

## TN Law & Ethics

### Issues & Updates on Tennessee Laws and Rules that Govern the Practice of Psychology

David C. Mathis, Ed.D.

Tennessee Psychological Association

November 3, 2017

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## Objectives

- Basis for Ethical Code in TN law
- Pitfalls and Potholes
- Obtaining help: TCAF
- Preventive Measures: Collaboration
- Good versus Bad Record Keeping

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## Ethics: It's the Law

### Statutes and Rules & Regulations

▪The "Practice Act" for Psychology enshrines into law the parameters of offering psychological services to the public: §§ TCA 63-11-101

▪Establishes Board of Examiners: "Its mission is to safeguard the health, safety, and welfare of Tennesseans by requiring those who practice as psychologists or psychological examiners within this state be qualified."

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## Promote Ethical Practice

### Penalize Unethical Practice

- TCA § 63-11-101 --- 63-11-311
- BoE promulgates Rules & Regulations
- CHAPTER 1180-01 – GENERAL RULES GOVERNING THE PRACTICE OF P, SPE, CPA, (BA)

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## Historic Context

### History, Research & DNA

- “Suggestions for a Code of Ethics for Consulting Psychologists” ---
- “In such a code lies the hope of clarifying our responsibilities both to the client and to ourselves”
  - **“Ethics are principles of action based on a commonly accepted system of values.”**
  - “These basic values will be translated into statements of duties and responsibilities.”

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### Wisdom for the ages---



“The individual is the most important unit of our society and that belief in his integrity is one of our most fundamental assumptions.”

Ray Bixler & Jules Seeman, 1946

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## Looking Back, Looking Ahead...



In my view, an overriding theme that connects past and present in humanistic thought is the emphasis on the positive value of helping people to maximize their optimal human potentialities" p. 617.

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## Developing APA Code

### Let's Do It Like Psychologists: Research

- "Our purpose...is to develop a technique which will be effective in modifying human behavior...specifically, the behavior of psychologists."
- "The research itself would involve the collection...of descriptions of actual situations which required ethical decisions...accompanied by a statement of decision."
- "These descriptions would be collated and classified."
- "Participants would be asked to study the issues and assign weights to the proposed solutions."
- Nicholas Hobbs, Ph.D., *Development of A Code of Ethical Standards for Psychology*, American Psychologist. 3 (3)

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## Identity & Connection

### History, Profession, Esteem

- "If a code of ethics is to remain a positive professional force, it must use as a continuous frame of reference our one purpose for existence: service to the individual and to society" -Jules Seeman
- "There is among psychologists a growing sense of professional unity and of professional esteem. Psychologists as a group feel the need for a formulation of standards for professional practice to encourage highest endeavor of members of the group, to ensure public welfare..." - Nick Hobbs

Reactions?

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## Professionalism & Ethics

- “In the most elementary sense, professionalism is a set of institutions which permit the members of an occupation to make a living while controlling their own work” - Eliot Freidson
- Professional organizations control training, certification and practice and are supposed to advance the refinement of knowledge and skill.

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## Professionalism & Ethics

“Psychology as a codification of optimal human being is an inherently moral science, and as such all our claims are subject to an **“ethics of shared understanding.”** This is not merely an obvious ethics of standards such as enumerated in the various professional codes, which are meant, after all, *to protect the autonomy of psychology*” (Stam)

Stam, Henderikus J. The Historical Boundedness of Psychological Knowledge and the Ethics of Shared Understandings. Journal of Theoretical and Philosophical Psychology 2015, Vol. 35, No. 2, 117–127

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## Professionalism & Ethics

- There must be an ethical basis for determining professional decisions.
- Is there a distinction between ethics (values) and professionalism (risk management)?
- “Professional” ethics code does not eliminate a personal ethical basis for decision making when presented with dilemmas.

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## Professionalism & Ethics



Where is this listing?

“Psychology” Today

As a profession we are blending into woodwork and many Psychologists in private practice are losing sense of identity within psychology.

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## Scientist-Practitioner Model

- LeJeune, Jenna T. and Luoma, Jason B. The Integrated Scientist-Practitioner: A New Model for Combining Research and Clinical Practice in Fee-For-Service Settings. Professional Psychology: Research and Practice 2015, Vol. 46, No. 6, 421–428.
- In a context such as ours, where collaboration and collegial support are essential... (we) attend to the effects of money on group-level dynamics. Since external reinforcers, such as money, can result in decreased sharing of information and expertise among colleagues (Lin, 2007) and **increased unethical and selfish behavior** (Tang et al., 2008) p. 426.

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## APA Ethics & TN Law

- 1180-01-.09 PROFESSIONAL ETHICS.
- (1) The Board adopts, as if fully set out herein and to the extent that it does not conflict with state law, rules or Board Position Statements, as its ethical standards the specific Ethical Standards which are part of the Ethical Principles of Psychologists and Code of Conduct published by the American Psychological Association (A.P.A.). The version adopted by the Board was approved by the A.P.A. s Council of Representatives on August 21, 2002 to become effective on June 1, 2003.

See a problem?

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## Legislative Involvement

### Does Tennessee Know Best?

- SB 0449 by \*Bell
- (HB 0566) by \*Howell (White, D)
- Professions and Occupations - **As introduced, requires state governmental entities that establish or adopt guides to practice to do so through the promulgation of rules; guides to practice include codes of ethics...**

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## Pitfalls and Potholes

### Here's the numbers

- As of December 2016 in TN
- **1,415** Psychologists
- 417 Psychological Examiners/Senior PE
- 47 Certified Psychological Assistants
- Office of Investigations - **Complaints**
- 11 against Psychologists
- 1 against PE/SPE

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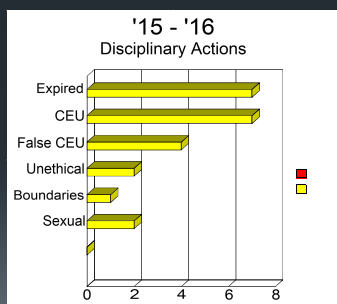
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## Pitfalls and Potholes

### Ethical Issues seen at the BoE



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## Pitfalls

### Keeping up with Continuing Education

- Insufficient CEUs
- Can make it up within 3 month period
- Misrepresenting CEUs
- Type I when it wasn't
- Failure to have record of CEUs
- Claiming to have hours when failed to do so
- Resulted in Agreed/Consent Decrees

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## Pitfalls

### Keeping up with Continuing Education

- Clarification regarding online CEU: No more than 20 hours, Type I. Anything through use of a computer vs live. May need policy statement.
- Clarification regarding audit IF newly licensed that year: The administrator has been directed by Board to forego any such audits

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## Pitfalls have Consequences Too

3/2016

Ms. Morgan stated she has a consent order to present to the Board for [REDACTED] Ph.D. who failed to obtain the required number of continuing education hours for 2011/2012.

Ms. Morgan said [REDACTED] has agreed to pay one (1) Type C Civil Penalty in the amount of \$100 for falsely certifying on her license renewal that she has completed the required continuing education and one (1) Type C Civil Penalty in the amount of \$100 for failing to complete the required continuing education hours for a total assessment of \$200. Ms. Morgan stated that all civil penalties must be paid in full within sixty (60) days of the effective date of the order and obtain three (3) hours of ethics continuing education hours for the 2011-2012 cycle, in addition to three (3) hours of Board approved ethics continuing education.

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## Pitfalls can Become Potholes

### The Devil is in the Details

2014 in order to complete his 1900 hours post-doctoral supervised training, to sit for the EPPP exam and the TN Ethics & Jurisprudence exam. Dr. [REDACTED] failed to notify the board of his status at the **end of his provisional license period** and also failed to request an extension once his provisional license expired. To date, [REDACTED] had not sat for the EPPP exam or provided documentation that he has completed the required 1900 hours of post-doctoral supervised training.

On April 27, 2015, the Health Related Boards received a provisional license application with a letter from [REDACTED] and his supervisor:

Dr. Auble made a motion that [REDACTED] would need to complete six (6) hours of continuing education in the area of TN Ethics and Jurisprudence and provide documentation that his supervisor on record has **notified the six (6) clients** that [REDACTED] evaluated during the time he was not provisionally licensed. It was also recommended by Dr. Mathis that the **supervisor** on record for [REDACTED] also obtain **six (6) hours of continuing education** in the area of Tennessee Ethics & Jurisprudence. [REDACTED] will be eligible to extend his provisional license upon compliance of the board's recommendation.

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## Expiration Dates can be Expensive

It's not only the monetary costs,  
its the adverse action that matters

The following disciplinary information exists for the professional selected:

Name: [REDACTED]	Profession: Psychologist	Lic #: [REDACTED]
ACTION	REASON	EFFECTIVE DATE
Assessed \$2700 civil penalty	Practiced on expired license	3/12/2015 <a href="#">View Board Order</a>

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## Potholes

### Unethical Behavior

Name: [REDACTED]	Profession: Psychologist	Lic #: [REDACTED]
ACTION	REASON	EFFECTIVE DATE
License reprimanded with terms; assessed \$1,000 civil penalty, plus costs not to exceed \$5,000	Unprofessional, dishonorable, or unethical conduct	[REDACTED] <a href="#">View Board Order</a>

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## Boundaries

There are reasons for boundaries

Ms. Morgan presented a Consent Order for [redacted] stating that [redacted] a private practice practitioner, admitted to giving a former patient \$4,000 over the course of ten (10) months by paying her utility bills and giving her a computer which is a violation of the Tennessee Psychology Practice Act.

Ms. Morgan said the Consent Order reprimands [redacted] license; require him to enter into a one (1) year Rehabilitation and Aftercare Monitoring Program (RAMP) contract with the Tennessee Colleague Assistance Foundation (TCAF); pay one (1) Type B Civil Penalty of \$250 in full within sixty (60) days; and, pay actual and reasonable costs of prosecuting this case to the extent allowed by law and not to exceed \$4,000 in full within sixty (60) days.

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## Potholes: Sexual

New type of Exposure Therapy?

- ◆ Facts:
- ◆ Therapy from 2004 through 2016
- ◆ Romanic from 2006 through 2016
- ◆ Billing of BCBS during that time
- ◆ No patient record
- ◆ Adverse Actions
- ◆ Surrender License
- ◆ National Practitioner Database

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## National Database

Very deep pothole

- The National Practitioner Data Bank (NPDB) was implemented by Congress in order to improve the quality of medical care and to restrict the ability of practitioners with a problematic past from moving from state to state and billing government health care programs.

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## Potholes: Sexual

Of course we know better but ...

Ms. Morgan presented a Consent Order for [redacted] Ph.D. stating that [redacted] who was a psychology professor at [redacted] admitted to having relationships with three (3) of his students between 2009/2015, which is a violation of the Tennessee Psychology Practice Act and Ethical Principles of Psychologists and Code of Conduct of the American Psychological Association.

Ms. Morgan said the Consent Order suspends [redacted] license for three (3) months, during which time he must enter into a five (5) year Rehabilitation and Aftercare Monitoring Program (RAM) contract with the Tennessee Colleague Assistance Foundation (TCAF), petition the Board for an Order of Compliance lifting the suspension restriction after the three (3) months; pay three (3) Type B Civil Penalties of \$400 each for a total of \$1,200 in full within sixty (60) days; and, after completion of the suspension have his license placed on probation to run concurrent with the duration of the TCAF contract.

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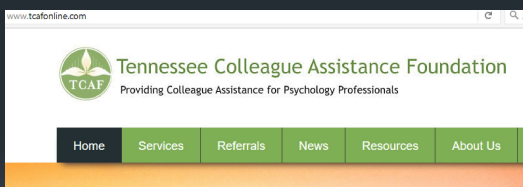
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## Obtaining Help

Tennessee Colleague Assistance Foundation



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## Saving Your License

Saving Yourself

### SERVICES

Colleague Assistance Programs are designed to provide assistance to impaired professionals, often in conjunction with the respective profession's state licensing board. The Tennessee Colleague Assistance Foundation (TCAF) is a colleague assistance program designed to serve mental healthcare providers in the state of Tennessee by:

- Educating psychologists and psychological examiners with respect to impairment and managing occupational stress that may lead to impairment.
- Intervening on impaired psychologists and psychological examiners when necessary.
- Ensuring appropriate evaluation and rehabilitation of impaired psychologists and psychological examiners.
- Providing support and advocacy services for those psychologists and psychological examiners referred for assistance.
- Engaging in ongoing monitoring of psychologists and psychological examiners as they resume their profession role.

The above-listed colleague assistance services are carried out with the ultimate goal of benefiting both the public and the profession of psychology.

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## Contacing TCAF

The sooner the better

Tennessee Colleague Assistance Foundation  
(TCAF)

418 North Maney Avenue  
Murfreesboro, TN 37130  
(615) 893-2248  
Fax: (615) 895-2049  
info@tcafonline.com

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## Preventive Measures

Promoting Ethical Consciousness

- Connection to your peers
- Continuing education
- Regional, State and National Associations
- Ongoing consultation group
- Depth of relationships and support
- Professional Quality of Life
- Personal Quality of life

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## Preventive Measures

Membership

- |               |                  |
|---------------|------------------|
| • LP          | • CPA            |
| – 2010 = 1330 | – 2016 = 46      |
| – 2013 = 1341 | • LPC            |
| – 2016 = 1404 | – 2016 = 1667    |
| • LPE/LSPE    | • TPA Membership |
| – 2010 = 528  | – 2000 = 600+    |
| – 2013 = 485  | – 2016 = 400     |
| – 2016 = 422  |                  |

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## Preventive Measures

### Consultation Groups

"Isolation is one of the leading factors in my state that can lead someone to distress and impairment...Peer consultation groups keep you from isolation, and help you to stay present with colleagues."

James Oraker, PhD, professor of ethics and director of the Clinical Health Psychology program at the Colorado School of Professional Psychology, 2005

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## Preventive Measures

### Consultation Groups

"Sharing information and experiences can also facilitate professional growth, allowing members of a peer consultation group to develop their clinical skills and improve their decision-making abilities. It can also facilitate professional growth by offering mentoring and networking opportunities."

*Not Going It Alone: Peer Consultation Groups*, APA Practice Organization, 11-2005

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## Preventive Measures

### Peer Consultation Group

To facilitate these goals, a peer consultation group should have competent clinicians within the group and establish an **emotionally safe environment**. Barriers to engaging in peer consultation include identifying potential group members, time and money constraints, and the **vulnerability** necessary to engage in peer consultation in a meaningful manner.

Despite the practical barriers, the benefits of engaging in peer consultation for the individual and the therapeutic community as a whole suggest that **this practice should be prioritized** (Johnson et al., 2012)

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## Preventive Measures

### Peer Consultation Group

One could think of peer consultation as having three goals:

- (a) refining the therapist's clinical skills/acumen,
- (b) ensuring better client care, and
- (c) providing emotional and practical support for the therapist

(Borders, 2012; Gillig & Barr, 1999; Golia & McGovern, 2013).

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## Preventive Measures

### Peer Consultation Group

"peer consultation is ideally a practice in vulnerability, in which therapists choose to tolerate feelings of unease in order to refine their skills and deliver better client care.

A useful model to consider is that presented by Linehan (1993), in which clinicians come to peer consultation with specific questions, are reminded to practice a nonjudgmental stance, receive validation and support from the team, and have a fallibility clause"

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## Preventive Measures

### Peer Consultation Group

The sample (71% return) was drawn from 800 randomly selected psychologists listed in the National Register of Health Service Providers in Psychology. We found that 23% of the sample currently belonged to peer consultation groups, and 24% had belonged in the past. Of those not currently in groups, 61% expressed the desire to belong if one were available.

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## Preventive Measures

### Peer Consultation Group

▪ "We also recommend a shift in the profession's approach to ongoing credentialing (licensure). In light of the fluidity and context specificity of competence, not to mention its vulnerability in the face of personal distress and the limitations of self-assessment, we encourage consideration of requirements for ongoing peer consultation and occasional multisource assessments of competence, such as periodic 360-degree evaluations, case presentation reviews, consumer surveys, live or recorded performance ratings, and perhaps simulated role plays" (p. 566).

▪ Johnson, W. B., Barnett, J. E., Elman, N. S., Forrest, L., & Kaslow, N. J. (2012). The competent community: Toward a vital reformulation of professional ethics. *American Psychologist*, 67, 557-569.

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## Preventive Measures

### Role of Continuing Education

- ASPPB: Majority of State and Provincial Psychology Boards require mandatory CEUs
- The permission to use online CEUs varies
- Tennessee: No more than 20 hours can be obtained through online use, must be Type 1
  - No more than 20 through use of a computer. Thus, 20 live.

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## Preventive Measures

### Competency

- The Step 2, a component of the EPPP, is a computer based examination which assesses the skills needed for entry level licensure.
- Scientific Orientation 6%
- Assessment and Intervention 33%
- Relational Competence 16%
- Professionalism 11%
- Ethical Practice 17%
- Collaboration, Consultation and Supervision 17%

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## Records: Friend or Foe

### Value for Client and Psychologist

- Record of treatment goals and progress
- Historic record in event of transfer of care
- Rationale for treatment, especially critical incidents

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## Records: Friend or Foe

### Evolution of Records in Psychology

- Jules – phenomenological experience
- Professional Standards - APA
- Medical Standards – Medicare et al

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## Records: Friend or Foe

### Risk for Client and Psychologist

- Loss of privacy
- Recent legislative effort in event of custody
- May reveal questions about level professional care

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## Records: Friend or Foe

### Confidentiality Concerns

"To create a sound approach to clinical records, professionals must do a better job of recognizing and responding proactively to threats to confidentiality. These threats may come from the rapidly evolving technologies used to record, store, and communicate clinical information. They may come from industries, advertisers, credit companies, governmental agencies, and thieves seeking access to confidential information to use for their own purposes" (Pope).

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## Records: Friend or Foe

### Confidentiality Concerns

HB 1236 by \*Akbari , Farmer; (SB 0233) by \*Harris

Child Custody and Support - As introduced, adds to and revises certain provisions related to the production, review, use, and **disposition of a parent's mental health records** pursuant to a mental health examination ordered by a court during a child custody determination; - Amends TCA Section 36-6-106.

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## Records: Friend or Foe

### APA Code of Ethics

- 6. Record Keeping and Fees
  - 6.01 Documentation of Professional and Scientific Work and Maintenance of Records
  - 6.02 Maintenance, Dissemination, and Disposal of Confidential Records of Professional and Scientific Work
  - 6.03 Withholding Records for Nonpayment
  - 6.04 Fees and Financial Arrangements
  - 6.05 Barter With Clients/Patients
  - 6.06 Accuracy in Reports to Payors and Funding Sources
  - 6.07 Referrals and Fees

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## Records: Friend or Foe

### 6.01 documentation of Professional and scientific Work and Maintenance of records

Psychologists create, and to the extent the records are under their control, maintain, disseminate, store, retain, and dispose of records and data relating to their professional and scientific work in order to (1) facilitate provision of services later by them or by other professionals, (2) allow for replication of research design and analyses, (3) meet institutional requirements, (4) ensure accuracy of billing and payments, and (5) ensure compliance with law. (See also Standard 4.01, Maintaining Confidentiality.

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## Records: Friend or Foe

### Content of Records: TN Law

#### 1180-01-.06 PATIENT RECORDS

(1) Purposes The purposes of these rules are:

(a) To recognize that patient records are an integral part of the practice of psychologists, senior psychological examiners, and psychological examiners as defined in T.C.A. §§ 63-11-202 and 63-11-203.

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## Records: Friend or Foe

### Content of Records: TN Law

#### (4) Patient Records

(a) Duty to Create and Maintain Patient Records... must cause to be created and cause to be maintained a record for every patient for whom he or she, and/or any of his or her professionally certified supervisees, performs services or provides professional consultation.

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## Records: Friend or Foe

### TN Law - Must include, not limited to:

- (i) the name of the patient and other identifying information;
- (ii) the presenting problem(s) or purpose of diagnosis;
- (iii) the fee arrangement;
- (iv) the date and substance of each billed or service-count contact or service;
- (v) any test results or other evaluative results obtained and any basic test data from which they were derived (not including protocols);
- (vi) notation and results of formal consults with other providers;
- (vii) a copy of all test and other evaluative reports prepared as a component of the professional relationship; and
- (viii) any releases executed by the patient.

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## Records: Friend or Foe

### Destruction of Records: TN Law

1. No patient record shall be singled out for destruction other than in accordance with established office operating procedures.
2. Records shall be destroyed only in the ordinary course of business according to established office operating procedures that are consistent with these rules.
3. Records may be destroyed by burning, shredding, or other effective methods in keeping with the confidential nature of the records.
4. When records are destroyed, the time, date and circumstances of the destruction shall be recorded and maintained for future reference.

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## Records: Friend or Foe

### Content of Records: Medicare

- Target symptoms
- Goals of therapy
- Methods of monitoring outcomes
- Frequency of treatments
- Clinical records to support beneficiary's relevant medical history
- Results of diagnostic tests or procedures
- Prognosis and progress to date
- Estimated duration of treatment

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## Records: Friend or Foe

### Content of Records: Medicare - EMR

1. Make sure auto-fill and keyword features are turned off. Watch for "cloned" notes—notes that appear identical for different visits; these may not reflect the uniqueness of the encounter or the patient's description of their chief complaint.
2. Make sure all notes have a date and time stamp, even when updating patient history and life events. Separate notes entered at different times by paragraph returns or other clear punctuation or spacing.
3. Make sure any edits to the patient's record are also initialed or identified with the person making the edit.

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## Records: Friend or Foe

### Template for Progress Note EMR

Assessment of Progress  
 Symptoms No Change-----x-----Full Remission

MSE:

Suicidal Risk:  None  Ideation  Passive  Active  Plan  Attempt  
 Homicidal Risk:  None  Ideation  Violence Hx  Plan

Solution-focused intervention for today's session:

Subjective:

Objective:

Assessment: Able to Benefit from Session?  yes  no  
 Response?  Positive  Neutral  Negative  Other \_\_\_\_\_

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## Records: Friend or Foe

### Examples of Inadequate Record

01/25/2013 1330 - 1430 60 Minutes Collateral Contact (Father)

The client's father was on time for this session, and presented alone. He discussed his recent visits with the client, including the activities in which they engage together and the fun they have. The client's father denied any difficulties in his interactions with his son. He discussed a recent issue regarding his son's toys and discussed the compromise they devised. The client's father also spoke of the client's sister. This psychologist discussed her progress in therapy and her continued reluctance to see or speak with her father. Ways to gently commence visitation were discussed.

The client's father will call to schedule appointments as needed.

01/30/2013 0800 - 0835 35 Minutes Individual Psychotherapy

The client was on time for this session, and presented with his mother. The client discussed his recent visit with his father. The client stated that he had fun with his father and that nothing happened

What problems do you notice?

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## Records: Friend or Foe

### Not as Easy as You Think

Dr. Mathis, sorry it has taken me so long to respond to your request for records. I have hardcopies in a file but also scanned versions but the computer crashed and I can't locate those scanned records. I have also started an electronics records program so at least this provides you with recent notes (please see attached).

In the meantime we are trying to reassemble the past records and will get them to you as soon as we can. I can try to do a summary of past treatments if I can recover the files. Will this work?

What problems do you notice?

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## Digitally Challenged

### The Ubering of Psychology

- Larry Summers
- "Doctor on Demand" app
- Marketplace Competition – Ethical risks

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## Digitally Challenged

### Clarifications for Telepsychology

Tennessee psychologist treating a client in another state without being licensed in that state COULD Be violating that state's laws.

Out of state psychologist treating a client in Tennessee without being licensed in Tennessee WOULD BE violating TN laws.

The home state of the psychologist is where violations are reported.

Part of the PROPOSED TN rules: Licensees bear responsibility to comply with rules for telepsychology in other jurisdictional boards.

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## Digitally Challenged

### Resources for Telepsychology

Guidelines for Telepsychology in American Psychologist, Dec. 2013 (vague, aspirational)

APA Guidelines for the Practice of Telepsychology:  
<http://www.apa.org/practice/guidelines/telepsychology.aspx>

American Association State and Provincial Psychology Boards  
working on an Interjurisdictional Telepsychology Compact (9/1/14)

<https://doxy.me/>

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Thank you

[drdcmathis@gmail.com](mailto:drdcmathis@gmail.com)

[DrDavidCMathis.com](http://DrDavidCMathis.com)

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