



## **Supporting the Safe and Ethical Use of AI in Mental Health Counseling**

The role of state licensing boards in mental health counseling is to safeguard the public by ensuring that licensed professionals meet the minimum qualifications necessary for safe and ethical practice. As technological advancements, particularly in artificial intelligence (AI), continue to integrate into clinical practice, licensing boards ensure that new technologies enhance the quality of care without compromising client safety, privacy, or the therapeutic relationship.

The purpose of this document is to support state licensing boards in upholding their duty to protect the public from harm as licensees use AI tools in clinical practice. This document has three sections. The first section includes information for board members. It offers information on how to think about and evaluate a board's role in protecting the public from harm within their scope of responsibility. The second section offers guidance to boards as they monitor how licensees use AI. The third section contains resources that boards can adapt and send to licensees to help licensees evaluate whether to use artificial intelligence as a tool.

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## AI Education for Boards

Technology and AI can be found in all aspects of mental health care delivery.

- a. Clinical Tools
  - i. Therapeutic Techniques
  - ii. Books and Educational Resources
  - iii. Assessment Tools
  - iv. Treatment Planning Tools
- b. Practice Management and Administrative Tools
  - i. Electronic Health Record
  - ii. Scheduling Software
  - iii. Billing and Insurance Management
  - iv. Telehealth Platforms
  - v. Licensing and Credentialing Platforms
- c. Communication and Collaboration Tools
  - i. Client Portal
  - ii. Secure Messaging to Clients or Other Providers
- d. Client Engagement Tools
  - i. Educational or Training Content
  - ii. Digital Interventions, such as mood logs

Licensed Counselors remain responsible for the care they provide, regardless of the tools they use.



Some of the concerns about AI in mental health care include privacy, efficacy, and bias. Licensed Counselors are responsible for their ability to understand and explain how AI is used in care, the potential benefits and risks to their clients, and allow clients to opt out of AI being used in their care, even if that results in some clients seeking care elsewhere. While bias has been found in some AI tools and programs, it has also been demonstrated to be reduced or eliminated in other tools and programs. The Licensed Counselor remains accountable for making the best clinical judgment for the diagnosis and care of their clients.

To stay abreast of technology and AI advancements board members and licensees should learn from reputable and knowledgeable people in the field. Learning opportunities come in the forms of workshops, presentations, conferences, articles, and publications, and talking to experts in both building and using technology in mental health care.

## Guidance For Boards as They Navigate Licensees Use of AI in Clinical Practice

Boards should respond to errors, adverse outcomes, and complaints related to the use of AI the same way they would respond to any complaint. Here are a few topics that specifically relate to using AI in clinical practice:

- Licensees are accountable for the care they deliver, regardless of the tools they use to assist or augment their clinical practice. Having used any tools in practice, AI or analog, does not alter the licensee's responsibility for their professional judgment in the care delivered.
- Licensees are expected to evaluate tools before selecting them for use, looking for ethical and responsible development that actively works to reduce bias and improve the standard of care for all.
- Informed Consent forms should include the following information:
  - a. All third-party information sharing, including technology and AI tools
  - b. Potential risks and benefits to the client because of using those tools
  - c. Any outsourced services that use their AI tools or technology (answering service, billing service, on-call service, etc.)
  - d. Clients should have the opportunity to opt out of those tools being used in their care, even if that results in their seeking care elsewhere
- Licensees are expected to improve the tools by giving feedback to the developers if clients or counselors have any unexpected experiences. Topics for feedback may include:
  - a. Clinical relevance
  - b. Cultural relevance
  - c. Technical / User experience
- Licensees may not use tools that deliver services outside the licensee's scope of practice.
- Licensees should consider what non-practice-related technologies are present in counseling sessions and take steps to secure clients' privacy and confidentiality. For example, smart speakers and smartphones that are always listening should be turned off and secured when the licensee is in session.
- Tools used in practice should enhance care and should not interfere with human relationships. Decades of research consistently find the basis of effective care is the relationship between humans:
  - Therapeutic alliance (counselor and client for care to work)
  - Natural support system (family, friends, co-workers for outcomes to sustain)
- Licensees are held accountable to the following training standards and qualifications for practice when using AI and emerging technologies:
  - a. Federal Laws & Regulations
    - a. Health Insurance Portability and Accountability Act (HIPAA)
    - b. Family Educational Rights and Privacy Act (FERPA)

- c. 42 CFR Part 2 (Confidentiality of Substance Use Disorder Patient Records)
- b. State Laws & Regulations (Tennessee for Example)
  - a. Tennessee Code Annotated (TCA) Title 63, Chapter 22 (Professional Counselors, Marital and Family Therapists, Clinical Pastoral Therapists)
  - b. Tennessee Department of Health Rules and Regulations for Licensed Professional Counselors
- c. Professional Association Guidelines & Codes of Ethics
  - a. ACA [2014 Code of Ethics](#)
  - b. ACA [Recommendations for Practicing Counselors and Their Use of AI](#)
  - c. NBCC [Ethical Principles for Artificial Intelligence in Counseling](#)

## **Resources For Boards to Distribute to Licensees to Support the Ethical Use of AI in Clinical Practice**

Existing Rules & Regulations licensees are held accountable to:

- a. Federal Laws & Regulations
  - i. Health Insurance Portability and Accountability Act (HIPAA)
  - ii. Family Educational Rights and Privacy Act (FERPA)
  - iii. 42 CFR Part 2 (Confidentiality of Substance Use Disorder Patient Records)
- b. State Laws & Regulations (Tennessee, for Example)
  - i. Tennessee Code Annotated (TCA) Title 63, Chapter 22 (Professional Counselors, Marital and Family Therapists, Clinical Pastoral Therapists)
  - ii. Tennessee Department of Health Rules and Regulations for Licensed Professional Counselors
- c. Professional Association Guidelines & Codes of Ethics
  - i. ACA [2014 Code of Ethics](#)
  - ii. ACA [Recommendations for Practicing Counselors and Their Use of AI](#)
  - iii. NBCC [Ethical Principles for Artificial Intelligence in Counseling](#)

*Recommended Informed Consent Clauses to add – see Appendix A*

**Licensees should use great caution when considering using AI tools in crisis management care.** When in doubt, licensees should handle all crisis situations with a human response. AI holds great promise in supporting crisis care, however many crisis innovations are in development or are only available within large organizations. Licensees must consider the limitations of the tools they have access to before engaging any tools in crisis management. For example, chatbots that have no escalation protocols may not be safe or effective.

To stay abreast of technology and AI advancements licensees should learn from reputable and knowledgeable people in the field. Learning opportunities come in the form of workshops, presentations, conferences, articles, and publications, and talking to experts in both building and using technology in mental health care.

## **Appendix A**

### **Informed Consent for Mental Health Counseling with AI Support**

Welcome! We're excited to work with you on your journey to better mental health. Our goal is to provide you with the best care possible, and that includes using advanced tools like Artificial Intelligence (AI) to support your treatment. This document will explain how AI is used, the potential benefits and risks, and your rights regarding its use. Please read this carefully and ask any questions you might have.

#### **1. What is AI and How is it Used in Your Care?**

Artificial Intelligence (AI) is a technology that helps us analyze information and provide personalized support. In our mental health counseling services, AI might be used to:

- **Analyze Your Progress:** AI tools can help track your mood, identify patterns, and offer insights to your therapist.
- **Provide Resources:** AI may recommend helpful articles, activities, or exercises based on your needs.
- **Enhance Communication:** AI tools can assist in scheduling appointments and reminding you of important tasks.
- **Provide Administrative Support:** AI may be used to complete the required documentation that your provider/counselor/therapist reviews and approves before being entered into your record.

#### **2. Benefits of Using AI in Your Care**

- **Personalized Support:** AI helps tailor recommendations and resources specifically to your needs.
- **Timely Insights:** By analyzing your data, AI can provide quick feedback and suggest adjustments to your treatment plan.
- **Convenience:** AI tools can make scheduling and communication more efficient, helping you stay on track with your care.
- **Attention:** Your provider/counselor/therapist's attention can be on you and your care while AI tools manage documentation or other tasks related to your care.

#### **3. Risks and Considerations**

- **Privacy:** While we take steps to protect your data, no system is completely immune to breaches. We use secure technology to keep your information safe.
  - **How we treat your data:** Your data will be stored within the HIPAA-compliant tools we select, never on an individual's device.
  - **How the tools we select treat your data:** Any tools we select for use will capture data, in some cases including audio or video recordings, with your

consent. The data is securely stored, accessed only by authorized individuals, and disposed of according to strict regulations to protect your privacy. Here is a high-level overview of how our tools treat your data:

- **Data Collection:** The data is collected, translated into text, and then integrated into the electronic health record and/or data set.
- **Secure Storage:** The data is stored on secure servers that are HIPAA compliant to ensure your information is kept confidential and secure.
- **Access Control:** Only authorized personnel can access your data. This might only include your provider/counselor/therapist or could include researchers with proper permissions and your consent.
- **Retention Policies:** We have policies that dictate how long data should be stored that meet our obligations set forth by both laws and codes of ethics that govern our practice.
- **Secure Deletion:** When it is time to dispose of the data – either because it has reached the end of its retention period, or it is no longer needed – the organization uses secure methods to permanently erase the data from servers so that it cannot be recovered.
- **Audit Trails:** Our AI tools maintain records of when data was accessed and deleted to ensure accountability and compliance with regulations.
- **Accuracy:** AI is a tool to assist in care but is not perfect. Human oversight is always involved to ensure the quality of your treatment.
- **Dependence:** Overreliance on AI tools might sometimes affect personal interaction with your therapist. We strive to balance technology with human connection.

#### 4. Your Rights and Choices

- **Opting Out:** You have the right to decline the use of AI tools in your care. If you choose to opt-out, it may mean seeking care through other providers or methods. We are here to support you in finding the best path for your needs.
- **Questions and Concerns:** If you have any questions or concerns about the use of AI in your counseling, please let us know. We're happy to discuss your options and provide more information.

#### 5. Your Consent

By signing below, you acknowledge that you have read and understood the information provided, including the use of AI in your mental health counseling. You consent to the use of AI tools as described and understand your right to opt-out at any time.

If you have any questions or need further clarification, please don't hesitate to ask. We're here to support you every step of the way!

Signature: \_\_\_\_\_ Date: \_\_\_\_\_