

The “Distance Counseling” Cyberfrontier, Part I

[This Practice Pointer begins a two-part discussion on “distance counseling.”]

Last year, Tom, a Midwest-based clinical social worker, answered the entrepreneurial call and began providing “distance counseling” to a sprinkling of clients across the nation. In the run-up prior to his business launch, Tom contacted his state board of social work examiners and was told that no statutory provisions specifically prohibited such practice. Currently, Tom—who works fulltime as a psychotherapist at a residential substance abuse treatment program—maintains weekly contact with his e-clients via instant online messaging. As part of the first session, he instructs his new clients that, if they find themselves in emergency situations, they should go to the nearest emergency room and then immediately update him by telephone. This evening, Tom unveiled his new business venture to a group of fellow practitioners, who reacted with surprise and curiosity. “The reason I’m getting into e-counseling,” he said, “isn’t so much the extra money. It’s mainly because this is the wave of the future—and I want to ride that wave.”

Wave of the future or not, Tom has entered a cyberfrontier whose alien landscape is pockmarked by both known and unknown risks. Since its inception roughly a decade ago, the practice of “distance counseling”¹ — an umbrella term encompassing the provision of psychotherapy via Internet instant messaging and videoconferencing, e-mail, telephone, and teleconferencing—has sparked tremendous interest and a firestorm of controversy.

Some observers believe that, nationwide, hundreds of “therapists” of unknown qualification and ethical bearing are currently engaged in distance counseling, most limiting their e-practices to text-based therapy. Indeed, dozens of unregulated businesses today boldly

advertise turn-key business packages promising to have “therapists” up and running in a matter of hours.

At present, the National Association of Social Workers, Association of Social Work Boards, state regulatory boards, and other key players are shaping practice guidelines that will guide future social worker participation in distance counseling. An NASW/ASWB work group is developing standards for distanced practice with an expected release date of spring, 2005. The standards will address technical initiatives in communication as they impact on social work. In the meantime, social workers, such as Tom above, are cautioned to carefully weigh their participation in a phenomenon that has all the makings of a legal and ethical minefield. Two invaluable resources to consult are the NASW’s practice updates, “Online Therapy and the Clinical Social Worker” and “Medicare Telehealth Provisions for the Clinical Social Worker.”

It should be noted that the NASW Insurance Trust is not recommending in favor of or against distance counseling. This Practice Pointer merely serves to provide key information for practitioners to mull in formulating their risk-management decisions. For those social workers who wonder if the malpractice insurance would cover an allegation of professional negligence in distance therapeutic counseling, the NASW Insurance Trust office advises that the answer is a much generalized “yes” with significant qualifications. For example, one of them is that the social worker must be properly licensed per state laws not only in the social worker’s location, but in the client’s location as well. This is an emerging and evolving social work risk management topic.

¹ While terms vary—finding “e-therapy,” “cybertherapy,” and “text-based therapy” all firmly rooted in the clinical vernacular—“distance counseling” is used in this Practice Pointer.

ASWB: “Very Complicated”

Reflecting on the ambiguities and unknowns pertaining to distance counseling, ASWB Executive Director Donna DeAngelis says social workers should not expect snap regulatory decisions on watershed issues. “The issues swirling around distance counseling are very complicated—and are becoming increasingly complicated,” she says. Typically, the legal system is years behind practice, meaning that it will take time for case law and regulatory law to catch up. Distance counseling is so new that while we know it’s going on—we’re aware the technology is here and we’ve see many of the websites—the central questions are: Should it go on and how? Frankly, that’s to be determined.”

In the absence of specific regulatory prohibition, some social workers might believe they have the green light to practice distance counseling, prompting DeAngelis to respond, “While the regulations governing this new practice are not firmly ironed out by the states, the prudent social worker should think twice about the doing distance counseling at this time.”

But not all distance counseling is alike, DeAngelis says. A social worker and client occasionally communicating via telephone or e-mail *as an adjunct to* regular office visits is a far cry from a social worker rendering diagnosis, assessment, and treatment with an unseen e-client via e-mail or Internet instant text messaging. “There’s a real risk factor in all of this—and it’s both the social worker and the client who are at risk.”

Frederic Reamer: “It’s a real mixed bag”

Frederic Reamer, Ph.D., a prominent social work ethicist, social work

professor, and chair of the task force that penned the NASW Code of Ethics—offers his perspective.

“I’m not categorical one way or another about this medium,” he says. “I think there are some aspects of distance therapy to commend, but some very worrisome features, too. This is cutting edge, so we need to be very circumspect while the regulators play catch up. We really need to approach it eyes wide open, recognizing the associated risks from an ethical and risk management point of view.”

Reamer outlines the potential benefits of distance counseling:

- Overcoming barriers. “I think distance therapy can potentially bridge the geographical distance between isolated individuals and therapists.”
- Bridging emotional barriers. “Distance counseling has the potential for assisting in overcoming certain emotional distances, if you will, such as with clients with anxiety disorders who might otherwise be reluctant to participate in therapy in person.”
- Better outreach. “I also think there’s a group of potential clients, for reasons of shame, culture, or simply those who aren’t comfortable going to a psychotherapist in person, who might avail themselves of this service.”

Calling the issue “a real mixed bag,” Reamer notes that while most every distance counseling medium has its inherent risks, his overarching concern centers on the bedrock issues of social work itself:

- Confidentiality and privacy breaches. “Unauthorized access to a PC or e-mail—or an errantly misdirected email—may be unlikely, but it is possible.”
- Overlooked clinical cues. “Reading a person’s body language, facial expressions, or other important

- nonverbal signals is best done when the client is sitting in front of the therapist. If one is doing therapy by telephone or email, one doesn't have that option."
- Crisis management. "I'm troubled by the possibility that a therapist who has a client hundreds of miles away will have a very difficult time managing a potential crisis."
 - Client misrepresentation. "If your client has disguised his or her identity and suddenly you've got a major crisis on your hands, you may have no idea who this person is."
 - Therapeutic alliance. Distance counseling can impede or prevent the development of a therapeutic alliance.

Assessing the ongoing debate, Reamer comments, "At present, I think we're orbiting this nebulous planet and we're not entirely clear as to what is appropriate ethically, what is not, and how we distinguish between the two. It's helpful to think of this as another example of pushing the envelope—of finding creative new ways of helping people. A good question to ask is: 'What aspects of distance counseling constitute appropriate, innovative, creative efforts to help—and I'm all in favor of innovation—and what aspects do not. Ultimately, I get a bit nervous when new approaches emerge without well established ethics-related guidelines.'"

The \$64,000 Question

Central to the distance counseling debate are issues related to geography and licensing. "The ASWB Model Law," says DeAngelis, "says that practice takes places where the client is located—where he is a resident. This means that if you're a Maryland clinical social worker treating a resident Floridian, the therapy you're providing is taking place in Florida."

Within this context, De Angelis poses several key questions:

- Is the social worker also licensed in Florida?
- Is the social worker meeting Florida's statutory provisions?
- Is the social worker's malpractice insurance coverage valid in Florida?
- Does this malpractice insurance cover distance counseling—a medium currently outside mainstream social work practice?

DeAngelis thus outlines the \$64,000 question of distance counseling: "If a client in Florida has a problem with a social worker licensed in Maryland, what recourse is there? If the client tries to file a complaint with the Florida board, that board is likely to conclude: 'This social worker isn't under our jurisdiction.' And if the client complains with the Maryland board, yet the practice isn't taking place in Maryland—we still don't know whether Maryland would consider that a violation. Quite simply, there's not a lot of case law written on it."

This begs the question: Could the Maryland board (or the Florida board) retroactively hold liable the e-therapist? Says DeAngelis, "If there is malpractice, the complainant's attorney is going to pull standards from clinical societies and other bodies. He or she is going to base his or her case on generally accepted standards of treatment."

Despite these arguments against distance counseling, DeAngelis sees a positive aspect. Pausing to reflect, she says, "I think some long-distance technologies are very appropriate for information & referral services. A skilled social worker can get an idea of what the caller's issues are and match that person with resources in their local area. But this is far different from the provision of e-psychotherapy or distance counseling."

Her bottomline? Great harm can be done to clients. Changes in case law could catch up with the imprudent social worker in a big way. When in doubt, refer out. Riding the wave of the future could carry the

unwitting e-therapist into very turbulent waters.

Practice Pointers is a service of:

The NASW Insurance Trust
750 First Street, NW, Suite 725
Washington, DC 20002-4241
www.NASWInsuranceTrust.org

Matthew Robb, MSW, writes for the NASW Insurance Trust. Names and case examples depicted in Practice Pointers articles are fictitious. Any resemblance to persons living or dead is coincidental.

Submit questions on practice issues to the NASW Insurance Trust via blawrenc@naswdc.org for appropriate referral. To obtain social work professional liability insurance, call the American Professional Agency at (800) 421-6694 or visit www.americanprofessional.com

Copyright & Reproduction Information

Copyright © 2004
National Association for Social Workers
All Rights Reserved.

Specific, written (can be email or fax) permission requests are required prior to any reproduction from the National Association of Social Workers Insurance Trust. Except where an author has specifically restricted permission, permission is hereby granted for republication of articles by not-for-profit organizations, journals, and publications; provided publication and credit is given, and a copy of the publication or URL is forwarded to our address below. Include contact name and information with correspondence. This copyright notice is not intended to discourage creating a link to this newsletter on home pages or in Web browsers with bookmarks.

OR e-mail: insurancet@naswdc.org OR fax (202) 336-8318

Terms and Conditions of Use

Statements made in this publication are the views of the authors only and do not necessarily represent the views of National Association of Social Workers, the NASW Insurance Trust, or its members. Although this publication has been carefully reviewed by staff, no warranty, expressed or implied, is made, or any responsibility assumed by National Association of Social Workers or the National Association of Social Workers Insurance Trust as to the accuracy or applicability of this publication, any use of this publication, or any related material. The fact of distribution by any means shall not constitute any such warranty. Consultation with an attorney about specific issues is highly recommended.