

Crossing State Lines in Therapy: A Guide to Staying Legal and Ethical

Benjamin E. Caldwell, PsyD, LMFT
ben@bencaldwell.com

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About Me

- California LMFT #42723
- Adjunct Professor, CSU Northridge
- Author, *Basics of California Law for LMFTs, LPCCs, and LCSWs* and *Saving Psychotherapy*
- Editor, *User's Guide to the 2015 AAMFT Code of Ethics*
- Chair, AAMFT Online Therapy Best Practices Workgroup
- Served on AAMFT Ethics Committee

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This continuing education course includes information on legal and ethical issues. It is presented from a clinician's perspective. **Nothing in this course should be considered legal advice or as a substitute for consultation with a qualified attorney.** If you are in need of a legal consult, your liability insurer or professional association may offer useful free resources.

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Throughout this presentation, the terms "state," "province," and "jurisdiction" are generally used interchangeably, in reference to the area or governing body of the clinician's licensure.

I attest that there are no conflicts of interest related to this presentation or its content.

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Myths about serving clients outside of jurisdiction

- It's allowed for continuity of care if the client has moved and is locating a new provider
- It's allowed if the client's mailing address or residency is in my state of licensure
- It's allowed if it's cash pay
- It's low risk, the worst that could happen is a slap on the wrist
- **None of these are typically true**

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Generally speaking, licensing boards care most about the **physical location of the client at the time of service.**

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Three mechanisms for practice across state lines

- Multi-state licensure
- Interstate compacts
- Temporary practice carve-outs

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Multi-state licensure

- Refers to applying for and receiving individual licenses from multiple jurisdictions
- Has generally gotten easier across the US in the last decade
- "Licensure by endorsement" - One state issues a license relatively automatically based on existing licensure in good standing in another
- Can become expensive, complicated to follow multiple states' rules

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Interstate compacts

- Agreements among participating states to honor each others' licensing decisions
 - Counseling Compact
 - Social Work Compact
 - PsyPACT (Psychology)
 - No MFT compact, but "strategic portability initiative" from AAMFT
- Compacts require both residency and licensure in a compact state to participate
- **California and New York unlikely to sign on to any interstate compacts in mental health care**

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Temporary practice carve-outs

- States increasingly allow short-term practice with an existing client if the client travels to that state temporarily
- **Requirements vary significantly by state**
 - Duration of allowed temporary practice
 - Required notification/application to the state board
 - Required disclosures to clients seen under the carve-out
 - Many states only apply carve-outs to licensees, not prelicensed clinicians

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So what do I actually do?

1. Know the rules of your board
2. Learn the rules where the client will be
 - Other jurisdictions in US: Look for temporary practice carve-outs
 - Information often available on board web site
 - If no information, inquire directly with the board
 - **In the absence of clear written approval, assume you cannot treat**
 - Outside of US: Find out regulatory structure for psychotherapy
 - No regulatory structure: If anyone can do therapy, so can you
 - Regulatory structure: Learn and follow that structure

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Prohibiting **treatment** is different from prohibiting **contact**.

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Crisis care

- You're free to *receive* information and refer appropriately
- Remember that distress is not the same as danger
- **No imminent danger:** Refer to local providers
- **Imminent danger:** Balance risk and safety
 - My personal opinion: If *genuine, imminent physical danger*, I'd try to help
 - Two avenues of defense if challenged

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When you are the one traveling

- Your location *usually* doesn't matter
- Specific rules vary by jurisdiction
- Relatively speaking, probably less risk here when traveling within US

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Considerations beyond legal allowance

- **Insurance coverage for the client** may significantly differ
- **Third-party payers** (grants, contracts, etc.) may not provide payment
- **Your professional liability insurance** may be limited
- If employed, **your employer may have rules** limiting out-of-jurisdiction services

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Ethical considerations

- Appropriate disclosures
- Informed consent (especially understanding potential billing issues)
- Relevant telehealth standards
- Continuity of care - but note this does not create a legal exception

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Common questions

- **For cash-pay clients, can I practice with out of state clients if I simply call the service I am providing "coaching" or "consulting" instead of using a protected title?**
- **Often no, but context matters.** While clinicians in many states can also engage in other services, providing coaching services to an *existing therapy client* only when they are out of state raises a variety of concerns.

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Common questions

- **What happens when I want to treat a couple or family and one partner or family member is in state, while another is out of state?**
- **There's a lot to consider.**
Who do you identify as the "client" in documentation and billing?
Who is signing informed consent for treatment?
With whom are you actually intervening?
There's a difference between a third party being present as a supportive observer and that same person being a subject of treatment.

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Common questions

- **Why is this all so wildly complicated? Why can't we just have a national license?**
- **In the US, it's a matter of Constitutional law.** The federal government can regulate interstate commerce, but the regulation of intrastate commerce is left up to the states.

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My books and trainings:
highpass.com

My blog:
psychotherapynotes.com

All articles and interviews:
authory.com/BenCaldwell

Email:
ben@bencaldwell.com

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