriate to see by video, and that he must weigh the clinical pros and cons of telehealth for each new referral. The patient's psychological presentation may necessitate more direct observation of their behaviors to provide a more accurate assessment and better management of highrisk behaviors.

#### Ethics Code General Principle C – Integrity

- The principle of integrity describes the importance that psychologists engage in accurate, honest practices. Staying up-to-date on changes to best practices and the law is part of this aspirational ethical mandate, in addition to a legal and professional one.

#### Ethics Code Section 2.03 – Maintaining Competence

- Even if Dr. A has years of telepsychology experience, gaining up-to-date training on virtual clinical interventions and legal requirements are important to maintain. Dr. A's decision to ignore state and federal mandates until next year, and his use of the listserv as his primary source of information about the new law would not satisfy this ethical principle.

There are multiple professional resources that are available to help Dr. A maintain competency and stay up to date on changes to state and federal mandates:

1. Professional organizations and electronic medical record platforms sponsor continuing education courses that are offered on a weekly, monthly, and annual basis. A few resources include:
  - Los Angeles County Psychological Association: <https://www.lacpa.org/continuing-education-programs>
  - California Psychological Association: [https://www.cpapsych.org/events/event\\_list.asp?group=&cid=13225](https://www.cpapsych.org/events/event_list.asp?group=&cid=13225)
  - American Psychological Association: <https://www.apa.org/members/your-training/continuing-education>
  - San Diego Psychological Association: <https://sdpsych.org/All-CE-Events>
  - Simple Practice: <https://www.simplepracticelearning.com/>
  - TherapyNotes: <https://blog.therapynotes.com/topic/ce-courses>
2. LACPA offers multiple Special Interest Groups can also provide a wide range in areas of education and can also reduce professional isolation: <https://www.lacpa.org/special-interest-groups-sig>
3. By joining professional organizations (See #1) member benefits, including newsletters and magazines, offer up to-date information:
  - LACPA's free subscription to their quarterly, The Los Angeles Psychologist
    - <https://www.lacpa.org/membership-benefits>
  - CPA's member benefit to their quarterly, The California Psychologist:
    - <https://www.cpapsych.org/page/048>
  - APA's member benefit to Monitor on Psychology

- <https://www.apa.org/members/your-membership/join>
4. Ethics On-Call services are available to clarify ethical dilemmas:
    - ° LACPA: On Call with the LACPA Ethics Committee
      - <https://www.lacpa.org/need-an-ethics-referral->
    - ° CPA: Ethics On Call:
      - <https://www.cpapsych.org/page/123?&hhsearchterms=%22ethics+and+call%22>
  5. Malpractice insurance carriers may also provide risk management consultation

**Margaret Hunt, Ph.D.**, is the current chair of the LACPA Ethics Committee. She received her Ph.D. from UCLA and completed her postdoctoral training in the Veterans Administration. Dr. Hunt provides cognitive-behavioral and mindfulness-based therapy in Santa Monica.

**Anthony Zamudio, Ph.D.**, received his Ph.D. in clinical psychology from UCLA. He is in private practice and teaches family medicine residents and medical students the biopsychosocial aspects of health and wellness. He serves on LACPA'S Ethics Committee and is a former ethics member of the California Psychological Association.