Ethical Issues in the Digital Age

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Learning Objectives

1. Learn Standard VI of the AAMFT Code of Ethics and how to apply it to your clinical practice
2. Be informed of how to “safe guard” your clinical practice in today’s digital age
3. Understand the legal and ethical concerns with telemental health practices

Disclaimer

Both presenters are Marriage and Family Therapists and we are not attorneys or information technology specialists. The information we provide is intended to give you timely information in a rapidly changing area. We cannot provide a warranty or guarantee on the information presented today.
Standard VI

- Standard created to acknowledge the widespread integration of technology assisted services in clinical practice
- Applies to therapy, supervision, and related professional services
- What is technology assisted service? What are electronic means?

6.1 - Technology Assisted Services

“Prior to services…compliant with all relevant laws for the delivery of such services.”
   a. Determining appropriateness of service
   b. Informing clients of potential risks/benefits
   c. Ensuring security of medium
   d. Only use technology after appropriate training

6.2 - Consent to Treat or Supervise

“Clients and supervisees, whether contracting for services as individuals, dyads, families, or groups, must be made aware of the risks and responsibilities associated with technology-assisted services. Therapists are to advise clients and supervisees in writing of these risks, and of both the therapist’s clients’/supervisees’ responsibilities for minimizing such risks.”

6.3 - Confidentiality and Professional Responsibilities

“It is the therapist’s or supervisor’s responsibility to choose technological platforms that adhere to standards of best practices related to confidentiality and quality of services, and that meet applicable laws. Clients and supervisees are to be made aware in writing of the limitations and protections offered by the therapist’s or supervisor’s technology.”
6.4 – Technology & Documentation

“Therapists and supervisors are to ensure that all documentation containing identifying or otherwise sensitive information which is electronically stored and/or transferred is done using technology that adhere to standards of best practices related to confidentiality and quality of services, and that meet applicable laws. Clients and supervisees are to be made aware in writing of the limitations and protections offered by the therapist’s or supervisor’s technology.”

6.5 – Location of Services and Practice

“Therapists and supervisors follow all applicable laws regarding location of practice and services, and do not use technologically-assisted means for practicing outside their allowed jurisdiction.”

6.6 – Training and Use of Current Technology

“Marriage and family therapists ensure that they are well trained and competent in the use of all chosen technology-assisted professional services. Careful choices of audio, video, and other options are made in order to optimize quality and security of services, and to adhere to standards of best practices for technology-assisted services. Furthermore, such choices of technology are to be suitably advanced and current so as to best serve the professional needs of clients and supervisees.”

What does Standard VI Cover? How does it apply to our clinical and professional practice?
Potential Consequences for Ethical or Legal Breaches by an MFT

- Complaint against license
- Complaint via professional affiliations or privileges (AAMFT, ACA, clinical facilities)
- Employment issues
- Civil proceedings/malpractice complaints
- Criminal Proceedings

Ethics and the Law in a Digital Context

- Standard VI is a vital step in the RIGHT direction
- The challenges are still daunting
- Lacking in guidance concerning social media and other technologies that continue to emerge
- The field still faces obstacles due to lack of ethical and legal standards for these areas of practice
- The processes of moral reasoning and decision-making are also critical

Standard VI is a step in the right direction, but what areas are still unclear?

Practicing in the digital age

Tips for safeguarding your practice
What does Standard VI not cover?

- The specifics on social media
- Personal verses Professional behavior online
- “Friending” and “following” requests
- Search engines
- Interacting via digital media
- Location-based services
- Consumer Review Sites
- Telemental Health Practices
- Scope of Practice

Case Example 1
Couple’s Therapy University’s MFT faculty recognize that students today are frequently engaged with social media. It comes to one of the faculty members attention that the Master’s cohorts have started “Group Pages” for each of the individual cohorts. This issue comes up in supervision one day, when the faculty supervisor is informed that “When I asked the cohort on Facebook about this client...”. The faculty supervisor then asked the student more information about this page, finding out that they use it to ask program questions, questions about course work, training opportunities, to connect socially, and to sometimes ask case questions. The student says that it is a private group for just the therapists and that she is certain that the privacy settings have been looked into.

Case Example 2
Cheryl is a licensed marriage and family therapist practicing in a small community. She has made it a routine part of her practice to discuss with clients the likelihood of them seeing each other outside of therapy in town. While on Facebook she sees a post on her Facebook homepage that her friend Toya is tagged in. To her surprise it is a post of some pictures of Toya at a party and one of her clients is tagged in the album. Cheryl not only can see the pictures but also anything that Toya has commented on. Cheryl is shocked to see that her client, who recently left an abusive relationship appears to be with her former intimate partner in the pictures. Being concerned for her clients safety, and now having the partner’s name, Cheryl goes to a search engine and looks up this individual online. After much searching she is able to find several stories about arrests do to violent behavior. Cheryl decides that in the next session she will try to get her client to disclose that she is back in the relationship so they can discuss her safety.

Case Examples

- What ethical issue(s) did your group identify in your case scenario?
- Does Standard VI provide guidance?
- Are there existing AAMFT ethical codes that provide guidance?
- What is unclear?
**Personal vs. Professional Online Activities**

- Understand the implications of discussing clinical issues within their social networks
- Post may be accessed/read by non-professionals
- “Masked data” could be enough to breach confidentiality

*Kolmes, 2010*

**Interacting using digital media**

- Email, SMS, @replies, and other messaging systems
- Popular online sites often provide limited security and privacy
- Communicating via these systems may breach client’s confidentiality to third parties
- Inform clients of risk of use
- Encryption software

*Kolmes, 2010*

**Search engines**

- Is searching for a client online an acceptable practice?
- Informing clients of when and why this is done
- Routine collection of information
- Crisis situations
- Documentation of such activity as part of your clients’ records if for assessment purposes

*Kolmes, 2010*

**“Friending” and “following” requests**

- Concerns of boundary management
- Dual relationships
- Access to contradictory information
- Risk of breaching confidentiality

*Kolmes, 2010*
Consumer Review Sites

- Consumer review sites request feedback from consumers
- A response to a review is a breach to confidentiality
- Clients may be unaware of the risk of writing a review

Location-based services

- Computer program services that utilizes location data
- Your practice may come up on LBS programs
- Clients may post on social media from your office and unintentionally reveal their location
- Informing clients of this potential

Telemental health services

- “The use of telecommunications and information technology to provide access to health assessment, intervention, consultation, supervision, education, and information across distance” (Nickelson, 1998, p. 527)
- Telemental health may utilize telephone, mobile devices, interactive videoconferencing, email, chat, text, Internet (e.g., self-help websites, blogs, social media) (APA, 2013)
Purpose

- To enhance the quality of services and provide greater access
- Telemental health should meet three things:
  1. Client's treatment needs
  2. Fulfill ethical obligations
  3. Meets legal requirements

Dr. Aamar Patel is an LMFT & has been providing therapeutic services for over 22 years. After speaking with a colleague who provides e-therapy, Dr. Patel thinks this is a profound way to help clients in rural Texas. Dr. Patel updates his website to include the offerings of email, text-based, and video conferencing therapeutic services. Dr. Patel provides his Gmail account information, his business cell phone number, and his Skype username. His advertisements highlight his 22 years of experience and includes access to his standard informed consent form online, which will allow clients to review and sign digitally. Quickly, Dr. Patel has 15 new clients seeking a range of different e-therapy services, several of which live in neighboring states and one from Canada who wants help with issues Dr. Patel specializes in.

Competence

- Telemental health requires two forms of competence
  1. Technological competence
  2. Clinical competence
- Professional, ethical, and legal issues
- AAMFT provides guidelines that represent MFT field’s consensus

Technological Competence

- Working knowledge of issues related to technology use
  - Hardware/software
  - Types of Internet connection
  - Privacy safeguards
  - Security precautions
- Evaluating and repairing quality issues
- Providing clients instructions on use
- Creating a back up plan for technical difficulties

Barnett & Kolmes (2009)
Video Conference Software

- Skype is NOT HIPPA compliant
- Search for products that have been certified by HIPPA
- HIPPA certified options:
  - Vyzit
  - Zsee
  - Zoom
  - Regroup Therapy
  - Breakthrough

Options for services

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<thead>
<tr>
<th>E-mail</th>
<th>Videoconferencing</th>
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<tr>
<td>Lack of empirical support for the effectiveness of email based therapy services</td>
<td>Therapeutic alliance has been found to similar to face-to-face services (Cousk &amp; Doyle, 2002; Hanley, 2006; Morgan, Patrick, &amp; Magaletta, 2008)</td>
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<tr>
<td>Absence of visual cues</td>
<td>Strong foundation of empirical support for effectiveness</td>
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<td>Potential for miscommunication</td>
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<td>Difficulty with assessment and diagnosis</td>
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<td>Identity of the client</td>
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<td>Informed consent</td>
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<td>Navigating crisis and emergency intervention</td>
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Who is appropriate to treat?

- Screening process
- Documentation of rationale
- Clients least appropriate for telemental health services
- Referral sources
- “Right” type of first clients

Other issues

- Multicultural competence
  - Knowledgeable about culture of clients accessing your telemental health services
  - Potential language barriers
  - Lack of competence in clients community
- General clinical competence
  - Still required to stay within scope of practice
  - Treating clients within competency
Informed Consent

Modifications:
1. Options and alternatives
2. Referrals
3. Fees
4. Issues of confidentiality
5. Interruption of electronic communication plan
6. Emergency contact information
7. Licensure information, license #, board contact
8. How you are compliant with state laws for telemental health
9. Responding to crisis
10. Anticipated response time to electronic communication
11. Ensuring person can give legal consent
12. Impersonation attempts
13. Assessing “success” of telemental health services

Legal Issues

- Interjurisdictional practice
- State’s licensing laws and regulations
- Contact EACH state you plan to offer therapeutic services
- Laws and regulations vary
  - Duty to report
  - Duty to warn
  - Requirement of state license
  - Hospitalization
- When laws/regulations differ apply the laws that more stringently protect the client

Take away points

- Be knowledgeable of and follow the AAMFT Code of Ethics
- Be knowledgeable of, and follow, relevant telemental health guidelines
- Learn and follow telemental health guidelines in EACH jurisdiction in which you practice
- Assess each client’s service needs to determine appropriateness of telemental health services
- Create a comprehensive informed consent
- Take all actions and use relevant tech. to protect confidentiality of clients
- Only use HIPPA compliant software
- Only provide services that you are clinically competent to provide
- Develop competence for hardware/software before conducting services
- Ensure multicultural competence, attend to linguistic competence for online interactions
- Learn/follow all reporting requirements for EACH jurisdiction
- Learn about resources available to each client’s location before starting services
- Use an ethical decision making model to determine appropriateness of online services for client
- Maintain appropriate liability insurance coverage and confirm that your malpractice insurance includes telemental health services

Barnett & Kolmes (2009)