

INTERNATIONAL LEGAL NOTE

Social work comes to the small screen

Legal challenges of tele-social work

● Daniel Pollack

Originally discovered by a Portuguese navigator in 1506, Tristan da Cunha is an island home to 270 British citizens and an active volcano. Located in the hostile South Atlantic Ocean, it boasts that its nearest neighbour is St Helena 2334 km to the north while Cape Town is 2778 km to the east. How does it get health care and social services?

The social work profession recognizes the need to deliver high-quality, prompt service at a reasonable cost, ensuring that every client receives the individual attention we would expect to enjoy ourselves. In countries and rural areas chronically short of social workers, during emergencies or after hours, delivery of social work services via telephonic or electronic technology is a maturing concept. It encompasses communication through the latest advances in high-speed digitized transmissions in concert with mainframe computers, satellites and other state-of-the-art hardware and software (Tang and Venables, 2000). Based upon proven medical models,¹ its purpose is to reduce or eliminate geographic barriers to allow broader access to professional social workers and create a seamless integration of creative solutions to help maintain and manage optimal social work services. These services may involve diagnosis, counseling, continuing education and consulting, as well as the transfer of records and other essential documents (Bakke et al., 2001; Barretto et al., 2006; Dietrich et al., 2006; McConnochie et al., 2006). Some examples of tele-social work agencies are listed as an appendix at the

end of this article. As Figure 1 illustrates, tele-social work consists of sending remote transmissions of audio, video and text information to the client or other professionals involved in a client's treatment, such as information about schools, judicial centers, and medical and mental health facilities.

Looming liability

Dissatisfaction is the difference between client expectations and results; the wider the gap, the greater the discontent. It is our job to understand what results clients expect, and then ensure that we can deliver. Failure to do so may result in a lawsuit, or worse, liability. As teleconferencing technology is more frequently used as a way to shorten vast distances, it may inadvertently be widening the potential for liability. Offering tele-social work does not mean people will use it. A big outlay of money and effort alone will not necessarily improve client services.

However careful an agency or worker is, there remains a risk of negligence due to the complexities of compliance with overlapping national, provincial, county or state laws and technological snafus. These missteps may lead to exposure to liability and the unfortunate prospect of mounting a defense in multiple jurisdictions.

Generally, social workers are not liable for malpractice if they act within the profession's standard of care. In the UK, the USA and other

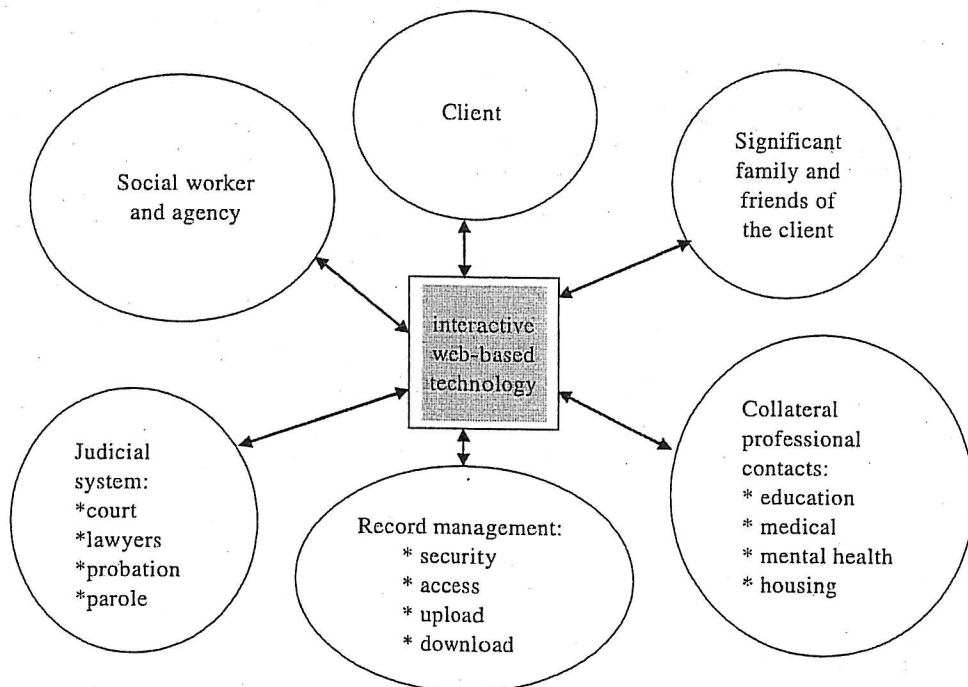


Figure 1 Social work treatment offered through web-based technology

countries following the common law, the standard of care applied in a typical malpractice action is that of a reasonable social worker, exercising the degree of care and skill that is ordinarily exercised by social work professionals under the same or similar conditions in comparable circumstances.² To establish malpractice a plaintiff must prove that: a social worker–client relationship existed; there was therefore a duty to provide treatment in accordance with the standard of care; there was a breach of the generally accepted standard of care; and the breach of the standard of care was the proximate cause of the plaintiff’s injury. An illustration may be helpful: a variety of interactive tele-social work websites exist. Typically, users type in questions and receive responses. Has a social worker–client relationship been established? Not surprisingly, one factor that courts have looked at in making such a finding is whether or not a fee was charged. If a fee was charged, the relationship may be treated no differently than an in-person encounter. If not, a necessary element in finding negligence may be missing and there will be no liability.

Licensure of tele-social work

The broadening scope and role of tele-social work calls out for the profession to provide guidance. There are no countries which have enacted licensure laws specifically directed to social workers as telecommunicators. Is there a need for licensure? For those who advocate that there is, would the social worker need to be licensed in each jurisdiction in which there is a client or collateral contact? Perhaps one solution would be to establish a protocol that social workers who provide a consultation outside of their primary jurisdiction on an occasional basis would not be subject to licensing in the secondary jurisdiction. Alternatively, local jurisdictions could elect to grant reciprocity to each other. One complication to this solution is what to do when a social worker in one jurisdiction tries to practice in another jurisdiction where the licensing standards are more stringent. A third alternative might be to work toward creating a national compact. Countrywide licensure or a countrywide compact has the potential to standardize the licensing process and the practice of tele-social work. If administered on a national basis, the central authority could create standards and preempt local licensure laws.

Safeguards for clients

As always, clients should be apprised of the potential benefits and risks of using teleconferencing and should be given the opportunity not to

participate. If a client does refuse, the worker is obliged to inform the client of other possible options and of the potential consequences of having refused to participate.

Privacy and confidentiality need not be compromised. Only those staff and technicians who need to be involved in the client's care should have access to the teleconferencing records, materials and environment. Special care should be taken to limit access to any cameras, monitors, tape-recorders, electronic storage facilities and CODECs (Coder-Decoder) that are used.

Prior to the mid-1990s, ensuring the confidentiality of audiovisual signals involved the use of scrambling techniques. Due to their vulnerability, the multimedia industry is now turning to the use of encryption compression signals in order to ensure the confidentiality of its signal technology. Social workers, while they need not be experts in the scientific aspects of teleconferencing, should be sufficiently familiar with teleconferencing technology to be able to ensure that effective treatment can be achieved without sacrificing confidentiality.

Concerns that need to be addressed by the social work profession

The tele-social work phenomenon has given rise to numerous practice and legal complexities. Many areas of tele-social work have barely been addressed, such as:

- How do electronic records differ from paper records?
- How do electronic records comply with present compliance requirements for maintenance and retention?
- In which jurisdictions is there legal recognition of electronic signatures?
- Who owns the electronic record once it exists?
- What are the rules for use and disclosure of the record?
- How are records protected in the international community?
- How is reimbursement for tele-social work services handled?
- If there are billing disagreements, how are they mediated?
- What safeguards should exist to deter fraud and abuse?
- Is fee splitting permitted?
- What are the tax consequences for tele-social work?
- What are best practices in this field?
- Which professional organizations will define key terms and precisely draft standards to ensure that primary treatment objectives are achieved?

- Which professional organizations will be responsible for reconciling tele-social work processes with existing laws and procedures in addressing ethics infractions?

Optimally, these questions will be addressed as soon as possible and relevant protocols and guidelines will be developed. For instance, specific protocols are needed to ensure that a client's privacy will not be violated by the accidental or intentional release of a password, and to minimize the possibility that a hacker could gain access to a client's records and either add false information or delete valid information. Parenthetically, it is suggested that the terms 'protocols' (or 'standards') and 'guidelines' should not be used interchangeably. A protocol (or standard) is a definitive point of reference which acts as a measure of evaluation. A guideline is a process that involves preference but does not have the force of a standard.

Conclusion

The advantages of the tele-social work superhighway are apparent. The relatively low cost of tele-social work makes it attractive to providers and funders. It not only connects clients to professionals, it also connects professionals to each other. Best of all, for those living in Tristan da Cunha, they can now have access to expert social workers without ever having to make an office visit.

Notes

1. The World Health Organization defines telemedicine as the 'delivery of health care services, where distance is a critical factor, by health care professionals using information and communications technologies for the exchange of valid information for diagnosis, treatment and prevention of disease and injuries, research and evaluation, and for the continuing education of health care providers, all in the interest of advancing the health of individuals and their communities' (World Health Organization, 2005).
2. For the earliest English case law discussions see *Blyth v Birmingham Waterworks* (1856) 11 Exch 781; *Vaughan v. Menlove* (1837) 3 Bing. N.C. 467, 132 E.R. 490 (C.P.).

References

- Bakke, B., J. Mitchell, S. Wonderlich and R. Erickson (2001) 'Administering Cognitive-Behavioral Therapy for Bulimia Nervosa via Telemedicine in Rural Settings', *International Journal of Eating Disorders* 30(4): 454-7.
- Barretto, A., D. Wacker, J. Harding, J. Lee and W. Berg (2006) 'Using Telemedicine to Conduct Behavioral Assessment', *Journal of Applied Behavior Analysis* 39(3): 333-40.

- Dietrich, A., J. Tobin, A. Cassells, C. Robinson et al. (2006) 'Telephone Care Management to Improve Cancer Screening among Low-income Women: A Randomized, Controlled Trial', *Annals of Internal Medicine* 144(8): 563–71.
- McConnochie, K., G. Conners, A. Bryaer, J. Goepp et al. (2006) 'Differences in Diagnosis and Treatment Using Telemedicine Versus In-Person Evaluation of Acute Illness', *Ambulatory Pediatrics* 6(4): 187–95.
- Tang, P. and T. Venables (2000) 'Smart Homes and Telecare for Independent Living', *Journal of Telemedicine and Telecare* 6: 8–14.
- World Health Organization, Department of Essential Health Technologies (2005) 'Information Technology in Support of Health Care'. Available online at: <http://www.who.int/eht/en/InformationTech.pdf> (accessed 1 November 2006).

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Appendix 1 Some examples of tele-social work agencies

Tele-social work agency	Web site
Childline (United Kingdom)	http://www.childline.org.uk/
National Center for Missing and Exploited Children (United States)	http://www.missingkids.com/
Befrienders (Egypt)	http://www.befrienderscairo.com/
The National Council of Sri Lanka Sumithrayo	http://www.srilankasumithrayo.org/
BI Suicide Prevention Centre (Japan)	http://www.spc-osaka.org/
Lifeline Shanghai (People's Republic of China)	http://www.lifelineshanghai.com/
Trust Social Work and Sociological Research Centre (Armenia)	http://www.befrienders.org/helplines/helplines.asp?c2=Armenia
Befrienders (India)	http://www.befrienders.org/helplines/helplines.asp?c2=India
Lifeline (Australia)	http://www.lifeline.org.au/suicide_prevention/where_to_get_help_now
Kidshelpphone.ca (Canada)	http://kidshelp.sympatico.ca