

**FINAL REPORT**  
*of the*  
**INTERNET THERAPY COMMITTEE**

*sponsored by the*  
**MINNESOTA BOARD OF  
MARRIAGE AND FAMILY THERAPY**

*December 2002*

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## I. Internet Therapy Committee

### **A. BACKGROUND INFORMATION & MEMBERSHIP**

The Minnesota Board of Marriage and Family Therapy initiated the Internet Therapy Committee after noticing that some licensees were engaged in practice using the internet. The committee consisted of representatives from several Minnesota state agencies including the Board of Marriage and Family Therapy, Board of Psychology, Board of Social Work and the Minnesota Department of Health, in order to work collaboratively. The committee worked from March 2001 to June 2002 to gather information about the provision of mental health services via the internet.

The original goal of the committee was to gather data and draft consistent, comprehensive guidelines for the provision of competent and ethical services via the internet; all for the purpose of consumer protection. After the committee identified the volume of legal and related issues, it revised its original goal and in this report lists and describes issues regarding internet therapy which regulatory agencies should consider. Therefore, specific recommendations for the regulation of internet therapy are not proposed. Rather, the committee is outlining these regulatory considerations and already established practice standards directly affected by internet therapy.

### **B. UNDERSTANDING INTERNET THERAPY**

The provision of mental health services via the internet (commonly called e-therapy) lacks clear definition because it:

- is in use by some practitioners;
- is a service delivery system needing scope of practice definition in many disciplines;
- is a service delivery system with jurisdictional questions; and
- currently lacks guidelines regarding ethical and competent practice and competence with the technology.

Increasingly, many forms of health care services are provided via the internet. These include the provision of mental health services, but also include medicine and nursing which are provided via telemedicine. This committee viewed telemedicine as outside the scope of its objectives; however, telemedicine is often regulated and, therefore, is a useful model for developing regulatory policies for mental health disciplines.

Internet mental health services, which are not in-person, nor real-time, can occur in many ways, such as electronic mail, virtual discussion groups, chat rooms, voice exchanges, or videoconferences.

To some consumers and practitioners, internet therapy offers alternatives which traditional methods may not. These include greater access to care for persons with disabilities and persons in rural areas, freedom to see a therapist outside of your home community, and greater anonymity for the consumer.

There are inherent risks for both the consumer and practitioner. These include the lack of visual cues, confidentiality risks, competency with the technology, and effectiveness of assessment and intervention. Another risk for the consumer is the lack of clearly defined legal jurisdiction and enforcement regarding consumer protection.

## II. Issues for Consideration

### A. LEGAL ISSUES

#### 1. Minnesota Mental Health Practice Acts

Minnesota regulatory agencies must refer to their practice acts to ensure that the definition of the scope of practice is comprehensive enough to include “internet therapy”.

#### 2. Constitutional Due Process Rights of the Practitioner

The United States Constitution requires each state regulatory agency to provide practitioners with substantive and procedural due process rights. Specifically, this means that 1) a state agency has the authority to investigate allegations of illegal conduct, 2) a state agency must provide effective notice to the practitioner regarding the allegations and rights under due process, and 3) provide the practitioner with an opportunity to make a meaningful response.

#### 3. Minnesota Jurisdiction

Regulatory agencies must have legal jurisdiction over practitioners in order to investigate allegations of illegal conduct and to enforce its statutes and rules. Questions often asked are “How is jurisdiction defined over an electronic medium?” and “Does the location of the practitioner, as service provider, or the client, as recipient of services, determine which state statutes control?”

The relevant statute in Minnesota is *Minnesota Statutes, section 543.19, entitled “Personal Jurisdiction of Non-residents.”* Reference Appendix C1 for the complete statute. The following summarizes the important language within the statute.

A court of Minnesota with subject matter jurisdiction may exercise personal jurisdiction over any nonresident in the same manner as if the individual were a resident of this state **if** the person:

- 1) owns, uses, or possesses any real or personal property situated in this state, or
- 2) transacts any business within the state, or
- 3) commits any act in Minnesota causing injury or property damage, or
- 4) commits any act outside Minnesota causing injury or property damage in Minnesota, subject to the following exception when there is *no* personal jurisdiction:
  - a. Minnesota has no substantial interest in providing a forum; OR
  - b. the burden placed on the defendant being brought under Minnesota's jurisdiction would violate fairness and substantial justice; OR
  - c. the cause of action lies in defamation or privacy.

In *State of Minnesota v. Granite Gate Resort, Inc. (Ct. App. 1997)*, 568 N.W. 2d 715, the court held that an out of state internet company's activities subjected it to personal jurisdiction in Minnesota. Reference Appendix C2 for the complete opinion. The following summarizes the important elements of this case which was affirmed by the Minnesota Supreme Court in 1998.

- 1) To be under a state's jurisdiction (personal jurisdiction), a nonresident must have done some act in order to have availed themselves of the privilege of conducting activities within that state, thus invoking benefits and protections of its laws.
- 2) There are five factors to consider in determining whether a defendant has established minimum contacts with a state:
  - a. quantity of the contacts;
  - b. quality of the contacts;
  - c. connection between cause and action and contacts;
  - d. state's interest in providing a forum for resident plaintiff;
  - e. convenience of the parties.

#### **4. Investigation**

To determine whether or not there is sufficient evidence to pursue an enforcement action, an investigation is always conducted by the regulatory agency. Investigating an out of state provider presents significant obstacles, such as locating the practitioner, obtaining practitioner cooperation, effective cooperation between state agencies, and increased investigation costs due to long distances.

## **5. Enforcement Actions**

After a regulatory agency finds sufficient evidence that a violation of law occurred, an enforcement action may be pursued against the practitioner. Enforcement actions include revocation, suspension and civil penalties. The obstacles for imposing enforcement actions are the same as described above in the investigations section.

### **B. RELATED ISSUES**

#### **1. Telemedicine**

Telemedicine is included as a related issue because it is the provision of medical services across state lines and is now regulated in Minnesota. Effective July 1, 2002 Minnesota Statutes, section 147.032, amended the Minnesota Board of Medical Practice statute to regulate interstate telemedicine. The statute requires out of state physicians to 1) be licensed without restriction in the physician's home state, 2) not have had any license restricted in any state, 3) not have opened an office in Minnesota, not meet with Minnesota patients, nor receive calls, and 4) annually register with the Board of Medical Practice on a form provided by the Board. See Appendix C3 for complete language.

This committee viewed telemedicine as outside the scope of its objectives; however, the laws regulating it provide a useful model for developing regulatory policies for mental health disciplines.

#### **2. Reimbursement for Services**

Information provided via the US Department of Health and Human Services Fact Sheet dated March 14, 2002, is that the Medicare Program provides reimbursement for telehealth services in rural and underserved areas. See Appendix D1 for complete Fact Sheet.

The Committee did not engage in significant research regarding whether mental health services provided via the internet are currently reimbursable from third party payers, both public and private, but clearly acknowledges this as an important issue for both consumers and practitioners.

## **III. Existing Guidelines**

### **A. AGENCY INVOLVEMENT**

#### **1. Minnesota Boards and Agencies**

The Minnesota Boards of Marriage and Family Therapy, Social Work, Psychology, Medical Practice, and Nursing have not yet enacted laws regulating internet therapy. The Minnesota Department of Health also lacks laws that address online counseling by alcohol and drug counselors and unlicensed mental health practitioners.

## 2. National Organization Guidelines

The Committee did not perform an exhaustive search of national organizations, but did research national organizations representing mental health disciplines. Information presented in this report was gathered in December 2002. Please contact these agencies for the most current information regarding e-therapy guidelines.

Organizations that have addressed internet therapy with a specific policy include the following:

- **American Medical Association (AMA):** The American Medical Association has two policies regarding these issues: E-5.025 Physician Advisory or Referral Services by Telecommunications and H-120.956 Internet Prescribing. See Appendix E1.
- **American Psychological Association (APA):** The American Psychological Association addresses issues of informed consent and privacy/confidentiality. See Appendix E2.
- **Association of Social Work Boards (ASWB):** The Association of Social Work Boards, Model Law Task Force took a position on both scope of practice and jurisdictional issues, and reaffirmed the increasing need for regulation that will address electronic practice. See Appendix E3.
- **Association of State and Provincial Psychology Boards (ASPPB):** The Association of State and Provincial Psychology Boards has published guidelines for consumers. See Appendix E4.
- **International Society for Mental Health Online (ISHMO):** The International Society for Mental Health Online has endorsed suggested principles for the online provision of mental health services. See Appendix E5.
- **National Association for Addiction Professionals (NAADAC):** The National Board for Certified Counselors Ethical Standards addresses confidentiality and security of client data obtained by any form of electronic communication. See Appendix E6.
- **National Association of Social Workers (NASW):** The National Association of Social Workers addresses the issues of informed consent and privacy/confidentiality while also providing guidelines for engaging in psychotherapy via the internet. See Appendix E7.

- **National Board for Certified Counselors (NBCC):** The National Board for Certified Counselors lays out a standard relating to the counseling relationship. See Appendix E8.

### **3. Federal Laws**

- **Federal Trade Commission (FTC):** The Federal Trade Commission regulates internet communications, mostly through false advertising regulations. See Appendix D2.

### **4. Relevant State Laws**

- **California Business and Professions code (Section 4999-4999.9) & California Board of Behavioral Sciences (Proposed Section 2290.5):**

Regulates telephone medical advice and requires registration by those providing it. Subsequently in 1999, legislation was passed that broadened “licentiate” adding marriage and family therapists and clinical social workers.

In addition, the California Board of Behavioral Sciences is seeking to clarify these issues, by statute, in the upcoming legislative year, to include specific provisions regarding the provision of psychotherapy on the internet. See Appendix F1 and F2.

- **Iowa Board of Nursing (655 IAC 3.2(1) and 655 IAC 3.2(2)):**

Requires anyone who responds to telephone calls from patients calling from Iowa to have an Iowa license regardless of the location of the employer. Determines that electronic services are included in “patient care” and therefore all persons providing that care in Iowa would need an Iowa license. See Appendix F3.

- **Iowa Board of Social Work (645 IAC 279.4 Provision of Services):**

States that social work services include telephonic, electronic, or other medium, regardless of the location of the social worker. These practitioners are subject to the jurisdiction of Iowa law. See Appendix F4.

- **North Dakota (Title 43, North Dakota Code, Chapter 390, Laws 2001):**

Allows for remote practice by persons who are licensed by another state and who are affiliated with licensed persons in North Dakota. See Appendix F5.

## **IV. Internet Therapy Survey**

### **A. PURPOSE OF THE SURVEY**

The committee conducted a survey of surrounding and regional states to gather information related to internet therapy. The questions addressed regulatory initiatives, inquiries from consumers and practitioners, sanctions on practitioners, academic curriculum, reimbursement, and malpractice insurance policies and regulations.

### **B. SCOPE OF THE SURVEY**

The committee decided to limit the survey to agencies that regulated mental health service providers, because the issues and data would most closely reflect this committee's goals. The mental health disciplines (where regulated) in the following states, were included in the survey:

- Disciplines Surveyed:
  - Alcohol and Drug Counselors
  - Marriage and Family Therapists
  - Medical Practice
  - Professional Counselors
  - Psychologists
  - Social Workers
  - Nursing
  - Unlicensed Mental Health Professionals
  
- States Surveyed:
  - Alaska
  - California
  - Florida
  - Iowa
  - Minnesota
  - New York
  - North Dakota
  - South Dakota
  - Texas
  - Washington
  - Wisconsin

### **C. SURVEY RESULTS**

A total of 42 surveys were sent in December 2001 and 21 surveys (50% return rate) were completed. A brief summary of the data indicated the following:

- 28.5% regulate practice of e-therapy

- 33.3% without current regulation interested in regulation
- 47.6% have received inquiries from consumers/practitioners
- 19.0% aware of practitioners in state providing e-therapy
- 0 % knowledge of sanctions
- 4.7% knowledge of academic programs including e-therapy content
- 4.7% knowledge of malpractice providers
- 0 % knowledge of third party reimbursement
- 71.4% concerns regarding e-therapy

Survey results are summarized in Appendix B3. Additional detailed information submitted by respondents is included in Appendix B4.

## V. Affected Practice Standards

The following practice standards and questions should be considered by regulatory agencies when drafting guidelines for ensuring public protection. This is not intended to be an exhaustive list of practice standards, but does include many key standards. Accountability of all practitioners to the codes of conduct is the benchmark of regulation.

➤ **Proper Assessment without Audio/Visual Communication (Body Language and Intonation):**

Effective mental health services require a comprehensive assessment including audio, visual and non-verbal cues. In the absence of these cues, can the provider make sound decisions about the needs of the clients? Can therapeutic rapport be established effectively? Can a client be informed adequately about data privacy and the Client Bill of Rights? Can informed client consent be ensured?

➤ **Authentication of Credentials:**

How does the client verify the practitioner's credentials in the absence of original posted credentials?

➤ **Competency:**

There are two levels of competency to be considered 1) competency with the technology and how that is measured or demonstrated, and 2) competency in practice methodology via the internet.

➤ **Confidentiality and Security of Client Records:**

Practice standards regarding the requirement for confidentiality of client records is further complicated by the technology of internet services.

➤ **Danger to Client:**

Intervention via the internet is not appropriate with all issues presented by clients, such as suicide. Without proper assessment by the practitioner a client's safety could be compromised. If a client experiences an emergency between on-line sessions is there adequate or emergency access to the provider?

➤ **Effectiveness of Treatment:**

In the absence of face to face contact, can treatment planning and provision be effective, and how is the progress of treatment measured?

➤ **Referrals:**

There are issues regarding referrals via the internet to consider, such as 1) the transmission of client records could result in a breach of confidentiality, 2) the inability to accurately assess a client's condition may lead to an inappropriate referral, or result in a needed referral not being made, and 3) the provider may be unaware of resources in the client's geographic area.

➤ **Communication:**

Communication may be hindered via the internet because of the 1) loss of visual and verbal cues, 2) lack of "real time," and 3) inability to confirm with certainty the identity of the client or the practitioner.

## VI. Summary

It is clear there are many unanswered questions regarding the provision of mental health services via the internet. However, these services are being provided and are likely to continue. Both consumers and practitioners need guidance about the possible pitfalls and benefits of e-therapy. As with any regulated profession, the goal of public protection is a shared responsibility between regulatory agencies and practitioners to ensure that guidelines are both in place and complied with regarding competence, scope of practice and jurisdiction.

As demonstrated in the many attachments there are existing opinions, guidelines, and laws already in place to serve as models for agencies attempting to further define the issues. Committee members hope that the research presented in this report, short of any specific recommendations, can aid agencies in the important process of developing regulations and standards of practice.

**Internet Therapy Committee Members**

<b>NAME</b>	<b>REPRESENTING</b>
<b>Brian Nystrom, LMFT, LICSW, Committee Chairperson</b>	<b>MN Board of Marriage &amp; Family Therapy Board Member</b>
<b>Matthew Eastwood, LMFT</b>	<b>MN Board of Marriage &amp; Family Therapy Board Member</b>
<b>Shireen Lee, LMFT</b>	<b>MN Board of Marriage &amp; Family Therapy Board Member</b>
<b>Nick Ruiz, LP</b>	<b>MN Board of Psychology Board Member</b>
<b>Susan Winkelmann, JD Author of Report</b>	<b>MN Department of Health Staff Member</b>
<b>Kate Zacher-Pate, LSW Author of Report</b>	<b>MN Board of Social Work Staff Member</b>
<b>Nancy O'Brien</b>	<b>MN Board of Marriage &amp; Family Therapy Staff Member</b>

November 26, 2001

Insert address

### **MINNESOTA STATE AGENCIES SURVEY REGARDING “E-THERAPY” ISSUES**

Dear Colleague:

A Committee of representatives from the Minnesota Board of Marriage & Family Therapy, Minnesota Board of Psychology, Minnesota Board of Social Work and Minnesota Department of Health are considering issues regarding the provision of mental health services via the Internet or other electronic media. As regulatory agencies our mission is to ensure public protection. Therefore, we are studying “e-therapy” issues surrounding jurisdiction, scope of practice, competencies and ethics. The purpose of this survey is to ask your assistance in providing information from your agency or state perspective regarding “e-therapy”.

At this time we are limiting our inquiry to mental health professions and regulatory agencies. We are hopeful to gain and compile data from this survey. If you are interested in obtaining survey results please indicate this by checking “yes” in the appropriate box on the survey form.

Please return your completed survey and any additional information in the enclosed return envelope **by December 21, 2001**. If you have questions or comments please contact Robert Butler, at [robert.butler@mn.state.us](mailto:robert.butler@mn.state.us). If there is someone within your state or profession that may be interested in this topic, please forward a copy of this survey to that person. Thank you in advance for your help in this important matter!

Yours truly,

Brian A. Nystrom, LMFT, LICSW  
Internet Therapy Committee Chair

Robert Butler, LMFT  
Executive Director  
MN Board of Marriage & Family  
Therapy

**MINNESOTA STATE AGENCIES SURVEY REGARDING "E-THERAPY" ISSUES**

Please complete this form and respond to the following questions.

Return your completed survey, in the enclosed envelope, by DECEMBER 21, 2001.

AGENCY NAME:	NAME OF PERSON COMPLETING SURVEY:
AGENCY MAILING ADDRESS (address, city, state, zip code):	TITLE:
AGENCY E-MAIL ADDRESS and TELEPHONE NUMBER:	WISH TO RECEIVE SURVEY RESULTS? NO <input type="checkbox"/> YES <input type="checkbox"/>

- Does your agency/state currently regulate the practice of "e-therapy"? If so, is it regulated through state statute, rule or policy?  
NO  YES  If yes, please enclose a copy of any applicable regulation.
- If your state/agency does not regulate "e-therapy", has there ever been any interest or initiatives toward regulation at a state level? Are you aware of any regulatory initiatives at a national level for your profession?  
NO  YES  If yes, please provide additional information.
- Has your state/agency received any inquires regarding the provision or regulation of "e-therapy" from consumers or practitioners?  
NO  YES  If yes, please provide additional information.
- Are you aware of any practitioners in your state engaged in providing services via "e-therapy"?  
NO  YES  If yes, please provide additional information.
- Has your state/agency received or taken action, including civil, criminal or regulatory/professional agency sanctions on alleged complaints in the area of "e-therapy"?  
NO  YES  If yes, please enclose a copy of any public disciplinary records.
- Are you aware of any academic programs in your state that have designed or implemented curriculum specific to "e-therapy" practice issues?  
NO  YES  If yes, please identify the academic program.
- Are you aware of any malpractice insurance providers that have addressed issues of "e-therapy" service coverage?  
NO  YES  If yes, please provide additional information.

8. Are you aware of any third party reimbursement providers who will reimburse for the provision of "e-therapy" services?

NO  YES  If yes, please provide additional information.

9. In general, do you have any concerns regarding "e-therapy"?

NO  YES  Please provide additional information.

e-therapy survey.doc 091901

**▶▶ PLEASE RETURN THE COMPLETED SURVEY ◀◀  
BY DECEMBER 21, 2001**

**▶▶ IN THE ENCLOSED RETURN ENVELOPE TO ◀◀**

**MN BOARD OF MARRIAGE AND FAMILY THERAPY  
2829 UNIVERSITY AVENUE SE SUITE 330  
MINNEAPOLIS MN 55414-3239**

***THANK YOU FOR YOUR ASSISTANCE!***

**“E-THERAPY” SURVEY RESULTS**

<b>QUESTION</b>	<b>YES</b>	<b>NO</b>	<b>NO RESPONSE</b>
1. Does your agency/state currently regulate the practice of “e-therapy”? If so, is it regulated through state statute, rule or policy?	<b>6</b>	<b>13</b>	<b>2</b>
2. If your state/agency does not regulate “e-therapy”, has there ever been any interest or initiatives toward regulation at a state level? Are you aware of any regulatory initiatives at a national level for your profession?	<b>7</b>	<b>7</b>	<b>7</b>
3. Has your state/agency received any inquires regarding the provision or regulation of “e-therapy” from consumers or practitioners?	<b>10</b>	<b>10</b>	<b>1</b>
4. Are you aware of any practitioners in your state engaged in providing services via “e-therapy”?	<b>4</b>	<b>15</b>	<b>2</b>
5. Has your state/agency received or taken action, including civil, criminal or regulatory/professional agency sanctions on alleged complaints in the area of “e-therapy”?	<b>0</b>	<b>17</b>	<b>4</b>
6. Are you aware of any academic programs in your state that have designed or implemented curriculum specific to “e-therapy” practice issues?	<b>1</b>	<b>18</b>	<b>2</b>
7. Are you aware of any malpractice insurance providers that have addressed issues of “e-therapy” service coverage?	<b>1</b>	<b>18</b>	<b>2</b>
8. Are you aware of any third party reimbursement providers who will reimburse for the provision of “e-therapy” services?	<b>0</b>	<b>18</b>	<b>3</b>
9. In general, do you have any concerns regarding “e-therapy”?	<b>15</b>	<b>5</b>	<b>1</b>