

HANDOUTS
Ethical Issues in the Electronic Age

Presented by
Linda Knauss, Ph.D., ABPP

12:45 p.m. Introduction and Confidentiality

- Existing Rules Governing Electronic Communication
- Confidentiality of Therapists and Clients

Informed Consent

- What Clients Need to Know
- Internet Policies

Telehealth and Boundaries

- Types of Telehealth
- Boundaries Unique to Electronic Communication

2:10 Break (*coffee, tea, iced tea, soda, snack*)

2:25 Record Keeping

- Legal Issues
- Record Retention

Googling Clients and Mental Health Professionals

- Pros and Cons
- Electronic Footprints

Social Networking and Bullying

- Ethical Decision Making
- Electronic Violence

4 p.m. Adjournment (Pick Up Certificates)

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Ethical Issues in the Electronic Age

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Learning Objectives

- Apply the overarching ethical principles to issues involving electronic communication.
- Identify issues in electronic communication that promote or prevent client welfare.
- Discuss the pros and cons of using social media in psychological practice.
- Improve ethical decision making skills about electronic communications.

Program Agenda

- Introduction and Confidentiality
- Informed Consent, HIPAA** and FERPA*
- Telehealth and Boundaries
- Record Keeping
- Googling Clients and Mental Health Professionals
- Social Networking and Bullying

** Health Insurance Portability and Accountability Act of 1996

* Family Education Rights and Privacy Act

Introduction

- Email communication is allowed between a psychologist and a client.
- Email is quickly becoming the preferred mode of communication.
- In fact, internet-based therapy is not prohibited.
- However, these types of electronic communications are governed by existing rules and regulations.

Introduction

- They are not yet part of the APA Ethics Code, or other mental health ethics codes.
- Electronic communications must be maintained as part of the client record, (except perhaps scheduling communications).
- This emerging area creates many challenges.

Confidentiality

- Of Therapist
 - Even if you do not give out your email address, you are easy to find.
- Positive
 - You do not need to notify former clients of a new office address.
- Negative
 - Lack of privacy

Confidentiality

- Of Client
 - Is it really the client who is emailing you?
 - Or is it a potential employer fishing for information?
 - Or an insurance company looking for pre-existing conditions?
- Client Identification
 - Is a major issue in internet mediated services.
 - For both therapy and assessment.

Confidentiality

- Verify
- Did the client give consent?
- Age?
- Legal status?

Consultations on the Internet

- Psychologists seek consultations on listservs.
- There is a risk of violating the client's confidentiality.
- Information must be well disguised.
- There is no assurance of the competence of the person responding.

Informed Consent

- Tell clients the limits of confidentiality on the internet.
- You can not guarantee confidentiality.
- Clients need to know this.
- You can communicate by email if this is part of your informed consent process.
- Tell clients if you prefer email, voice mail, etc.

Informed Consent

- Clients should be aware of the benefits and risks of electronic communication so they can make good decisions.
- Even if the psychologist does not plan to use electronic communication, it may be initiated by the client.
- Thus it is important to have an internet policy as part of your informed consent form.

Inform Clients

- If you conduct therapy or assessment electronically
 - Strangers can hack in
 - Institutional staff may have access
- If clients send you email with sensitive content
 - Others can read these
 - Discourage clients from sending this type of content

Inform Clients

- If you provide services electronically
 - Have a visible privacy statement
 - APA has a sample

Security

- Encryption
 - Encryption provides additional protection.
- Firewall Software
 - School networks should have firewall protection.
- Get technical assistance if you need to protect confidentiality.
 - Precautions so that others can not modify your reports

APA Ethics Code

- Standard 4.01
 - “reasonable precautions to protect confidential information...”
- Standard 4.02
 - Specifically refers to: Psychological services or the transmission of records VIA ELECTRONIC MEANS

NASP 2010 Principles for Professional Ethics

- Standard 11.4.7

—“To the extent that school psychological records are under their control, school psychologists protect electronic files from unauthorized release or modification (e.g., by using passwords and encryption), and they take reasonable steps to ensure that school psychological records are not lost due to equipment failure.”

FERPA

- FERPA does not allow an educational institution to leave educational records unprotected or subject to access by unauthorized individuals, regardless of whether the record is paper, film, electronic, or any other format.

HIPAA

- Privacy
- The HIPAA privacy rule requires psychotherapy notes to be kept separately from the client's chart.
 - How do you do that on the internet?
- If a client requests a report electronically, he/she still needs to sign an authorization form.

HIPAA

- Security

- Psychologists and other providers need to comply with the Security Rule if they electronically transmit or store PHI.
- The Security Rule applies only to PHI kept on electronic devices.
- Security risks to PHI can not realistically be eliminated.

HIPAA

- Security

- The Security Rule is about taking reasonable measures to manage and reduce risks.
- The Security Rule does not require any single method or “best practice.”
- The rule requires psychologists to use reasonable security measures to respond to the risks relevant to their practice.

HIPAA

- Security

- HIPAA does not require encryption.
- There are encryption services specifically for emails.
- It is a good idea to document that you considered encryption even if you decide it is not a good fit for your practice.

HIPAA

- Security

- If a breach occurs, with encryption it is not necessary to send breach notifications.
- It is important to conduct a risk analysis and consider the different options to best protect your practice.
- Then document your decision making process and your final decision.

HIPAA

- Security

- When creating a Security Rule compliance plan be sure to show:
 - The areas of risk identified.
 - The security measures considered.
 - The final decision that will best protect your practice.

HIPAA Compliant Healthcare Technology

- Therapy Notes

- Electronic health record system

- Thera-Link

- For secure online therapy sessions

- Hushmail

- Secure email service to send and receive encrypted emails and attachments

Assessment

- By computer
- Can not observe behavior
- Can not verify ethnicity
- Can not see motor problems
- Video is better than voice or email
- Computer generated reports

Telehealth

- Email
- Instant messaging
- Chat room
- Videoconferencing
- Skype
- Computer voice service

Telehealth

- Research has shown that a meaningful therapeutic alliance can be formed over the internet.
- Set up an agreed upon procedure with each client in the event of technology failure.
- What course of action will the clinician take in the case of an emergency?

Telehealth

- It is important to know the client's location and contact information.
- This is necessary to alert an emergency management team, or Child Protective Services.
- It is also helpful when referring clients to community resources.

Licensure

- Service is provided across state lines.
- You must know the laws where the services are received.
- This includes the Mandated Reporting law.
- It is more difficult to know when a professional relationship is established.
- The PA Licensing Board is studying these issues.

Benefits

- Electronic intervention and assessment can reach people who would not otherwise get services due to:
 - Geography
 - Speciality
 - Disability
 - Resistance (This is more anonymous)
 - Agoraphobia

Benefits

- Easier to store and transmit data
- Cost effective
- Convenient
 - Anytime
 - Any place
- Keep in mind the welfare of the client

Boundaries

- Email is always available.
- Used for scheduling
 - Must check often to find last minute cancellations.
- Used for clinical information
 - Between sessions
 - What about needy clients?

Boundaries

- Should email be used for emergencies?
- This is a professional communication.
 - Avoid abbreviations.
 - Avoid irregular punctuation.
- People often expect an immediate response.
 - Let clients know that this is not possible.

Boundaries

- Clinicians can not check email on a 24 hour basis.
- Should you respond to a client late at night?
- What message does this send?

Record Keeping

- Print out email and keep it in the client's file. It is part of client records (any email with identifying information).
- Keep emails about clients brief.
- Do not make inappropriate references to others (family members).

Record Keeping

- Legally, emails are "discoverable" whether they are on a work or home computer.
- If you are not sure how to respond to an email, consult with your supervisor.

Google Therapists

- Clients find out a lot about us on the internet.
 - Licensing Board complaints
 - Political affiliation
 - Evaluations by other clients (YELP)
- Even things not related to psychology
 - Charitable activities
- You do not need a website or a Facebook profile.
 - You are there.

Google Clients

- Pro
 - Searching for information is a standard of care.
 - Currently people search on the internet –
 - NOT in a phone book
 - Clients learn a lot about us on the internet and we can also learn a lot about them.
 - This is especially important if you are doing a forensic evaluation.

Google Clients

- Pro
 - Opposing attorneys will have this information.
 - They will Google.
 - In individual treatment, we trust what the client says and base treatment on this.
 - We lack collateral information.
 - Clients may post information about:
 - Mood, substance use, suicidal ideation

Google Clients

- Pro
 - If an adolescent says he or she is substance free and posts photos of drinking on his or her facebook page, is this relevant to treatment?

Google Clients

- Pro
 - This information is public.
 - Some say curiosity is not a reason to do an internet search of a client.
 - But we base treatment on the data we gather.
 - Should getting all information be a standard of care?
 - Do we need consent to look at public information? Must use clinical judgment.

Google Clients

- Con
 - It is like hiring a detective to observe a client's public behavior and reporting back to the therapist.
 - The information may not be accurate.
 - If it is not an emergency, we should have informed consent.
 - If you do not do internet searches, tell that to clients and tell them you rely on the information they provide.
 - Tell clients you will only use the internet in instances of safety or risk.

Social Networking Online

- Pro
 - This is a good way to reach new prospective clients.
 - Also a good way to reach referral sources.
 - It is the PRIMARY WAY clients and professionals will find you.

Social Networking Online

- Pro
 - Be helpful to others
 - Post links to news stories or articles
 - Write your own
 - Interact with others
 - Answer questions
 - This will help others see you as an expert and pass your name on to their social network.

Social Networking Online

- LINKEDIN
 - For professional contact
 - Like a professional Facebook page
 - Search for people in similar or complimentary professions

Social Networking Online

- FACEBOOK
 - General public
 - Personal or business page
 - Business page provides more content
 - Went from “Fan” to “Like”
 - Does not require mutual “friending”
 - Be aware of security settings

Social Networking Online

- TWITTER
 - Brief text-based communication
 - Can follow others
 - Or be followed

Social Networking Online

- Con
 - Everything is potentially public
 - Check privacy settings
 - It lasts forever
 - Could be in an archive
 - Could be in someone else’s account

Social Networking Online

- Con
 - Think carefully before placing personal information on internet sites that may be visited by clients, students or supervisees.
 - Having clients as “friends” on a social networking site blurs the boundaries of the therapeutic relationship.
 - The client’s perception of the relationship may become more casual.

Social Media Policy

- Can be part of informed consent.
- Include policy on friend requests.
 - Current versus terminated clients
- Include whether you use the internet to obtain information about clients.
- Samples on the Trust website and Dr. Keely Kolmes website.

Mental Health Apps

- Apps for mindfulness
- Diagnose depression
- Track moods
- Think positive
- Create journals
- Track symptoms
- Find support networks

Mental Health Apps

- Technology is faster than science.
- Very little data on the efficacy of most apps.
- People use and like mental health apps.
- Possible risks are not well understood.
- Try out the app before recommending it to a client.

Bullying

- Is the most common form of violence in our society (NASP, 2003).
- Bullies reach their victims through Web sites, email, and cell phones.
- Cyber-bullying is the newest form of bullying.
- Victims are vulnerable 24 hours a day.
 - No place is safe

Bullying

- Bullies can be anonymous.
 - Can use a temporary email account
 - Can use a pseudonym
- It is easier to type a message than confront someone in person.
- With social networking sites, hundreds of children can pick on one child.

Bullying

- It is important for schools to have a bullying policy.
- If cyber-bullying occurs on school premises or during school hours, the school must intervene.
- Bullying must not be kept a secret.

Bullying

- It is important to print out and save any emails, instant messages, or Web site pages that contain threatening or derogatory statements.
- Help children give specific information about the bully and keep written notes.

Bullying

- Give victims unqualified support.
- Victims often feel alone.
- They may also feel shame and hopelessness.
- Encourage open communication about bullying and let children know that it is okay to tell.
 - Silence only empowers the bully.

Ethical Challenges

- Clients ask you to be their “friend.”
- Students ask you to be their “friend.”
- Many internet activities are anonymous.
 - Could be interacting with a client
 - Like at a DATING site
- Clients can see your personal information.
 - Sometimes even if you do not want them to

Ethical Challenges

- Be prudent about what you post on the internet.
 - People have lost jobs
- Facebook is a delicate balance.
- Knowing about privacy settings can save you embarrassment.
- Use the highest privacy settings not the default settings.

Ethical Challenges

- Allow only those you know to be your “friend.”
- Keep personal and professional pages separate.
- Do not put personal photos on a professional page.
- Use the internet for psychological tips.

Conclusions

- Clients will search for you.
 - Be aware of your digital footprint.
- What you write on blogs, social networking sites, listserves can be read by clients.
- Be smart about privacy settings.
- Avoid “friend” Facebook pages.
 - All material posted can be read by others.

Conclusions

- Be careful discussing cases online.
 - Get permission
 - De-identify
- Clients may read online cases and recognize themselves.
- Clients may read advice to their therapist from other therapists.

Conclusions

- Social media is the future.
- It is important to explore possibilities.
- Use it to attract clients.
- Use it to give information to the public.
- Psychologists have value to offer to the public.
- Greater outcomes may be possible.

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