Post-showdown FAQs, Part 1 of 5

The following questions were answered by Samantha Slaughter, PsyD, Director of Professional Affairs for the Washington State Psychological Association. This information should NOT be considered legal advice. WSPA offers this document as guidance during these uncertain times and encourages members to reach out to appropriate persons for clinical, legal, and ethical consultation when considering actions to take and/or policies to enact in their practices.

Federal law/rules changes:

1. No Surprises Act
   Thank you to Susan McGroarty, PhD, ABPP, the DPA from New Jersey, for providing the initial summary on this new federal regulation.

   The No Surprises Act was signed into law by President Trump in December 2020. Patients who receive nonemergency services at an in-network **facility** can only be billed by out-of-network providers at these facilities at in-network rates. This means that ancillary services provided by doctors that are not in a facility's network (such as anesthesiologists for a surgery) will be subject to the facility's in-network cost-sharing requirements. There is a limited exception that allows out-of-network providers at these facilities to bill their full rate if a patient is notified in advance (not less than 72 hours prior to receiving out-of-network services) and consents to the provider's charges.

   Notes: Most psychologists in private practice would be exempt from the regulations in the No Surprises Act because it is focused on care received in an emergency and at in-network "facilities." Psychologists in private practices are usually considered non-facilities. The following is guidance for out-of-network providers at in-network facilities, but it is also guidance for anyone treating clients for whom you are out-of-network.
   A. As part of the informed consent to treatment, educate the client about their specific responsibility for the specific fee(s).
   B. Educate the client about the option of consulting their insurer about using an in-network provider and what the fee would be for that. Explain that typically clients can use an in-network provider at a lower cost but since each insurer is different, they should consult their plan representatives.
   C. Explain that you are an out-of-network provider, and that the insurer may not reimburse for any care provided by an out-of-network provider. Also explain that if the insurer reimburses at the in-network rate, the patient is still responsible for the remaining balance (i.e., balance billing).

D. Document that all of the client education listed above was discussed with the client via written consent.

2. Open Notes
   As of April 5, 2021, the Department of Health and Human Services (HHS) began enforcing a rule to prohibit "information blocking." Information blocking is when a health care provider, such as a psychologist, has technical, business, and/or administrative processes or policies that interfere with clients accessing or using their records.

   Notes: As of June 2021, there are no penalties for non-compliance. Also, many psychologists in private practice are exempt from this rule. APA created great resources on this topic, including an FAQ that provides detailed answers.

Telehealth:

1. Will we be allowed to offer telehealth services after the federal PHE and the Washington State Proclamation of a state of emergency end?
   Yes. Here are the relevant details.

   Federal rules – The Centers for Medicare and Medicaid Services (CMS) changed the rules for Medicare in December 2020 with President Trump's signing of the Consolidated Appropriations Act of 2021. CMS now allows clients to obtain telehealth services while in their homes. CMS also removed the previous geographical restrictions on telehealth. These changes were made permanent and will not be removed once the federal public health emergency (PHE) ends. As of June 2021, audio-only telehealth services continue to be allowed, but only until the end of the federal PHE*. APA and other organizations are actively advocating for CMS to permanently allow audio-only telehealth services.

   *The federal PHE is due to expire on July 19, 2021, and must be renewed every 90 days. HHS signaled that the PHE will likely be continually renewed until the end of 2021.

   State rules – We are fortunate in Washington State that telehealth legislation was passed prior to the pandemic. In 2015, SSB5175 was signed into law by Governor Inslee. This bill mandated insurance companies offer telehealth for services that are also provided in-person, are medically necessary, and are recognized as essential health benefits under the Affordable Care Act. Then in 2020, Governor Inslee signed ESSB5385, and we obtained payment parity guaranteeing that in-person and telehealth services are paid at the same rates. Generally, this means that most insurance plans in Washington State must offer telehealth services and must pay the same rate for telehealth services that they pay for in-person services.

There is one exception to our state laws: Plans that are managed at the federal level. These are called ERISA plans. ERISA plans are employer-sponsored, self- or fully-insured health plans that fall under the Employee Retirement Income Security Act of 1974. The most difficult thing about ERISA plans is that there is no way to easily identify them. There is nothing on the insurance card indicating a plan falls under ERISA, and often clients do not know if their insurance plan falls into this category. *WSPA is looking into advocacy options to make ERISA plans more easily identified.* For now, options for identification of an ERISA plan include calling the insurance company and/or asking the client. As of June 2021, it is unclear if any of the pandemic allowances related to telehealth will be made permanent for ERISA plans.

2. Will we be allowed to continue to practice across state lines?
   Yes. The January 2021 guidance from APA states the standard of practice is, as it was prior to the pandemic, that psychologists should be licensed both where you are physically located and where the client is physically located. During the pandemic, some states made it easier to obtain licensure with them through temporary permits and other measures. This is not true of all states, however. It is up to you to contact the licensing body of each state in which you want to practice. If you were granted a temporary permit in a state and you anticipate you will want to continue providing telehealth services in that state after the federal PHE and/or state's emergency order ends, then consider applying for full licensure in those states prior to the end of the pandemic. If other states are like WA, their licensing bodies are running behind and are struggling to respond promptly to licensing applications.

   The other option that allows psychologists to provide telehealth services in multiple states is an interjurisdictional compact called PSYPACT. Washington has not yet adopted PSYPACT legislation. As of June 2021, WSPA plans to introduce PSYPACT in the 2022 legislative session. We are hopeful that it will pass and be signed by the Governor. If this happens, then the soonest it would be possible to obtain an E-passport and offer telehealth services in other PSYPACT states is 2023. The delay is due to a variety of administrative aspects that must be set up after the legislation becomes law. **Note: As of May 2021, ASPPB, the organization through which one applies to obtain an E-passport, decided that they will grant E-passports only to psychologists who graduated from APA-accredited programs. *WSPA and other state associations are looking into ways to advocate for the allowance of all psychologists to be eligible for E-passports.*

3. What insurance billing codes (e.g., CPT code, place of service, modifier) will indicate a telehealth session after the PHE ends?
   Each insurance company determines criteria for billing independent of other companies. There is no federal or state mandate dictating billing criteria. It is up to you, and your billing person/department if you have one, to stay up to date on current billing criteria.

You can do this by signing up for newsletters that most insurance companies release regularly, as well as checking WSPA's list. Please note that despite our best efforts, the WSPA list may not be as current as information directly from the insurance companies.

4. Should psychologists anticipate that some insurance companies who have covered telehealth during COVID will no longer do so once office visits are deemed safe?
   Yes. While we have parity for telehealth services in Washington, there are some insurance companies that are governed by federal instead of state law. These plans are known as ERISA plans. See question 1 in the Telehealth section of this FAQ for information on ERISA plans.

Post-showdown FAQs, Part 2 of 5

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Telehealth (continued):

5. Will insurance companies be able to require medical necessity for telehealth sessions to occur. In other words, will insurance companies be able to say that a patient must have an in-person session unless it is medically necessary for them to be seen via telehealth? Medical necessity is a requirement for billing services to medical insurance, no matter the service provided. That said, insurance plans governed by the state of Washington cannot impose limitations or extra restrictions on telehealth services if they are also not imposed on the same service when provided in-person. ERISA plans are not bound by state laws. See question 1 in the Telehealth section of this FAQ for information on ERISA plans.

6. What is the recommended course of action when a client with whom you have done long-term therapy temporarily moves out of the state in which you are licensed? WSPA provides the following steps as guidance to follow in addition to APA guidance:
   A. Assess the appropriateness of offering telehealth service to the client. Talk with your client about the pros and cons of continuing treatment via telehealth. Document!
   B. Consider the level of risk of the client. You may need to quickly access services where your client is physically located should they become a risk for harm to self or others. Gather these resources and discuss them with your client prior to the client leaving the state, if possible. Document!
   C. Reach out to the licensing body in the state where your client will be physically located. Obtain the appropriate licensure and review their relevant laws. Document!
   D. If you are billing the client's insurance company, contact the insurance company to verify correct billing practice.
   E. Be prepared to provide referrals to the client for in-person services where they are located should you determine telehealth is no longer appropriate. Document!
   F. When providing telehealth services, in every chart note be sure to note you are using this modality and why it continues to be appropriate.

7. How do psychologists safely send receipts to telehealth clients who are private pay? Snail mail? Password-protected file? Some other method of encryption, cloud service or drive that is HIPAA compliant?
   All the options listed are possible. What you must ensure is that any electronic option used adheres to HIPAA. You might consider using an electronic option for receiving payments as it should automatically generate receipts.

8. Will telehealth be accepted as standard practice for outpatient psychotherapy by the Washington licensing board, or only for specific conditions (e.g., to increase access for rural clients, or clients who cannot make it into the office due to disability or transportation limitations?)
   Telehealth services are a valid modality from which to practice if deemed appropriate for the client and their treatment plan. The Examining Board of Psychology released telepsychology guidelines in 2016 and supports the use of telepsychology practice.

9. Can I jump back & forth between in-person and telehealth services with the same client?
   Yes. You will need to be sure to use the correct billing codes for each session. It is recommended you provide justification in each session note for providing services via telehealth when in-person services are an option.

10. Do I have to change the modifier on the billing for each session if they show up in person one week and do telehealth the next week?
    Yes. The correct billing includes the ICD-10-CM diagnostic code, the CPT code for the service(s) provided, the POS code, and a modifier if needed. The billing is date specific, so you will need to be sure to use the correct codes depending on where and how services were rendered.

11. How can we track if insurance companies try to change our fees back to lower rates for telehealth whenever they deem it unnecessary or less necessary? I guess I am wondering if they will lower the fee and how we can advocate for clients who are at higher health risk.
    This should not be a problem in Washington State. See Question 1 in Telehealth section of this FAQ.

12. I received a question that was a bit unclear, so I am answering it in two different ways. Here is the original question:
    "If I am considering shifting from temporary to full-time telemedicine, is there particular paperwork that I might have to encourage my current patients (whom I used to see in-office) to review/sign after a pandemic title has been lifted?"
    A. Is there paperwork I should have clients sign to continue with telehealth once all restrictions are lifted? Maybe. You should at this point have at minimum a telehealth

consent form that all clients have signed. If not, then you need to create one and have all clients receiving telehealth services sign one.

B. Is there more paperwork than the telehealth consent form? Maybe. If you decide to only offer telehealth services, then you need to disclose this to your clients as soon as possible. You need to document this conversation somehow… in the session note and/or with written consent. This idea for written consent is not mandatory; it is another option to consider. The written consent you ask clients to sign, should you choose to use one, needs to include (at minimum) wording to show the client understands that you will no longer offer in-person services, that at any time they can ask for referrals to another clinician offering in-person services, and how you plan to manage emergencies. Consider consulting with an attorney and/or your liability insurer to review this written consent.

13. If I moved to another state and wanted to maintain my psychologist license in Washington and provide telemedicine, how would (or does) licensure work? Would I need to obtain a residence in Washington still?
    No, residency is not a requirement for obtaining and/or maintaining a license as a psychologist in Washington State. You would maintain your license just as you do now. As long as you meet the continuing education requirements, you should be fine. Review the website for the Examining Board of Psychology for the latest requirements for obtaining and maintaining a license as a psychologist.

14. How do people in PSYPACT states manage licensure issues or residency requirements in other states due to licensure reciprocity?
    Washington State is not a member of PSYPACT, so I am unsure of the rules. See the PSYPACT website for details on how the process works.

15. Where do people pay their business taxes if practicing in multiple states?
    State business taxes are determined by the state in which your business is registered.

Post-showdown FAQs, Part 3 of 5

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Returning to the office/in-person services:

1. What do I need to consider when it comes to returning to in-person care?
   First, consider your health and that of those closest to you. You cannot help your clients if you do not care for yourself. Should you determine that it is safe for you to offer in-person services, then consult the guidance from APA (use link to access details for each item):
   A. Determine whether an in-person visit is necessary.
   B. Review the physical and mental health risks.
   C. Establish new rules for patients/clients attending in-person sessions. (Sample consent form from APA)
   D. Take steps to reduce the spread of COVID-19 in your office. (See below)
   E. Implement policies that protect employees.

   Regarding C above – It is advisable that whatever rules you create (yes, to some degree these are up to you) are presented in written form and reviewed with the client. Having an official consent form that the client signs is likely the best way to document you reviewed the new policies with the client.

   The current (May 2021) Washington State Roadmap to Recovery states "Remote work strongly encouraged" for professional services, which includes psychological practices. The Governor's office released (June 2021) updated guidelines for professional services that state, "Professional Services are required to mandate that employees work from home when possible and close offices to the public if possible." The guidance from the Department of Labor and Industries may be useful to review. Finally, the Governor's office released (May 2021) guidance for businesses on the use of masks and asking about vaccination status.

   Additionally, Stephen Feldman, JD, PhD reached out to the DOH regarding the Governor's facial covering guidance. He communicated with the person in charge of the

DOH staff attorneys. She stated, “Our read is that masks are still required for everyone, regardless of vaccination status, in healthcare settings. At this point, I think a healthcare provider in private practice must wear and must require their clients/patients to wear a mask. If this changes, I don’t see why a healthcare provider can’t still require patients/clients to wear masks. I am not aware of anything preventing a healthcare provide from asking a patient their vaccination status.” (There will be more about vaccinations in Part 5)

On reducing the spread of COVID-19 – Guidance from the Centers for Disease Control and Prevention (CDC) is being updated regularly as new information is learned about COVID-19. The CDC Standard Precautions (see page 7, number 5) are advisable for all healthcare settings, including outpatient offices.

As of June 2021, the latest CDC guidelines for healthcare professionals were updated for visitations in facilities, which may provide you with some aspects to consider. ***Psychologists in private practice settings are in healthcare offices and are healthcare professionals, so it is advisable to follow guidelines specific to healthcare professionals.***

The following are a few examples from the CDC guidelines:

- “Post-acute care facilities should continue to encourage vaccination among all new admissions.”
- “Before allowing indoor visitation, the risks associated with visitation should be explained to patients/residents and their visitors so they can make an informed decision about participation.” → My notes: Be sure to discuss with clients the current risks associated with in-person sessions so they can make informed decisions. Consider obtaining written consent for in-person services and updating this consent as new information and guidance emerges.
- “Visitors should be screened and restricted from visiting, regardless of their vaccination status, if they have: current SARS-CoV-2 infection; symptoms of COVID-19; or prolonged close contact (within 6 feet of an infected person for a cumulative total of 15 minutes or more over a 24-hour period) with someone with SARS-CoV-2 infection in the prior 14 days or have otherwise met criteria for quarantine.”
- “Visitors, regardless of their vaccination status, should wear a well-fitting cloth mask, facemask, or respirator (N95 or a respirator approved under standards used in other countries that are similar to NIOSH-approved N95 filtering facepiece respirators) for source control, except as described in the scenarios below.”

    - "If the patient/resident is in a single-person room, visitation could occur in their room."
    - "If in-room visitation must occur (e.g., patient/resident is unable to leave the room), an unvaccinated roommate should not be present during the visit. If neither patient/ resident is able to leave the room, facilities should attempt to enable in-room visitation while maintaining recommended infection prevention and control practices, including physical distancing and source control."
- "Hand hygiene should be performed by the patient/resident and the visitors before and after contact."
- "High-touch surfaces in visitation areas should be frequently cleaned and disinfected." → My notes: Yes, the current science indicates COVID-19 is contracted through the air. However, from a liability standpoint, it cannot hurt to disinfect high-touch surfaces. It is best to be able to prove you did all you could to reduce the likelihood of someone contracting COVID-19 in your office.
- "In general, fully vaccinated healthcare personnel (HCP) should continue to wear source control while at work. However, fully vaccinated HCP could dine and socialize together in break rooms and conduct in-person meetings without source control or physical distancing. If unvaccinated HCP are present, everyone should wear source control and unvaccinated HCP should physically distance from others."

2. Do we foresee a time when we will not need to wear a mask for in-person services? For patients who cannot or choose not to be vaccinated, do we think we will always be recommended to wear a mask to do in-person therapy with them? What about if our colleagues choose not to vaccinate?
   This is a difficult question to answer given all the unknowns currently. It is currently relatively safe to do so if all parties in the room are vaccinated per CDC guidelines. We will have to wait for further guidance regarding those who are unvaccinated.

3. I communicated with my clients that masks will not be worn in my office as I cannot do therapy wearing a mask and I cannot do therapy if my client is wearing a mask. The expectation is that clients will wear masks in the building, waiting room, bathroom, etc. but not my office. Is this okay?
   You are allowed to set whatever policies make sense to you. Be prepared to back up your policies and decisions if they are questioned.

4. Is there any downside for the client or for me if I do partly telehealth and partly in-person?

It depends. Can you see a client in-person sometimes and virtually other times? Yes. Are there cons to switching back and forth? Not necessarily. You will need to consider all relevant factors. You and the client will need to assess your levels of risk tolerance regarding COVID-19 and returning to some in-person meetings. When utilizing telehealth, you will want to assess and document in each session note the appropriateness of telehealth for the client. Maintaining an open dialogue with the client about treatment options will be important as well. The client will hopefully let you know if virtual sessions are not effective. Should you determine that virtual sessions are not effective and/or appropriate, you will need to take steps to manage this situation (e.g., referring to another clinician who provides in-person care).

5. Anything I need to know about setting up a permanent hybrid practice going forward? Anything that my malpractice insurance company needs to do differently or know what I am doing? Does this alter my liability at all to have a hybrid practice?
   It would be prudent to contact your liability insurance carrier and ask what your policy covers and what it does not, as well as possible cost implications of a hybrid practice. If you can get the conversation in writing, even better. On the Division 42 listserv in March 2020, Jana Martin, PhD, who is a Trustee for The Trust, made a statement about telehealth coverage. She wrote, “The Trust Sponsored Professional Liability Policy covers psychological and other associated professional services including such services as telehealth provided the insured is in compliance with the appropriate state practice rules or regulations. All other policy terms and conditions apply.” This statement lets you know that The Trust covers telehealth services. Again, you will have to contact your liability carrier directly to understand how a hybrid practice might influence your coverage.

Post-showdown FAQs, Part 4 of 5

The following questions were answered by Samantha Slaughter, PsyD, Director of Professional Affairs for the Washington State Psychological Association. This information should NOT be considered legal advice. WSPA offers this document as guidance during these uncertain times and encourages members to reach out to appropriate persons for clinical, legal, and ethical consultation when considering actions to take and/or policies to enact in their practices.

Returning to the office/in-person services (continued):

6. When will WA State have reciprocity for getting licensed in other states? I heard there was work being done on this, but likely was halted. Is there a date we can expect this to move forward?
   I think this question refers to PSYPACT. If so, see Question #2 in the Telehealth section of this FAQ for more information. Outside of an interstate compact like PSYPACT, it is up to the licensing body of each state to determine reciprocity criteria. It is highly unlikely there will ever be a nationwide license option.

7. I received questions regarding what happens if you are the person who moves out of state. I combined them here.
   a. If I move to another state, can I continue seeing my Washington State clients and billing their insurance? Can I keep my insurance contracts and see those clients and maybe even get new WA telehealth clients?
      I know from the experience of psychologists who moved out of state during the pandemic that they were **NOT** able to maintain their contracts here in WA. One of these psychologists is Marta Miranda, PsyD, WSPA's former APA Council Representative. Here is her response to this question, used with her permission:
      "While you can get new WA telehealth clients, you cannot be in-network with any insurance company headquartered in WA. If someone in customer service tells you that it is possible, they don't know what they are talking about.
      You will need to re-credential with the local version of that network in whatever state you are in (for either Premera or Regence, you would re-credential with the local BCBS affiliate), after which you can see clients in WA who have Premera and Regence. You cannot re-credential until after you have moved because you need to have an address and business location in that state (as well as a license to practice) before you can apply to be on those insurance panels. Re-credentialing takes at least 3-4 months (there is no fast-track just because you were credentialed in WA with the same insurance company). Insurance companies are locally/regionally administered; they do not coordinate with one

another, partly due to varying state insurance laws, but (I believe) also due to anti-trust regulations.

"Once you notify insurers that you are moving and your address will change to your new out-of-state location, most of them will automatically terminate you from your contract. With some, your clients will be notified by mail that their provider (you) will no longer be in-network. The insurance company will offer them the opportunity to get connected with a new provider. Your clients can ask that they be allowed to see you temporarily (no more than 90 days) for continuity of care, but they will have to ask their insurance for the correct form that you need to fill out, which you attach with a cover letter stating why this person needs you (and only you) as their provider for this period of time. I do not recommend going this route. It was incredibly cumbersome, some of my requests were declined, I had to fight for my clients, and (in one case) it took the insurance company six months to pay me even after they had agreed to it.

"I recommend telling your clients that you are moving out of state, will not be taking their insurance, and offering them the option of getting referrals to someone else or continuing with you on an out-of-network basis. They can get reimbursed for your services as an out-of-network provider and that might not be that difficult for some."

b. Do I need to register my business in the new state?
Per Dr. Miranda: "It depends on the state and their regulations vis a vis businesses. I moved to DC and did not need to register as a business because there is an exemption for medical practices (including psychologists) as long as they do not sell products. DC collects income tax from me, so they get their money a different way. Per my accountant's advice, I have maintained the WA registration of my LLC. I also continue to pay for my Seattle city license because their threshold for who is responsible for reporting business is pretty low (i.e., if you do at least $2000 of business per year within city limits).

"Also, know that if you see people in WA (even via telehealth), you must pay taxes in WA and possibly in the city where your clients are located. This is because WA considers us to be doing business in WA if our clients are in WA, even if we are not (collecting taxes from businesses is one of the few ways WA can collect revenue, since there are no income taxes). Because fewer of my clients are in WA than when I was located there, I got moved to an annual reporting cycle (as opposed to quarterly) and, effectively, I end up paying nothing (or next to nothing) because I don't do enough business to hit the taxable threshold."

c. I need to know if contracts with insurance companies could be maintained. If so, do I just need to change my service address and W9 with the insurance companies?
Per Dr. Miranda: “Once you change your service address and W9 info with the insurance companies, they will automatically terminate you (see above). I have heard of a couple of therapists who left the US and continue to be in-network with insurance in WA state. They did that by establishing a "dummy" business location somewhere in WA that is essentially a postal service and not an actual service location. That business receives their mail and forwards it on to them in their international addresses. However, I'm not sure if insurance companies would accept this or if they would consider it fraud. At one point I asked the provider credentialing person at one insurance company whether I could do this, and she said that my actual service location (from where I am providing services) would need to be in WA State.”

Big thanks to Dr. Miranda for sharing her experience!!

8. If I am doing teletherapy only from a home office, do I list my home address as the service address with the insurance company? How do I prevent the insurance company from making my home office address public?
This is an important question. Your insurance contracts may require you to have physical office space associated with your practice. This is true for Medicare, which means a PO Box will not count. It is highly recommended you read through the most current versions of insurance contracts and/or talk with a Provider Relations Representative for each company with which you are contracted to fully understand their requirements. Should you decide to continue offering telehealth from your home, it will likely be quite difficult to get around the requirement for your home address to be listed in provider directories. WSPA has heard of colleagues finding creative solutions to this problem:

    You may want to consider sharing office space with one or more colleagues so that you have an office address to provide that is not your home address.

    Another option may be to sublease, at a lower cost, office space and mailbox usage from a colleague with the understanding that you will use the office only as needed (so hypothetically never). This would also give you a non-home mailing address to associate with your practice without having to pay for full office availability.

    WSPA offers no opinion as to the legality of these or other creative options you may consider. I am in communication with the Association for Washington Healthcare Plans (AWHP) regarding home addresses and confidentiality. AWHP represents the insurers in WA. In our correspondence, they stated, “Providers are not required to have a physical

office space, but it is a regulatory requirement for plans to have a provider address. Plans are required to have up-to-date and accurate provider directories containing a provider's address. If the provider has a home business, the directory will need to list the business address registered regardless of location."

Current practice is fast outpacing current regulations. WSPA will continue to advocate for new options given the status of telehealth.

9. I am wondering whether insurance and Medicare may put limits on the number of teletherapy sessions a client can receive?
   There are currently no limits (number of sessions or financial) on psychotherapy services provided to Medicare beneficiaries. Neither APA nor WSPA anticipates such restrictions being imposed in the future. Regarding other insurance companies – If a plan governed by the Affordable Care Act, then it cannot put limits on psychotherapy services. If a plan is not governed by the Affordable Care Act, then limits may exist. Obtaining a quote on benefits may be necessary for these plans.

10. Given that it looks like there will be no 'post-pandemic' and COVID-19 will likely be around permanently, how will this affect practicing psychologists with disabilities and medical conditions that put them at high risk?
    Each psychologist will need to assess their own personal safety moving forward and create office policies as appropriate. For example, you may decide that you can only work with clients who have up-to-date vaccinations against COVID-19, or you want clients to cancel sessions if they show any signs of feeling ill. The important point is that your policies need to be discussed with and consented to by the potential client.

11. How do we handle clients who will not follow safety protocols (e.g., masking indoors, Covid-19 symptom screening, staying home when ill) long-term, particularly if psychologists with disabilities and medical conditions have to implement protocols that are stricter than general society?
    This is a challenging scenario to consider. You should consult with your liability insurance carrier to discuss this hypothetical situation. However, generally, you would likely handle this client behavior as you would any behavior that is threatening to you as that is exactly what this behavior is if you have made your medical needs clear to the client. In my psychotherapy consent form, it states "You normally will be the one who decides therapy will end, with three exceptions." The third exception is as follows (thank you Laura Brown, PhD, ABPP for sharing this language with me many years ago):

    > If you do violence to, threaten, verbally or physically, or harass myself, office staff, the office, or my family, I reserve the right to end the relationship with you unilaterally and immediately end treatment. If I end therapy for any reason other

than violence as described in exception #3, I will offer you referrals to other sources of care, but cannot guarantee that they will accept you for therapy.

It would seem to me that if I discussed my medical needs ahead of time and the client signed the consent form, then I can end the relationship if the client is unwilling to keep me safe during in-person meetings. As always, documentation is key.

12. Since proof of vaccinations is one of the markers being discussed for admittance without mask, and there are illegal, fake vaccination records out there floating around, how would we check for that with people we do not know and trust to be truthful with us? We are not experts in that area.
    You are correct that psychologists cannot and should not attempt to determine if a vaccination card is real or a forgery. Those of us in private practice who do not have a formal institution directing policies will have to create our own. It will be up to each of you to determine how to best handle this situation should it arise. WSPA has seen no guidance on this topic to date.

Post-showdown FAQs, Part 5 of 5

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Vaccinations:

1. Will psychologists be permitted to ask patients and collaterals if they have been vaccinated? If so, then will they be permitted to include documentation of the vaccine in their notes as part of their safety assessment in determining if they wish to meet with that patient and collaterals? If this is not permitted, then are there any additional or new recommendations (beyond the existing guidelines from APA, the DOH, and the CDC) do you have for members given the liability and health concerns that we all have as we attempt to keep our patients, staff, and ourselves healthy?

   Okay, these are difficult questions to answer. I sent them and a few more to the Department of Health's COVID vaccine department (COVID.Vaccine@doh.wa.gov). I encourage you to send them questions as well and then post the answers on the WSPA listserv for all to benefit (WSPAlist@memberleap.com).

   a. **Does the law permit a psychologist in WA in a private practice setting to ask clients about their vaccination status for COVID-19?**

   ➔ Yes. Per LNI, businesses are allowed to choose this option.

   b. **Does the law permit a psychologist in WA in a private practice setting to request proof of vaccination for COVID-19?**

   ➔ Yes. Per LNI, businesses are allowed to choose this option.

   c. **If we can require proof of vaccination, are there regulations above and beyond those psychologists typically follow for the protection of this healthcare information?**

   ➔ Please reach out to LNI at 1-800-4BE-SAFE
      - My note: If you choose to keep copies of proof of vaccination, treat those records as you would any other records received from a third party.

   d. **Does the law permit a psychologist in WA in a private practice setting to refuse to see a client face-to-face if the client is not vaccinated against COVID-19? Telehealth services would be offered as a substitute to face-to-face meetings.**

➔ Per the Governor's Office Facial Covering Guidance:
- If the customer responds stating s/he is not fully vaccinated but is otherwise exempt under the Proclamation, the business may:
  - Offer a reasonable accommodation (alternative way to receive service, if feasible). If the reasonable accommodation is refused, deny the person entry; or
  - Allow the customer to enter.
- If the customer declines to provide information or states that s/he refuses to wear a face covering (not exempt under the face covering order and proclamation but unwilling to wear a face covering), the business must deny the customer entry/service (unless there are worker safety concerns). The business may choose to offer an alternative way to receive service, when feasible; however, if the alternative is refused, the business must deny entry as provided above.

e. If a psychologist in WA in a private practice setting is seeing clients face-to-face and is diagnosed with COVID-19, does that need to be reported to any agency or authority?

➔ Please work with your local health jurisdiction.
- My note: You may need to ask whoever diagnoses you with COVID-19 about reporting your status. Follow their guidance.

f. If a psychologist in WA in a private practice setting is told that a client was diagnosed with COVID-19, does that need to be reported to any agency or authority?

➔ Please follow HIPAA guidelines.
- My note: You may need to call/email the DOH about this scenario should it arise. You may also want to call your liability insurance carrier before reporting.

g. Is contact tracing mandatory for a psychologist in WA in a private practice setting? Is the disclosure of clients' names and contact information legally required to be released if requested by the WA State Dept of Health?

➔ Please follow HIPAA guidelines.
- My note: You may need to call/email the DOH about this scenario should it arise. You may also want to call your liability insurance carrier before reporting.

They also provided the following additional resources—all of the below include vaccination information:

- Governor's Office: Updated COVID-19 Facial Covering Guidance for Employers and Businesses
- LNI: COVID-19 Prevention in the Workplace

- LNI: Mask and Distancing Requirements Are Changing

The best thing to do should you decide you want to return to seeing clients in the office is to schedule a consultation with your liability insurance company. They will be able to provide guidance on the pros/cons of asking about vaccination status.

2. There were two ethics questions submitted.
    a. What are the ethics of asking or requiring that patients must have the covid vaccine to resume in-person sessions?
    I am no ethics expert, so I sent this question over the WSPA's Ethics Committee. They are considering this question and exploring options for answers. Remember, as a member of WSPA, you have access to ethics consultation and can contact them directly about this and other ethical dilemmas.

    b. How would the Examining Board of Psychology handle a complaint about a psychologist to makes such a requirement?
    I cannot predict how the Examining Board of Psychology would rule on a complaint made due to a vaccination requirement as there are too many factors to consider. However, as with any office policy, you would want to show documentation that this policy was not targeted toward a particular client. You would want to show written documentation of client's understanding of the new policy. If you have other vaccination requirements, that policy documentation would be helpful. If you are immunocompromised, or if you live with/care for someone who is, and you can show you discussed this risk to your client, that would be helpful. Proving you attempted to offer the client other options, such as telehealth or referrals to other psychologists, would be beneficial. All of this is to say that mitigating liability risk is complicated. Consulting with your liability insurance is likely warranted before instituting a vaccination policy for clients.