

Licensing Board Issues Warning to Patients who Travel Out of State! (Regarding Telephone Counseling / Psychotherapy)

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LICENSING BOARD ISSUES WARNING TO PATIENTS WHO TRAVEL OUT OF STATE! Re: Telephone Counseling/Psychotherapy

Suppose that you have been treating or counseling an adult individual, or a couple, or a child for a period of time for a particular problem. You have informed the client of your office policies and any other information that is required or encouraged by state law or regulation (or by HIPAA) or by applicable ethical standards. At some point during the course of the professional relationship, you learn that the client will be leaving the state for a limited period of time to go on a vacation or business trip, to attend a graduation, wedding or funeral, or for other reasons. The client, while away, may need or choose to contact you by telephone and may require one or more sessions – whether for the typical “hour” or for a shorter period of time.

Should a client expect the therapist’s availability during the period of time when the client is temporarily out of state? May the client call the practitioner during this period of time, without jeopardy to the practitioner, if there is a need to discuss something or to receive counseling, psychotherapy, or other professional services, whether in a crisis situation or otherwise? May the client receive therapy services via a telephone session, without jeopardy to the practitioner, if the practitioner determines that such treatment is necessary or appropriate? “Yes,” or “of course,” has been and should be the answer to these questions.

Such scenarios have occurred for mental health practitioners of all licensures and in all states for multiple decades (half a century for some), and to my knowledge, without problem or controversy and without jeopardy for patients or practitioners. But one state licensing board has recently taken action which shockingly calls into question the legality of such contact between client and practitioner. What has occurred is an affront to clients and potential clients (consumers) in California, and to the mental health professionals regulated by this board.

From the very inception of the existence of the licensing law in the state in which you practice, clients have likely expected and should expect that practitioners will continue to be available during the course of the professional relationship, especially in times of need and even when the client is temporarily out of state – provided that the practitioner has not previously informed the client of any limits on or

conditions of such availability. Mental health practitioners of all licensures and from all states recognize the importance of the patient's expectation of continuity of care from the practitioner of his or her choice, and they strive to advance the welfare of their clients. I am not aware of any state that has tried to prohibit a licensee of State "A" from speaking with an existing client from State "A" who is temporarily out of State "A" and who has a need for telephone counseling from the treating practitioner located in State "A" - where the professional relationship began and continues.

Recently, however, the Board that regulates California LPCCs, LCSWs, LMFTs, and LEPs has published a notice to California consumers that is alarming. This notice is essentially a travel warning to all current patients and to all California consumers seeking or receiving counseling or psychotherapy from any of these practitioners. The Board notifies California consumers that if they are traveling to another state and wish to engage in psychotherapy or counseling via the telephone (or the internet) with their California-licensed therapist while they are away, their therapist needs to check with the state that the patient is temporarily located in to see if this is permitted. The State of California, through one of its many regulatory boards, is thus suggesting to patients who are already in treatment with their California-licensed practitioners that they may not be able to get continuing and necessary treatment from their therapists via telephone if they temporarily cross the borders of California!

Such a notion strikes this writer as absurd and contrary to decades of safe and ethical practice nationwide, where the best interests of patients have long been served by the continuity of care commonly expected and received by patients. This travel warning to the California consumer is related to and based upon a regulation recently enacted by the same Board (see the article entitled *The Regulation of Telehealth/Online Therapy and Informed Consent* in the July/August 2016 issue of the *Bulletin*). The regulation says that the California licensee may provide "telehealth services" to a client located in another jurisdiction only if the California licensee 1) meets the requirements to lawfully provide services in that other jurisdiction, and 2) only if the delivery of services via telehealth is allowed by that jurisdiction. The use of the word "located" in the regulation seemingly forms the basis for the Board's ill-advised, over-broad, and harmful travel warning to California consumers.

With respect to # 2, the Board that is supposed to be protecting California consumers takes the position that if the state where the client is presently located (on vacation, for example) does not allow for the delivery of services via telehealth, clients cannot call their California-based therapists and receive needed treatment when they are physically in that other state. Such a notion seems bizarre, but a violation of the regulation would apparently constitute unprofessional conduct for the California licensee! The possibility that some jurisdiction may not allow for the delivery of services via telehealth should not mean that a licensee from California would be precluded from continuing to treat a patient via the telephone when the patient is temporarily traveling (located) in that other state or country.

The Board has publicly stated that it "... does not have jurisdiction over a therapist practicing telehealth with a client who is located in another state," yet the regulation it enacted indicates otherwise. The regulation, in part, allows the Board to pursue disciplinary action against a licensee if the licensee does not meet the requirements to provide professional services in the state where the patient happens to be

temporarily located. Moreover, the Board notifies patients/consumers that if they travel out of California, their therapist is required to check with the state that the patient is located in to see if the therapist can lawfully provide treatment via the telephone according to that state's laws and regulations!

It is a strange fiction to believe that in order to accept and appropriately respond to a telephone call from an established client in need, a therapist would be expected or required to meet the requirements for practice in one or more states or countries as the California client travels about. What specific requirements must be met? Is the therapist committing the crime of practicing without a license in the other state by responding to the patient's phone call? Moreover, to think that the treating licensee would be expected to communicate with clerks of one or more licensing boards of other states or countries, or that the licensee is going to get timely and reliable answers to questions about the propriety of responding to the treatment needs (sometimes sudden and unexpected) of the California domiciled patient, is unrealistic, unnecessary, and unreasonable.

In reality, it would be up to the state where the patient is temporarily located to take the position, assuming they somehow learn of and care about the telephone counseling session(s), that the California licensee was practicing without a license in their state (typically a crime). What licensing board in the country would be so irresponsible, so uninformed, and so out of control to think that it could or should interfere with or criminalize an established California based therapist-client relationship merely because the patient is temporarily traveling in its state and chooses to use a telephone to communicate with the therapist in California?

Consumers who become aware of this travel warning will be concerned that traveling may interfere with their right to continuity of care with their therapist of choice. Practitioners fearful of disciplinary action by the State will hesitate to treat at times when the patient is in need, thus raising the abandonment issue. The development of telehealth nationwide is intended to improve patient access and to remove unnecessary or arbitrary barriers to treatment. The Board's travel warning issued to California consumers limits patient access, causes harm to the therapeutic relationship, and creates multiple problems and dilemmas for practitioners.

Therapists and counselors in all states are rightly concerned about protecting their licenses and livelihoods, and therefore they seek to avoid civil, criminal, or administrative jeopardy by practicing with care and by complying with ethical standards and applicable laws and regulations. Now, these affected California practitioners are subjected to possible disciplinary action simply because a telephone was used by client and practitioner while the client was traveling outside of California! If California consumers and practitioners were to become fully aware and educated about the precedent setting dangers this travel warning poses to the historic and special therapist - patient relationship, this warning would likely be retracted following the resulting anger and protest over this senseless government overreach.