



Denver Technology Center 5290 DTC Parkway,
Suite 150
Greenwood Village , CO 80111
phone : (303) 292-10 20
fax: (303) 379- 4735

Robert A. Lees
RAL@robertalees.com
Senior Attorney

Laura J LeVigne
llevigne@robertalees.com
Paralegal/Office Administrator

Kerry Broman
kbroman@robertalees.com
Paralegal/Regulatory Analyst

Peter Barber
pbarber@robertalees.com
Paralegal/Organizational Consultant

Kirsten Broman
kirbroman@robertalees.com
Paralegal/Administrative Assistant

Teletherapy

What You Need to Know:

1. Several statutes were introduced in 2016 and 2017 that legitimized Teletherapy (these are called, variously, *telehealth, telemedicine, or teletherapy*). We anticipate more will come from DORA's sunset/sunrise of 2020.
2. DORA has **updated and vastly expanded** the existing Teletherapy Policy 30-1 to provide "guidance" when performing Teletherapy services.
3. This policy ONLY covers services provided within the State of Colorado.
4. Teletherapy is considered to occur in the state/country in which the which the client is located (this is a new distinction). For example, if a therapist located in Colorado provides therapy to a client in Tennessee, therapy has taken place in Tennessee and must be governed by Tennessee's Mental Health statutes, rules, regulations, and policies.
5. Each state and each country has different statutes, rules and regulations regarding Teletherapy.
 - a. Some states do not allow Teletherapy.
 - b. Some states require that you be licensed in their state in order to provide this type of therapy.
 - c. You can be grieved for providing therapy in a state in which you are not licensed.
6. Teletherapy requires different skills and training than traditional face-to-face talk therapy—**especially because** DORA is still holding you to the same "standards of care" as traditional face-to-face talk therapy.

7. DORA's old Teletherapy policy required you to meet with your client in-person for the first session, and periodically thereafter. This is no longer the case. Now, the entire relationship can occur via electronic means. However, **it is our strong recommendation and advisement that first session and periodic face-to-face interactions be a routine part of Teletherapy.**
8. Teletherapy encompasses long-term relationships only. It does not apply to temporary circumstances of normal face-to-face clients (i.e. vacations, brief trips, inclement weather, etc.).

What You Need to Do:

1. Get trained in Teletherapy. This will enable you to demonstrate that you have been specifically trained in how to offer this form of psychotherapy and have a thorough working knowledge of how it differs from traditional face-to-face psychotherapy. Visit the National Board of Certified Counselors' website www.nbcc.org for a list of Approved Continuing Education Providers.
2. In addition to your standard practice forms, you should use a separate Informed Consent/Disclosure document targeted to Teletherapy.
3. Ensure that clients understand the risks, benefits and limitations of engaging in electronic psychotherapy.
4. Ensure the Teletherapy platform you use is HIPAA-compliant. There are many platforms available which are: SimplePractice, TheraNest, Doxy.me, VSee, Securevideo.com and Arcadiantelepsychiatry.com are HIPAA Compliant.
 - a. Ensure that you have the requisite training to use this format and to troubleshoot when needed.
 - b. **NOTE: SKYPE AND FACETIME ARE NOT HIPAA-COMPLIANT.**
5. Ensure that your professional malpractice liability insurance covers your use of Teletherapy.
6. Provide a written procedure for alternative communication options should technology fail.
7. Provide clients/patients with specific directions to follow in emergency situations.
8. Develop and provide the client with a written procedure for determining and verifying the client's identity during each electronic contact. If the client is a minor, obtain legal consent to not only treat the client but to do so via electronic means.

9. Provide clients/patients with detailed information on the electronic platform used with each client's specific case. This should include written information on how the therapy will take place, what type of equipment and/or software is needed to utilize the format, how to use the format, when to use the format, confidentiality concerns, potentials risks and limitations, as well as benefits.
10. Research the laws in the states you are providing services. Be sure to consult skilled and knowledgeable attorneys in those states so that you are fully ethically and legally compliant.
11. Ensure that this type of therapy is covered under the client's managed care policy. Provide a section in the informed consent form that delineates the possible repercussions of managed care denials for payment.

Ensuring that you are trained in how to provide teletherapy and that you have a thorough understanding of the laws and policies that apply will go a long way to helping you protect your practice.

Tech in Private Practice

There are more technological tools available today than ever before. Not only do these make communication faster and easier, but clients are more accustomed than ever to using these new technologies to communicate. But, in order to safeguard your client's confidentiality and the personal health information (PHI) they are entrusting you with, there's several factors you need to consider.

Below, we break down technology into 2 categories: **communication** and **information security**.

Tech in Private Practice – Communication tools:

1. Email
 - a. Conventional email is NOT SECURE (either by HIPAA standards or by encryptions standards)
 - b. TLS (or Transport Layer Security) is good, but not great
 - c. "Escrow" email is best
 - d. Options:
 - i. LuxSci Secure Line
 - ii. Hushmail
 - iii. Most EHRs offer "escrow" style secure messaging

ROBERT A. LEES & ASSOCIATES

Denver Technology Center 5290 DTC Parkway,
Suite 150
Greenwood Village , CO 80111
phone : (303) 292-10 20
fax: (303) 379- 4735

2. Phone
 - a. Traditional landline
 - b. Cell phone
 - c. VoIP
 - i. ~~Google Voice~~
 - ii. ~~WhatsApp~~
 - iii. ~~GrassHopper~~
 - iv. ~~Sideline~~
 - v. ~~GoDaddy Smartline~~
 - vi. RingRX
 - vii. 8 x 8
 - viii. Spruce
 - d. Innovative solution = get a Google Voice number and use as your personal number and use your regular mobile number as your business line
3. Texting options
 - a. SMS & iMessage are NOT HIPAA compliant
 - b. Clients are allowed to opt in to receiving unsecured text messages
 - c. Key ingredients:
 - i. Both client & therapist possess smartphones
 - ii. Both client & therapist use same secure texting app
 - d. Options:
 - i. VSee
 - ii. LuxSci
 - iii. Signal

(NOTE: No BAA, but still meets or exceeds HIPAA requirements)
4. Fax
 - a. Traditional fax machine w/ landline – HIPAA compliant
 - b. Internet-based fax services are not automatically HIPAA compliant
 - c. Options
 - i. FAXAGE
 - ii. Dr Chrono
 - iii. SR Fax

Tech in Private Practice – Information Security tools:

1. Data encryption
 - a. HIPAA requires a "breach notification" if devices w/ PHI is lost or stolen
 - b. However, there is a "safe harbor" savings clause when these devices utilize encryption
 - c. How to encrypt your devices:
 - i. Macs = activate FileVault2 in security settings

- ii. PCs = activate "BitLocker" (NOTE: only available via Windows Pro)
 - iii. iPhones = set a strong passcode
 - iv. Android = turn on encryption in security settings
2. Antimalware/anti-virus
- a. Install and utilize latest antimalware and antivirus software
 - b. Yes, even on your Mac!!
3. Information back-up tools
- a. External storage devices (see Data Encryption above!)
 - b. Cloud-based back-up solutions:
 - i. SOS Online Backup
 - ii. Carbonite Online Backup (NOTE: not compatible w/ encrypted Macs)
 - iii. SpiderOak One
 - c. ALWAYS sign BAA
4. Client Record Storage
- a. Pen, paper, and file cabinets are still 100% HIPAA compliant, provided you're adhering to 2-lock rule
 - i. 2-lock rule means the file cabinet is locked, and your office/file room is locked
 - ii. NOTE: DORA has started showing a preference for typed notes as opposed to handwritten notes in the past two years, meaning they may request transcribed copies of your handwritten notes in a grievance proceeding
 - b. EHR systems have proliferated in the last several years, and this will no doubt continue
 - c. Recommended options:
 - i. Therapy Appointment
 - ii. Therapy Partner
 - iii. CounSol
 - iv. TheraNest**
 - v. SimplePractice**
 - vi. Therapy Notes
 - d. ALWAYS sign BAA