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PRIVILEGED AND CONFIDENTIAL **ATTORNEY-CLIENT COMMUNICATION**

VIA ELECTRONIC MAIL

Janet P. Orwig, MBA, CAE
Executive Director
Psychology Interjurisdictional Compact Commission
210 Market Road, Suite D
Tyrone, GA 30290

Re: **Home State and Authority to Practice Interjurisdictional Telepsychology**

Dear Janet:

On behalf of the Psychology Interjurisdictional Compact Commission (the "Commission"), you have requested a legal opinion regarding the definition of Home State and its impact on the Authority to Practice Interjurisdictional Telepsychology (APIT). More specifically, you have asked us whether a psychologist practicing under an APIT must be physically located in a Home State to provide telepsychology services under an APIT.

Short Answer

Yes. A psychologist providing telepsychology under an APIT issued by the PSYPACT Commission must be physically present in the Home State designated by the psychologist for the practice of telepsychology into a Receiving State. A psychologist furnishing telepsychology under an APIT may not provide telepsychology into a Receiving State while physically located in any other Compact State, including any other

state in which the psychologist happens to be licensed, unless the psychologist changes the Home State designation.

Discussion

The Psychology Interjurisdictional Compact (“PSYPACT”) was created by a series of state legislative enactments of a model compact statute (the “Model Compact”). Under the Model Compact, a “Home State” is defined in Article II, Section N, as follows:

“Home State” means: a Compact State where a psychologist is licensed to practice psychology. *If the psychologist is licensed in more than one Compact State and is practicing under the Authorization to Practice Interjurisdictional Telepsychology, the Home State is the Compact State where the psychologist is physically present when the telepsychological services are delivered.* If the psychologist is licensed in more than one Compact State and is practicing under the Temporary Authorization to Practice, the Home State is any Compact State where the psychologist is licensed.

(Emphasis added.) This language appears to impose a “choice of Home State” requirement in the event disciplinary action against a licensed psychologist is necessary based on the psychologist’s conduct in the provision of interjurisdictional telepsychology under an APIT, and where the psychologist is licensed in more than one state. We draw this conclusion because Article III, Section B expressly provides that “a psychologist may hold one or more Compact State licenses at a time” and Article IV, Section C, states that:

The Home State maintains authority over the license of any psychologist practicing into a Receiving State under the Authority to Practice Interjurisdictional Telepsychology.

(Emphasis added.) Similarly, Article IV, Section D, provides that if a Receiving State takes disciplinary action against a psychologist practicing under an APIT, “the state shall promptly notify **the** Home State and the Commission.” (Emphasis added.)

It is somewhat anomalous that the Model Compact clearly permits a psychologist to hold multiple state licenses, and the definition of Home State encompasses all states in which the psychologist holds a license. However, nowhere does the Model Compact require a psychologist to designate a specific Home State for purposes of practicing under an APIT. Commission Rules, however, address this in Section 4.4, which states:

A psychologist must identify the Home State which has been designated as such by the psychologist for purposes of practicing interjurisdictional

telepsychology and participation in the Compact at the point of initial application and provide an update regarding any Home State changes.

Also, Article VI of the Model Compact establishes “Conditions of Telepsychology Practice in a Receiving State.” (A receiving state is defined by Article II, Section V, as “a Compact State where the client/patient is physically located when the telepsychological services are delivered.”) Subsection (A)(1) of Article VI expressly states that “a psychologist may practice in a Receiving State” under an APIT under circumstances which include:

The psychologist *initiates a client/patient contact in a Home State* via telecommunications technologies with a client/patient in a Receiving State.

(Emphasis added.) This provision clearly establishes a substantive requirement that a psychologist be physically present in a Home State to initiate telepsychology patient contact. Similarly, Commission Rule 6.2 states that “a psychologist must initiate a client/patient contact in a psychologist’s Home State via telecommunications technologies when treating a client/patient in a Receiving State.”¹

Therefore, we believe that the Commission has exercised its regulatory prerogative to impose a requirement that psychologists practicing under an APIT must designate a single, specific Home State for the purpose of providing telepsychology. When Rule 4.4. is coupled with the above provisions of the Model Compact, not only must a psychologist practicing under an APIT be physically present in a Home State to initiate telepsychology, but also the psychologist may only practice telepsychology when physically present in the specific Home State he or she has designated with the Commission for the provision of telepsychology. Rule 4.4 would also require the psychologist to change the Home State designation to be permitted to initiate or practice telepsychology under an APIT when physically located in any other Home State.

¹ Interestingly, these provisions specify only that the psychologist be physically present in a Home State to *initiate* the telepsychology services. There is no mention in these sections of what happens if the psychologist initiates the interaction in a Home State but then leaves that Home State during the interaction. However, we believe that in Rule 4.4, the Commission clarified that the psychologist must be in the designated Home State “for purposes of *practicing* interjurisdictional telepsychology,” which goes beyond “initiation” of a telepsychology interaction and encompasses the entirety of the telepsychology interaction between the psychologist and the patient/client. Incidentally, we believe that if Rule 4.4 (A) was repealed, or so modified, that a psychologist could under the language of the Model Compact initiate and practice telepsychology from *any* Home State, whether “designated” or not. As it currently exists though, we interpret Rule 4.4 to require a psychologist to designate one specific Home State from which to practice telepsychology under an APIT.

Another anomaly in the Home State issue is found with regard to the Temporary Authorization to Practice (TAP) in-person psychology in a Distant State (as defined in Article II, Section K, as “the Compact State where a psychologist is physically present (not through the use of telecommunications technologies), to provide temporary in-person, face-to-face psychological services”).

The Home State definition from Article II, Section N, states, “[i]f the psychologist is licensed in more than one Compact State and is practicing under the Temporary Authorization to Practice, the Home State is any Compact State where the psychologist is licensed.” Nevertheless, Article V, Section D, states that with regard to the Temporary Authorization to Practice, “[i]f a Distant State takes action, the state shall promptly notify the Home State and the Commission.” It is particularly curious that the Model Compact uses the word “the” when the Home State definition expressly defines the Home State for practice under a TAP as any Compact State in which the psychologist is licensed.

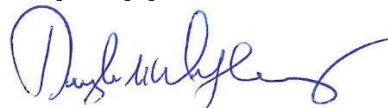
However, similar to Commission Rule 4.4, Commission Rule 5.4(A) specifies that “[a] psychologist must identify the Home State which has been designated as such by the psychologist for purposes of the Temporary Authorization to Practice and participation in the Compact.” Although the psychologist is, by definition, physically present in the Distant State when furnishing temporary, in-person psychological services, the psychologist must nevertheless designate a single Home State for purposes of practicing under a TAP.

Although it is not expressly stated in the Model Compact or Commission Rules, we presume that the basis of the Home State designation requirements for practicing under an APIT and a TAP is to clearly establish enforcement authority and to ensure personal jurisdiction over a psychologist practicing under a PSYPACT privilege.

Finally, we note that the provision of telepsychology under conditions not covered by PSYPACT, i.e., in accordance with a license issued by a state licensing board (for instance, telepsychology provided in a state by a licensee of that state), would not be subject to the provisions of PSYPACT discussed above.

We hope this is helpful. Please contact us if you require any additional information.

Very truly yours,



Douglas M. Wolfberg

DMW: