

# **NOTEBOOK ON ETHICS, LEGAL ISSUES AND STANDARDS FOR COUNSELLORS & PSYCHOTHERAPISTS**

**E-MAIL COMMUNICATION WITH CLIENTS:  
A BRIEF REVIEW AND SOME RECOMMENDATIONS**

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In 2009, C. Hawn published an article in the journal of Health Affairs entitled “*Take Two Aspirin and Tweet Me in the Morning: How Twitter, Facebook, and other Social Media are Reshaping Health Care.*” In it, he reviews the potential impact of these new communication sites on health care delivery and the implications for health care systems and healthcare practitioners. Since that time, there have been additional advances in communication technology and we continue to adjust to life in a digital world where distance is no longer a barrier to communication. Within the helping professions, there is increased use of the many technologies to deliver or to enhance the delivery of professional services.

## TECHNOLOGY & COUNSELLING TODAY

The diverse modes of technologically mediated services are advancing and changing more quickly than our understanding of the associated benefits and risks. Also, it is faster than the development of regulatory statutes, policies, and changes to our practice standards necessary to govern their use. I was reminded of the circumstance by several recent consultations regarding counsellor use of email communication with clients. In one situation, a counsellor was both surprised and challenged by a judge’s demand that a considerable volume of emails with a client be delivered to the court because the judge saw them as part of the client’s counselling record. Another counsellor had also generated a great deal of email correspondence with a client and was now wondering if it was possible to invoice the client for what was now being seen, in retrospect, as the use of professional time on behalf of the client. A psychologist shared with me an email that had arrived when she was attending to a sick relative and had not checked emails for several days. The message from a client said something like the following: “...today, I’m feeling down and I am not sure if it’s worth continuing with the work we have been doing.” The counsellor was quick to view this as a potentially suicidal thought. She immediately connected with the client and apologized for the delay, and found out that they were okay. She did wonder what her liability would have been if her client had acted on such a thought and also because she had not provided an emergency contact number.

## PRACTICES & GUIDELINES

So for this Notebook, I decided to focus on the question: what are some practices and guidelines that could help us to manage our email communication with clients consistent with our ethical obligations and fiduciary duty. At the outset, members are advised to consult both the **CCPA Code of Ethics** and **Standards of Practice** for some direction. Article B17 of the code is titled **Services using Distance Delivery, Social Media and Electronic Technologies**. It obligates CCPA members to engage in an intake process with sufficient disclosure and discussion to support client informed consent to any intended use of electronic technologies including email communication. For email use, this includes providing an orientation about “*security protocols and ethical risks, limits to content and frequency of checking email transmission and anticipated response time, and strategies clients can use to improve the security of their communications.*”

## GUIDANCE FOR THE USES OF TECHNOLOGY IN COUNSELLING & PSYCHOTHERAPY

As some of you may know, at the 2019 CCPA Annual Conference held in Moncton from May 13-16, the CCPA Technology and Innovative Solutions Chapter adopted a comprehensive report entitled **Guidance for the Uses of Technology in Counselling and Psychotherapy**. For email use, the guidelines in this report are as follows:

*Have a secured and separate email address for clients.*

*All email used to communicate with clients should be encrypted. To quote Ray Huggins of Personcenteredtech.com—“encryption is the cyber-equivalent of sound-resistant walls, closed doors and noise machines in the hallway.” It is a strong tool, but it is only a tool. You need to use and maintain it properly.*

*There are options to consider:*

- ⇒ *You can encrypt or password-protect a document that you are sending to a client;*
- ⇒ *You can encrypt or password-protect the email itself;*



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Guidance for the Uses of Technology in  
Counselling and Psychotherapy

⇒ *You can choose to use a secure, encrypted email system (e.g. Hushmail or Privace-mail) to communicate with or provide counselling or psychotherapy to clients.*

*We need to ensure that we, as counsellors and psychotherapists, make secure options reasonably available. Clients may say they want unencrypted email communication though they may not fully understand the privacy implications.*

There may be some resistance to this encryption requirement because of the demands it places on clients and, I suppose, it could depend on email content. However, I note that the US Health Insurance Portability and Accountability Act requires encryption for all electronic communication regarding protected health information.

The practice standards of the American Counseling Association (ACA) are similar to the CCPA Standards on this issue; however, they have this additional standard:

#### H. 4. C. Technology-Assisted Services

*When providing technology-assisted services, counsellors make reasonable efforts to determine that clients are intellectually, emotionally, physically, linguistically, and functionally capable of using the application and that the application is appropriate for the needs of the client. Counselors verify that clients understand the purpose and operation of technology applications and follow up with clients to correct possible misconceptions, discover appropriate use, and assess subsequent steps.*

The American Medical Association has a set of Guidelines for Patient-Physician Electronic Mail. The following is my abbreviated outline of these guidelines:

- ⇒ Have a patient-clinician informed consent signed re: email use
- ⇒ Establish turnaround time for messages. Do not use email for urgent matters but for prescription refills, appointments and scheduling
- ⇒ Inform patients about privacy issues. Patients should know:
  - ⇒ Who besides the addressee processes messages:
    - ◇ During addressee's usual business hours
    - ◇ During addressee's vacation or illness
- ⇒ Email messages are part of the patient's medical record
- ⇒ Never use patient's email address in a marketing scheme
- ⇒ Do not share professional email accounts with family members
- ⇒ Use encryption for all messages when encryption technology becomes widely available, user-friendly, and practical
- ⇒ Do not use unencrypted wireless communications with patient-identifiable information
- ⇒ Double check all "To:" fields prior to sending messages

## **Counsellors and psychotherapists should discuss with their clients at the beginning of the counselling relationship their position with respect to their use of communication technologies and social media.**

- ⇒ Perform at least weekly backups of email onto long-term storage. Define "long-term" as the term applicable to paper records
- ⇒ Commit policy decisions to writing and electronic form
- ⇒ Terminate the use of email with patients who repeatedly fail to follow guidelines

Recommendations:

- ⇒ Counsellors and psychotherapists should discuss with their clients at the beginning of the counselling relationship their position with respect to their use of communication technologies and social media.
- ⇒ If you do not use Facebook, Twitter, or other forms of social media with clients, inform them that it is not because you are unfriendly, but is intended to protect their confidentiality and to maintain the boundaries appropriate for a professional relationship. If you mix professional and personal relationships with clients through social media, you risk having an inappropriate dual relationship, which can cause confusion for clients about the nature of their relationship with you.
- ⇒ If you do use email communication with clients, it is important to have a written policy with respect to such use and to share it with

clients as part of your informed consent process.

- ⇒ If you are engaging in distance counselling with clients or allowing the exchange of therapeutic material, then you will need an agreement with sufficient detail, orientation and coaching to enable competent, ethically appropriate, and safe client participation. (See CCPA Standard B17 and Chapter guidelines referenced earlier)
- ⇒ Remember that such counsellor-client exchanges are part of the client's counselling record and should be retained for the same period as face-to-face counselling notes. Of course, such a record will be verbatim unlike the counsellor-generated notes after a counselling session. I am unsure now if it would be acceptable or advantageous for the counsellor to make counsellor notes after each distance counselling session rather than keeping the verbatim record?
- ⇒ If email is to be used only for non-urgent and non-therapeutic purposes such as appointment scheduling, this must be made clear to clients. This practice could also be highlighted as a standard footnote on each email. Such as:

*Please do not send confidential or urgent information by email. If you have an emergency, please call 123-456-7890*

You could also use this footnote:

*This email transmission may contain information that is confidential, privileged, or otherwise protected by federal or provincial statutes. If you have received this email in error, please notify me immediately and permanently delete the transmission, including any attachments.*

\*Be sure to include contact information for each of these footnotes.

- ⇒ If you receive unsolicited emails with clinical questions or personal disclosures from clients or non-clients, you could respond by stating that because of your privacy concerns, they are invited to discuss it at their

next visit or call your office to discuss the issue.

- ⇒ For clients who repeatedly fail to adhere to your guidelines, inform them you are terminating the email communication.
- ⇒ Request that the client put their name somewhere in the body of the email.
- ⇒ Configure your automatic reply to acknowledge receipt of messages and request that clients establish a similar auto-reply feature.

**NOTE:** Many of these practices also apply with clients in regards to texting, but it will require particular attention to sufficient telephone security. If you email or text with clients at public places, such as airports, hotels, and/or coffee shops (amongst others), ensure that your security systems there are secure.

**The Notebook on Ethics, Legal Issues and Standards for Counsellors & Psychotherapists** is published in each edition of COGNICA and is an additional ethical resource for CCPA Members.

Previous Notebooks include:

- ⇒ [Scope of Practice for Counsellors](#)
- ⇒ [Counselling Records: Best Practices for Counsellors and Psychotherapists](#)
- ⇒ [A Supreme Court of Canada Decision, and the Goudge Report on Complaints & Discipline](#)

For a compilation of selected Notebooks, [refer to our website](#).