Ask the Attorneys Town Hall

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Legal & Regulatory Affairs Team

Shirley Ann Higuchi, JD
Associate Executive Director

Alan Nessman, JD
Special Senior Counsel

Connie Galietti, JD
Director, Legal & Professional Affairs

Deborah Baker, JD
Director, Legal & Regulatory Policy

Brad Steinbrecher, JD
Director, Legal & Regulatory Affairs

Sheila Kerr-Wilson
Program Director, Legal & Regulatory Affairs

Charlene Harvey
Legal & Regulatory Affairs Coordinator

APA PRACTICE LEADERSHIP CONFERENCE
Disclaimer

Legal issues are complex and highly fact-specific and state-specific. They require legal expertise that cannot be provided in this forum. Moreover, APA/PO attorneys do not, and cannot, provide legal advice to our membership or state associations. The information in this presentation does not constitute and should not be relied upon as legal advice, and should not be used as a substitute for obtaining personal legal advice and consultation prior to making decisions.
HiPAAASmart

New HIPAA Compliance Product
New HIPAA Production Process

- Converting the complexity of HIPAA into what psychologists need to know in plain English
- Finding the balance: legally accurate vs. simple and accessible
- Layered approach: Simple, plain English overview combined with the resources that cover details
- Update for changed HIPAA Rules
- Update privacy laws of 51 jurisdictions
- Preemption Analysis (when Privacy Rule conflicts w/ state law)
- Creation of 51 x 3 different forms for psychologists and their patients
- Debate esoteric preemption points with the Trust’s expert

Thousands of hours of legal, communications and technological expertise from collaborators:
  - LRA
  - The Trust Communications
  - Vendors (eLearning Joe and 2B Communications)
Select LRA Accomplishments

(What we’ve done for you lately...)
Select LRA Accomplishments

• Insurance and Parity Advocacy
  • 90837 (60-minute code) payment policies
  • CHQI Accreditation Standards Committee

• Medicaid
  • Worked with individuals and state psychological associations in DC, CA, DE, IL, LA, NE, VA, WA, NM, AK, NJ, and KY on intern reimbursement by Medicaid
  • Moving forward with Pilot Project in DC to increase integration and use of psychologists and interns in Medicaid
Select LRA Accomplishments

• Licensure, Scope of Practice, Boards
  • Drafted comments on proposed definition of “practice of psychology” & proposed board consolidation in Texas
  • Participation in stakeholder committee drafting alternative definitions for “practice of psychology” in Texas
  • Worked with several SPTAs on behavior analyst licensing bills that keep assistant ABAs and technicians from being supervised by psychologists
  • Collaborated with other SPTA challenging licensing board consolidation proposals and/or licensing board deregulation.
Select LRA Accomplishments

• Telehealth / Telepsychology
  • Collaborated with GR on telehealth comments to US Senate Finance Committee’s bi-partisan Chronic Care Working Group
  • Co-authored chapter on interjurisdictional practice issues for telepsychology casebook to be published by APA Books
  • Collaborated with ASPPB on promoting PSYPACT
  • Advised SPTAs on telehealth-related legislation
Now to Your Questions

• Let’s start with some questions you submitted in response to the pre-PLC survey
• We’re focusing on questions we hear a lot from members, questions with broad relevance
• Then we’ll take questions from the floor
• In the interest of time, our attorneys will be giving simplified answers vs. the detailed discussion we normally have
HIPAA

I use a cloud-based EHR and Hushmail for emails. My laptop is password protected but am I still required to encrypt it even though no PHI is stored on it?
Someone broke into my locked car and stole my briefcase, which contained a file folder with three new patient referrals. The information taken included their names, addresses, ages, preferred contact number and our upcoming appointment dates. I haven’t seen any of these patients yet, but I did have several business cards in the briefcase that clearly identify me as a psychologist. Do I have to notify them that this happened?
Insurance

An administrator at a hospital has encouraged psychologists not to use 90837 as it "might trigger an audit." Instead they are being encouraged to use 90834 regardless of time spent with patient. What are the realities about whether 90837 use will trigger an audit? Isn't it fraud not to bill according to time spent with patient?
Children and Families

Working with children, I often find myself dealing with divorced parents. If the custodial parent brings the child in for an assessment or therapy and does not provide contact information for the non-custodial parent (whose parental rights are intact), can I still see the child?
Children and Families

• Do I have to release records of my treatment of a minor to the minor’s parents?

• What if the parents are involved in child custody or divorce proceedings?
Telehealth / Interjurisdictional Practice

- Practicing telehealth across state lines appears to still be in question. Is there expectation this will be resolved from a federal perspective.

- Progress toward and issues about cross-jurisdictional practice.

- Following patients who move out of state- liabilities. Status of interstate Licensing.

- I've been getting a lot of questions about PSYPACT. Any comments on this topic would be helpful.
Insurance

Can we insist that audit be done with name redacted records?
Insurance

Insurance denying psychological testing after they already provided pre-authorization, can we bill it to the patient if insurance denies?
A 20-year-old patient died of an accidental drug overdose. Her father wants to talk to me and has requested a copy of her records – he knows of our relationship and was paying for the therapy. Do I have to provide them? And is it even ok for me to talk to him about any conversations? I’ve heard it’s better to be compassionate, but how much can I say?
Parity

Updates on efforts to argue that mental health parity laws are not being followed as mental health reimbursements are not in par with medical reimbursements. What type of advocacy can be done?

Can psychiatry and psychology band together to address parity issues?
Mandatory Reporting

Managing client disclosures of wrong doing from a previous therapist still practicing in the community.
Mandatory Reporting

What is a good way to handle a recovered memory of child sexual abuse in an adult client when dealing with mandatory abuse reporting. The recovered memory was from earlier work with a previous therapist.
Telehealth / Interjurisdictional Practice

Since most therapists have patients who sometimes go out of town and might call in an emergency. What can a therapist do? It seems like the standard of practice is to talk to the patient on the phone but we are now concerned that this is illegally practicing psychology in another state.
How does a provider avoid having to pay for an interpreter when the patient is deaf, blind or cannot speak? And what's the process one must take in compliance with ADA.
General

The difference between the evaluating psychologist and the treating psychologist. Whose opinion carries more weight with the Court?
My question is actually broader - how to help psychologists know when to seek legal advice and how to be more proactive about getting good information before taking actions.
Insurance

Are you legally permitted to accept a client as self-pay if you are paneled with the client's insurance company, but the client desires to do self-pay and not use insurance?
THANK YOU!
Need more assistance?
Contact us at praclegal@apa.org
Find resources at www.apapracticecentral.org

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