

## Risk Management Advice Regarding Practice Under PSYPACT (As of December 18, 2023)

PSYPACT is an agreement between states (called an interstate “compact”) specifically designed to allow interjurisdictional psychology practice in two forms: telepsychology and temporary in-person, face-to-face practice. For those psychologists who obtain credentials (what PSYPACT calls the “APIT”—which allows interjurisdictional telepsychology practice and/or the “TAP,”—which allows in-person temporary practice in member states) it opens tremendous possibilities for practice across state lines. However, it also carries some novel and notable risks that clinicians should carefully consider. PSYPACT is still quite new (the first APIT was issued in July 2020), and some elements of its design are not fully understood and have not yet been tested or resolved (via court and licensing board adjudications). As such, due caution and thoughtful deliberation is warranted when stepping into this relatively new way of practicing. The following risk management advice is offered as of December 2023:

### **Overall recommendations:**

- Act conservatively and very carefully
- Make good use of standard risk management strategies:
  - **Know the laws and rules that govern practice** (this includes PSYPACT rules, as well as rules and regulations in your home state and any distant/receiving states into which you practice).
  - **Consult** often and early in the decision-making process, and have a low threshold for consulting. Ensure those you consult with are knowledgeable and reliable. Be careful of misinformation that is rampant in forums such as listservs.
  - Clearly **document** your decision-making and underlying rationale (both for what you did and why, and what you did not do and why); and give special attention to noting the physical location of both you and your client/patient for each session, and any unusual events that may occur during a remote session.
  - Utilize an appropriate and thorough **informed consent process**. You will need to tailor your informed consent documents to each state in which you practice (see comments below). Ensuring an adequate and ongoing informed consent process (rather than just a signed document) will be especially important. It is prudent to include language in your informed consent documents about your jurisdictional practice limits.

### **Home State Issues for those Practicing Under the APIT:**

- PSYPACT is very clear that it is **illegal** to practice under PSYPACT if you, the psychologist, are not physically located in your home state. Thus, it is important to ensure you are in your home state and to document such.
- If you travel between multiple home states, it is critical that you **get in the habit of updating your declared home state each and every time you travel** into another home state. If you do not, PSYPACT considers this illegal practice.
- If you are not physically located in your home state, you cannot legally practice under PSYPACT. You do, however, have **two avenues for potentially legal practice depending on where you and your patient are located and the rules/regulations governing those states**:
  - **Option one:** If your patient is located in a state where you are fully licensed, you may be able to practice there under your full license while you are in another state

- You will need to confirm with both licensing boards (the one where you are located and the one where the patient is located) that this is allowable practice
  - Document your contacts with each board
- **Option two:** If your patient is located in a state where you are not licensed, you may be able to practice into that state under the state's temporary practice statute. Be aware that temporary practice statutes are only for **temporary** practice and they vary significantly from state to state. You must be in compliance with the state's temporary statute requirements in order for it to be legal practice in that state.
  - You will need to learn the temporary practice law for any state in which you plan to practice. If temporary practice is allowable (in some states it will not be), clarify the parameters/expectations of practice (e.g., number of days permitted, whether you have to apply in advance, whether they require a supervisor) and document your compliance with such.
  - You also need to contact the licensing board of the state where you, the psychologist, are located at the time of service to ensure you can practice legally while within that state. You should document this as well.
- If neither of the above two options are available, then practicing into that state would not be legal.
- If you are outside your home state and practice into another jurisdiction under one of the legal options described above, you should document such and clearly note the legal avenue under which you are practicing.
- Prior to seeing a patient in a state **where there is no legal pathway**, it is strongly recommended that you:
  - **First**, consult with knowledgeable colleagues and fully understand the implications of non-legal practice
  - **Second**, conduct a thoughtful analysis of your decision-making process and rationale for why you are choosing one course of action and not another.
  - **Third**, document the above decision-making and rationale, including notation of any relevant clinical (e.g., ongoing clinical needs, potential for destabilization if treatment is interrupted) and ethical (e.g., abandonment, compromised patient welfare if services are disrupted) factors, which might support a decision to see the patient. However, be aware that such clinical and ethical factors will not make the practice legal and there may still be negative consequences from such illegal practice, notwithstanding a good ethical and clinical justification.
    - **Potential risks of practicing illegally across jurisdictions include (but are not limited to):**
      - You may be sanctioned by a licensing board for such practice.
      - If you incur a negative finding or encumbrance against your license, you **permanently** lose your ability to practice under PSYPACT.
      - Because coverage depends on the legal practice of psychology, psychologists who provide crisis services to clients who are in states in which the psychologist is not licensed, take a risk in doing so. Referring clients to local emergency services when appropriate is recommended as is preparing your client in advance of an out-of-state trip with strategies to use and guidance on what to do in an emergency. If crisis services are provided, psychologists are urged to consult in advance and to document fully the reasons for providing such services when the client is in a state in which the psychologist is not licensed.

- Be aware that if you get a licensing board complaint, you **cannot** change your home state during the time period you are being investigated.

### **Crisis sessions:**

- As noted above, PSYPACT requires the psychologist to be physically located in your home state. So, if you are on vacation in another state and receive a crisis call from a patient, PSYPACT would consider it illegal practice for you to provide crisis services to that patient while you, the psychologist, are not in your home state.
- Of course, this pits the psychologist against other clinical and ethical requirements to provide good, effective care and not abandon the patient. In true emergencies, the psychologist may elect to prioritize ethical/clinical factors and provide telepsychology to the patient anyhow (though this of course does not change the legality of it). If one elects to provide telepsychology in such a situation, it is essential that you clearly document your rationale and limit these sessions to true emergencies. A psychologist may also refer patients to an existing safety plan that identifies crisis support services (e.g., mobile crisis, emergency room, 911, 988) local to the client/patient. Again, this should be well documented and, ideally, such a plan and local resources would be identified prior to the occurrence of an emergency. It is wise to include language about these issues in your informed consent.
- Given the risks, clinicians should consider proactively developing more robust back-up services in states where they see patients; potentially including having a licensed clinician in those states who could cover for the psychologist while they are away from their home state.
- It will also be important to have clear safety and emergency plans for each patient and to have discussed this with patients in advance.
- In addition, it is prudent for clinicians to think through what constitutes a true emergency (e.g., active suicidal thinking/intent versus a patient who is upset about a poor grade they received or a fight they had with a significant other) and consider limiting services they provide while they are outside their home state to true emergencies.
- Any services provided without a legal pathway, should be very brief in nature.

### **Knowing the Laws of the Distant/Receiving State:**

PSYPACT **requires** a psychologist to know and be in compliance with the Distant/Receiving State's laws that protect the health and safety of its citizens. PSYPACT representatives have interpreted this to mean a psychologist should know and be in compliance with the law of the Distant/Receiving State just **as if that psychologist were fully licensed and practicing in that state**. If there is a licensing board complaint, the psychologist will be judged based on the laws of the Distant/Receiving state (**not** on their home state laws). As a result, we recommend:

- Dedicate time to learn the specific laws of **every** jurisdiction into which you practice.
- Go slowly when moving your practice into multiple states; start small with just a state or two and gradually add others (if you wish) once you have gained the requisite knowledge for each state. The more states you practice into, the more laws you will need to learn and with which you will need to be in compliance (i.e., Receiving and Distant State laws).
- It is prudent to make professional connections in the states in which you practice, so as to be able to consult when needed to help understand relevant laws and how they are interpreted in the state. You may also wish to connect with State Psychological Associations to stay up-to-date on any changes in the state's laws or regulations governing psychological practice.
- Some sources for learning the state laws include:

- PSYPACT state resources webpage: <https://psypact.org/page/BDcontact>
- State licensing board sites
- Epstein Becker Green's Telemental Health Laws app: <https://www.ebglaw.com/telemental-health-laws-app>
- State Psychological Associations, including their Ethics Committees
- Mental health attorney local to the state in question
- Consultation with a Risk Management Consultant from The Trust (Advocate 800 Program: 877.637.9700)

#### **Informed Consent:**

- It is recommended that you have state specific informed consent documents. This means you should have a distinct informed consent for each state in which you work, and that you need to be aware of differences in practice laws when you are working with patients in different states.
- General sample informed consent templates are available here:  
<https://parma.trustinsurance.com/Resource-Center/Document-Library-Quick-Guides>
  - These need to be tailored to each state.
- We routinely advised that you have your informed consent documents reviewed by an attorney local to each state so as to ensure they are in compliance with state law.

#### **Supervision:**

- Be aware that PSYPACT does **not** allow any supervisee to practice under the supervisor's APIT or TAP.