Legal, Ethical, Security and Privacy Issues Relating to the Use of Behavioral Health Technology Tools in Clinical Care

March 26, 2015, 1-2:30 p.m. (ET)

Presenter:
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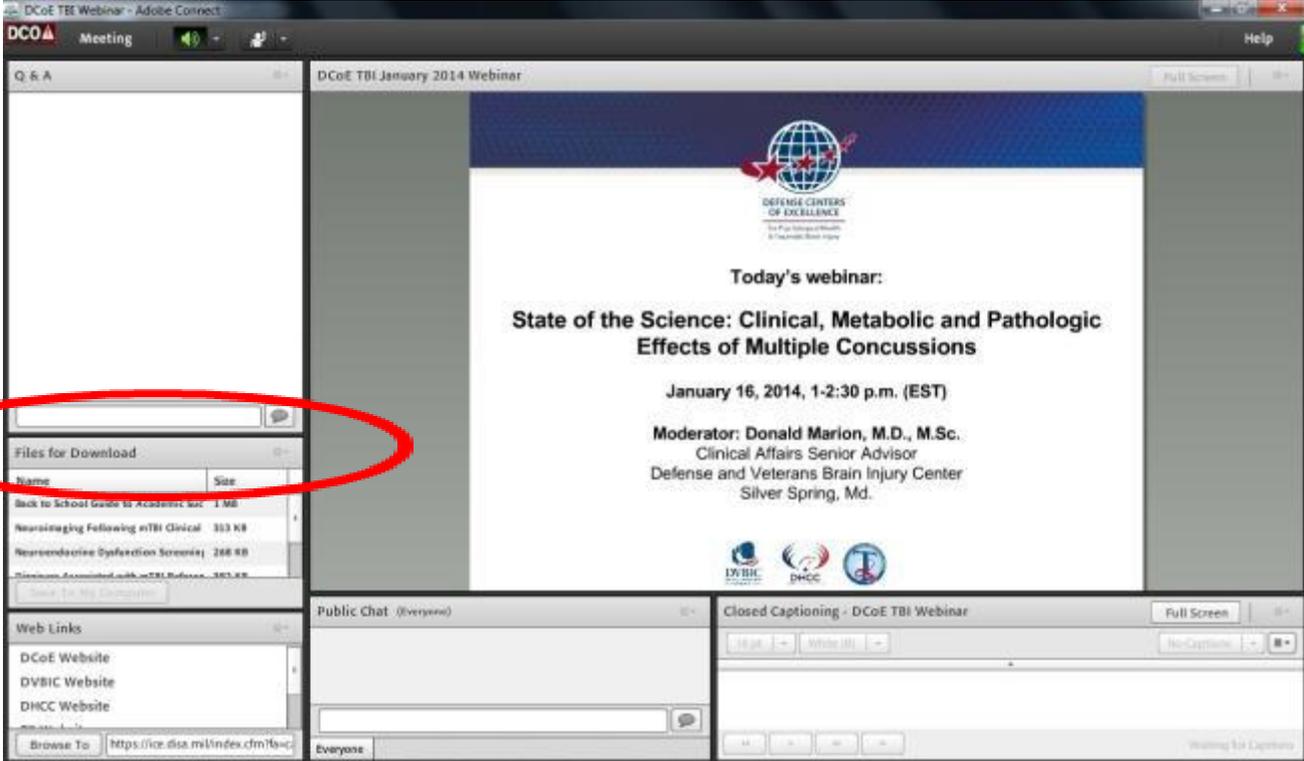Defense Health Agency
Falls Church, Virginia

Webinar Details

- Live closed captioning is available through Federal Relay Conference Captioning (see the "Closed Captioning" box)

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    - Use participant pass code: **9942561**

- Question-and-answer (Q&A) session
    - Submit questions via the Q&A box

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Resources Available for Download

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- The authority for training of contractors is at the discretion of the chief contracting official.
  - Currently, only those contractors with scope of work or with commensurate contract language are permitted in this training.

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- The Duke Medicine website online CE evaluation and post-test will be open through **Thursday, April 2, 2015,** until 11:59 p.m. (**ET**).

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- Credit Designation – The Duke University School of Medicine designates this live webinar for:
  - 1.5 AMA PRA Category 1 Credit(s)

- Additional Credit Designation includes:
  - 1.5 ANCC nursing contact hours
  - 0.15 IACET continuing education credit
  - 1.5 NBCC contact hours credit commensurate to the length of the program
  - 1.5 contact hours from the American Psychological Association (APA)
  - 1.5 NASW contact hours commensurate to the length of the program for those who attend 100% of the program

Continuing Education Details

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- Psychology: This activity complies with all of the Continuing Education Criteria identified through the American Psychological Association (APA) Continuing Education Requirements.

- NASW: National Association of Social Workers (NASW), North Carolina Chapter: Southern Regional AHEC will award contact hours commensurate to the length of the program to participants who attend 100% of the program.

Questions and Chat

- Throughout the webinar, you are welcome to submit technical or content-related questions via the Q&A pod located on the screen. **Please do not submit technical or content-related questions via the chat pod**.

- The Q&A pod is monitored during the webinar; questions will be forwarded to presenters for response during the Q&A session.

- Participants may chat with one another during the webinar using the chat pod.

- The chat function will remain open 10 minutes after the conclusion of the webinar.

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Webinar Overview

As behavioral health care providers embrace the integration and incorporation of technology into current practice, it is important to understand both the benefits and risks. The presentation will include a discussion of statutory and regulatory guidance regarding security and privacy issues involving telehealth and other types of behavioral health technology tools in the clinical environment. Specifically, it will address the Health Insurance Portability Act of 1996 (HIPAA), the Privacy Act and related DoD guidance and will discuss ethical considerations regarding the use of technology in a clinical setting.

During this webinar, participants will learn to:

- Identify security and privacy risks related to the use of mobile technology in clinical care
- Evaluate potential security and privacy risks in current clinical practice
- Implement administrative, physical and technical safeguards used to protect patient data
- Interpret the security and privacy guidelines and be able to explain them to patients to allow them to make informed decisions regarding their health data.

Bryan Wheeler

- Currently Deputy General Counsel, Defense Health Agency

- Previously served as Associate General Counsel with the Office of General Counsel (OGC), TRICARE Management Activity (TMA), Falls Church, VA with primary duties as counsel to the Defense Centers of Excellence for Psychological Health and Traumatic Brain Injury and the TRICARE Regional Office-North

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Disclosure

- The views expressed in this presentation are those of the presenters and do not reflect the official policy of the Department of the Army, Defense Department or U.S. Government.

- I have no relevant financial relationships to disclose.

- I do not intend to discuss the off-label/investigative (unapproved) use of commercial products.

- I will be discussing web and mobile applications that have been developed by the Defense Department, including those developed by the National Center for Telehealth and Technology (T2).

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Introduction

- Legal Issues
  - More than telemedicine
  - More than licensure, credentialing and privileging issues
  - More than reimbursement issues

Overview

- Legal Considerations
- Security and Privacy Issues
- Ethical Concerns
- Cultural Considerations

Legal Considerations

- Privacy Act (1974)

- HIPAA (1996)

- Health Information Technology for Economic and Clinical Health Act" or the "HITECH Act (2011)

MEMORANDUM FOR ASSISTANT SECRETARY OF THE ARMY (MANPOWER AND
RESERVE AFFAIRS)
ASSISTANT SECRETARY OF THE NAVY (MANPOWER AND
RESERVE AFFAIRS)
ASSISTANT SECRETARY OF THE AIR FORCE (MANPOWER
AND RESERVE AFFAIRS)
COMMANDER, JOINT TASK FORCE NATIONAL CAPITAL
REGION-MEDICAL

SUBJECT: Waiver of Restrictive Licensure and Privileging Procedures to Facilitate the
Expansion of Telemedicine Services in the Military Health System

References: (a) Department of Defense 6025.13-R, "Clinical Quality Assurance in the Military
Health System," June 11, 2004
(b) Title 10, United States Code, Section 1094(d) (as amended by Section 713 of
the National Defense Authorization Act for Fiscal Year 2012)
(c) Title 32, United States Code, Section 502(f) (2011)
(d) The Joint Commission Comprehensive Accreditation and Certification
Manual, July 1, 2012 (see Standard Medical Staff 13.01.01 titled
"Telemedicine")
(e) Sections 482.12(a)(1) through (a)(7) and 482.22(a)(1) through (a)(2) of Title
42, Code of Federal Regulations (Regulations of the Centers for Medicare and
Medicaid Services)
(f) American Telemedicine Association, www.americantelemed.org,
"Telemedicine Standards & Guidelines," current edition
(g) American Telemedicine Association, "Practice Guidelines for
Videoconferencing-Based Telemental Health," current edition

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PC COACH

Photo credit by National Center for Telehealth and Technology

Case Study 1

- You are using PE Coach with a PE patient. Their saved session audio recording is backed up by another audio app they have on their phone and uploaded to the cloud. This recording is then accessed by a friend who has access to their audio uploads.

- What are the clinical implications of this?

T2 Mood Tracker

Photo credit by National Center for Telehealth and Technology

- You are using moodtracker with a bipolar patient and they want to send you their results 2 times a week (by screen shot). This information is sent to you via the patient's personal email to your military email account. You put this information in the patient EHR.

- What security/privacy concerns might you have?

Case Study 3

- You have a patient that is wearing a fitbit and tracking their exercise, calorie, and sleep. They are also using moodtracker and Mindfulness coach. Your patient transmits all this information to you via NFC that is on your personal phone as well as your clients personal phone.

- What security/privacy concerns might you have or things you might want to consider.

Guidelines for the Practice of Telepsychology

- Telepsychology is defined as the provision of psychological services utilizing telecommunication technologies

- Psychologist's proper knowledge of and competence in the use of telecommunication technologies

- The psychologist's need to ensure that client/patient has a complete understanding of the increased risks to loss of security and confidentiality when using telecommunication technologies.

- Understanding of Interjurisdictional Practice

(American Psychological Association, 2012)

Applicable APA Ethical Standards

Standard 2: Competence

Standard 3: Human Relations

Standard 4: Confidentiality

Ethics Code Refresher

- When using a treatment or tool in therapy that you aren't familiar with, what do you need to consider?
  - What ethics codes would inform this?

Ethics Code Refresher

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  - What ethics codes would inform this?

APA Ethics Standard 2: Competence

This Standard will address two topics of relevance:

2.01 Boundaries of Competence

2.03 Maintaining Competence

Group Discussions

Are there technologies with current limited empirical evidence that have been used effectively?

- Discuss why the technology was selected for that individual
- How did therapist monitor effectiveness?
- How did therapist safe guard against harm/contraindications?
- How is this the same/different than competent integration of telepsychology in clinical care?

APA Ethics Standard 2: Competence Recommendations

- Always put evidence-based practices first
- Take the time to practice prior to integration in therapy
- Education and training
- Consultation with colleagues

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APA Ethics Code Standard 3: Human Relations

This Standard will address three topics of relevance:

3.05 Multiple Relationships

3.06 Conflicts of Interest

3.10 Informed Consent

APA Ethics Code Standard 3: Human Relations

This Standard will address three topics of relevance:

3.05 Multiple Relationships

3.06 Conflicts of Interest

3.10 Informed Consent

Section 3.05 Multiple Relationships Recommendations

- Psychologists are aware of potential boundary issues that may arise in using specific telecommunication technologies.

- Psychologists are encouraged to weigh the risks and benefits of dual relationships that may arise with their client/patient during the use of telecommunication technologies before entering such a relationship

APA Ethics Code Standard 3:
Human Relations

This Standard will address three topics of relevance:

3.05 Multiple Relationships

3.06 Conflicts of Interest

3.10 Informed Consent

Section 3.06 Conflict of Interest Recommendations

- Know what's available
- Think of what tools would be valuable to you and your patients
- Know the tool

APA Ethics Code Standard 3:
Human Relations

This Standard will address three topics of relevance:

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3.10 Informed Consent

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Section 3.10 Informed Consent Recommendations

- Full disclosure with patients regarding empirical support
- Ensure capacity and comprehension
- Ensure understanding of voluntariness
- Add something to your informed consent

Activity
Adding Something to your Informed Consent

- By yourself, or with your neighbor, create a few lines of text that you might add to your current informed consent that relate to use of technology in sessions.

- Share with the group?

Corresponding Guideline from the APA Task Force on Telehealth

Considerations to be included in informed consent:

- Manner in which they and clients/patients will use the specific technologies

- Boundaries that will be established and observed

- Procedures for responding to electronic communications from clients

- Provide client/patient with adequate information regarding inherent risks a technology may pose in both equipment and in the processes that will be utilized with the equipment

APA Ethics Code Standard 4: Confidentiality

This standard will address four topics of relevance:

4.01 Maintaining confidentiality

4.02 Discussing the limits of confidentiality

4.03 Recording

4.04 Minimizing Intrusions on Privacy

"My lawyer will call your lawyer as soon as he speaks with *his* lawyer."

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Case Study 4

Patient arrested and has mobile app data on phone with assessment results indicating they have a substance use problem and anger problems. What are the limits of confidentiality of the data on his phone? What if the data was sent to his provider as well?

Case Study 5

Patient commits suicide and had tracked her very depressed mood via a mobile app and sent that information to their provider. What is the liability of provider?

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Cultural Considerations

- What comes to mind when you think of cultural considerations and technology?

Cultural Considerations

Variables to consider

- Ethnic, linguistic and culturally diverse populations (racial/ethnic)
- Military culture
- Technology culture (familiarity with, knowledge of use of technology, "Digital native vs. Digital Immigrant")

Digital Natives vs Immigrant

- Standup if you were born after 1985
- PEW Research Center's Internet & American Life Project (Pew Research, 2012)
  - Smartphone owners in 2014:
    - White 53%
    - African-American 59%
    - Hispanic 61%

- PEW (2012) Mobile Health report:
  - "Younger adults, minorities, and those in particular need of health information lead the way"

Cultural Considerations

Need to consider:

- Differences between provider and patient
- How differences may impact quality of care provided
- Methods of assessing variables
- Level of acculturation (influence on psychological help-seeking behavior, compliance with treatments and treatment outcomes
- Addressing preconceived notions.

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Additional Resources

- Bush, N. E., Dobscha, S. K., Crumpton, R., Denneson, L. M., Hoffman, J. E., Crain, A., & Kinn, J. T. (2014). A Virtual Hope Box smartphone app as an accessory to therapy: Proof-of-concept in a clinical sample of veterans. *Suicide and Life-Threatening Behavior*, *Advance online publication*. DOI: 10.1111/sltb.12103

- Kuhn, E., Greene, C., Hoffman, J., Nguyen, T., Wald, L., Schmidt, J., ..., & Ruzek, J. (2014). Preliminary evaluation of PTSD Coach, a smartphone app for post-traumatic stress symptoms. *Military Medicine, 179*(1), 12-18. DOI: 10.7205/MILMED-D-13-00271

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- Richards, D., & Richardson, T. (2012). Computer-based psychological treatments for depression: A systematic review and meta-analysis. *Clinical Psychology Review*, *32*(4), 329-342. doi: 10.1016/j.cpr.2012.02.004

- Wang, J., Wang, Y., Wei, C., Yao, N., Yuan, A., Shan, Y., & Yuan, C. (2014). Smartphone interventions for long-term health management of chronic diseases: An integrative review. *Telemedicine and e-Health, 20*(6): 570-583. DOI: 10.1089/tmj.2013.0243.

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Change.

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Culturally Diverse Populations. Washington, DC.

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technology- fact-sheet/

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Questions?

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- We will respond to as many questions as time permits.

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Save the Dates

Next DCoE TBI Webinar:
Date/Time: Thursday April 9, 2015, 1-2:30pm ET
Title: *Prevention and Management of Concussion/mild Traumatic Brain Injury (TBI) in Youth Sports*

Next DCoE PH Webinar:
Date/Time: Thursday April 30, 2015, 1-2:30pm ET
Title: *Psychological Health and Resilience of Children in Military Families: How Child Narcissism Impacts their Development and Implications for Clinical Practice*

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