

# Practical Guidance and Risk Management for Interjurisdictional Practice

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# Marc A. Martinez, PhD, ABPP



Dr. Martinez has been a Risk Manager for The Trust since 2020. He is a psychologist licensed in Indiana (Health Service Provider in Psychology), Ohio, and New York. He is also board certified in forensic psychology by the American Board of Professional Psychology (ABPP). Since 2012, he has maintained a private practice that specializes in forensic psychological evaluations of juveniles and adults. Dr. Martinez's has served in several national leadership positions such as President and Treasurer of the American Board of Forensic Psychology, Chair and Vice Chair of ABPP's Ethics Committee; and Chair of APA's Committee on professional Practice and Standards.

# Disclosures/Conflicts of Interest

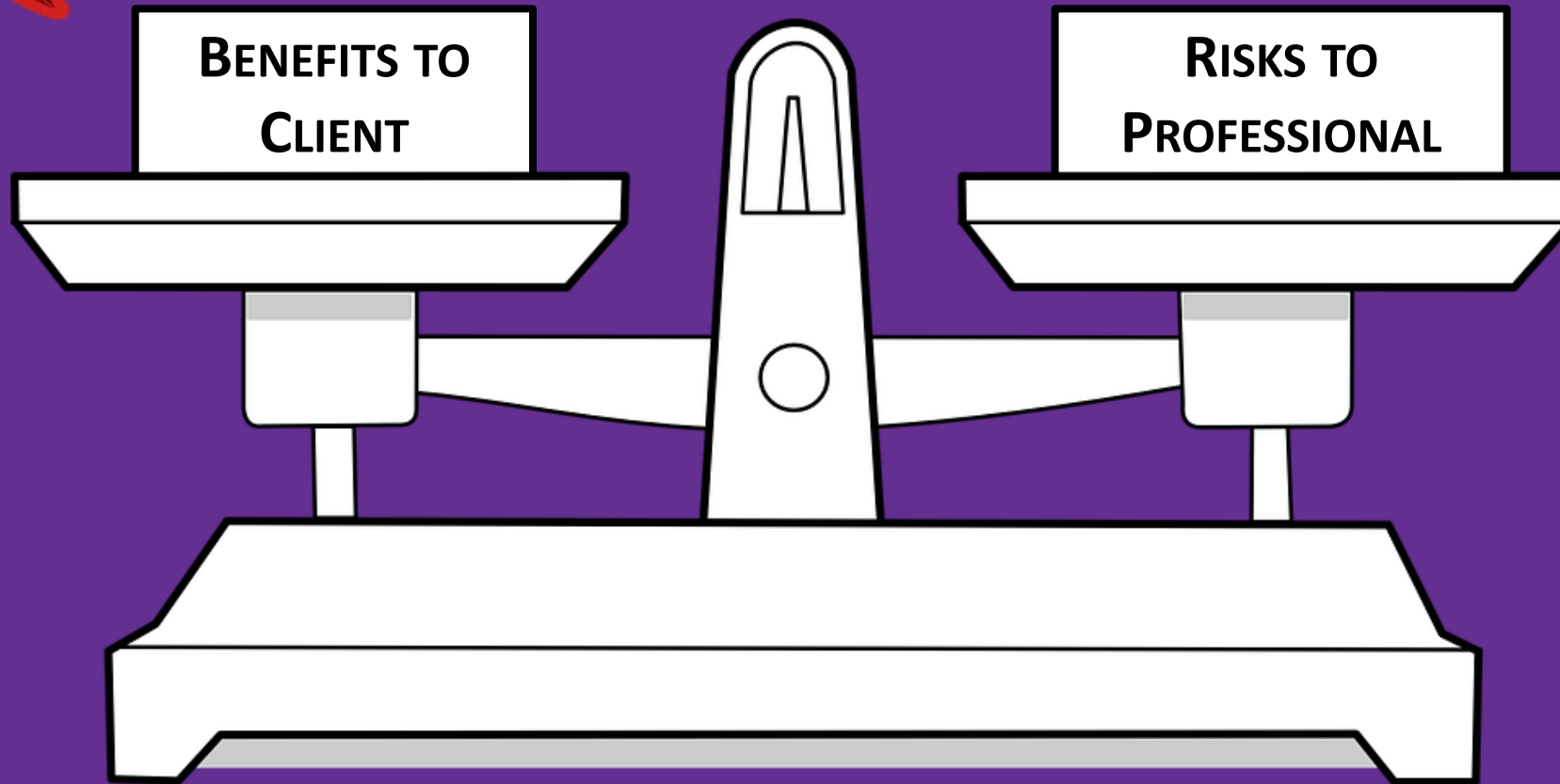
- Aside from my affiliation with The Trust, I have no conflicts of interest to disclose.

# Learning Objectives

1. Identify three broad considerations for conducting a risk analysis of practicing interjurisdictionally.
2. Explain at least two methods for complying with state regulations when practicing across jurisdictions.
3. Describe at least two strategies for obtaining state licensing information regarding temporary practice.

# What is risk management?

What can  
go wrong?



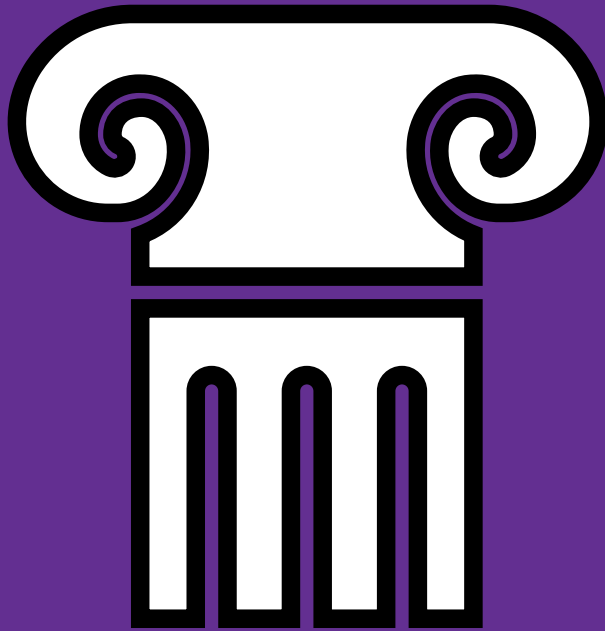
# Essential Risk Management Tools

- Informed Consent
- Documentation
- Consultation

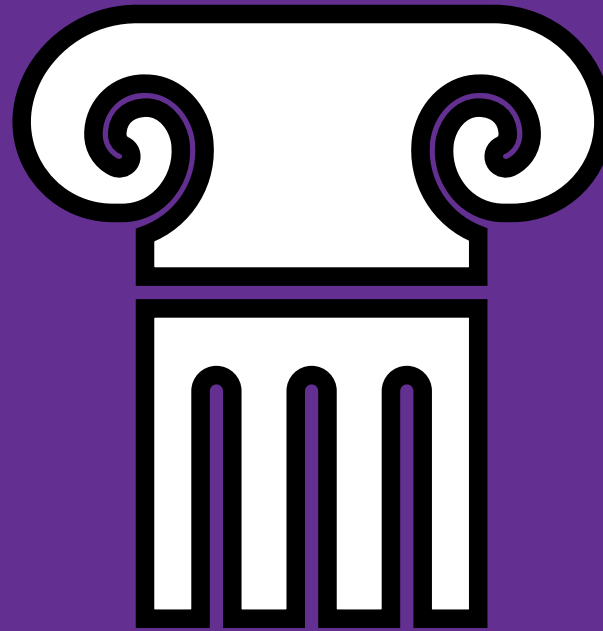


# Interjurisdictional Considerations

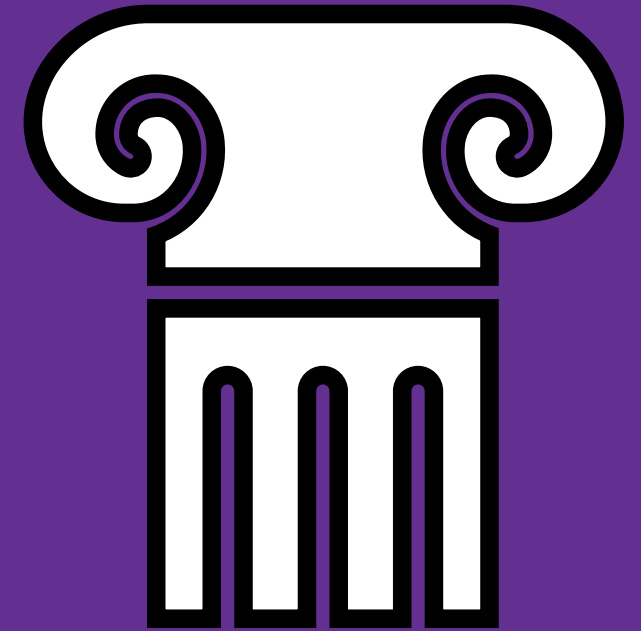
Regulatory



Clinical



Ethical





# Practice of Psychology Definitions (New York)

## New York (Education Law § 7601-A)

- The practice of psychology is the observation, description, evaluation, interpretation, and modification of behavior for the **purpose of** preventing or eliminating symptomatic, maladaptive or undesired behavior; enhancing interpersonal relationships, personal, group or organizational effectiveness and work and/or life adjustment; and improving behavioral health and/or mental health. The practice **includes, but is not limited to** psychological (including neuropsychological) testing and counseling; psychoanalysis; psychotherapy; the diagnosis and treatment of mental, nervous, emotional, cognitive or behavioral disorders, disabilities, ailments or illnesses, alcoholism, substance abuse, disorders of habit or conduct, the psychological aspects of physical illness, accident, injury or disability, psychological aspects of learning (including learning disorders); and the use of accepted classification systems.



# Unlicensed practice (New York)

## New York (Education Law § 6512)

- Anyone not authorized to practice under this title who practices or offers to practice or holds himself out as being able to practice in any profession in which a license is a prerequisite to the practice of the acts, or who practices any profession as an exempt person during the time when his professional license is suspended, revoked or annulled, or who aids or abets an unlicensed person to practice a profession, or who fraudulently sells, files, furnishes, obtains, or who attempts fraudulently to sell, file, furnish or obtain any diploma, license, record or permit purporting to authorize the practice of a profession, **shall be guilty of a class E felony.**

# Unlicensed practice (California)

## California (Code of Regulations 16 §1397.53)

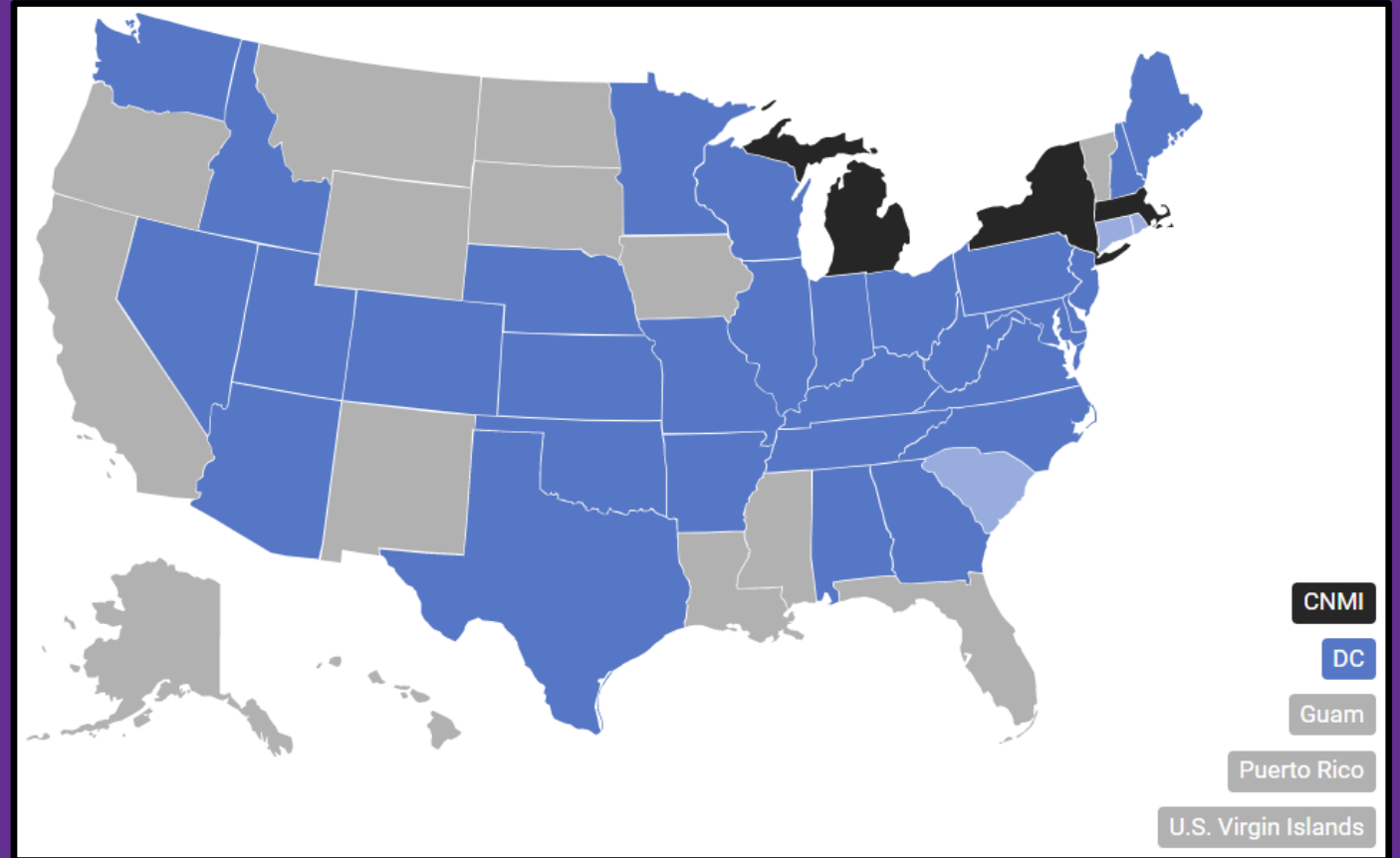
- Citations for Unlicensed Practice. A board official is authorized to determine when and against whom a citation will be issued and to issue citations containing orders of abatement and fines against persons, partnerships, corporations or associations who are performing or who have performed services for which licensure as a psychologist is required under the laws and regulations relating to the practice of psychology. Each citation issued shall contain an **order of abatement**. Where appropriate, a board official shall levy a **fine for such unlicensed activity** in accordance with subdivision (b)(3) of section 125.9 of the Code. The provisions of section 1397.50 and 1397.52 shall apply to the issuance of citations for unlicensed activity under this subsection. The **sanction authorized under this section shall be separate from and in addition to any other civil or criminal remedies**.

# Regulatory Issues

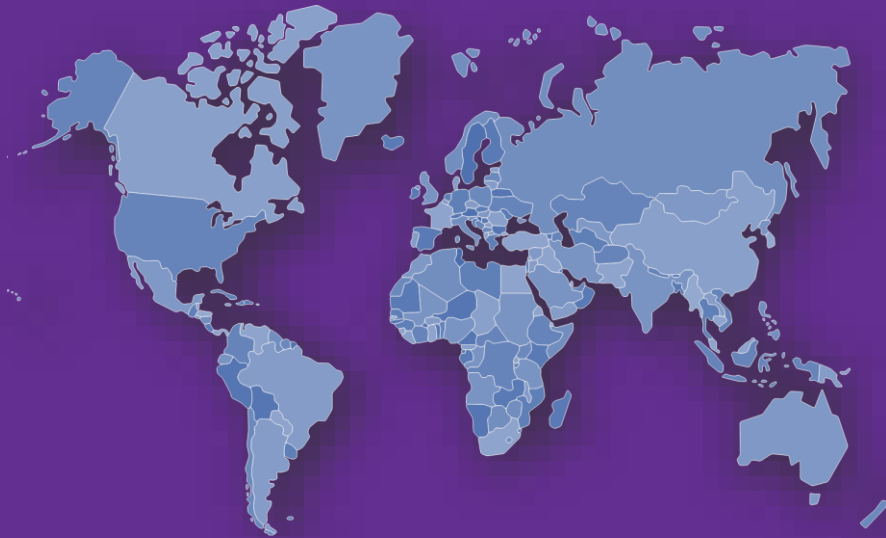
- This pertains to licensing regulations, which vary by jurisdiction
  - **Long-term** options include full licensure, authorization to practice under PSYPACT (telepsychology and/or temporary in person practice options), registration (e.g., Florida Statutes §456.47(1)(b): permits permanent registration of psychologists licensed in other states, who will only be providing care remotely into Florida)
  - **Short-term** options include temporary practice allowance, emergency waivers (e.g., waivers put in place by states during COVID that have largely or completely expired)
- Practice laws and regulations vary by jurisdiction (e.g., record retention requirements, mandated reporting obligations, telehealth services)
- Insurance companies vary in terms of their requirements (e.g., record content, reimbursement rates)
- Liability insurance will not cover criminal defense of unlicensed practice

# Psychology Interjurisdictional Compact

- PSYPACT has been operational since July 2020
- As of September 2022, there are 31 participating member states
- Current map as of September 2022
  - **Dark blue:** enacted and effective PSYPACT legislation
  - **Light blue:** enacted, but not yet effective
  - **Black:** pending legislation



# International Regulatory Issues



- Many nations do not regulate the practice of psychology (e.g., Singapore, France, Thailand, India)
- Among those that do regulate practice (Canada, China, Mexico), there may be little objection to following patients, if one does not “hang out a shingle” — either online or with a physical presence in the forum country
- Temporary practice provisions may exist in some countries
- **The nature of the services** -- temporary, a transitional period, or permanent (the latter carrying more risk with less suitable patients/clients) will also be relevant

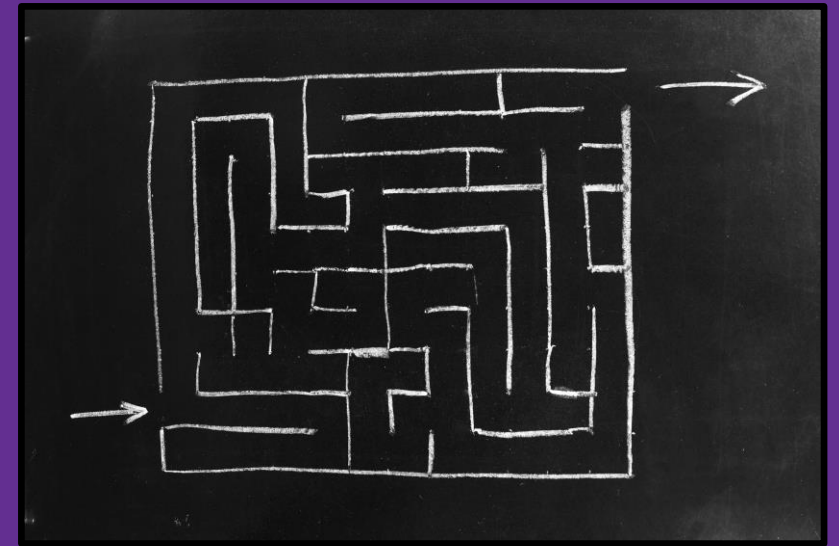
# Clinical Issues



- High risk client characteristics
- Need
- Appropriateness

# High Risk Considerations

- Cluster B personality traits or diagnosis (e.g., attachment challenges, impulsivity)?
- Unregulated bipolar illness?
- Recent and/or significant history of suicidal ideation/attempts?
- History of or current threats/acts of violence?
- Substance abuse or dependence?
- Fragile eating disorder?
- Domestic violence?
- History or current nonadherence to treatment?
- Litigious or involvement in ongoing litigation?





# Ethical Issues

- Consider ethical standards and principles
  - Avoiding harm (e.g., Beneficence and nonmaleficence, APA Standard 3.04)
  - Boundaries of competence (e.g., Justice, APA Standard 2.01)
  - Personal problems and conflicts (e.g., Respect for People's Rights and Dignity, APA Standard 2.06)
  - Conflict of interest (e.g., Fidelity and Responsibility, Justice, Respect for People's Rights and Dignity, APA Standard 3.06)
  - Terminating therapy (e.g., Beneficence and nonmaleficence, APA Standard 10.10)
  - Fee and financial arrangements (APA Standard 6.04)

# Practice Scenario: Dr. Judicious



Dr. Judicious has a private practice located in Georgia. She has been providing psychotherapy to Sally for the past 8 months to alleviate problems with social anxiety. Sally has shown substantial progress. Sally informed Dr. Judicious during the last session that she will be relocating permanently to Alabama in 4 months but would like to continue through telehealth. Dr. Judicious is licensed in good standing as a psychologist in Georgia but does not hold a license in Alabama. Dr. Judicious would like to continue to treat Sally but is unsure how to proceed.

# Practice Scenario: Dr. Judicious

- Regulatory
  - Dr. Judicious contacted the Alabama Board of Examiners in Psychology and was provided with the applicable practice statute (AL Code § 34-26-41(f)), which would permit her to practice in Alabama for no more than 30 days each calendar year without applying for a license
  - The Alabama Board of Examiners in Psychology confirmed that telehealth would be permitted under the 30-day practice allowance
  - Dr. Judicious learned that Georgia and Alabama are among the states where PSYPACT is effective

# Practice Scenario: Dr. Judicious

- Clinical
  - After a de-identified consult with colleagues about Sally's clinical presentation, there was consensus that Sally would benefit from ongoing treatment
  - Sally experienced fleeting suicidal thoughts several years ago, but does not currently present with high-risk clinical characteristics
  - Dr. Judicious has the requisite training and experience to provide ongoing treatment using telehealth, having obtained training specific to this delivery of services that includes earning a Telepsychology Competencies Credential (TCC)
  - Dr. Judicious has concerns that Sally may experience an exacerbation of symptoms if treatment is interrupted, even though mild and temporary
  - Sally can navigate the telehealth platform and will have proper connectivity

# Practice Scenario: Dr. Judicious

- Ethical
  - Dr. Judicious wants to avoid harm to Sally but interrupting treatment
  - Dr. Judicious contacted Sally's insurance provider and confirmed that telehealth sessions would be reimbursed at the same rate as in person sessions delivered up to this point
  - Dr. Judicious has the requisite competence to deliver services through telehealth and treat Sally's condition

# Practice Scenario: Dr. Judicious

- Dr. Judicious' plan
  - Continue to see Sally through telehealth based on ongoing clinical need and progress to date
  - Pursue an E.Passport through PSYPACT, which would allow unlimited telepsychology practice between her home state of Georgia and participating PSYPACT states
  - While waiting for approval through PSYPACT, practice under Alabama's temporary practice allowance
  - Create an updated safety plan with Sally
  - Review revised informed consent that includes the use of telehealth and mandates applicable to Alabama
  - Retain clinical records in a manner that satisfies both states
  - Document analysis in detail in personal records

# Practice Scenario: Dr. Imprudent

Dr. Imprudent runs an outpatient private practice devoted to the treatment of substance use disorders. Dr. Imprudent has written several books and articles on effective treatments for such presentations. Dr. Imprudent's practice is in Hawaii, his sole jurisdiction of licensure. He was contacted by David, located in Vermont, who requested to be seen. David informed Dr. Imprudent that he has been diagnosed with borderline personality disorder and alcohol use disorder. He is also engaged in a high-conflict custody dispute. David informed Dr. Imprudent that he has seen several local practitioners who he described as "unethical," "terrible," "incompetent," and "unhelpful." David said that he was impressed by Dr. Imprudent's writings, seeing him as the only person who can help with his alcohol use. Flattered, Dr. Imprudent agreed to see David through telehealth using FaceTime and receive payment through insurance. Dr. Imprudent had never used telehealth before. After four telehealth sessions, David became displeased with the lack of progress, accusing Dr. Imprudent of substandard care and filing a complaint with the Vermont Board of Psychological Examiners.



# Practice Scenario: Dr. Imprudent

- Regulatory
  - No consideration of regulatory requirements related to the lawful practice across jurisdictions
  - Dr. Imprudent assumed incorrectly that he was clear to practice in Vermont because he held a license in good standing in Hawaii
  - Dr. Imprudent did not familiarize himself and comply with Vermont's temporary license requirements (per VT Administrative Rules of the Board of Psychological Examiners 1.8)
  - Hawaii and Vermont do not participate in PSYPACT

# Practice Scenario: Dr. Imprudent

- Clinical
  - David's presentation was high risk (e.g., comorbid and complicated clinical conditions, previous unsuccessful treatment and highly critical characterization of other providers, involvement in high-conflict litigation)
  - Dr. Imprudent did not consider the appropriateness of seeing David remotely (e.g., whether clinical presentation is suitable for telehealth, whether the 6-hour time difference would complicate the delivery of services)

# Practice Scenario: Dr. Imprudent

- Ethical
  - It is questionable whether Dr. Imprudent had sufficient training and experience in treating comorbid clinical presentations like David's or those who are involved in high-conflict litigation, raising questions about his competence to take on this case
  - Dr. Imprudent has no training in the use of telepsychology
  - Dr. Imprudent elected to use a video conference platform that was not HIPAA compliant (insufficient precautions to protect confidentiality)
  - Dr. Imprudent did not revise his informed consent
  - Dr. Imprudent did not check with the insurance provider prior to initiating services to clarify fee arrangements

# What should we do when all considerations cannot be met?

Regulatory



Clinical



Ethical



# General Risk Management Strategies

- Document your thought process while navigating interjurisdictional practice (what was done and why as well as what was not done and why)
- Seek consultation
  - Always check with the state board or licensing authority of your state and the receiving state for guidance on interjurisdictional practice issues (e.g., telehealth guidelines/regulations)
  - The ideal situation is for a practitioner will be licensed to practice in both the state where services are rendered as well as where they are received by the client
- Use an appropriate informed consent, such as limits to confidentiality relating to state-applicable mandates

# Additional Resources

- “Ethical Principles of Psychologists and Code of Conduct” (APA, 2017)
- “Guidelines for the Practice of Telepsychology” (APA, 2013)
- *Ethics Desk Reference for Psychologists* (Barnett & Johnson, 2010)
- *Ethical practice in forensic psychology: A guide for mental health professionals* (2<sup>nd</sup> ed.) (Bush et al., 2020)
- *Ethics in Psychology and the Mental Health Professions: Standards and Cases* (4<sup>th</sup> ed.) (Koocher & Keith-Spiegel, 2016)
- *Ethics in psychotherapy and counseling: A practical guide* (5<sup>th</sup> ed.) (Pope & Vasquez, 2016)
- PSYPACT Information: <https://psypact.site-ym.com/>
- Website: [www.trustinsurance.com](http://www.trustinsurance.com)
  - Sample documents and templates
  - Education Center: Resources and articles

# Q&A With Dr. Martinez



- Dr. Martinez will answer 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.



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