

[22 seconds of silence]

**Nicole Owings-Fonner:** Welcome to the APA Practice Organization's webinar on Telepsychology and the Psychology Interjurisdictional Compact known as PSYPACT. I'm Nicole Owings-Fonner, communications project manager here at APA, and I'll be moderating today's webinar. It will cover the following: current and legal regulatory factors for telepsychological practice, obstacles and solutions of interjurisdictional practice. I will also have our speakers explain the PSYPACT proposal and current advocacy efforts to implement it and there will be an opportunity for questions and answers during the webinar, including those that were previously submitted during the registration. Please use your chat box in the question feature to submit questions at any time during the presentation. This webinar is being recorded and will be emailed within 48 hours after the webinar to all participants and those who registered but could not attend. Our presenters today are Deborah Baker and Dr. Alex Siegel; I'll turn it over to Ms. Baker to start.

**Deborah Baker:** Thank you; thank you for joining us today on this webinar. Today's primary focus will be on how PSYPACT can facilitate lawful interjurisdictional practice, either using telehealth or allowing for temporary in-person practice, but I'd first like to set the stage and talk about some initial considerations that ought to be taken into account before engaging in telepsychological practice. Next slide...

Just as you would use due diligence to ensure your competence and working with either a special... special patient population or in a specialty practice area, you'd want to take stock of what you know about the relevant factors for telepractice before you start using technology and delivering services. In other words, do you appreciate what the differences are or may be between having a patient come into your office to meet with you for a session versus meeting with the patient virtually? So, if you were to think about some of these factors in kind of broader categories, you might conceptualize them as... as shown here in this slide. For example, what is telehealth, what is telepsychology, and thinking about the context in which you're talking about that issue? What are the relevant practice considerations as outlined in the APA telepsychology practice guidelines? What are the relevant privacy and security issues? Is there a third-party payer involved and, if so, what are the relevant policies that may govern the telehealth interaction? And then, finally, as we're going to focus on today: the differences between intrastate telehealth practice and interstate practice. Next slide, please...

So, what is telehealth? Unfortunately, there is not a universal definition of the term that everybody works from and so it really is going to be determined by the context in which you're considering telehealth. It may be governed by the third-party payer that's offering coverage and reimbursement. It could be the facility setting in which you're providing it. It could be the state law that may govern that interaction. So it could be a very expansive definition that covers a broad range of technologies, or it could be very limited and just be speaking to video conferencing, for example. There may be certain context in which only certain providers are recognized as eligible telehealth providers or there may only be certain settings in which telehealth is recognized. For example, under Medicare, not only does the patient need to be in a health professional shortage area, the patient also has to be in an eligible clinical setting: either another provider's office, a hospital, skilled nursing facility, but in certain situations, a patient's home is not an eligible site. So, it's really important you understand how telehealth is defined or determined for a particular situation. Next slide, please...

So, understanding that this was an increasingly important topic area, a few years ago APA established a joint task force comprised of representatives from APA, representatives from the Association of State Provincial Psychology Boards, as well as The Trust, to come together and develop guidelines that would help psychologists think about in providing telepsychological practice. And those guidelines are demonstrated in the eight principles you see here: competence, standards of care, informed consent, confidentiality, security and transmission of data, disposal of data, testing and assessment, and -- of course -- today's focus, the interjurisdictional practice piece. Next slide, please...

So, I'd like to highlight a few of the areas that are addressed in the APA guidelines and one is the psychologist's competence. It's... it's a given that the psychologist... the... would be competent to deliver the services, but the question

often needs to be considered is “what is the psychologist’s technological competence in using a particular technological modality in providing the particular intervention?” Obviously people come from different points of view in terms of being a digital novice versus a digital expert, feeling comfortable with using technology, understanding what to do if something goes wrong. Do you know how to troubleshoot? Do you know what resource to use if for some reason a technology fails? Are you familiar with any existing guidelines that may govern how to use a particular technological modality whether it's phone, whether it's video conferencing, whether it's email with patients or what do the guidelines... what does the research say about using technology for certain types of patients with certain types of diagnoses? Next slide, please...

And part of that is also being able to evaluate the patient's competence to participate in a telepsychological practice encounter. Obviously, a lot of patients are motivated to use telehealth because it improves patient access. It's more convenient; it can facilitate patients avoiding having to miss an appointment or cancel an appointment, but you want to look at the patient's functional level. Also, clinically, are they appropriate based on their diagnosis, for example, to participate in a telepsychological practice encounter? What about their cognitive functioning? And then, also, their own technological competence: are they comfortable with the particular technology you're discussing using and do... or do they need an assistant from some... or do they need assistance from someone who needs to be in the room with them should something go wrong with the technology? And so this is something you need to evaluate for each individual patient and then you periodically need to reevaluate for a particular patient, because you may find the circumstances change. Next slide, please...

Informed consent: there... as I'd mentioned previously, there may be some unique factors that you will encounter in a virtual session that you wouldn't necessarily have to deal with in an in-person setting. And so thinking about those in advance -- for example, what if the technology fails? Let's say, you're doing a video conferencing session and either yours or the patient's internet connection goes down: do you already have a back-up plan in place that you discussed in advance? Did you talk about whether or not either of you would be recording the session or whether or not... or why it's not appropriate to record the session? Where should the patient be at the time of the session? Hopefully, you... you discussed that the patient really ought to be in a private, quiet space, free of distractions, but talking about these issues in advance of engaging in a telepractice intervention is really helpful and documenting in your own records that you've had this conversation and that you and the patient are on the same page, so that you're being proactive, rather than just being reactive if something goes wrong during the time of the session. Next slide, please...

And it goes without saying you need to think about HIPAA and HI-TECH compliance. A lot of our members have to deal with insurance companies and submit claims to insurance companies and therefore trigger HIPAA. And... you trigger HIPAA once, you're obligated to be HIPAA compliant across your practice – not just for those patients for whom you submit insurance claims. And so, thinking about these compliance issues broadly, it isn't just limited to “Well, can I email patients and, if so, what kind of email should I use?” or “What video conferencing platform should I use?” It really is a broader discussion that requires careful analysis of... of your practice and how you use technology and... and how you store and transmit any kind of digital patient information. So, you know you need to be thinking about encryption and access controls and audit trails and breach notification and for these reasons, I try to encourage members that using a platform like Skype won't... won't help you comply with HIPAA because, for example, while Skype may have encryption features, it doesn't offer the other features that you need to be mindful of in following HIPAA Security Rule requirements such as access controls, audit trails, understanding who has logged in to your account, or is there a way to secure your account. So, it really is important to kind of look for two things initially when you're looking at video conferencing platforms. For example, does the platform market itself as being... understanding HIPAA compliance? That it's marketing itself to the healthcare provider community and understanding how important it is for you to have to comply with these privacy and security rule requirements? And then also, does it back it up by offering a business associate agreement, which is an agreement that a third party signs with you as the provider saying, “I may have access to some of your patient data as part of me providing services to you to run your practice and therefore, I'm indicating I'm obligated to keep safe any data I might somehow have access to and if I have any kind of data breach in my system

I'm obligated to notify you so that you can notify your patients?" And so, those are the two kind of guideposts you really ought to be looking for when you're looking at certain platforms to use in your practice. I also would like to point out that the APA Practice Organization and The Trust have been jointly working on an updated HIPAA compliance product that will be launched later this year and as part of that compliance product will be Security Rule materials that would be helpful to consider in using technology in your practice. Next slide, please...

So, at the time the test... the task force was drafting the guidelines, it got to the issue outlined in Guideline 8 – [the interjurisdictional] practice issue – and there wasn't a lot that the task force could definitively say for psychologists who may find themselves [providing services across state lines virtually]. [Unfortunately], there is no uniform lawful way to do that where you're licensed in your state, but the patient may be in a jurisdiction where you're not licensed. Some states have a temporary practice provision that may allow for that, but there's a lot of variability – not all states have it and the ones that do, the number of days in a calendar year vary a lot as well as whether you're required to get advanced approval from the licensing board and the other jurisdiction or whether you can do it on the honor system [so to speak]. So, the best guidance the task force [could offer] is that the psychologist really needs to be familiar as to what the requirements or policies are in the other jurisdiction [to determine] whether or not it is appropriate to be engaging in interstate practice, since your license allows you to practice in the jurisdiction that issued it. It's not like a driver's license where you can practice anywhere in the US. It really is limited to the jurisdiction that issued your license, which is why a lot of psychologists who find themselves practicing in more than one jurisdiction end up getting licensed in multiple jurisdictions. Next slide, please...

And the reason this is so thorny is the fact of which... which jurisdiction's laws are going to apply in the situation. Is it where the psychologist is at the time services are delivered? Is it where the patient is at the time? And so – particularly from a consumer protection standpoint, which is the primary mission of a licensing board – who gets to govern the relationship or the interaction, particularly if something goes wrong and there... there are differences from state to state in terms of the different laws that impact [psychological practice. Some states might have a "duty to warn" or "duty to report" provision; others do not] and even in those that do have laws, some of them have a mandatory requirement that psychologists must abide by. Some states, it's permissive and even then, the reporting requirements to whom do you report under what circumstances can vary a lot. Mandatory abuse reporting can vary; the record-keeping requirements from state to state aren't always the same. This also applies for patient confidentiality and patient access to his or her records. Some states have been... have enacted red flag laws and so, because of the variability and the fact that some states there's a conflict between the states as to which requirements apply, it was really important that some sort of pathway be explored that would facilitate interjurisdictional practice in a way that still protects patients, but yet also protects the psychologists that they can provide their services in a legal and ethical way. And so ASPPB was the natural attitude to do this since it represents – or its membership is comprised of – all the psychology licensing boards in the US and Canada. So, at this point, I'd like to turn over the slides to Dr. Siegel, so he can talk more about PSYPACT.

**Alex Siegel:** Thank you very much and I'd like to thank APAPO, the Practice Organization, for including us, ASPPB, in this webinar. What I want to focus on is what PSYPACT is. It's the Psychology Interjurisdictional Compact and we'll kind of focus basically on what it does. In essence, what it provides for is the legal and ethical mechanism to provide electronic service from one state into another state without being licensed in the latter state, as well as some other components to it. But next slide, please...

Let's talk about what a compact is. So, back in the Revolutionary days – to give you a quick history – when there was a conflict between the colonies – let's say Georgia and South Carolina – over borders, they would send a message to King George. King George would resolve the issue and the states would abide by whatever the British crown said. That was adopted and there's actually a compact clause in the United States Constitution – Article 1, Section 10, Clause 3 – which talks about compacts that states can address issues amongst themselves - not necessarily all of them, but it may be one or two or three or it may be all of them. And it pretty much is an agreement that states have the first major compact and that people think about is the New Jersey / New York compact, which helped decide who owned the Hudson River and

where it was Statue of Liberty and Ellis Island and in New York or in New Jersey and so forth. So, there's a compact there; it also helps deal with economy of scales and deals with national priorities. The thing that compact... the states like about compacts is they can retain control and they're not abdicating the control to the federal government or to the other state; it's a joint sovereignty with the other states. Tut the driver's license as a compact. You have one license; you can drive anywhere in the United States with that license without being... having a license in that other jurisdiction. And 46 of the 50 states say that if you get a driving ticket and you have points or get in an accident; that information is going to go back to the state where you have your license. Next slide, please...

Why compacts? Because legislators understand that. They may not understand psychology or interjurisdictional practice, but all states have between 20 and 40 compacts. It helps with flexibility and cooperation between states. You're not creating a fiction, but a binding agreement among the states and once the states adopt -- and it does take legislative action to do that in both chambers in the United States and signed by the governor -- it has full force and effect of law. Next slide, please...

And with compacts, you have to adopt as is. You can't modify it; you can't change it; and you have to agree to the terms which are in the compact. Other professions -- nursing, medicine, EMTs, PTs -- also are currently developing compacts to help with their interjurisdictional practice. Psychology is the only one that's looking for a national practice, if you will. Medicine is kind of adopting, if you are familiar with the ASPPB program CPQ, their certificate of professional qualifications. It is similar to that in that their compact will facilitate take licensure from one compact state into another compact state. Next slide, please...

So, what happened as a result of the APA / ASPPB / Trust task force -- and you heard Deborah talk about number eight -- the interjurisdictional compact? ASPPB was charged with how do you deal with a legal and ethical interjurisdictional practice and so the Board of Directors in responding to our member jurisdictions -- which are the 50 states, Puerto Rico, the Virgin Islands, the District of Columbia, and Guam and the ten provinces and territories in Canada -- wanted us to come up with a plan. And so the PSYPACT is... only pertains to the United States and the four territories, because if Canada was involved, it would not be a compact -- it would be a treaty and then you'd have to get the United States Senate and the President to get on the same page to deal with that and since they don't deal with a whole lot of things, this is something they probably would not do. But we know our colleagues in Canada are working on similar agreements across jurisdictions for the interjurisdictional practice up there and we're hopeful that the two documents will be very similar and that it may be possible from someone in Montana to see someone in Ontario, much like the CPQ works now. So, the goal with the other thing was to help licensing boards know who's coming into their state to practice because right now, as Deborah was saying, it's somewhat like the Wild West. You could go to a web therapy site and you have no idea if the people who are there are in fact who they say they are or their credentials... credentials are correct and they're just coming into the state and you don't know what they're doing to their... your citizens in that jurisdiction. So, what the PSYPACT assures that there's some type of vetting process and the people who are using this will have the requisite education, training, and experience to ensure accountability. Next slide, please...

So, the... the compact itself is 40 pages, but this is what it comes down to is each of these two paragraphs. So, let me take the first bullet point; first, this... the compact will allow you if you're in one compact state to practice into another compact state without getting licensed in the latter state. If you give me the next slide, please... I have a diagram -- it's kind of a hub-and-spoke model. So, if I'm in Arizona and I want to practice into Utah, I can do that -- or into Colorado, I can do that, but I cannot once if I happen to ... wait, let's go back to the slide before. The second part of the compact has to do with a temporary -- and I'm gonna highlight temporary -- in-person face-to-face psychological practice for up to 30 days. This component allows someone to physically go from one compact state into another compact state physically to see a person or do consultations or forensic evaluations or the IO folks dealing with different sites that they may have in different states to go there temporarily for up to 30 days. You're not allowed to have an address or business or telephone numbers there; it's purely temporary. The other benefit for this and how I kind of conceptualize this is suppose I live in Philadelphia and let's suppose I'm an expert in ADHD and there's someone across the river in New

Jersey that comes across the river to see me in my office in Philadelphia as I work with their child who has ADHD. That's perfectly permissible because I'm in Pennsylvania, they're in Pennsylvania -- I can do that. But if mom who goes back home calls me up on the phone from New Jersey -- am I practicing in New Jersey? Am I violating New Jersey law since I'm not licensed there? Now, suppose the parents and the school want me to come to the school to help with an IEP or do behavioral observations; since I'm not licensed in New Jersey, I would not be eligible or to go into New Jersey to provide that consultation. PSYPACT allows me the opportunity to do that and also allows IO folks to consult and forensic people. Next slide... please? Next slide, please...

So, how does it work? PSYPACT basically helps the states to communicate and exchange information by verifying licensure and disciplinary actions and basically it forces states to play nice in the sandbox and to kind of work together in terms of providing services and access to patients as well as if there is some type of substandard of care or egregious action taken or whatnot, their discipline can be resolved across jurisdictions. Since you're only going to be licensed in one state -- the state where the patient is, you're not licensed there -- that state will work with a state where the license is -- and to get hyper-technical, even that state where the patient is... that state can take action based upon the compact to resolve the issues. Once the PSYPACT has seven states -- which we'll talk about in a minute or two -- a commission is formed, made up of one commissioner from each of the compact states. And the... and the Commission will be or is a quasi-governmental entity to manage the PSYPACT. At that point, while ASPPB is involved and is advocating and is working with this, it will no longer be an ASPPB function and it will be the PSYPACT Commission, which will rule and control and manage PSYPACT and not ASPPB. Next slide, please...

So, we talked about having seven states -- and we'll talk about that in a minute -- so what will happen is not... we're not anticipating that every psychologist will want to use this service and not every psychologist will be eligible to use this service. So, for those people that want to use the electronic from one compact state into another compact state, you'd have to apply for an e-passport and an e-passport is a mechanism that will allow you to do that. Let's go to the next slide.

And the e-passport creates a legal relationship between the licensing board, the receiving licensing board, and the psychologist. And ASPPB will vet those individuals to make sure that the individuals have the right education, training, and experience. there's a misnomer out there that people who have master's degrees will be able to use PSYPACT; that is not correct because in order to get a e-passport, you will have to have a doctorate and even in those states of Vermont and West Virginia, where master's-level folks are allowed to practice on an independent level, those individuals would not be eligible for the e-passport and therefore could not practice under the auspices of the compact. Other psychologists in West Virginia, in Vermont -- if they were compact states -- who have a doctoral degree could provide those services. Next slide...

And so, some of the requirements you must meet, the educational requirements. You have to have a current unrestricted license to practice. You can't have any history of adverse action or discipline on your license; we got some pushback on this because some people said, "Well, you know, I... I was sanctioned by a licensing board because I didn't do continuing education; that's really different than sleeping with a patient." That is correct; however, from a policy position, since people are practicing into a state and they're not licensed there, it was... a determination was made that only those people that have an unblemished practice record would be eligible for an e-passport or to provide services. You can't have criminal history; you can't have child abuse histories; and you have to make certain attestations of where you're planning to practice: what's your intent, what's your work experience, and so forth. And then the Commission has the ability to create other criteria to help the implementation of the... the PSYPACT. Next slide, please...

So, the IPC or the interjurisdictional practice is what you need to have to go from physically into another state. It's based... they're very similar, the IPC and the e passport. The requirements are the same: how it functions it's the same and we're anticipating that some people may just want to do the electronic, particularly you're in the middle part of state and not near a border state. They're right on the border of a state and some people may just want to do the

physically in-person and some people may want to do both and so, it's either/or the IPC and... and the e-passport. Next slide, please

And you can see it's similar requirements to get the IPC. Next slide...

So, the benefits of PSYPACT: it increases client patient access to care, facilitates continuity of care when patients relocate or travel. So, the example that I like to use: if I'm seeing a senior in high school in therapy and I've been working with them for a period of time and in the fall they're going to Michigan to school, technically I could not continue seeing that person because I'm not licensed in Michigan. But if both Pennsylvania and Michigan were PSYPACT states, I'd be able to legally and ethically continue working with that person while they're attending school in Michigan. They're also going to certify that psychologists meet certain standards and acceptable standards of care and practice. It promotes cooperation between licensing boards in the states; it will hold... states have the authority to hold licensees accountable for their behavior and their actions in providing services. It increases consumer protection across state lines and the last one, which is very significant for me; it promotes ethical and legal interjurisdictional practice. Next slide... please...

The challenges: so, when you... since you can't modify a compact -- and this is what's going on with nursing now -- nursing was one of the first in the early 90s to have it; they got up to 24 states and then after that no other state wanted to join because they had problems in their compact with discipline and criminal reporting and criminal background checks. And so what happened is nursing had... is basically imploding number one and restarting with... with nursing compact two and so they're basically getting states to void number one and move to number two and ask other states it weren't involved with one to adopt the nursing compact. So... so, it has to be general enough to allow to the field to evolve, but specific enough that it has teeth. So, for example, if... if you know... some of you may remember Myspace many years ago and if you look around now, you don't see Myspace. So, had we put as a vehicle or a mechanism to allow for the Psychological Interjurisdictional Practice you had to use Myspace, that would have been great ten years ago. Maybe five years ago. But, if it was in the compact that's the only mechanism that you had to use, you would be able to use, and so today since Myspace -- if it does exist, it's pretty much non-existent -- if the compact said that, that's what you'd have to do. So, you have to write a compact... hope it's broad enough that the field ... as the field of telehealth or interjurisdictional practice evolves and the internet evolves and the platforms evolve that the compact will be able to incorporate that. And you don't want.... it's like the next point is like Goldilocks and the three bears; you don't want to have such a high standard by saying only those people, for example, that are board-certified can do it because you're then you're gonna have only two percent of the psychologists and then what does that do in terms of helping access to care? Actually, I think maybe that's about four percent of the psychologists now... and then if it's too low that anyone can get in, how are you then providing protections to the public? That sweet spot in the middle and we talked about the master's / doctorate issue and I'll take the next slide...

So, where we are now? In this map, there are five states that have adopted it. Arizona was the first; Nevada, Utah, Colorado, and Nebraska... there's active legislation going on in Illinois and it was presented yesterday before the Senate, one of the Senate committees to have hearings. There's active legislation in Rhode Island, both House and Senate as we speak, and, in Missouri last week, it passed out of the House and the Senate and the bill was sent to the governor's office to sign and we're optimistic that he will do that in the next week or so. So, Missouri will be the sixth state. We're also anticipating that legislation is going to be introduced in North Carolina and we are under... under... being... we're under the impression or understanding that the Department of Health and Human Services has recommended PSYPACT and the government of North Carolina is looking to introduce that as a bill and hopefully we're optimistic that will get passed this year as well. There's a talk in the District of Columbia of introducing legislation this year and the good thing about the District is it takes a vote of the City Council to adopt the compact. They have enabling legislation to allow the city commissioners to do that and the District of Columbia just adopted the medical compact. Next slide...

So, this is just what I just said in graphics. Next slide...

Everyone wants to ask what's the future, what other states that are going on. This is where I've given talks in the last couple of years about PSYPACT. And any other states there's not mentioned here, if you'd like me to come in and give presentation about telehealth and PSYPACT, I'll be more than happy to do that. I was just in Wyoming last week and the month before I was in Virginia. So, we have been told -- and don't quote me on this because who knows what happens in government -- but we've been told that in the 2000 legislative cycle that South Dakota, North Dakota, Idaho, New Hampshire, Maryland, South Carolina, Oklahoma, New Mexico are seriously considering introduce...and Hawaii... are seriously introducing... thinking about introducing legislation for the adoption of PSYPACT in those jurisdictions. And we know in Texas that PSYPACT is connected to the sunset provision and as soon as sunset is adopted as long as PSYPACT is still in the sunset provision, Texas will come aboard with PSYPACT. And there was a question about "I'm from Puerto Rico or I'm in the Virgin Islands; that's not a state." For the purpose of the compact, the District of Columbia, Virgin Islands, Guam, and Puerto Rico are considered a state by definition. Next slide...

So, some people have asked, "What can you do if your state does not know about it? How can you help?" If you're interested in providing this legal and ethical way for any jurisdictional practice, you can talk with your State Association and see if they're interested. If the psychologists in your other states or Commonwealths or territories are interested, you can talk the licensing board and seeing if they've heard about it or they're interested about doing it and you can also let your legislators know to do this. Now, ASPPB is... is working with APA, the National Governors Association, the Council on State Governments; we're dealing with the Department of Defense -- the DoD has is very interested in PSYPACT and they've put that as one of their top 10 priorities in 2018 and 19. So, we're working with them and so let me go back to a slide that Deborah talked about... about the differences of law. The problems with... primary problems with interjurisdictional practices is which law do you apply? So, PSYPACT talks about where the home jurisdiction is takes precedence, but the distant jurisdiction has the opportunity if someone is doing something wrong to issue cease and desist. But... but forgetting about that disciplinary part, what do you do right now if I'm a psychologist in Pennsylvania which has a standard for duty to warn saying I have to use reasonable care to protect by warning an individual. So I must warn someone if my patient tells me they're going to harm someone else. If you go into a state that's permissive or does not have a duty to warn standard -- if I were seeing someone electronically now and the patient in, let's say, Texas told me that -- if I didn't warn the victim in or potential victim in Texas, I violated Pennsylvania law. If I did warn the person in Texas, I may have violated Texas law by breach of confidentiality. The other issue has to do with duty to reporting; if in your... child abuse, for example. if in your state, you make a good-faith attempt or good-faith reporting that whoever told you, according to your state laws, that child abuse is going on and you send it to Children and Youth and they do an investigation and even if it's unfounded, there's immunity that's attached to your reporting because you're a mandated reporter in that state. However, that immunity stays within the state; once you cross a state line, that immunity does not follow. So, if you did the same thing in the other state and there was a hearing and it was unfounded, that person then could sue you for breach of confidentiality, defamation, slander, and so forth. So, PSYPACT begins to resolve these issues by allowing states to work together and through the informed consent process, this patient and... will understand what happens in terms of the differences of laws and what is going to happen at the beginning of therapy in terms of resolving these issues that are going on. Next slide ...

This is PSYPACT; it has its own web page. If you'd like to see the compact or look at legislative resources or frequently asked questions, we have them for psychologists, for legislators, for licensing boards and you can get an update about what's the status of PSYPACT in each state. You can follow us on Twitter; you can email us; and if you go to the next slide...

Here's my email address; if we don't get to all the questions and you have specific questions, please feel free to ask... email me directly. There's my email address and I'll turn it back over to... or the net... Nicole.

**Nicole Owings-Fonner:** Hi - thank you! I'd like to thank both of our presenters. We're gonna go ahead and go through some of the questions that were submitted previously and then also some of the ones that have come in live. So, first up

what do you think of the “Anywhere to Anywhere” legislation passed by Congress for the VA? Does this actually protect practitioners?

**Deborah Baker:** So, I'm gonna take the first stab at answering that question. So, for... for those who are in listening today, the VA issued a final rule that allows clinicians – VA clinicians, not contractors or community providers, but those on staff in a VA facility – to provide telehealth services to VA beneficiaries, regardless of where the VA beneficiary is or where the provider is. Previously, it... it was restricted to only in VA clinical settings and they've since expanded it in an attempt to increase access to veterans in need of health care. And so that specific distinction between clinicians on staff or who are direct employees versus others who may contract with the VA is important because the distinction then is between being part of the closed VA system that has a specific credentialing policy. The malpractice coverage that the VA offers is supposed to cover those providers in that particular context, unlike more open-ended where there's not a way to really monitor who the provider is and where the patient is. So, the intent is it is supposed to protect those practitioners.

**Alex Siegel:** Let me add a couple of things here. I've had several conversations with several VA psychologists that are concerned about this as well as I've had some calls from licensing boards. Clearly if this falls within the Supremacy Clause, then the... and you're practicing within the federal system, you're exempt from the state regulatory system, but state licensure in all professions is a state responsibility. It goes back to the Supreme Court cases in the 1880s and as well as the 10th of... 10th amendment to the Constitution. So, there are a couple of cases that I'm aware of where VA psychologists have been brought before a licensing board; I'm remembering one in Montana and in California. So, it probably will, but because it's a new regulation and it hasn't been challenged in a licensing board hearing yet; that's why some psychologists are concerned. What I hear also in this bill is that the VA will defend you if there is an action brought upon you before a licensing board. And the other thing that I'd highlight is that it's only for the beneficiary; it's not for the family. You may be able to do family therapy because a beneficiary's identified patient, but you probably could not see the child or the wife separately within that... without being licensed in that distant jurisdiction.

**Nicole Owings-Fonner:** Okay, thanks guys; that was great. I'm gonna go into the next question; we've had a few questions along the same vein and this one says, “I am relocating to the UK later this year and would like to know if it is possible to do telephone sessions with clients in the United States?”

**Alex Siegel:** I'll take that; that's a great question and the answer is it depends. what I would recommend is doing two or three things: one, I'd talk to the regulatory body in the UK -- the British Psychological Society -- which charters all psychologists there or... they use the word “charter”; we use the word “licensure” in the States and “registered” in Canada and ask permission if you're allowed to do that. Because just because you're seeing people back in the States, you're on the UK territory and they may be saying you're practicing there without being chartered and that may be problematic. The second thing I would do is I'd talk to the licensing board of where you want to practice into and if it's your home jurisdiction and you're licensed there, I would ask them if it's permissible for you to provide services outside of a state where you're licensed back into the state. And the third thing that I would suggest doing is talking to your malpractice carrier. The Trust, as you may know, has a wonderful risk management program with very knowledgeable lawyer psychologists there and ask them that question as well and get a risk management perspective on providing those services. But right now, you know, I know people are providing services from the States into Australia and I can tell you that Australia, if they knew about that would not be happy with that practice, because their mandate is to protect people who are in Australia and even though it's a US citizen or an expat that's in Australia, the Australian Psychological would have concerns about that. I know that ASPPB is working with the Australians and the New Zealand's... Gers and we're trying to figure out a way how we can extend recognizing each other's credentials and share disciplines to allow for the telepsychological practice from the United States and Canada into Australia and New Zealand and I know the European Union through EuroPsy, the 28 countries are working on telepsychological services there so that someone from the UK could provide services to someone in you... Russia for example.

**Deborah Baker:** I'd like to piggyback on that. The example about European countries is with the EU just released its privacy regulations that go into effect, I think, the end of this month. They are far more stringent than HIPAA, so it behooves psychologists who may be providing services into the EU to become familiar with those policies.

**Nicole Owings-Fonner:** Okay, thank you. Next question: how is reimbursement and malpractice handled?

**Alex Siegel:** Great question. So, as regulators, we deal with the regulations and we deal with looking at how we can expand the scope of practice to provide that service in a legal and ethical way. We don't really have the authority to talk with and negotiate with insurance companies or malpractice carriers. However, you know, based on that movie, *Field of Dreams* – if you build it, they will come – it's our belief that both will... will happen, not because psychologists want it, but because clients will demand it and I've had discussions with several of the malpractice carriers and I've been told that as soon as the Commission is up and running and PSYPACT is operational, they will begin to talk to their underwriters to be able to provide insurance in the interjurisdictional way under the compact. We've had conversations as recently as the beginning of this week with some insurance companies in those states where PSYPACT has already been adopted, asking those questions. So, we're beginning the process; they're coming to us; and we're in... we're helping them understand the compact and what's the requirements and so forth and some are even looking at it possible to provide services and be considered an in-network provider, even though you're not licensed in that state. So, we're having those discussions and I'm optimistic that both will happen. Right now, telepsychological practice by and large is a cash basis – anywhere from 99 cents a minute talked about \$29.99 a minute on one of these websites.

**Deborah Baker:** On the reimbursement issue, there's approximately 37 jurisdictions that have enacted telehealth coverage mandates, prohibiting insurance companies from refusing to cover a service simply because it was provided by telehealth, if that same service would be covered if provided by in-person. So, it's... it's whether you're providing intrastate or interstate, it's always important to understand what... if a payer is involved what that payer's policies are and, you know, I'm hopeful based on the conversations Alex alluded to about insurance companies trying to understand how the compact works to figure out how that aligns with their coverage policies, but you're still always going to need to check first with a payer if your patient is going to be using insurance coverage.

**Alex Siegel:** Let me add something that's tangentially related to that. PSYPACT just deals with the interjurisdictional between states; ASPPB does not take a position and the compact doesn't focus on inter... intrajurisdiction. That's up to the states to decide how they want to conceptualize telepsychological services within the state, territory, or commonwealth and so we're... this is just dealing with the interjurisdictional. So, if you're just thinking about wanting to practice within the state, that's something that you need to see if the licensing board has promulgated rules or if there's been legislation to allow that to happen in that state specific.

**Nicole Owings-Fonner:** Thank you. The next question is "I'm often asked if regular telephone is considered an approved method of conducting telepsychology sessions?"

**Alex Siegel:** so, part of the... I'll take the first half of that... if you go to the PSYPACT definition of what telepsychology is and if you go to the APA guidelines about what telepsychology is, it's the same definition and we include there the telephone is part of the interjurisdiction... a telephone is part of the electronic communications. So, for this... for the compact, the answer would be yes.

**Deborah Baker:** However, if you're talking about third party payers, it often does not include phone. So again, it's really important if you have a third party payer involved, you need to understand what that particular payer's policies are because chances are phone therapy would not be included in the definition of telehealth and what that means is... is that if there is a dispute with the payer about covering the service, you could not rely on... if a state has a telehealth coverage mandate, you couldn't rely upon that in support of your argument that the service ought to be covered but... but an insurance company may have a separate policy about phone therapy.

**Nicole Owings-Fonner:** Thank you. We've had a... quite a few questions regarding where the... where the... either the... the psychologist is or where the client is. For example, if someone is licensed in New York and the client is in New York, but the psychologist is not presently in New York, could they do telepsychology into New York?

**Alex Siegel:** So, that's a ques... I'll take a first stab at that... that's a question for New York State to decide what... what... whether that's permissible. The other... the other thing that you need to realize is that you... where you are; you also have to deal with that jurisdiction to see if you're practicing in their state without a license. Let me give you a quick example: I'm a Pennsylvania psychologist. I'm seeing a patient of mine and they for the winter go to Florida. I cannot telepsych in Florida because Florida may not like that and I'm not licensed there. Suppose I now go on vacation in Florida and I let my patients know that I'm there and I don't know why I would do that, but if I did and they wanted to have a session -- and hopefully not in the hotel room... that's a joke -- but I can borrow someone's office to see the patient for an hour. So, it's a Philadelphia, Pennsylvania psychologist talking to a Pennsylvania patient. It has nothing to do with the state of Florida. However, Florida could say you're practicing psychology in Florida without a license; so you... PSYPACT resolves those issues and you pretty much have to check the jurisdiction where you want to practice back into as well as where you're practicing from if you're not licensed to see that it's permissible and allowable by that jurisdiction.

**Nicole Owings-Fonner:** Another question: I live and practice in Nevada, which is a PSYPACT state; is there anything I can do to prepare for this?

**Alex Siegel:** Yes, not at this time, though. So, as you know, we have five states, hopefully six states by next week, and we need seven states before this become operational. We did not want to start to offer e-passports or IPCs a year ago when we started... the states were starting to get involved because we didn't know quite frankly if this was going to work and we didn't want to sell something, if you will -- and there'll be a cost to e-passports and the IPC to help defray some of our administrative costs in terms of vetting and gathering information and so forth -- until the compact was viable. now we're getting close to that time once the seven states are there, or the first cohort of seven states; so, it could be eight or nine or ten, the first meet and at that point the Commission will get together; we will start to advertise or let it be known how much the e-passport cost, what are the requirements to do that, what you need to do at this point. So, right now the best answer is if you stay close to our... the PSYPACT dot org and get the updates, at that point you'll know more what you can do. But at this point right now, until the commission is up and running, we're... there's not a whole lot you can do. and for those other states where it's in like an Illinois and Rhode Island, please feel free to contact your legislators to encourage them to adopt PSYPACT and other jurisdictions where there's no legislation, please feel free to work with your... your licensing board and/or state association to help promote PSYPACT.

**Nicole Owings-Fonner:** Thank you. I have another question regarding whether this applies to consulting psychologists or even to coaching psychologists: instances that don't require insurance.

**Alex Siegel:** Yes, so as I talked about earlier, we're anticipating that those licensed IO psychologists would also have to... it applies to IO consider... and consulting psychologists who are licensed. The question about coaching gets a little more difficult and people may not like my answer here. If you're a psychologist and you also do coaching and you say, "Well I'm providing coaching service here and not psychological services", the onus is on you to prove that you're not practicing psychology because all licensing laws include coaching. They may not use that word in the definition of the practice of psychology in each jurisdiction, but coaching is assumed that it's under the practice of psychology. So, if you're licensed as a psychologist and you're coaching, you're going to be held to the psychology standard. And if you were to do something inappropriate and you were saying, "Well, I was a coach and not a psychologist here" and there was an action brought against your license, the burden of proof would be on you to demonstrate to the board what's the difference between the two and do you have two separate business cards, do you have two separate clientele, blah, blah, blah, blah, blah and how or... or as my college roommate wrote yada, yada, yada. So it does apply for IO consulting, forensic psychologists, and IO psychologists.

**Nicole Owings-Fonner:** Thank you both. We're starting to run out of time, so I have one last question: where can folks locate samples of informed consent forms or assistance with what indicators of competence for patients to participate would be and other resources of that matter?

**Deborah Baker:** Well, I think... I was going to say there are resources out there; the research is coming out. You can go to APA PsychInfo and... and look at what the research says. I know the American Telemedicine Association also has resources that... that talk about... talk about these issues in terms of indicators and specifics about technical requirements and so forth. So, that would be where I would start. As far as informed consent, it's part of... it is going to be determined by your state because some states in their telehealth laws have some specific informed consent requirements, but I think using the APA practice guidelines... telepsychology practice guidelines are a good starting point.

**Alex Siegel:** And I'd add to that I believe that The Trust and their risk management program has informed consent... consent documents in there. I think Eric Harris and Jeff Youngan wrote those. The other thing is that the PSYPACT Commission hopefully will mandate that each compact state have an informational page which will talk about those informed consent issues that are unique to that jurisdiction, that will talk about those laws which are unique: duty to warn, duty to protect, do you have to report elder abuse, so that the individual member who's practicing under PSYPACT could go to a site and see what those requirements may be into that state.

**Nicole Owings-Fonner:** Thank you both for your time today.

If you enjoyed the content of our monthly webinars, be sure to check out Progress Notes. Progress Notes is a podcast produced by the APA Practice Organization with practicing psychologists in mind. Episodes will cover a range of topics that affect practitioners including the financial and legal aspects of running a business and listeners will also hear experts talk about developments in health care policy and stories that highlight the work of fellow psychologists.

I'd like to thank you all for being with us today. A link to today's recorded webinar will be emailed to all registrants within 48 hours; in addition, the slides in the recording will be available on the APA Practice Organization website in a few weeks. As always, we'd like your feedback on this webinar; with each recording email, there is a link to a survey. We would appreciate it if you would take the time to fill it out. Have a great day! Thank you.

**Alex Siegel:** Thank you.