

# Psychologists' Use of E-mail with Clients: Some Ethical Considerations



By Kenneth Drude, PhD, & Michael Lichstein, PhD

## Introduction

The time from the end of World War II until the present has been one of unprecedented technological change. Every facet of our lives has been impacted by the "digital revolution." Even those psychologists who proudly identify themselves as "technophobes" probably have a cellular phone, a photo copier, a facsimile (FAX) machine, and a personal computer in their outer office.

Despite all the wonderful uses of technology, there is the potential for confidentiality to be breached. Indeed, who of us has not talked on the telephone with a client, whether about some routine issue or in hopes of averting a crisis. Each type of electronic communication has potential strengths and limitations and the risks of each need to be managed (Maheu & Gordon, 2000). But what are these risks? How can they be minimized? What are the ethical and legal implications of using such communications? How can psychologists stay informed about what are best practices? As VandenBos and Williams (2000) point out, it is not a matter of "whether" psychologists will be providing services using technology, but "how." They state further a belief that the use of technology, particularly Internet communications, will increase in the future to become "as routine, readily accessible, and expected as the telephone."

In this article, we provide a brief overview of the development of guidelines and standards for the use of technology in clinical practice. We then focus on specific issues that have been identified as important when using e-mail with clients.

## Technology Use Guidelines and Standards

Many psychologists are already using e-mail to communicate with their clients (Maheu and Gordon, 2000; Welfel and Bunce, 2003; Drude, 2005). Practitioners can now receive authorizations, request additional sessions, and communicate with care managers by e-mail or online through insurance companies' Web sites. Medicare is moving toward requiring electronically submitted billing and it is only a matter of time until most insurance claims submitted by psychologists will be transmitted electronically. In the meantime, our profession is left with a substantial lag between emerging technologies and their uses in practice (Koocher and Morray, 2000).

As psychologists increasingly adopt technology in their practices, it becomes important to address the effect that this may have upon the ethical practice of psychology. There is little guidance from the literature about how to proceed. A 1997 "American Psychological Association (APA) Statement on Services by Telephone, Teleconferencing, and Internet" by the APA Ethics Committee briefly acknowledges that the APA "...Ethics Code is not specific with regard to telephone therapy, or teleconferencing, or any electronically provided services as such, and has no rules prohibiting such services." Psychologists are told that after reviewing these services, they "...must then consider the relevant ethical standards and other requirements, such as licensure boards." No further guidance has been forthcoming from APA, although in 2002,

references to "electronic transmission" were added. (APA, 2002).

Even after several years of consideration, there remains no agreed upon method of applying the APA Ethics Code to analyze any new tool and its application in clinical practice. Without some guidance, psychologists are on their own in navigating the myriad technical and ethical issues that arise when using e-mail to communicate with clients. Some psychologists are reluctant to begin communicating with their clients via the Internet because they are unclear about potential liability, lack of reimbursement, and security concerns. Federal government privacy and security rules required by the 1996 Health Insurance and Portability and Accountability Act (HIPAA) seem daunting and only serve to heighten these concerns.

Psychologists can no longer take a *laissez faire* attitude toward the uses of technology in psychological practice. VandenBos and Williams (2000) are correct in concluding that "efforts should begin now to develop standards and guidelines "before such service delivery is widespread." Despite such urgings, it appears that psychologists continue to take a "wait and see" attitude while others act.

Ragusea and VandeCreek (2003) propose that psychologists need to begin developing guidelines as to how the current APA Ethics Code could be applied to psychological services that are conducted electronically. It is our belief that psychologists need to be proactive rather than reactive when it comes to the ethical use of technology in clinical practice. By not taking action ourselves,

we run the risk that standards will likely be imposed on us by the legal system or by legislation, possibly without input from psychologists.

A number of professional healthcare organizations have attempted to foresee the ways in which developing technology is likely to impact services provided by their members, and to shape expectations of how it should be used. Various guidelines have been proposed, and several professional organizations have formally adopted detailed standards for the use of technology and the Internet in providing services (e.g., American Counseling Association 1999; American Medical Association 2000; American Mental Health Counselors Association 2000; Clinical Social Work Federation 2001; Hi-Ethics, 2000; Health on the Net, 1996; Interdisciplinary Telehealth Standards Working Group, 1999; International Society for Mental Health Online 2000; Kane and Sands, 1998; NBCC 2001; Reed, McLaughlin and Milholland, 2000; Rippen and Risk, 2000). Some guidelines and standards are broad and inclusive of different forms of telehealth and types of Internet communication, and others are more specific to a particular technology (e.g., use of e-mail or teleconferencing).

#### E-Mail Guidelines

In this article, we restrict ourselves to identifying key ethical and legal issues involved with psychologists' use of e-mail with clients. We have further narrowed our focus to e-mail communications with clients with whom a psychologist-client relationship already exists. That is, we consider the use of e-mail as an adjunct to face to face services with already existing clients. We specifically exclude situations in which clients are solicited, enrolled, and provided services either exclusively or primarily through e-mail, as described by Shapiro and Schulman (1996) or where psychologists respond to unsolicited e-mail from individuals seeking services, as described by Eysenbach (2000).

Studies that have looked at how psychologists currently use e-mail with clients have typically found poor compliance with the APA's Code of Ethics (Welfel and Bunce, 2003; Maheu and Gordon, 2000). Concerns about ethical issues such as informed consent, confidentiality, and relevant laws, have been identified as factors in some

psychologists choosing not to use e-mail with clients (Welfel and Bunce, 2003).

One of the most comprehensive efforts to develop guidelines for the use of e-mail with clients are those adopted by the American Medical Association (AMA) (2000) and are based upon guidelines previously published by Kane and Sands (1998). Other guidelines or statements relevant to e-mail use have been adopted by mental health professional organizations including the American Counseling Association (1999), American

Mental Health Counselors Association (2000), and the International Society for Mental Health Online (2000). A review of many of the key standards and guidelines relevant to clinical practice using the Internet is provided in Ragusea's doctoral dissertation (2005). Additionally, a summary of issues specific to e-mail is included in the guidelines developed by the e-Risk Working Group for Healthcare (2002).

A review of the different statements, comments, opinions, and official

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guidelines regarding the use of e-mail with clients reveals a number of common issues including the following:

#### E-mail Policies and Procedures

The AMA's guidelines include a recommendation that the first step in the use of e-mail with clients is to develop written internal policies and procedures. For instance, which office personnel are authorized to read and respond to e-mail from clients? How will messages from the

psychologist's office be identified so that it is clear who is writing, i.e., the psychologist or a staff member.

#### Standard Turnaround Time for Responding

Clients need to know how long it will take for their messages to be answered, and what steps should be taken if a timely response is not forthcoming.

#### Message Content

The psychologist should educate clients about what information and types of discussions are appropriate for e-mail and those that are not. Some psychologists may wish to limit e-mail communication to scheduling or brief follow up messages and to avoid more sensitive issues altogether. It has been suggested that clients identify the topic and importance of the message in its subject line. Healthcare providers are urged to exercise extreme caution whenever a message contains information which might identify the client.

#### When Not To Use E-mail

Psychologists should identify when it is more appropriate for clients to meet face to face, or by telephone, rather than using e-mail messages.

#### Emergencies or Crises

Three issues about emergencies or crises appear frequently in the literature. These need to be addressed with the client, probably while documenting informed consent. First, e-mail is not considered to be an appropriate means of communication when the client is in crisis. Second, in the event of an emergency, or if e-mail is temporarily unavailable, both the healthcare provider and the client must have an alternative means of getting in touch with one another—such as by telephone. Third, the psychologist needs to know what emergency resources are available to the client, and how to contact them.

#### Confidentiality and Privacy

E-mails to and from clients should be regarded as confidential, and maintained in a manner that protects client confidentiality and unauthorized access to client information. Some authors suggest the use of a word or phrase, agreed upon in advance, which might serve as a low-level verification of the sender's identity, similar to the use of a password to protect sensitive information. Unfortunately, the information would be available to anyone who possesses the password. Another suggestion is to use the auto reply features of e-mail programs to let the sender know that the message has been received. However, this does not guarantee that the message has been read by its intended recipient.

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## Security

Proponents of using e-mail with clients frequently point out that, given the insecurities of this type of communication, it is advisable to encrypt<sup>1</sup> all e-mail (Maheu and Gordon, 2000). Some guidelines state that communication should only be over a secure network<sup>2</sup>, with provisions for authentication<sup>3</sup> and encryption (eRisk, 2002). Any type of encryption requires that both the psychologist and the client agree to use the same software to encrypt and decode all messages. For the sake of consistency, it might be that the psychologist would provide such software to all clients wishing to communicate via e-mail. At the present time, most e-mail is not encrypted. If encryption is not used, the privacy limitations should be explained to the client and should be clearly stipulated in the informed consent.

Once an e-mail message leaves your computer, it enters the Internet, a World Wide Web of computers, over which the psychologist has no control. The security of the communication is only as good as the security of these computers. At a minimum, each message passes through the computer of your Internet service provider. This computer, often called a server, retains a copy of your message. Anyone who has followed the popular press is aware that these computers have often been compromised either by a disgruntled employee, or by individuals seeking information which might be of some use to them—so called “hackers.” Security precautions are extremely important when using computers to communicate with clients (Stein, 2005). Without adequate protection, the psychologist’s personal computer is open to attack with the possible outcome being disclosure or corruption of confidential information. It seems essential that psychologists become familiar enough with such threats that they are able to reassure clients that reasonable efforts are being made to protect confidential information. Features such as firewalls, antivirus software, and backups of computer contents need to be kept up to date, and need to be used, preferably on a daily basis. While this may seem to be a daunting task, most routine computer protection and maintenance can be automated.

## Informed Consent

In addition to the usual informed consent requirements that psychologists are expected to obtain from clients at the time services are started, consent to use e-mail is advised. This could be a statement about the use of e-mail that is signed by the client and documented in the client’s chart. Such a statement should include relevant issues such as the limitations, potential risks and benefits of using e-mail.

### Fees

Will clients be charged for time spent reading and responding to their messages, and if so how much? Although there is a CPT code for online evaluations and management services, it may not be reimbursed by some insurance companies. This should be discussed with clients prior to any email exchange.

### Documentation/Recordkeeping

Psychologists are cautioned to maintain printed copies of all messages to and from clients. These copies should be kept in the client’s chart. This step recognizes that communication is professional rather than casual, and that they have potential clinical, legal, and ethical implications (Maheu and Gordon, 2000).

### Licensing Jurisdiction

Providing services via e-mail to clients outside of the state in which a psychologist is licensed may be questioned, and may put the psychologist at legal risk. The possible relevance of this legal issue should be given consideration when deciding to use e-mail with a client. Different states have different laws regulating this issue (Koocher and Morray, 2000).

### Competency

How knowledgeable are clients and psychologists in the use of computers and e-mail? Cautions about writing skill competencies, potential misunderstandings and other differences between the spoken and written word have been raised as being important issues to consider in choosing to communicate with clients via e-mail (Fenichel, 2000).

### Summary

It is past time that psychologists begin developing guidelines for the ethical use of technology in the clinical setting. E-mail, which is becoming more common between psychologists and clients, is a logical place

to begin this analysis. Guidelines for the use of e-mail with clients have been developed by a number of professional groups other than psychologists. These guidelines identify a number of common areas of concern that need to be considered when deciding whether to correspond with clients by e-mail. A summary of these issues has been presented here to assist psychologists in making such a decision. Having a comprehensive written informed consent, describing potential risks and expectations, is a crucial component. It is our hope that this paper will rekindle a discussion of how technology can be ethically used in clinical practice, and that such a discussion will eventually lead to well-defined guidelines for the use of e-mail with clients.

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### Footnotes

- 1 encrypt is to translate data into a coded form requiring a decrypting to view the original data
- 2 a secure network uses a security software protocol to automatically encrypt data being transmitted
- 3 authentication is the process of identifying an individual, usually using a username and a password

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