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MAY 2022 Newsletter

In This Issue:

1. Upcoming workshops
2. An update on Audit-Proof Progress Notes: An In-Depth Look At Documentation And Recording Keeping
3. Ethics Matters- Psychotherapy Notes Vs. Progress Notes

Greetings colleagues,

I hope this Newsletter finds you and yours well. It's hard to believe that it is already the middle of May. Where did the time go? If you are like me, you are just coming out of your winter shell, becoming more active and thinking about what's next.

What have I been up to? After 25 months of working from my home office:

- I've decided that I will not return to only providing in person psychotherapy and I have happily embraced the permanent pivot to a hybrid model
- I've gone back to my office 1 day per week, as most of my clients still like to convenience of tele-health
- I'm redecorating (really, consciously decorating) and organizing my home office to meet my needs
- I'm working on revising my business plan to incorporate more of what I love to do most—supervise, consult, mentor, educate and conduct workshops

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- And most importantly, I'm focusing on daily self-care, connecting with family, friends and colleagues, and looking forward to some much needed R and R.

What are you up to? Do you have any news to share? Drop me a line. I'd love to hear about your activities and plans.

UPCOMING WORKSHOPS

June 2022

"Warning: Boundary Crossing Ahead"

Saturday, June 11, 2022

9:00 AM-3:00 PM EST, ZOOM

5 ethics CEs available to Social Workers in all states except for NY and WV.

Past attendees rave about the thought-provoking case examples that illuminate the intricacies of the therapeutic relationship and potential pitfalls that can (and do) arise when clinician's engage in dual relationships and boundary crossings. **This is not your ordinary, boring and typical ethics workshop.**

Through the use of Zoom break out rooms, attendees will have several opportunities to examine common situations that raise ethical/legal concerns, such as:

- Attending a client's wedding, funeral or graduation
- Accepting referrals from one's own church, synagogue, mosque, or temple
- Dating one's co-worker, mentor, supervisor or boss
- Adjusting a client's diagnosis, waiving no show fees for some, but not all clients, and ignoring a client's repeated lateness/cancellations
- Treating more than one member of a family and shifting from working with a couple to working with one party individually
- **...And so many more**

Due to the interactive nature of this workshop, registration is limited. Register now <https://www.leslietsukroff.com/warning-boundary-crossing-ahead>

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July 2022

"Everything You Need to Know: Documentation in Private Practice."

Sunday, July 17, 2022

9:00 AM-3:00 PM EST, ZOOM

5 ethics CEs available to Social Workers in all states except for NY and WV.

A must for all New Jersey private practitioners. This workshop provides a broad overview of legally required case record documents, with a focus on obtaining informed consent and maintaining privacy and confidentiality. Due to the educationally-rich nature of this workshop, registration is limited. <https://www.leslietsukroff.com/everything-you-need-to-know-documentation-in-private-practice>

AUDIT-PROOF PROGRESS NOTES: AN IN-DEPTH LOOK AT DOCUMENTATION AND RECORDING KEEPING

Thank you to those who participated in Audit-Proof Progress Notes: An In-Depth Look at Documentation and Recording-Keeping on April 14th. For those who couldn't join me, I hope you'll keep me in mind for one (or both) of the workshops I am conducting this summer.

Click here <https://www.leslietsukroff.com/workshops-events>

I am still working on editing the video recording, as I had some technology glitches. I'll keep you posted when the 2022 video is available for rent. If you can't wait, there is a recording of the same workshop on my website from May 2021. Access now <https://www.leslietsukroff.com/workshop-videos>

ETHICS MATTERS

What is the Difference Between Progress Notes and Psychotherapy Notes?

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Clinicians often express confusion between psychotherapy notes and progress notes and during the workshop several questions were raised, so I'll provide clarity here.

What is a psychotherapy note?

HIPAA defines psychotherapy notes as:

"...notes recorded (in any medium) by a health care provider who is a mental health professional documenting or analyzing the contents of conversation during a private counseling session or a group, joint, or family counseling session and that are separated from the rest of the individual's medical record."

Psychotherapy notes do not include any information that is maintained in a patient's medical record including, any information about medication prescription and monitoring, counseling session start and stop times, the modalities and frequencies of treatment furnished, results of clinical tests, or summaries of diagnosis, functional status, treatment plan, symptoms, prognosis, and progress to date. 45 CFR § 164.501

<https://www.govinfo.gov/content/pkg/CFR-2004-title45-vol1/pdf/CFR-2004-title45-vol1-sec164-501.pdf>

Where can I store psychotherapy notes?

Psychotherapy notes, if you choose to keep them, **must** be maintained separately from the client's medical record. If you are old school (like me) and maintain physical (paper) records, your psychotherapy notes should be kept in a separate notebook, Pendaflex or manila file and should not be comingled with the client's medical record.

Since psychotherapy notes may contain sensitive data, they should be kept under lock and key, just like the medical record. If you use a practice management system (PMS) to maintain an electronic medical record then you may keep paper psychotherapy notes or if your PMS has the capacity to separate the medical record from psychotherapy notes, you may enter them into your PMS.

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For example, both **Simple Practice** and **TherapyNotes** have the capacity to keep psychotherapy notes separate from progress notes in their systems, thus adhering to the HIPAA mandate. In **TherapyNotes**, clinicians who wish to maintain psychotherapy notes do so by entering them into the Process Note template while **Simple Practice** has a separate template called "Psychotherapy Note".

Can psychotherapy notes be subpoenaed in a legal proceeding?

Yes. Although under HIPAA psychotherapy notes receive special privacy protections and are afforded a higher level of privacy than progress notes, psychotherapy notes are not 100% protected. In general, HIPAA does not allow the release of psychotherapy notes, even for treatment purposes, without the client's prior specific authorization; however, under certain circumstances exceptions exist. For example, in some situations, a court may order the release of psychotherapy notes and this is consistent with several mandates set forth by HIPAA. According to The Department of Health and Human Services, Office for Civil Rights,

"A notable exception exists for disclosures required by other law, such as for mandatory reporting of abuse, and mandatory 'duty to protect' situations regarding threats of serious and imminent harm made by the patient (State laws vary as to whether such a warning is mandatory or permissible)."

<https://www.hhs.gov/sites/default/files/hipaa-privacy-rule-and-sharing-info-related-to-mental-health.pdf>

Do I have to worry about any other laws?

Maybe. As with all issues regarding progress notes, psychotherapy notes, medical records, access to/release of records, confidentiality and privacy etc., it's important to not only consider HIPAA, but practitioners should always check their regulatory and state laws as well. States may define psychotherapy notes differently than HIPAA does.

In fact, some states:

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- 1) Do not differentiate between a progress note and a psychotherapy note;
- 2) Permit clients and others access any and all information documented about them;
- 3) Give psychotherapy notes protective status.

Do I have to allow insurance companies access psychotherapy notes?

Probably not. In general, the information contained in psychotherapy notes are typically not viewed as being helpful or legally required for treatment, payment, or health care operations purposes, other than by the treating provider and therefore, insurance companies should not be requesting access to such information.

If you are faced with a request for psychotherapy notes, before you act, I urge you to contact your professional liability provider, your professional membership organization, an attorney or Leslie S. Tsukroff, Inc. for further guidance.

Do parents have the right to access psychotherapy notes regarding their minor child?

HIPAA does not give parents **the absolute right** to access psychotherapy notes. HIPAA's Privacy Rule differentiates information contained in the medical record and a clinician's psychotherapy notes and does not permit a minor's personal representatives **the right** to access to psychotherapy notes.

See 45 CFR 164.524(a)(1)(i). <https://www.ecfr.gov/current/title-45/subtitle-A/subchapter-C/part-164/subpart-E/section-164.524>

However, *at the discretion* of the clinician, HIPAA **allows** for the disclosure of information contained in the medical record and in psychotherapy notes to patients and their personal representatives. When parents request psychotherapy notes regarding their minor children, clinicians must consult their State laws to determine if other laws prohibit, limit or restrict such disclosures.

Are we required to keep psychotherapy notes?

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No. Unlike progress notes which, in most states you are legally required to maintain, psychotherapy notes are optional.

Is client art work considered psychotherapy notes?

No, work completed in session, including worksheets, assessments, artwork and photos of sand tray creations should be maintained in the medical record, as they are a part of the clinical work.

Final thoughts

If you only keep one set of notes, then those notes are automatically considered progress notes, NO MATTER WHAT IS CONTAINED IN THEM. Therefore, it is really important to make sure that the official notes you place in the client's medical record, meet the HIPAA criteria for progress notes and not psychotherapy notes.

This document is for general informational purposes only and is not intended to be used as advice (legal, ethical or technical) or as a substitute for the guidance of an attorney or an individualized consultation. It does not address all possible clinical, legal and ethical issues that may arise, nor does it take into consideration the particular circumstances, nuances or concerns of the situation or person(s) involved. Leslie S. Tsukroff, Inc. does not assume any responsibility or liability for any errors or omissions in its content.