

ETHICAL AND LEGAL CONSIDERATIONS FOR TELEHEALTH IN OHIO

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OBJECTIVES

- Explore ethical and legal guidelines related to the provision of telehealth services in Ohio, in the context of the ACAs *Code of Ethics* and Ohio law.
- Learn about an ethical decision-making model endorsed by the ACA and practice applying learned material through case examples.
- Learn of additional available resources that may help facilitate continued development as ethical practitioners.

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WHAT IS TELETHERAPY (TELEHEALTH)

"Counseling, social work or marriage and family therapy in any form offered, rendered, or supported by electronic or digitally-assisted approaches, to include when the counselor, social worker or marriage and family therapist and the client are not located in the same place during delivery of services or when electronic systems or digitally-assisted systems are used to support in-person face to face therapy."

The following are the services that may be provided via telehealth:

- Individual counseling
- Group counseling (1:12 ratio)
- Community Psychiatric Supportive Treatment (CPST) services
- Therapeutic behavioral services and psychosocial rehabilitation services
- Peer recovery services
- SUD case management service
- Crisis intervention services
- Assertive community treatment service
- Intensive home-based treatment service

<https://codes.ohio.gov/ohio-administrative-code/rule-4757-3-01>; <https://codes.ohio.gov/ohio-administrative-code/rule-5122-29-31>

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OHIO TELETHERAPY: BEFORE YOU GET STARTED

- Client must be within Ohio's borders at the time of service. Counselors can be located anywhere!
- Counselors licensed in Ohio cannot provide teletherapy to clients outside Ohio's borders without permission from the respective location's licensing board. This may change with the new Counseling Compact!
- Counselors must screen potential clients for appropriateness to receive teletherapy services. These considerations should be documented!
 - Consider current mental and emotional status
 - Screen client's technological capabilities
 - Acknowledge power dynamics when working with a family or group with differing levels of technological competence
 - Per Ohio Law, "licensees shall be aware of cultural differences and how they can affect non-verbal cues. Teletherapy methods should be appropriate to the client's cultural experiences and environment, and shall also be sensitive to audio/visual impairment and cognitive impairment."

<https://codes.ohio.gov/ohio-administrative-code/rule-4757-5-13>

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2014 ACA CODE OF ETHICS SECTION H (DISTANCE COUNSELING, TECHNOLOGY, AND SOCIAL MEDIA)

H.1. KNOWLEDGE AND LEGAL CONSIDERATIONS

- *Develop knowledge and skills regarding related technical, ethical, and legal considerations (e.g., special certifications, additional course work).*
 - In Ohio, counselors must consider their education, training, and experience before providing teletherapy services and provide only services for which they are competent.
- *Counselors understand that they may be subject to laws and regulations of both the counselor's practicing location and the client's place of residence. Counselors ensure that their clients are aware of pertinent legal rights and limitations governing the practice of counseling across state lines or international boundaries.*

<https://www.counseling.org/resources/aca-code-of-ethics.pdf>

<https://codes.ohio.gov/ohio-administrative-code/rule-4757-5-13>

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2014 ACA CODE OF ETHICS SECTION H (DISTANCE COUNSELING, TECHNOLOGY, AND SOCIAL MEDIA)

H.2.a. INFORMED CONSENT & DISCLOSURE

- *Distance counseling credentials*
 - In Ohio, counselors must consider their education, training, and experience before providing teletherapy services and provide only services for which they are competent.
- *Physical location of practice and contact information*
- *Time zone, cultural, and language differences*
- *Risks and benefits of engaging in the use of distance counseling/technology*
 - In Ohio, counselors must address confidentiality and security risks including the risk of using public computer, shared networks, and auto-fill log-in, and consideration for employer policies related to the use of a work computer for personal communication.
- *Possibility of technology failure and alternate methods of service delivery*
 - In Ohio, "providers shall have a contingency plan for providing services to clients when technical problems occur during a telehealth session."

<https://www.counseling.org/resources/aca-code-of-ethics.pdf>

<https://codes.ohio.gov/ohio-administrative-code/rule-4757-5-13>

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2014 ACA CODE OF ETHICS SECTION H (DISTANCE COUNSELING, TECHNOLOGY, AND SOCIAL MEDIA)

H.2.a. INFORMED CONSENT & DISCLOSURE

- *Anticipated response time to electronic communication*
- *Emergency procedures to follow when counselor is not available.*
 - In Ohio, counselors “shall identify an appropriately trained professional who can provide local assistance, including crisis intervention, if needed.”
 - In Ohio, counselors “shall provide teletherapy clients the local crisis hotline telephone number and the local emergency mental health telephone number.”
- *Possible denial of insurance benefits*
- *Social Media Policy*

<https://www.counseling.org/resources/aca-code-of-ethics.pdf>

<https://codes.ohio.gov/ohio-administrative-code/rule-4757-5-13>

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2014 ACA CODE OF ETHICS SECTION H (DISTANCE COUNSELING, TECHNOLOGY, AND SOCIAL MEDIA)

H.2.b., c., & d. CONFIDENTIALITY/SECURITY

- *Acknowledge the limitations of maintaining the confidentiality of electronic records and transmissions.*
- *Use current encryption standards within websites and/or technology-based communications that meet applicable legal requirements.*
 - In Ohio, counselors “shall use encryption methods that are Health Insurance Portability and Accountability Act of 1996 compliant for teletherapy, except for treatment reminders, scheduling contacts or other information provided outside of a therapeutic context.”
 - Clients may waive encryption via informed consent.

<https://www.counseling.org/resources/aca-code-of-ethics.pdf>

<https://codes.ohio.gov/ohio-administrative-code/rule-4757-5-13>

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HIPAA AND BAAs

A **business associate** is a vendor, partner, or other entity that performs certain functions or activities that involve the use or disclosure of PHI on behalf of, or provides services to, a covered entity (**you, a healthcare provider who conducts electronic healthcare transactions**).

- A platform you use to offer telehealth services (e.g., Zoom, Microsoft Teams, TherapyNotes, SimplePractice, G-Suite, etc.)
 - Claims processing providers
 - An attorney whose legal services to you involve access to PHI
 - A consultant that performs reviews of your practice and has access to PHI
 - An transcription service provider
- The HIPAA Privacy Rule requires that **you** obtain **satisfactory assurances** from a **business associate** that they will appropriately safeguard the PHI it receives or creates.
 - These **satisfactory assurances** must be contracted in writing, usually in the form of **Business Associate Agreement (BAA)**. There are several components a BAA must have beyond our scope today, but the important part is to know you need one!
 - You can view a sample BAA here: <https://www.hhs.gov/hipaa/for-professionals/covered-entities/sample-business-associate-agreement-provisions/index.html>
 - Any BAA you have should be shared with clients during informed consent.

<https://www.hhs.gov/hipaa/for-professionals/privacy/guidance/business-associates/index.html>

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2014 ACA CODE OF ETHICS SECTION H (DISTANCE COUNSELING, TECHNOLOGY, AND SOCIAL MEDIA)

H.3. CLIENT VERIFICATION

- *Take steps to verify the client's identity at the beginning and throughout the therapeutic process. Verification can include, but is not limited to, using code words, numbers, graphics, or other nondescript identifiers.*
 - In Ohio:
 - An initial face-to-face meeting, which may be via video/audio electronically, is required to verify the identity of the teletherapy client.
 - At the initial meeting, steps should be taken to address impostor concerns (i.e., password/phrase to use in future).

<https://www.counseling.org/resources/aca-code-of-ethics.pdf>

<https://codes.ohio.gov/ohio-administrative-code/rule-4757-5-13>

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2014 ACA CODE OF ETHICS SECTION H (DISTANCE COUNSELING, TECHNOLOGY, AND SOCIAL MEDIA)

H.4 DISTANCE COUNSELING AND THE RELATIONSHIP

- *Verify clients understand the purpose and operation of technology applications and follow up with clients to correct possible misconceptions, discover appropriate use, and assess subsequent steps.*
- *Establish professional boundaries regarding appropriate use of technology and limitations of its use within the counseling relationship (e.g., times when not appropriate to use).*
- *When distance counseling services are deemed ineffective by the counselor or client, counselors consider delivering services face-to-face.*
 - *In Ohio, counselors, "shall regularly review whether teletherapy is meeting the goals of therapy."*
- *If not effective and the counselor is not able to provide face-to-face services (e.g., lives in another state), the counselor assists the client in identifying appropriate services.*

<https://www.counseling.org/resources/aca-code-of-ethics.pdf>

<https://codes.ohio.gov/ohio-administrative-code/rule-4757-5-13>

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2014 ACA CODE OF ETHICS SECTION H (DISTANCE COUNSELING, TECHNOLOGY, AND SOCIAL MEDIA)

H.5. RECORDS & WEB MAINTENANCE

- *Inform clients on how records are maintained electronically (type of encryption/security and if/for how long stored).*
- **Provide electronic links** (regularly kept up-to-date) to relevant licensure and professional certification boards.
 - *In Ohio, counselors must provide links to websites for their certification bodies and licensure boards to facilitate consumer protection and provide a link to the board online license verification site on their web page.*
 - *Ohio's eLicense lookup: https://elicense.ohio.gov/OH_HomePage*
- *Counselors who maintain websites provide accessibility to persons with disabilities. They provide translation capabilities for clients who have a different primary language, when feasible. Counselors acknowledge the imperfect nature of such translations and accessibilities.*

<https://www.counseling.org/resources/aca-code-of-ethics.pdf>

<https://codes.ohio.gov/ohio-administrative-code/rule-4757-5-13>

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OTHER OHIO DOCUMENTATION CONSIDERATIONS

- Document screening of clients for appropriateness for teletherapy.
- Document informed consent, including review of risks/benefits of telehealth.
- Progress notes must indicate that service were provided by telehealth.
- Retain copies of all written therapeutically relevant communication with clients (**including emails, texts, instant messages, and chat history**) for a minimum of **seven years**.

<https://codes.ohio.gov/ohio-administrative-code/rule-4757-5-13>

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2014 ACA CODE OF ETHICS SECTION H (DISTANCE COUNSELING, TECHNOLOGY, AND SOCIAL MEDIA)

H.6. SOCIAL MEDIA

- *Separate professional and personal web pages and profiles are created to clearly distinguish between the two kinds of virtual presence.*
- *Take precautions to avoid disclosing confidential information through public social media*
- *Counselors respect the privacy of their clients' presence on social media unless given consent to view such information.*
 - In Ohio, counselors "shall obtain client consent when using electronic search engines to gather information about the client, except in circumstances when such searches may provide information to help protect the client or other parties who may be at risk."

<https://www.counseling.org/resources/aca-code-of-ethics.pdf>

<https://codes.ohio.gov/ohio-administrative-code/rule-4757-5-13>

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BEST PRACTICE STRATEGIES FOR MANAGING CLIENT RISK VIA TELEHEALTH

- Maintain the following local (where the client resides) resource information in the client's file in an easily accessible location.
 - The local suicide prevention hotline if available, or national suicide prevention hotline.
 - OHIO Cares: <https://ohiocares.ohio.gov/ResourceMap>
 - Contact information for the local police and fire departments.
 - OHIO Law Enforcement Directory: <https://www.ohioattorneygeneral.gov/Law-Enforcement/Law-Enforcement-Directory>
 - An emergency contact person (name and contact information) (not required, but recommended)
- **It is recommended you also have a plan for accessing this information each session in the event of a technology failure during a crisis***
- Provide the client information on how to access assistance in a crisis.
 - Identify an appropriately trained professional who can provide local assistance, including crisis intervention, if needed.
 - Provide the local crisis hotline telephone number and the local emergency mental health telephone number.

<https://codes.ohio.gov/ohio-administrative-code/rule-4757-5-13>

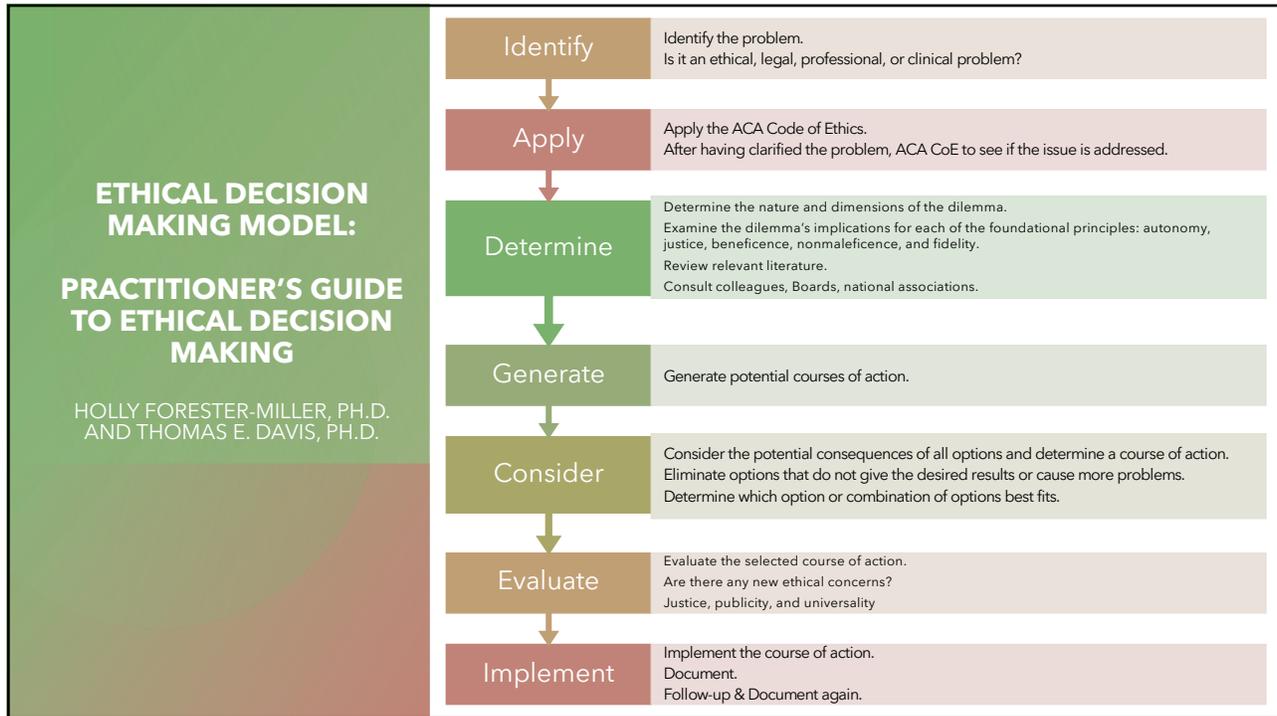
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UPDATE DOCUMENTS, POLICIES, PROCEDURES, & PROFESSIONAL LIABILITY INSURANCE

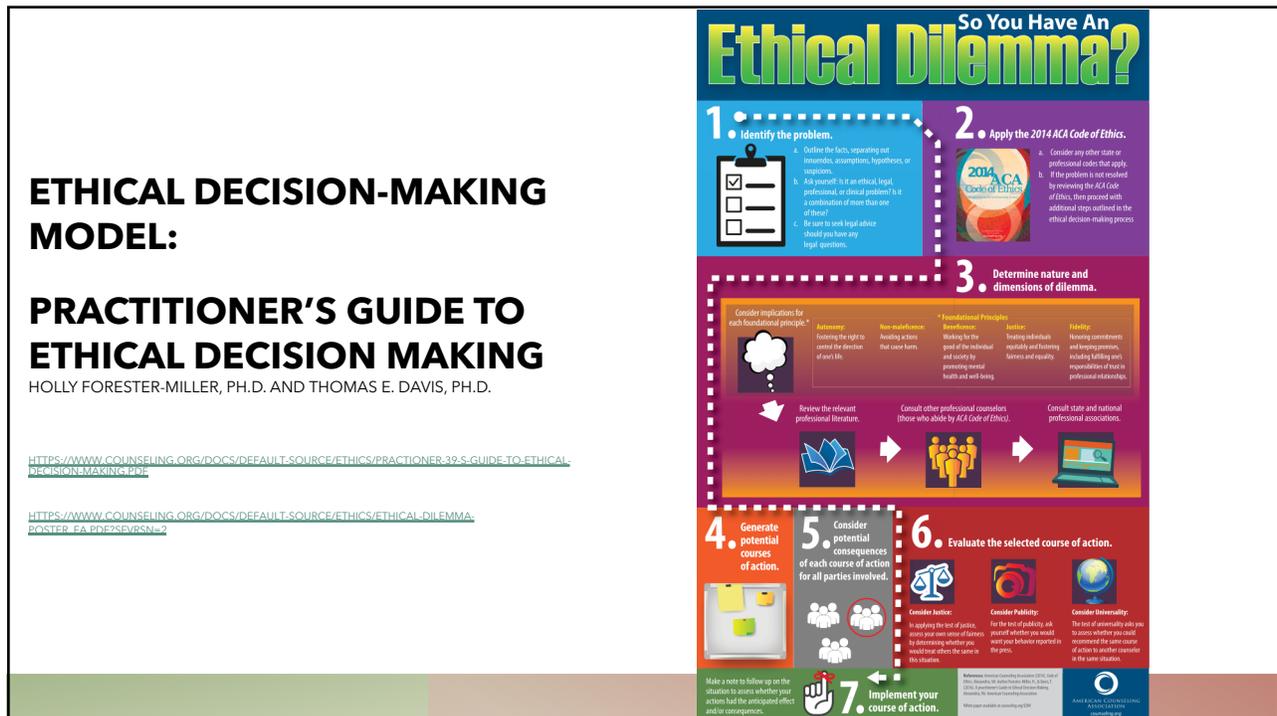
- Update brochures, websites, etc.
- Update informed consent and privacy notice documents.
- Have a policy for the secure storage, recovery, and destruction of data, as well as the technologies used to store, maintain, and transmit data.
- Have a policy and procedure describing how you ensure that staff assisting clients with telehealth services or providing telehealth services are adequately trained in equipment usage.
- Have a policy for notifying clients as soon as possible of any breach of confidential information.
- **AND** ensure your professional liability insurance covers telehealth services!
 - American Counseling Association partners with Healthcare Providers Service Organization (HPSO): <https://www.hpso.com>
 - Ohio Counseling Association partners with CPH & Associates: <https://www.ohiocounseling.org/professional-liability-insurance>

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CASE - SET UP

You have just opened a private practice and are considering offering telehealth services. Before you even think of seeing a client via telehealth, what are some critical steps you should take?

- Receive training in offering this service; ensure competency
- Update your professional liability insurance, website, policies, procedures, and informed consent forms.
- Have BAAs in place for all platforms utilized.

Now that you've updated your professional liability insurance, website, policies, procedures, and informed consent forms, you now start accepting clients. What are some important considerations to make before you initiate teletherapy services?

- Client must be within the state of Ohio.
- Client must be screened for appropriateness of teletherapy services (mental and emotional status, technology available, technology capabilities)
- Consider other key factors such cultural considerations, environmental considerations, ability status considerations, power dynamics)

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CASE - SET UP

You are having your initial face-to-face appointment and are now going through informed consent. Aside from standard point to address, what are some telehealth specific points to include?

- Verify client's identity and take steps to address impostor concerns (i.e., password/phrase to use in future).
- Verify clients understand the purpose and operation of technology applications and follow up with clients to correct possible misconceptions, discover appropriate use, and assess subsequent steps.
- Risks and benefits of engaging in the use of distance counseling/technology (including risks to confidentiality such as risk associated with transmission of electronic records, using public computer, shared networks, and auto-fill log-in, consideration for employer policies related to the use of a work computer for personal communication).
- Contingency plan for when technical problems occur during a telehealth session.
- Anticipated response time to electronic communication
- Emergency procedures to follow when counselor is not available (identified outside professional, provide local crisis line)
- Possible denial of insurance benefits
- Social Media Policy
- Provide links to websites for certification bodies and licensure boards (Ohio's eLicense lookup: https://elicense.ohio.gov/OH_HomePage)

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CASE

You are working for a community mental health agency. You have a productivity requirement of 30 of 40 hours per week and have been falling short lately. Today, you are excited because you have been assigned a new client interested in telehealth. This is great, because your agency offers this service, has all proper BAAs and policies/procedures, and you just updated your professional liability insurance to include provision of telehealth services.

The client states they are not open to in-person/in-office services, and are only interested in telehealth. One reason for this is because they have limited transportation. They specifically chose your agency instead of the agency 5 miles from their home, because your agency advertised telehealth services. Your front desk has already verified that the client's insurance will cover telehealth services, and has obtained emergency contact, local PD, and local crisis information. In your initial meeting during informed consent procedures, you learn that your client has no cell service and "very spotty" internet service at their home, only has a cell phone (no laptop/desktop), and are not familiar with the concept of videoconferencing. The client also stated, "I just want to do this by talking on the phone, better to talk to a person than the voices" (you did not clarify but are aware the client lives alone).

What are your thoughts? How do you proceed?

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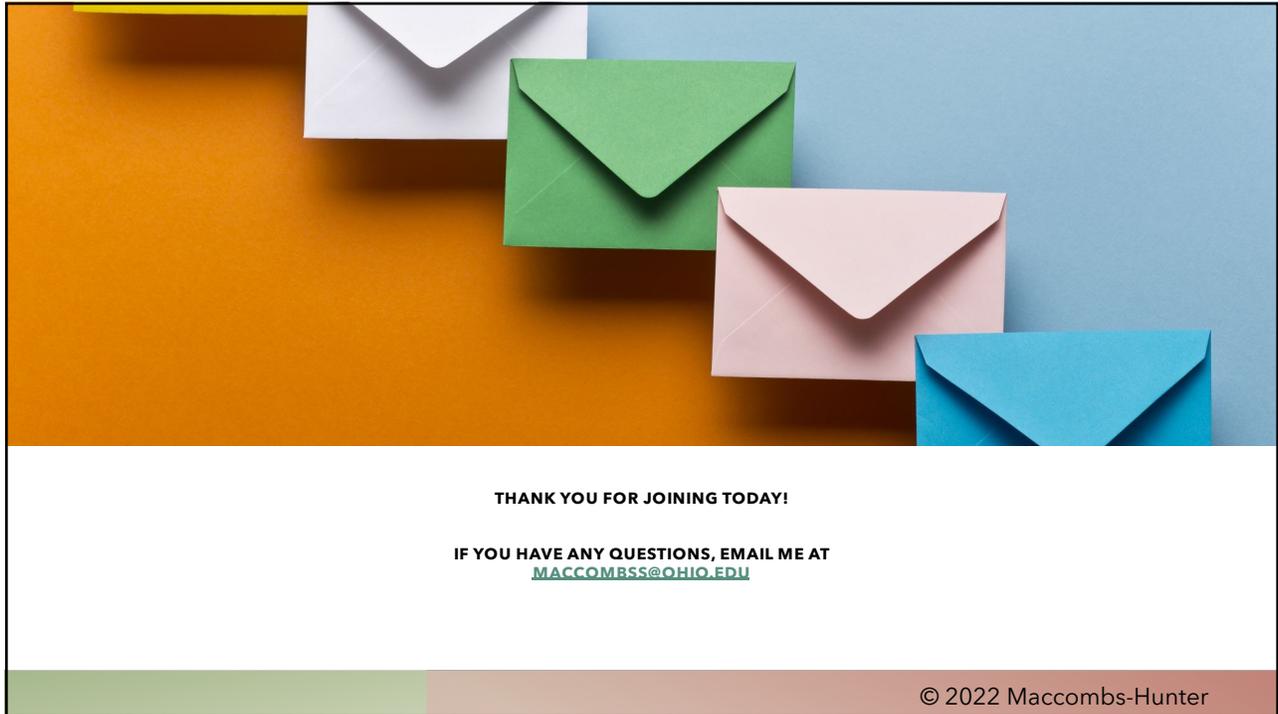
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OTHER HELPFUL RESOURCES

- American Counseling Association Code of Ethics: <https://www.counseling.org/resources/aca-code-of-ethics.pdf>
- Ethical Decision-Making Infographic: https://counseling.education/counseling/intro/ethical_models.html
- OCSWFT Newsletters: <https://cswmft.ohio.gov/wps/portal/gov/cswmft/about-the-board/news-letter>
- Ohio Administrative Code Rule 4757-5-01 | Standards of ethical practice and professional conduct: <https://codes.ohio.gov/ohio-administrative-code/rule-4757-5-01>
- Ohio Administrative Code Rule 4757-5-13 | Standards of practice and professional conduct: electronic service delivery (internet, email, teleconference, etc.): <https://codes.ohio.gov/ohio-administrative-code/rule-4757-5-13>
- Ohio eLicense Lookup: https://elicense.ohio.gov/OH_HomePage
- Ohio Law Enforcement Directory: <https://www.ohioattorneygeneral.gov/Law-Enforcement/Law-Enforcement-Directory>
- OHIO Cares (find local crisis line by county): <https://ohiocares.ohio.gov/ResourceMap>
- Healthcare Providers Service Organization (HPSO): <https://www.hpso.com>
- Helpful video from TherapyNotes about BAAs: <https://blog.therapynotes.com/why-you-need-business-associate-agreements>
- Detailed article about options for HIPAA compliant email: <https://empathysites.com/hipaa-compliant-email-for-therapists-baa-secure-forms/>
- National Board of Certified Counselors Policy Regarding the Provision of Distance Professional Services: <https://www.nbcc.org/Assets/Ethics/NBCCPolicyRegardingPracticeofDistanceCounselingBoard.pdf>

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THANK YOU FOR JOINING TODAY!

IF YOU HAVE ANY QUESTIONS, EMAIL ME AT
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