Crossing State Lines: How Credentialing and Licensure Impacts EA Practice

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One of the major innovations in EA practice (and healthcare in general) has been the explosive growth in telehealth and online health delivery platforms. Although gradually emergent over the past decade, use of these virtual mechanisms exploded during the COVID-19 pandemic. This increased use of telemedicine and mobile applications has generally been seen as a remedy to improve the accessibility and reach of health services.

In the United States, aspects of medical and mental health delivery have been regulated by over 50 independent jurisdictions. As a result, they are characterized by considerable geographic variation with respect to insurance coverage, access to/cost of care, health status, and standards of professional practice. With the onset of the pandemic, the demand for telehealth services was so acute that it forced the easing of previously restrictive requirements. This easing allowed mental health clinicians in many areas to practice teletherapy across state lines, regardless of where the client and provider were physically located. This previously guarded professional service delivery apparatus has become an evolving issue in the US health care system, with many lobbying for less restrictive regulation of telehealth across jurisdictional boundaries.

Indeed, the lifting of restrictions on interstate telehealth provision first appeared in a few states beginning in 2017 but was spurred on by pandemic-related demand. This pattern may signal an eventual degradation of control by state mental health professional licensing boards over certain aspects of the contemporary delivery of telepsychology services. The result is a movement toward greater reciprocity among licensed mental health practitioners, commonly called compacts, with participatory efforts by specific professions and states steadily increasing. The adoption of these legislative efforts includes the initial enactment by a certain designated number of state legislatures, which then initiates the establishment of a governing commission to oversee its implementation. Subsequently, such commissions will develop procedures to guide the privilege to practice across state lines in those states that have enacted the compact.

Two fairly advanced interstate practice initiatives are the Psychology Interjurisdictional Compact (PSYPACT) and the Interstate Counseling Compact. The first, PSYPACT, is designed to facilitate the practice of telepsychology and temporary in-person, face-to-face practice by psychologists across state boundaries. To date, it has been enacted by 38 states, is currently in progress by five states, and has active legislation under consideration by five more. Applications to practice under this compact are available, and psychologists licensed in member states can apply to start practicing under its authority to provide tele-psychological services and/or conduct temporary in-person, face-to-face psychology in PSYPACT states. The second, the Interstate Counseling Compact, seeks to allow licensed professional counselors (LPCs) in a member state to practice in other member compact states without the need for multiple licenses. As of May 2022, 10 states have ratified the Compact, 12 more are currently considering it, and two have not adopted it.

Since 10 states have enacted the legislation, this allows the establishment of the governing structure to oversee implementation. After this process, which may take 12-18 months, states will be able to issue Compact privileges to LPCs. A third effort for social workers has begun initial steps to convene an interagency task force charged with formulating a compact mechanism. Similar arrangements are also being studied and may soon be implemented in Canada.

The Intersection of Credentialing and Licensure Boundaries in EA Practice

One important question for EA professionals in the future will be how to determine the effect of these new initiatives on their particular practice. The myriad rules of the governing bodies or state boards can be confusing, especially when individuals who provide EA services also possess licensure and/or certifications from other mental health professions (such as professional counselors, social workers, psychologists, marriage and family therapists, etc.) An important determinant for any provider will be to consider the precise function or role under which they are offering services. In the US and other countries, regulation of these mental health professions is defined by individual jurisdiction-specifics of a state, regional, or national authority. These serve to govern entry to the practice and professional conduct and the designation of such licensure. For example, if a psychologist practices within the established scope of a licensed psychologist, that would govern their duties, responsibilities, and professional ethics. If, however, a psychologist who may hold also hold a Certified Employee Assistance Professional (CEAP©) credential only provides Employee Assistance services (as defined by a governing body such as the Employee Assistance Credentialing Commission (EACC)), this designation would primarily govern their activities, barring any additional state or national regulations. And if such services are offered via telehealth or virtual platforms, then any separate laws or regulations may also apply.

According to the EACC, the CEAP©, created in 1986, is the only credential that represents knowledge, experience, and expertise across the entire EAP body of knowledge. It identifies those individuals who have met an established level of standards for competent EA practice while adhering to a professional code of ethical conduct. While this designation is recognized internationally as the knowledge standard for EAP practice, an important distinction of the CEAP© is that it is a self-regulated entity, whereby members of an industry, trade, or sector of the economy monitor their adherence to legal, ethical, or safety standards. Unlike the existing state regulatory mecha-

nisms for licensed mental health professions, no governmental regulations currently exist in the US which impact the delivery of Employee Assistance services by individual practitioners (e.g., CEAPs). One historical exception to this non-state regulation of EA practitioners was North Carolina's short experiment with EAP Licensure (NC Gen. Stat. § 90-501), created in 1996. This solitary creation of a state-regulated structure for licensing EA professionals relied on the established CEAP© as its criteria for entry to and the conduct of licensed EA practice. In an attempt to streamline and shrink government regulations, this act was subsequently repealed in 2019 by the state's legislature and other professional designations deemed to have insufficient contingencies.

Thus, the proper decision factors must be considered to determine what rules, guidelines, regulations, or professional codes of ethics may apply to individual EA practitioners intending to offer telepsychology across jurisdictional lines. These include the nature of services to be delivered, any professional licensing or certification requirements, and any applicable jurisdictional regulations (which may designate specific permissions or prohibitions according to the physical location of the provider and/or client). Given the array of functions within the universe of EA services (e.g., assessments, referrals, worksite wellness information, short-term counseling, supervisory consultations, crisis intervention, and organizational development it is clear that individuals involved in these activities represent a diversity of professional backgrounds, approaches, and values. This array is perhaps what makes EAPs unique in the workplace mental health realm.

With multiple, affordable, easily-accessible telehealth platforms routinely employed in EAP settings for functions, such as assessments, information and referrals, supervisory consultations, trainings, program promotions, and brief counseling; the CEAP© practitioner and service user of the (near) future may physically be located in two different cities, states, or countries. As further technological innovations and cross-jurisdictional agreements continue to proliferate, these trends will likely only grow.

A Related Question: Are Individual CEAPs *Also Required* to Hold Professional Mental Health Licensure?

The short answer to this question is *no*. The criteria to determine appropriate credentials and licensure for *individual* EA practitioners are largely about a) *knowledge*, b) *conformance with any applicable regulations* and c) *risk reduction/risk management.* Exploring each of these three in turn:

- ***Knowledge*** of the principles and provision of EA policies, procedures, best practices, direct services, ethics, etc., to gain entry to and remain credibly cognizant of the current CEAP© credentialling and maintenance process. An aspiring CEAP© first learns how to function as an EA professional, demonstrates competence by admissions testing, then maintains that knowledge and updates it with new or evolving information. As summarized by the EACC "The CEAP© is the only credential that demonstrates knowledge, experience, and expertise across the entire EAP body of knowledge."
- ***Conformance with any applicable regulations*** This is perhaps where most of the confusion about individual EAPs needing a license comes in. Unlike the other licensed health professions, the CEAP© in good standing is not licensed at any state or other jurisdictional level. There is no requirement (and no prohibition) for EAPs that wish to practice under their CEAP© engaged in clearly defined EAP functions (sometimes referred to as a core technology EAP). Likewise, this would be true for some of the functions EAPs offer, like responding to workplace critical incidents, but not others, such as US DOT's Substance Abuse Professional functions, which have a national qualification requirement. Another source of confusion lies with the multi-state managed behavioral healthcare organizations (MCHOs) that provide both behavioral health and EAP services. MCHOs employ a wide variety of disciplines in their networks – LCSWs, LPCs, licensed psychologists, etc., and may fall under states' insurance regulations that require organizational or insurance licenses. Thus, for any internal EAP operating in one or multiple states, within the strict function of EAP services (i.e., non-clinical counseling), no clinical license would be required for the individual practitioners. If said EA practitioners remain within their non-clinical CEAP operating functions, this would be true across state lines.
- ***Risk Reduction/Risk Management*** If an EAP provides clinically defined behavioral health services (acting much like an insurance company), they might be liable if their staff members were not licensed as per their

Can CEAPs provide teletherapy across state lines?

Generally, yes, if that professional subscribes to the established functions and standards of a certified Employee Assistance practitioner (CEAP©). If individuals practice outside this role, for example, as a licensed professional counselor, social worker, or psychologist, they become subject to all applicable provisions of that established, regulated mental health profession, which vary by state and profession. Since, historically individual mental health provider licenses were issued at the state level, the practice of mental health services was typically not permitted across jurisdictions - this was the "rule of the day". However, with the onset of the recent pandemic, a rationale for the cross-jurisdictional delivery of telepsychology became obvious, fueling initiatives for certain licensed mental health professions to formulate and implement a mechanism to begin to allow telehealth across state lines. This is permitted if their state participates in a reciprocal licensure compact between provider and client, and the telehealth provider has performed the steps necessary to be licensed in the client's state.

particular discipline – social work, psychologists, etc. This is precisely why large integrated (MBHO+EAP) companies require network affiliates to maintain a state-specific license, as most of these individuals serve a mix of clinical behavioral health and EAP clients, so it makes sense to have a criterion of state license as a floor credential. This is purely a risk management mechanism for others, such as external EAPs operating within the CEAP scope of practice. Some strictly internal EAPs have adopted a state license criteria, however, if that organization's EAP staff members only act within the CEAP scope of practice, then this licensing requirement is unnecessary in a legal sense. It is recommended that you consult with your professional liability company about risk management guidance.

Note: The information contained in this document is to be considered educational in nature and is not intended as legal advice. Always consult with legal counsel on specific legal matters.

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