

Telepractice Tips

Ontario Association for Behaviour Analysis (ONTABA)

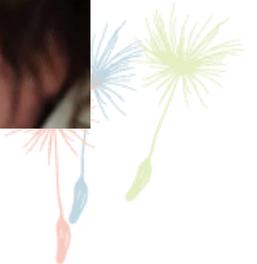
Professional Webinar Series

Presented by: Richard Steinecke

www.sml-law.com



Introduction



Overview

1. The Therapeutic Relationship
2. Location of Service
3. Informed Consent
4. Privacy
5. Record Keeping



Overview

6. Standards of Practice
7. Fees and Billing
8. COVID Emergency Directives
9. Special Issues
10. Miscellaneous Tips



Context

CANADA: How COVID-19 has helped advance telemedicine

Social distancing required to prevent the spread of COVID-19 has led to a sharp increase in the use of telemedicine

Apr 12, 2020 8:55 PM By: The Conversation



Stock image

This article, written by [Inderveer Mahal, University of Toronto](#), originally appeared on [The Conversation](#) and has been republished here with permission:

The COVID-19 pandemic has transformed how doctors provide health care. This public health crisis has shifted the paradigm on how Canadians access medical care and has ushered in the new era of telemedicine. Almost overnight, patients have stopped walking into their doctors' offices and are instead receiving medical care through online platforms.

Telemedicine is the [delivery of medical care and information through communications technologies](#). This can be as simple as a telephone call, or can extend into the digital world with email, text messaging and videoconferencing.

Can a lawyer or paralegal use virtual commissioning in the context of COVID-19? ^

Commissioning is governed by the [Commissioners for Taking Affidavits Act](#) and is not regulated by the Law Society. Although the law is evolving in this area, the best practice for commissioning documents remains for the lawyer or paralegal who is acting as a commissioner to be in the *physical presence of the deponent* to commission the document(s). For more information, please review the Law Society's [Virtual Commissioning](#) resource.*

However, as a result of COVID-19, until further notice:

- The Law Society will interpret the requirement in section 9 of the *Commissioners for Taking Affidavits Act* that "every oath and declaration shall be taken by the deponent in the presence of the commissioner or notary public" as not requiring the lawyer or paralegal to be in the physical presence of the client.
- Rather, alternative means of commissioning such as commissioning via video conference will be permitted.
- If lawyers and paralegals choose to use virtual commissioning, they should attempt to manage some of the risks associated with this practice as outlined below.

Managing the Risk of Virtual Commissioning:

If a lawyer or paralegal chooses to use virtual commissioning, the lawyer or paralegal should be alert to the risks of doing so, which may include the following issues:

- Fraud
- Identity theft
- Undue influence
- Duress
- Capacity
- Client left without copies of the documents executed remotely
- Client feels that they did not have an adequate opportunity to ask questions or request clarifying information about the documents they are executing.

What is Telepractice?

For today's purposes:

Any method of providing a professional service or product where the practitioner is not physically present with the recipient



Advantages of Telepractice

- Available during the pandemic
- Access to services that are otherwise not available
- Increase efficiency and productivity
- Motivates recipients who are responsive to technology
- Affordability (at least over time)



Disadvantages of Telepractice

- Technological glitches
- Inability to physically assess or give tactile cues
- Stressful for recipients uncomfortable with technology
- Start up costs



1. The Therapeutic Relationship Scenario

You are approached by a new recipient to provide services in respect of some mental health issues. Things go well. The recipient emails you that they are having credit card issues and wonder if they can make a direct deposit. You provide the relevant information. The next month you learn that you have been the subject of identity theft and a new credit card has been issued in your name without your knowledge.



1. The Therapeutic Relationship

- Easier where pre-existing relationship
- For new recipients:
 - Ensure that recipient aware of formal therapeutic relationship
 - Identification of the recipient
 - Identify theft, fraud, mischief, location misrepresentation
 - Recipient aware of any scope of practice limitations / options
 - Recipient access to usual documents
 - Otherwise as close to in-person retainers as possible



2. Location of Service Scenario

- You are flying in your Learjet over the Pacific for a family holiday in Hawaii. You live in Ontario. Your recipient, who lives in Bermuda, is on a cruise in the Mediterranean. You provide professional services to the recipient by Skype through a US account. In what jurisdiction was the service provided?



2. Location of Service

- Surprisingly, Canadian law is not clear
 - Depending on facts, jurisdiction of recipient, practitioner, both
 - Sufficiency connection test
 - Assume both jurisdictions
- Comply with law of both
 - Eligibility to practise (may require dual registration)
 - Use of title
 - Privacy rules (e.g., transporting information across border)
 - Standards may not be identical (e.g., architects case)
 - Insurance coverage



3. Informed Consent Scenario

- You propose to a family that, since you can save travel time, that you can double the number of sessions each week. They readily agree. Everything goes well until the family receives its first invoice for your services. They assumed that they would pay half the fees for each session - not the full fee each time. How could this misunderstanding have been prevented?



3. Informed Consent

Always need informed consent for

- Treatment
- Privacy
- Billing



3. Informed Consent

Add the telepractice aspects to the usual topics:

- Nature of service
- Anticipated benefits
- Gaps, risks and side effects
- Alternatives, e.g., no service or in-person service
- They can change their mind
- Additional privacy risks
- Registration status of practitioner



3. Informed Consent – Special Challenges

- Determining whether recipient is capable
 - Especially when relying on non-verbal cues
- Others in the room
 - Recipient reluctance to say things, undue influence
 - Determining who is the substitute decision maker if possible candidates in the same room
 - Ensuring that those who leave the screen view cannot hear



4. Privacy Scenario

A recipient who has some symptoms of paranoid thinking reports to you that one of their neighbours is saying things about the recipient's past that have only been discussed in your sessions. At first you wonder if the recipient is misinterpreting innocent comments. However, over time you begin to consider other explanations. After consulting with a colleague you ask whether the recipient's home WiFi is password protected. It soon becomes evident that this is the source of information for the neighbour's malicious comments.



4. Privacy

- Usual rules apply
- Added technology risks
 - Specifically designed telepractice programs are best
 - Reluctance of authorities to recommend programs
 - Pandemic exceptions for use of some commercial programs



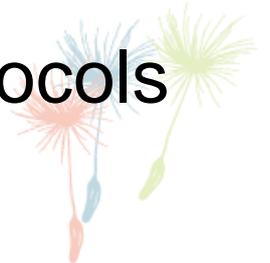
4. Privacy – Online Resources

- Information and Privacy Commissioner of Ontario
 - <https://www.ipc.on.ca/newsrelease/ipc-closure-during-covid-19-outbreak/>
- HIPAA
 - <https://www.hhs.gov/sites/default/files/telehealth-faqs-508.pdf>
- College of Psychotherapists of Ontario Security Practices Checklist
 - <https://www.crpo.ca/wp-content/uploads/2019/03/FINAL-Security-Practices-Checklist-for-Electronic-Practice-Guideline-approved-01MAR2019.pdf>



4. Privacy - Tips

- Informed consent
- Use anti-virus, firewall and other protections
- Ensure no unplanned observers at both ends
- Waiting room feature
- Passcode feature
- Disable recording feature
- Safeguarding electronic and paper records at home
 - Including retention and destruction protocols
 - Portable devices must be encrypted



5. Record Keeping Scenario

In the last scenario (the neighbour snooping in on the recipient's WiFi), how likely is it that you would have a record of discussing this risk when you first obtained informed consent to use remote technology?



5. Record Keeping

- Must maintain usual record keeping requirements
- Need to document technology / form of session
 - Video / sound quality?
- How to document during the session
- Integrating remote and central records



5. Record Keeping

Recording the session?

- Requires specific consent
- May not serve the purpose well (cannot easily review)
- Is not sufficient on its own (e.g., date, those present, indexing, assessment findings)
- Discuss a no-recording policy with recipients (suggest they don't record either?)



6. Standards of Practice Scenario

- You are providing services to a recipient who can be quite anxious at times. The recipient does not live at one fixed address and they remote into the sessions from different locations. During a remote session you become concerned that the recipient's symptoms are becoming acute. Suddenly the connection is lost. Are you in a position to meet professional standards?



6. Standards of Practice

- Must meet all usual standards of practice
- Usually cannot use consent as a reason not to comply
 - E.g., adequate assessment
 - E.g., can provide this service competently in this format
 - E.g., referral where cannot meet recipient needs
- Suitability standards (e.g., support if crisis)
- Translator standards
- Emergency exceptions
- Avoid using financial pressures to justify gaps



6. Standards – Additional Competencies

- Ability to use technology
 - Including building rapport
- Ability to support patients in the use of technology
 - May need to review steps they can take to protect themselves
- Ability to assess using telehealth
 - May be additional strategies available
 - E.g., online tools (even with practitioner observing)
 - E.g., observing behaviour in the home environment
 - E.g., joint sessions with others on the team
- Ability to coordinate care using technology



7. Fees and Billing Scenario

- Your invoices to recipients for remote services are identical to those for in person services. You are aware that many recipients submit those invoices to third party payers. One week almost half of your recipients tell you that their third party insurer is asking them whether the services were provided in person or remotely because the plan does not cover remote services. Whose problem is this?



7. Fees and Billing

- Disclosure of fees
 - Fee schedule must be fair and ethical
- Informed consent
- Honest disbursements (at cost)
- Disclosure to third party payers that not in-person
- Billing where satisfactory service was not possible



8. COVID Emergency Directives Scenario

- You are registered with a health regulatory College in Ontario. Your colleague next door is not registered with any regulatory College. You both provide services to children with autism. Is there any difference in your ability to provide services during the pandemic?



8. COVID Emergency Directives

- In Ontario, online services are generally permitted
- However, March 19th Directive for regulated health professions has been interpreted as limiting health care services to essential services
 - For RHPA registered practitioners
 - To facilitate redeployment



9. Special Issues Scenario

- You are providing services to a family with three children. The youngest has been diagnosed with autism. During one session you see in the background the two older children sword fighting with long handled wooden spoons. You see one of the parents intervene, roughly grabbing the spoons out of their hands and hitting the oldest child once on the bum with one of the spoons. What are your obligations here?



9. Special Issues

1. Child abuse / in need of protection
2. Over-sharing and boundary crossings
3. Plan B if there is a technological disruption
4. Professional liability insurance coverage
5. Overlapping sessions
6. Crossing the border with device
7. Email communication with recipients

1. <https://www.ipc.on.ca/wp-content/uploads/2016/09/Health-Fact-Sheet-Communicating-PHI-by-Email-FINAL.pdf>



10. Miscellaneous Tips Scenario

- Even when providing in person services, you tend to run 5-10 minutes behind schedule. There are educational toys and learning activities in the reception area and no one seems to mind. However, now that you are providing remote services, recipients seem to be perturbed when you remote in 5-10 minutes late. Is this pandemic just making everyone more anxious than usual?



10. Miscellaneous Tips

1. Reminders
2. Punctuality concerns are heightened
3. Eye contact, active listening
4. Close other tabs
5. Use cable rather than WiFi where possible
6. Connecting with colleagues



Lists of the Post-COVID World

7 Predictions for a Post-Coronavirus World

Rectangular Snip

Remote work, automation, and telemedicine could soon become the new normal



Emma Rose Bienvenu [Follow](#)

Apr 14 · 6 min read

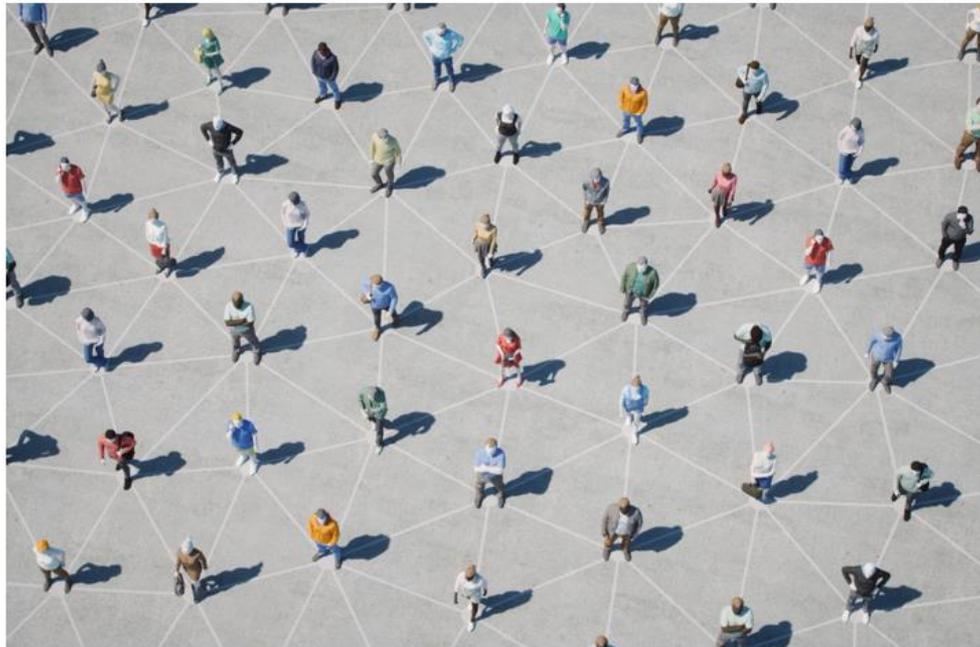


Image: imaginima/E+/Getty Images



Questions or Comments

