Risk Management For Practice Expansion

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1 CE Credit, Instructional Level: Intermediate
1 Contact Hour (New York Board of Psychology)

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Disclosures/Conflicts of Interest

The presenter does not have any conflicts of interest to disclose.

NOTE: The information presented in this webinar is not intended to provide legal advice or to substitute for the advice of an attorney, but rather to provide information about general risk management considerations for practice expansion.

Learning Objectives

1. Identify sections of the ethics code relevant to growing one's business in new directions
2. Describe potential risks clinicians face when expanding the scope of their practice
3. Discuss three risk management strategies that can help mediate such risks

Poll #1

My practice currently consists of:

a) All telehealth
b) 25% telehealth, 75% in-person services
c) 50/50 telehealth and in-person services
d) 75% telehealth, 25% in-person services
e) All in-person

Poll #2

The best description of my practice is:

a) I have not expanded my practice very much over the last year.
b) I expanded my practice in new ways over the last year and do not intend to make additional changes.
c) I am contemplating new or additional practice expansion/changes in the coming months/year.
d) I am already planning and implementing additional practice expansion/changes.

Poll #3

The primary reason I am contemplating or implementing new or additional expansion of my practice is:

a) I see a clinical need for it.

b) I desire to enliven/change my practice to either reduce burnout or continue my own growth as a clinician.

c) Due to financial pressures.

d) Other

Emerging Opportunities

- Teletherapy
- Yoga
- Online Courses
- Meditation Classes
- Coaching
- Support Groups
- Unique Practice Combinations
- Mobile Apps

Potential Challenges/Risks

- Am I *clear* on what I am planning to do?
  - Will clients/consumers be clear?
- Am I *competent*?
- Do I know applicable *regulations/laws/ethics/standards of practice*?
- Is it the *practice of psychology*?
- Do I need an *informed consent* or to *keep records*?
- Can I practice *across jurisdictions*?
- Are there potential *multiple relationships* I need to consider?
- Should I use a *disclaimer*?
- How will I *market* my services? Can I use *testimonials*?
- Have I *consulted* with relevant advisors?

Am I Clear?

- What is it you want to do?
- The 3 D's: Define, Describe, Distinguish
  - For yourself
  - For consumers
- Critical for:
  - Clarifying relationship(s)
  - Setting expectations
  - Maintaining appropriate boundaries
  - Accurate and transparent marketing

Am I Competent?

APA Ethics Code

2.01 Boundaries of Competence

(a) Psychologists provide services, teach, and conduct research with populations and in areas only *within the boundaries of their competence*, based on their education, training, supervised experience, consultation, study, or professional experience.

(c) Psychologists planning to provide services, teach, or conduct research involving populations, areas, techniques, or technologies *new to them* undertake relevant education, training, supervised experience, consultation, or study.

Am I Competent?

2.01 Boundaries of Competence

(d) When psychologists are asked to provide services to individuals for whom appropriate mental health services are not available and for which psychologists have not obtained the competence necessary, psychologists with closely related prior training or experience may provide such services in order to ensure that services are not denied if they *make a reasonable effort to obtain the competence required by using relevant research, training, consultation, or study*.

(e) *In those emerging areas* in which generally recognized standards for preparatory training do not yet exist, *psychologists nevertheless take reasonable steps to ensure the competence of their work and to protect* clients/patients, students, supervisees, research participants, organizational clients, and others from harm.

Am I Competent?

- Good risk management requires a conservative evaluation of competence:
  - Intellectual
  - Technical
  - Emotional
  - Cultural
- Technical Competence:
  - Good working knowledge of all technology used
  - Security and privacy of technology
    - E.g., cellphone, ipad, computer, email, texts, apps
- Consider an IT consult

Establishing Competence

- If I have to defend my competence before a licensing board or other investigatory body, am I confident I can do so?

- Establishing competence:
  - Training or retraining
    - Coursework
    - Certification
    - Continuing education
  - Supervision and/or consultation

Regulations/Laws/Ethics/Standards of Practice

- Federal laws (e.g., HIPPA)
- State laws and regulations
- APA ethics code and other relevant guidelines
- Other relevant rules/regulations (e.g., PSYPACT)
- Standards of practice
- Security/privacy (e.g., apps, online platforms, social media)

- *What do I already know?*
- *What do I not know?*
- *What do I not know that I don't know?*

Is it the Practice of Psychology?

- Defined by states
- Typically broad in scope
- Clarifies whether professional duties apply
- Impacts cross-jurisdictional practice
  - Example: Coaching
- Licensing board perspective
  - Risks of doing one thing (e.g., therapy), but calling it something else (e.g., coaching)
  - The Duck Test

Informed Consent & Record Keeping

- Informed consent is always important; though may look very different depending on what services or products are offered (e.g., therapy, coaching, assessment)
  - Coaching resources:
    - Sample coaching contract: https://parma.trustinsurance.com/Resource-Center/Document-Library
    - Coaching: A New Frontier – Some Questions and Answers https://parma.trustinsurance.com/Resources/Articles/coaching-a-new-frontier-some-questions-and-answers
  - Differences for 'purely' educational offerings
    - Lower risk
    - Syllabi
    - Disclaimers
- Specifics of record keeping are context dependent (e.g., coaching note vs. therapy note
  - Be aware of legal, ethical, RM considerations
  - Emails, texts, apps

Can I Practice Across Jurisdictions?

- If it is the 'practice of psychology' licensure law applies
- Cross-jurisdictional options:
  - Temporary licensure laws
  - Covid waivers (**some already expired, others expiring soon)
  - PSYPACT
  - FL and NJ laws
  - Other considerations (e.g., CPQ)

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Can I Practice Across Jurisdictions?

- In many instances, when practicing in another jurisdiction you need to be familiar with the relevant laws of BOTH jurisdictions
- Other critical considerations:
  - Client/patient suitability
  - Emergency planning
  - Billing
- Educational only offerings = generally less risky
  - But, some potential risk of being perceived as doing therapy
    - Interactive vs. non-interactive online offerings
    - Offering 'coaching' as a means of deepening an online class or as an associated marketing tool

Is It A Multiple Relationship?

3.05 Multiple Relationships

(a) A multiple relationship occurs when a psychologist is in a professional role with a person and (1) at the same time is in another role with the same person, (2) at the same time is in a relationship with a person closely associated with or related to the person with whom the psychologist has the professional relationship, or (3) promises to enter into another relationship in the future with the person or a person closely associated with or related to the person.

A psychologist *refrains* from entering into a multiple relationship if the multiple relationship could reasonably be expected to impair the psychologist's *objectivity*, *competence*, or *effectiveness* in performing his or her functions as a psychologist, or otherwise risks *exploitation* or *harm* to the person with whom the professional relationship exists.

Should I Step Into a Multiple Relationship?

- Ethics code does not prohibit multiple relationships, but there can be increased risks
- Important to think through potential dual roles and have a general plan for how you will handle them
  - Set and maintain appropriate boundaries, including online
  - Be aware of your audience
- Additional considerations of potential impacts
  - E.g., clinician is both a yoga instructor and therapist
- Importance of having an electronic communications policy, including social media

https://parma.trustinsurance.com/Resource-Center/Document-Library

Questions to Ask Yourself

Younggren & Gottlieb (2004)

1. Is entering into a relationship in addition to the professional one necessary or should I avoid it?
2. Can the dual relationship potentially cause harm to the patient?
3. If harm seems unlikely or avoidable, would the additional relationship prove beneficial?
4. Is there a risk that the dual relationship could disrupt the therapeutic relationship?
5. Can I evaluate this matter objectively?

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Should I Use a

- Disclaimers serve as both a warning and a way to mitigate risk
- They do not rule out the possibility of legal action being taken against you, but afford important protection from liability
  - Examples: on website, online courses, educational material
  - Wording is specific to the context
    - Might include: statement that you are not providing psychological services, not establishing a doctor/patient relationship, that materials provided are strictly educational in nature, etc.
  - Verbal and written
- Importance of sticking to the disclaimer

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Marketing and Testimonials

- Clarify what you are/are not providing
- Provide accurate and honest information; refrain from confusing or misleading statements
- Set clear and accurate expectations and delineate clear distinctions between services/offerings
- Ensure marketing strategies are appropriate
- Play it safe
- Clarify the jurisdiction(s) in which you are licensed to practice
- Be cautious with "active" material on websites

Ethics Code: 5.05 Testimonials

Psychologists do not solicit testimonials from current therapy clients/patients or other persons who because of their particular circumstances are vulnerable to undue influence.

Consultation

- A primary and very effective risk management strategy
- Helpful at all stages of practice expansion
- Benefits:
  - Brainstorming and problem solving
  - The 3 D's: define, describe, differentiate
  - Get to borrow someone else's pre-frontal cortex for a bit
  - Reveals our blind spots (what we don't know we don't know)
  - Deliberate integration of ethical principles, standards of care, laws/regulations
- Who might you consult with?
  - E.g., experienced colleagues and trainers, risk management advisor, relevant practice groups, business advisors, attorney, accountant, IT consultants, malpractice insurance company

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Q&A With Dr. Bryant

- Discussion of select questions that were submitted via the Q&A feature throughout the presentation.
- Due to time constraints, we will not be able to address every question asked.