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Telepractice Policy Statement

The delivery of psychological services by telephone, teleconferencing, and the Internet is a rapidly evolving area. Board rules do not specifically address telepractice, teletherapy, teleconferencing, or electronically providing services. No rules currently prohibit such services. However, it is important for psychologists to be aware of a number of concerns about telecommunication-based service delivery including the following:

1. The increased potential that a therapist will have limited knowledge of a distant community's resources in times of crisis.

2. Problems associated with obtaining informed consent.

3. The lack of standards for training providers in the use of technology as well as the special therapeutic considerations in the use of the medium.

4. The lack of vocal, visual, and other sensory cues.

5. The potential that equipment failures may lead to undue patient anxiety particularly in crisis situations.

6. The potential inability of patients in crisis or those unfamiliar with technology to adequately access and use the technology.

7. The lack of full disclosure of provider credentials.

8. The lack of definition of professional relationships.

9. The lack of confidentiality and privacy.

All of these issues are actively being explored, discussed, and debated at both state and national levels. It is important to remember that the

Psychologists' Licensing Act and all other laws affecting the delivery of psychological services apply to all psychological services delivered anywhere within the state of Texas, regardless of whether or not they are provided via electronic media.

Complaints received by the Board regarding psychological services delivered through electronic media, including telephone, teleconferencing, electronic mail and Internet, will be evaluated by the Board on a case-by-case basis. However, the following general principles apply.

An individual who is physically located in another state shall be considered to be practicing psychology in Texas and, therefore, subject to the Act, if a recipient of psychological services provided by the individual is physically located in the state of Texas. Licensees should also be aware that services they offer to consumers in other states may similarly be regulated by the laws of the state in which the consumers are located.

The Board currently considers the use of non-traditional media to deliver psychological services, including telephone, teleconferencing, e-mail, and the Internet, as "emerging areas" as set forth in Board rule 465.9(e), Competency. That rule

states: "in those emerging areas in which generally recognized standards for preparatory training do not exist, psychologists nevertheless take reasonable steps to ensure the competence of their work and to protect patients, clients, students, research participants, and other affected individuals from the potential for harm." Board rule 465.9(d) requires that licensees who provide services in new areas or involving new techniques do so only after undertaking appropriate study, training, supervision, and/or consultation from persons who are competent in those areas or techniques.

Other Board rules that licensees should also consider include:

465.1. Definitions

465.6. Listings and Advertisements

465.8. Psychological Services Are Provided within a Defined Relationship

465.10. Basis for Scientific and Professional Judgments

465.11. Informed Consent/Describing

Psychological Services

465.12. Privacy and Confidentiality

465.15. Fees and Financial Arrangements

465.16. Evaluation, Assessment, Testing, and Reports

465.17. Therapy and Counseling

465.36. Code of Ethics.

Other rules may also apply depending on the type of services involved.

It is important for licensees considering such services to review the characteristics of the services, the service delivery method, and the provisions for confidentiality to ensure compliance with the rules of the Board and the acceptable standards of practice

Policy on Licensees Working in Exempt Facilities

In compliance with Section 501.004 of the Act, persons who are licensed with this Board and who work in exempt settings are exempt from the Act if their "activities and services" are a part of the duties of their positions with the exempt agencies.

Section 501.004 states that persons who are employed in exempt facilities as psychologists or psychological associates are not required to be licensed with this Board. However, this section does require that persons who are employed by an exempt agency and who provide services to the public for added compensation above their salary from the exempt agency have to be licensed with the Board.

Therefore, any "activities and services" regarding the practice of psychology and licensure with this Board outside the context of the exempt setting are subject to the requirements of the Act and the rules and to the discipline of the Board. For example, a licensee may work part-time in an exempt facility and part-time in private practice. The private practice would be subject to all the rules regarding supervision, record keeping, confidentiality, etc. However, the work in the exempt facility would be exempt from such rules of the Board.

Since activities such as renewal, payment of fees, submission of mandatory continuing education, etc. are not considered "activities and services" performed in the context of an exempt setting, the licensee would have to adhere to these provisions of the Act and rules to keep the license in good standing.

Complaints received by the Board concerning the "activities and services" of a licensee in an exempt setting are referred to the appropriate exempt agency so that the matter can be resolved in the most expedient and proper manner. Complaints pertaining to the "activities and services" occurring outside of the exempt setting by a licensee who is employed by an exempt agency will be investigated and resolved by the Board.

No Duty to Warn: Says Texas Supreme Court

On June 24, 1999, the Supreme Court of Texas delivered its opinion concerning mental health professionals' duty to warn third parties as to specific threats of harm made by a patient of the professional. In *Thapar v. Zezulka*, a psychiatrist had been treating a patient for approximately three years for post-traumatic stress disorder, alcohol abuse, and various delusional beliefs about his stepfather. After being admitted to the hospital, the patient stated to his psychiatrist that he

had felt like killing his stepfather. A few weeks after being released from the hospital, the patient did, in fact, shoot and kill his stepfather.

The specific issue before the court was whether or not the psychiatrist was negligent in failing to disclose the patient's threats to the family or to law enforcement officials. Chapter 611 of the Texas Health and Safety Code provides that mental health information is confidential and permits disclosure of mental health information only in limited circumstances.

Section 611.004 lists these exceptions and specifically states in 611.004(a)(2) that,

(a) A professional **may** disclose confidential information only:

(2) to medical or law enforcement personnel if the professional determines that there is a probability of imminent physical injury by the patient to the patient or others or there is a probability of immediate mental or emotional injury to the patient." Texas Health and Safety Code Ann. 611.004(a)(2).

Because Section 611.004 does not provide an exception for disclosure to third parties threatened by the patient (such as the potential victim or their family members), the court concluded that the psychiatrist could not have legally warned the patient's stepfather or his family without violating the confidentiality statute. As such, the doctor in *Thapar* was prohibited from warning the patient's family members as to the threat and, therefore, had no duty to warn potential third party victims as a result.

However, Section 611.004 does allow disclosure of serious threats to medical or law enforcement personnel. Nevertheless, the court determined that this disclosure was permissive on the part of the professional rather than mandatory. Consequently, a mental health professional has no legal duty to warn a third party of a patient's threat but may contact the appropriate officials in the event that the professional has determined that there is a probability of imminent injury by the patient to himself or others, or mental or emotional injury to the patient.

The current law will not penalize a mental health professional for failing to disclose threats to the proper officials even if he or she truly believes that some type of harm is imminent. However, professionals who do choose to disclose threats are not immune from civil liability for improper disclosure of confidential communications. This is true even if the disclosure was made in good faith. While there are circumstances where a patient's right to confidentiality may be legally compromised, it will be incumbent on the mental health professional to show why the disclosure was permissible and made pursuant to the exception stated in 611.004(a)(2).

Copies of the Texas Supreme Court opinion in this *Thapar v. Zezulka* can be obtained at the Court's website at http://www.supreme.courts.state.tx.us on the June 1999 "Opinions" page.