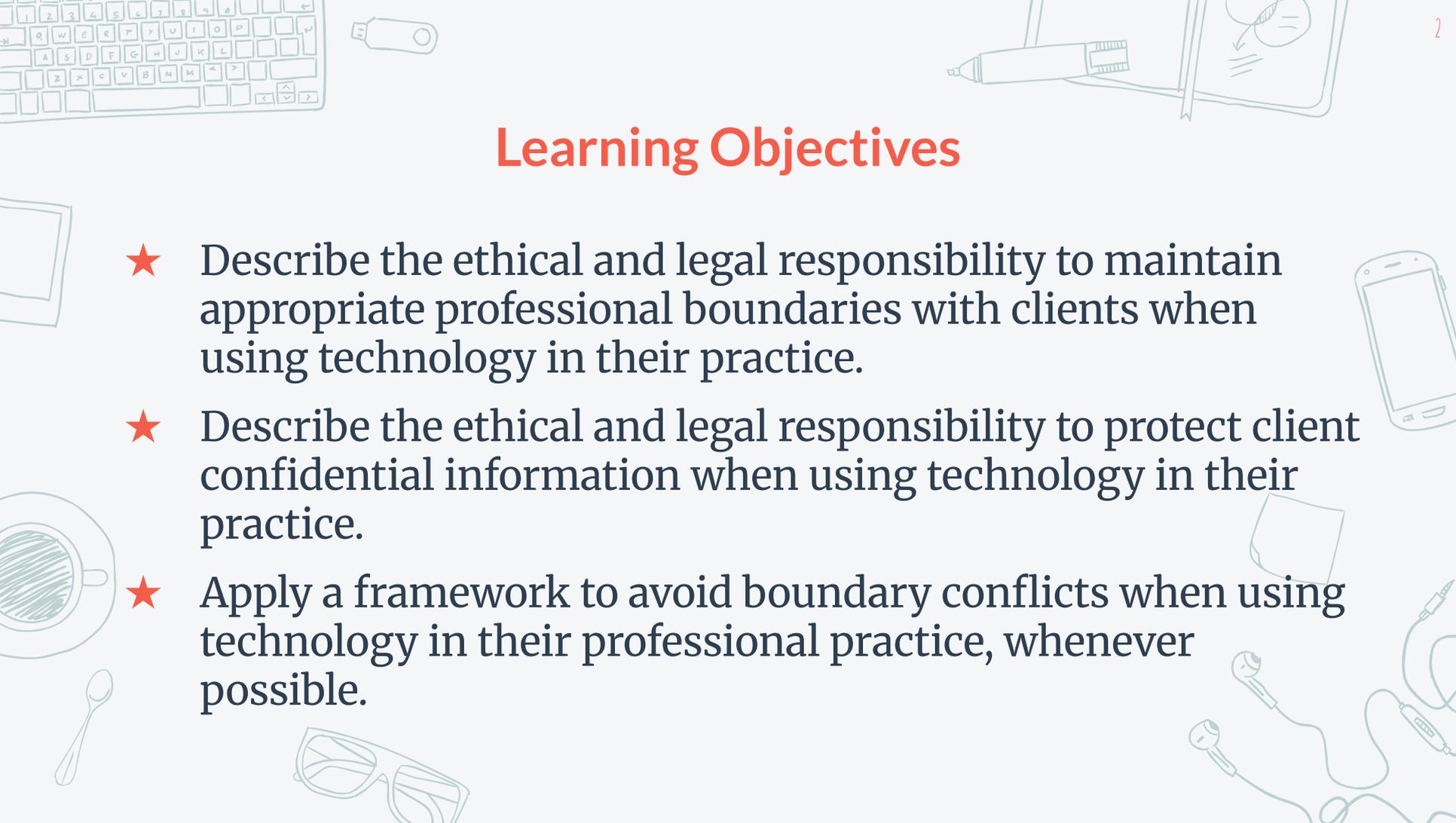


Kathryn S. Krase, PhD, JD, MSW

# Ethical Challenges in Mental Health Practice Presented by the Use of Technology





## Learning Objectives

- ★ Describe the ethical and legal responsibility to maintain appropriate professional boundaries with clients when using technology in their practice.
- ★ Describe the ethical and legal responsibility to protect client confidential information when using technology in their practice.
- ★ Apply a framework to avoid boundary conflicts when using technology in their professional practice, whenever possible.



# Session Outline

- 
- 
- ★ Introductions
  - ★ Revisiting Ethics in Professional Practice
  - ★ Protecting Yourself from Ethical & Legal Liability
  - ★ Ethical Challenges Related to Technology
    - Electronic Record Storage
    - Communications
    - Interactions in Cyberspace
    - Artificial Intelligence
  - ★ Case Examples
  - ★ Conclusions
- 
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# Introductions:

## Who We Are & Why We're Here

### Who Am I?

- Lawyer, Social Worker
- [www.kraseconsulting.com](http://www.kraseconsulting.com)
- Disclaimer

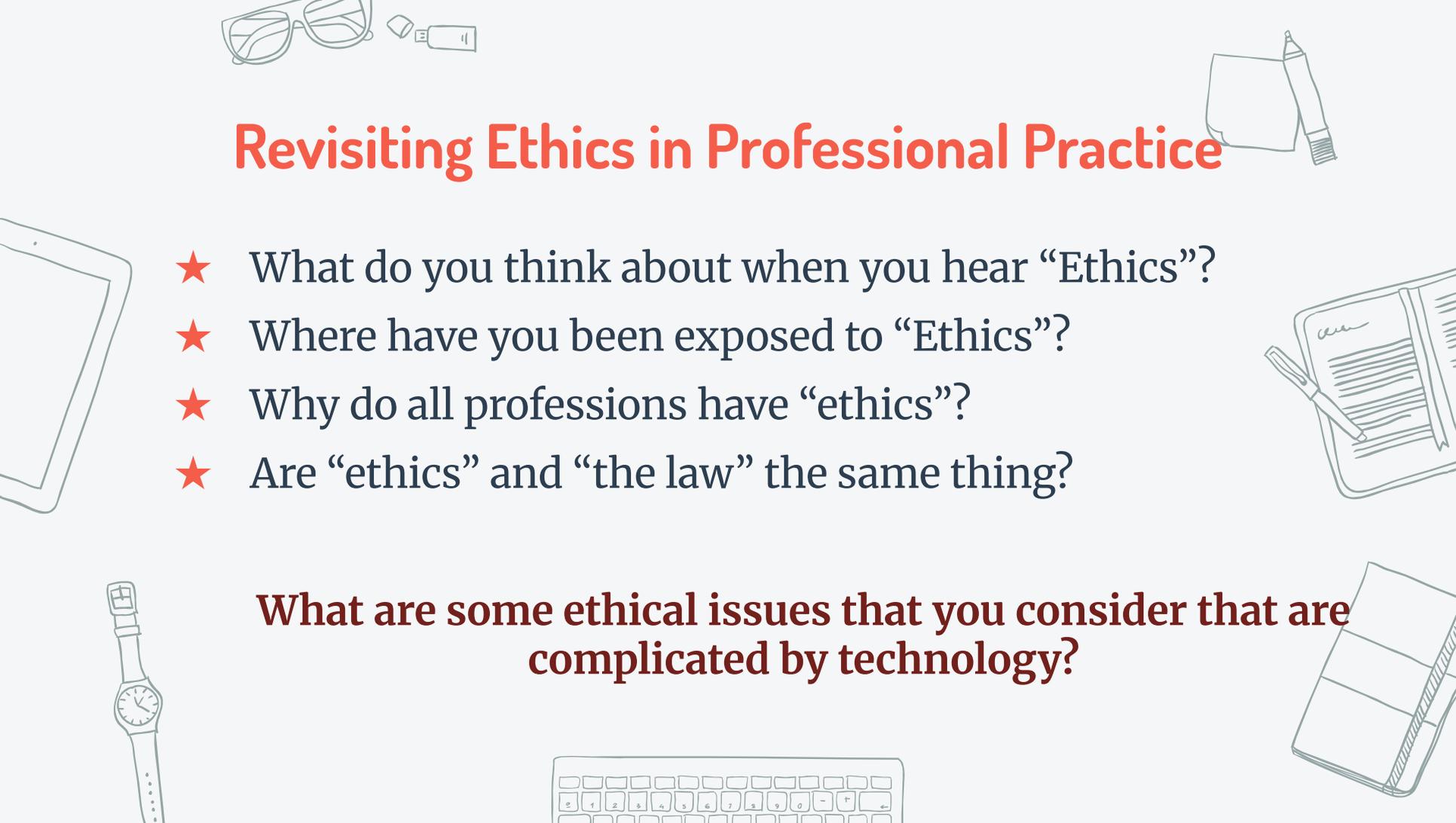
### Who Are You?

- Where are you located?
- What kind of professional are you?
- What kind of work do you do?

### Why Are We Here?

**Technology in practice challenges our ethical decision making**  
**COVID PANDEMIC ACCELERATED CHANGE**





# Revisiting Ethics in Professional Practice

- ★ What do you think about when you hear “Ethics”?
- ★ Where have you been exposed to “Ethics”?
- ★ Why do all professions have “ethics”?
- ★ Are “ethics” and “the law” the same thing?

**What are some ethical issues that you consider that are complicated by technology?**



# Four Basic Ethical Principles

## ★ Beneficence

- Technology makes our practice more accessible

## ★ Non-Maleficence

- Technology threatens confidentiality

## ★ Autonomy

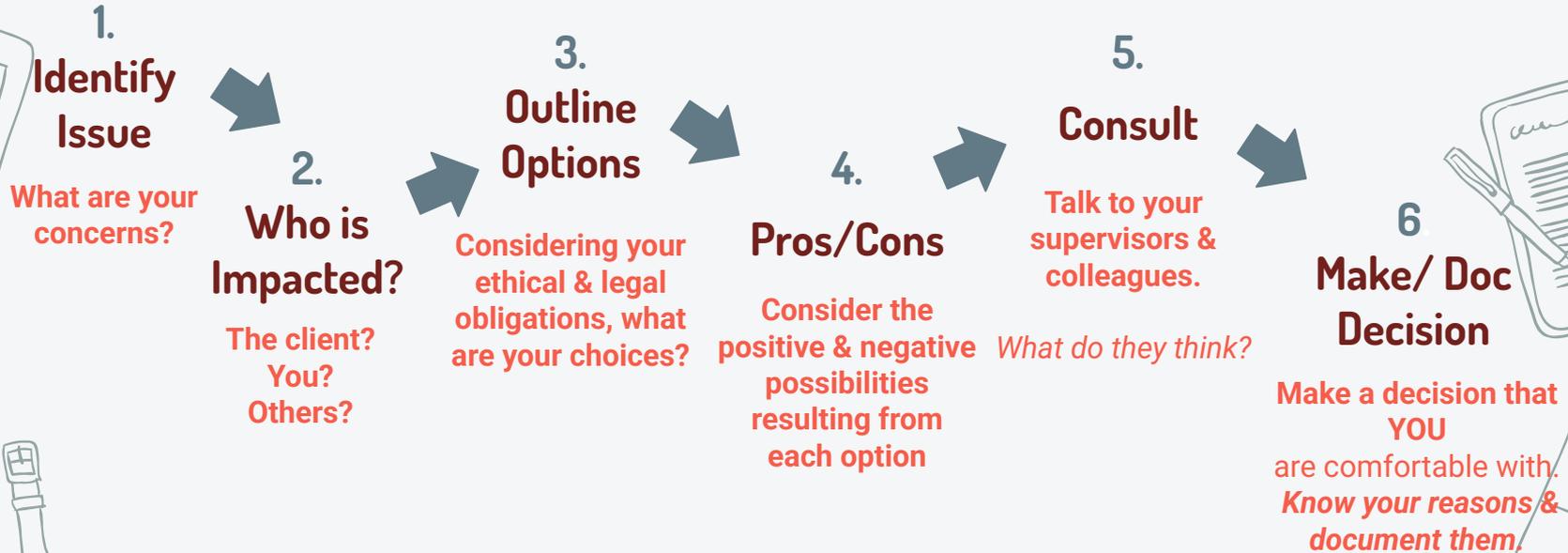
- Do clients understand risks & benefits of technology?

## ★ Justice

- The risks and benefits of technology should be equitable



# Protecting Yourself from Ethical & Legal Liability





# Resources for Safeguarding Yourself: Prevention is KEY to Protection

## Know Your Code

- Helpful
- Not exhaustive
  - [NASW Code of Ethics](#)
  - [APA Ethical Principles](#)
  - [AAMFT Code of Ethics](#)
  - [ACA Code of Ethics](#)
  - [APA Principles of Medical Ethics](#)

## “In-House”

- Supervisors
- Agency “Counsel”

## Finding a Lawyer

- [NYC Bar Legal Referral Service](#)

## Insurance Protections

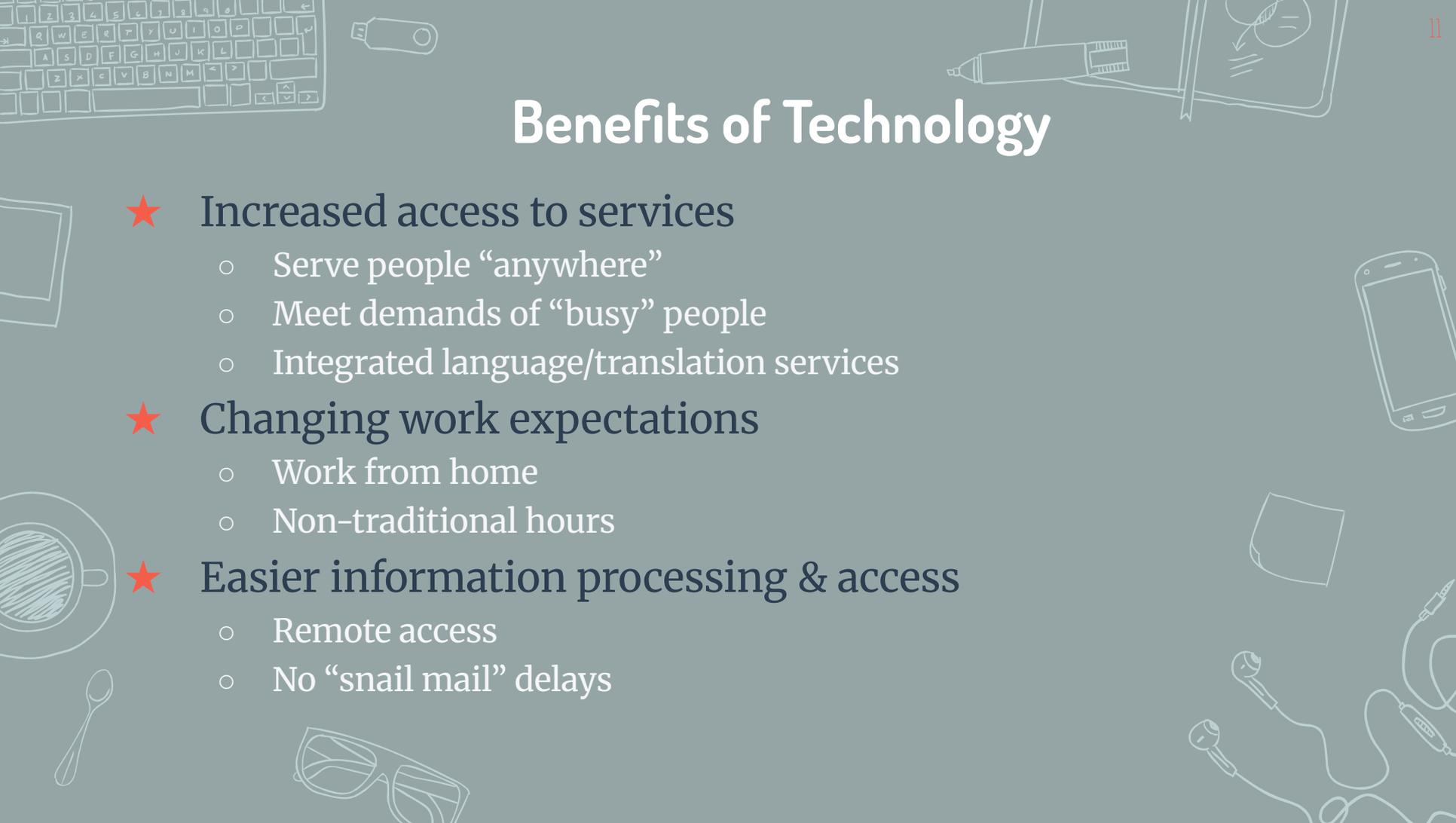
- Malpractice Insurance
- Personal/Professional

# Ethical Challenges Related to Technology



# Types of Technology

- ★ Telephones (landline & mobile)
- ★ Fax machines
- ★ Computers, tablets & smartphones
- ★ Email
- ★ Videoconferencing
- ★ Social Media
- ★ Avatars, AI ... and more



# Benefits of Technology

- ★ **Increased access to services**
  - Serve people “anywhere”
  - Meet demands of “busy” people
  - Integrated language/translation services
- ★ **Changing work expectations**
  - Work from home
  - Non-traditional hours
- ★ **Easier information processing & access**
  - Remote access
  - No “snail mail” delays

# Drawbacks of Technology

## ★ Risks to confidentiality

- Security breaches
- Who can “hear”?

## ★ Challenges in fostering therapeutic relationships

- Difficulty reading body language
- Distance in space and time
- Move from the “social” domains to the “informational”/ “transactional” domains

## ★ Technological glitches or malfunctions

## ★ Limited access to those without technology

# Ethical Standards & Technology

- ★ NASW Practice Standards for Technology in Social Work Practice
- ★ ACA Code of Ethics
  - Section H Distance Counseling, Technology, and Social Media • 17
- ★ AAMFT Code of Ethics
  - Standard VI Technology-Assisted Professional Services
- ★ APA Ethical Principles:
  - Same as in in-person
- ★ Summaries of Various Professional Standards
  - <https://drzur.com/ethics-of-telehealth/>



# Electronic Record Storage



# EHR/EMR Storage: Law & Ethics

## ★ Federal Law

- HIPAA
  - PHI: Protected Health Information
- American Recovery & Reinvestment Act (ARRA)(2009)
  - Promote the adoption of health information technology.
- 21st Century CURES Act (2016); OpenNotes Rule
  - Full and immediate access to own electronic health data

## ★ Applicable State Laws

## ★ Check your ethical codes

# EHR/EMR Storage: Basics

- ★ “Records” & “Psychotherapy Notes” are NOT the same
  - “Records”: Consider potential use. Enough info necessary for continuation of good care.
  - “Notes”: Information helpful to the practitioner; documenting
  - Keep them separate
  
- ★ Ethical considerations no matter how records are kept
  - Paper
  - Electronic (in-house/local)
  - Cloud-based (outwardly accessible)

## EHR/EMR Storage: Controlling Access

- ★ Who is authorized to access information that is gathered, transmitted, managed, or stored?
  - How is information secured (e.g., through encryption, firewalls, passwords, or other forms of user authentication)?
  - How are computers and other devices protected from theft/hacking?
  - Whose right/ authority to add, delete, or amend the information
  - What about client's right to access records?
  
- ★ In cases of unauthorized access:
  - How will clients or others be informed of the breach?
  - How will damages be mitigated or compensated?
  - What will be done to ensure no further breaches?

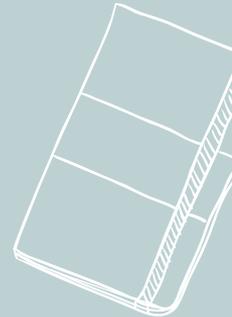
## EHR/EMR Storage: Protect Yourself & Clients

- ★ Stay informed about standards
- ★ Keep clients informed about practices
  - What info contained within an EMR?
  - How is it shared with others?
  - Risks of system breaches, crashes, etc.
- ★ Best “fair information practices”:
  - Least-intrusive, least identifiable, minimize disclosure, fewest number of persons as necessary to achieve the service goals.
  - Responsibility after termination (follow applicable rules/laws)



# EHR/EMR Storage

## Case Example



You are resigning/ retiring.

- You are offering a transfer of your practice and clients to therapists in-house
- You are offering to transfer your clients to another therapist in another private practice
- How do you manage your:
  - Records?
  - Notes?

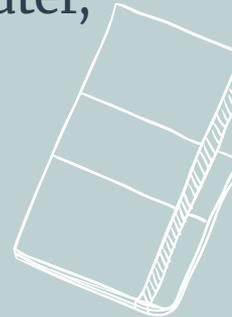


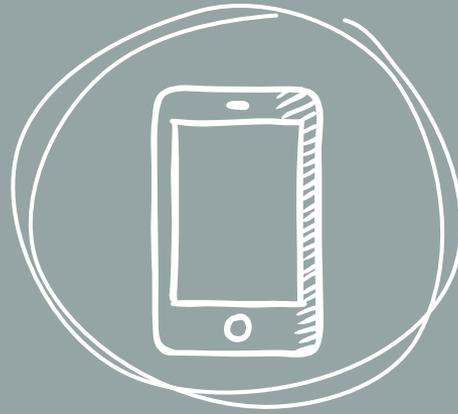
# EHR/EMR Storage

## Case Example

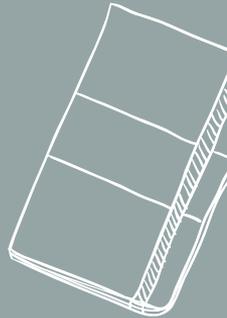


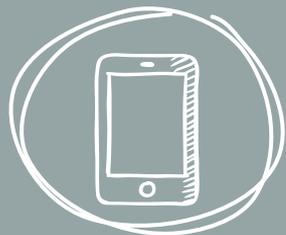
★ You are returning from “overseas”. On your laptop are client case files.

- In the airport, you finish typing some diagnostic assessments.
  - Your laptop is password protected; client files are encrypted.
  - You get selected for a “random” search in accordance with anti-terrorism laws. You are ordered to turn on your computer, login, and provide access, otherwise be detained.
  - What do you do? What could you have done better?
- 
- 
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# Communications





# Communications: Over Time

## The Old Days

- ★ Limited contact outside office
- ★ Landline telephones
- ★ “Snail-Mail”
- ★ Standards based on in-person contact

## In-Between

- ★ Tele-therapy
- ★ Fax Machines
- ★ Emails
- ★ Evolving standards & laws (e.g. HIPAA)

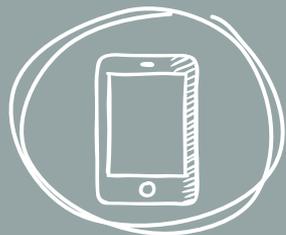
## “Nowadays”

- ★ Tech is BIG
- ★ Video-therapy
- ★ Smart phones
- ★ Wearables
- ★ Apps/ DMs/ Chats
- ★ Standards can't keep up

## The Future?

- ★ Microchip brain inserts?

WE HAVE  
NO IDEA



# Communications: Challenges

## Privacy/ Confidentiality

- ★ Are you alone?
- ★ Are they alone?
- ★ Can you/client record?

## Security

- ★ Who will read/see communication?
- ★ Which communication methods are “secure”?
- ★ Encryption

## Access/ Accessibility

- ★ Do you/they have the right tech?
- ★ Do you/they know how to use it?
- ★ Do you have a back up plan?

## Best Practices

- ★ Ethical Eval
- ★ Check-In
- ★ Client Choice
- ★ Encryption
- ★ Phone settings
- ★ Be wary of companies selling the best and newest...

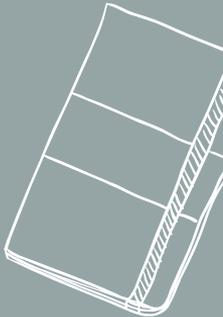


# Communication

## Case Examples



★ Your client asks you to sign an insurance reimbursement form and send it to them:

- By “snail-mail”
  - By fax machine
  - By email
- 
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# Communication Case Examples



★ Your client shows up on a video-therapy session:

- At the public library
  - At Starbucks.
  - In their private office, behind a closed door
- 
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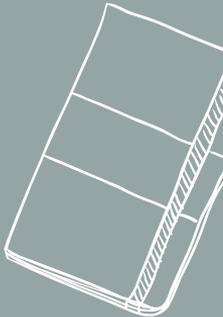


# Communication

## Case Example

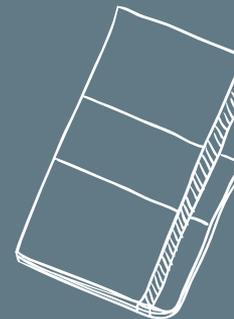


★ You are at dinner with a friend, when you cell phone, lying on the table face up, rings. The name on the screen is your client's name. Your friend sees the screen and says "I know them. How do you know them...?"





# Interactions in CyberSpace



# Interactions in CyberSpace



## Boundaries Basics

- ★ Avoid “Dual/Multiple Relationships”
  - Friends, neighbors, mutual community members
- ★ Avoid Conflicts of Interest
  - Keep professional & personal separate.
  - Whose “BNAJ” is being prioritized?

## Boundaries Best Practices

- ★ Working from home?  
Elsewhere?
  - Insulating professional space
- ★ Working across state lines
  - [PsyPact, SW Compact, etc.](#)
- ★ Online Marketing
  - Whose “BNAJ” is being prioritized?

# Interactions in CyberSpace



## Your Professional Boundaries in CyberSpace

- ★ Who are you online?
  - What can your clients find out through your online profile?
- ★ Social Media
  - Personal accounts
  - Professional accounts
- ★ What is ok to put out there?
  - Yes. You have “free speech”, but you can be judged...

## Client Boundaries Online

- ★ Don't search for your clients
  - Unless you have permission &/or for an appropriate professional reason
- ★ Helping clients understand their online profile
- ★ Making boundaries clear
  - Sharing concerns when you have them
  - Mutual decision making



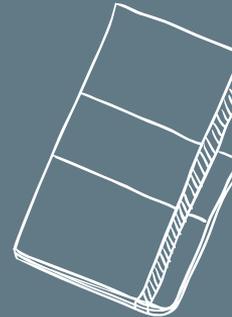
# Interactions in CyberSpace

## Case Examples



★ Your new client was involved in a high profile legal case about a decade ago that got considerable media coverage.

- You followed the case closely at the time. During intake with the client, what should you do?
  - You didn't follow the coverage at the time. The client is not sharing information about their experience, but you have an inkling that experience underlies some of their presenting issues. You are considering revisiting the media coverage so you understand the context.
- 

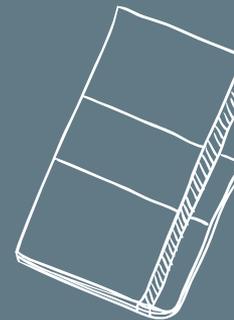




# Interactions in CyberSpace

## Case Examples

- 
- ★ You accept Venmo for payment. When logging on to the app, you see a transaction between one of your clients and someone else. The client is sober. The emojis representing the transaction are martini glasses. What do you do?
- 



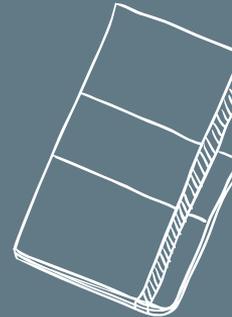


# Interactions in CyberSpace

## Case Examples



- ★ You use a dating app that aims to connect people through mutual interests, not photos. Once connected to someone you find really interesting, you realize they are a client...

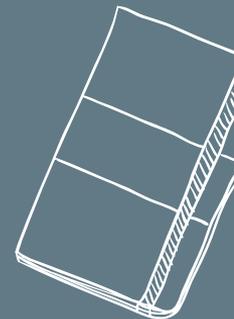




# Interactions in CyberSpace

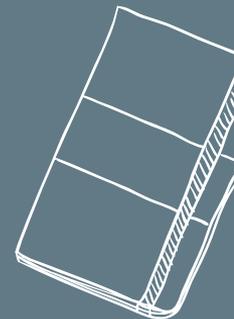
## Case Examples

- ★ You supervise a student intern. Another intern reports that the student you supervise is sharing client information on Instagram...





# Artificial Intelligence (AI)





# AI In Mental Health



★ “Computers”/ programs simulate human intelligence and problem-solving capabilities.

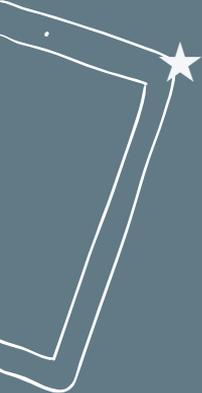
★ Examples for mental health practice:

- 
- Transcribe, “digest”, summarize verbal communications
  - Make suggestions of questions to ask
  - AI can answer questions
    - Evaluate diagnostic criteria
  - Wearables can provide feedback/input
  - Audit Charts
  - AI can conduct therapy...
  - AI can personalize services
- 
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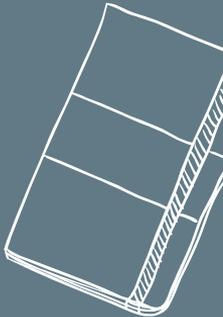


# Artificial Intelligence

## Benefits & Concerns



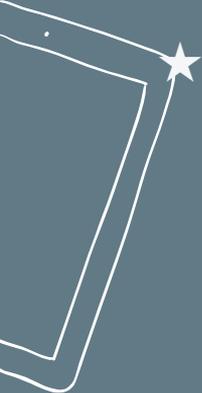
### Benefits

- Time
  - Money
  - INCREASED ACCESS
- 
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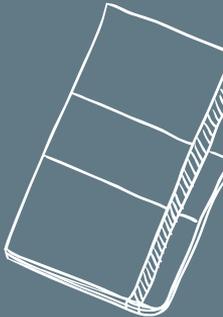


# Artificial Intelligence

## Concerns



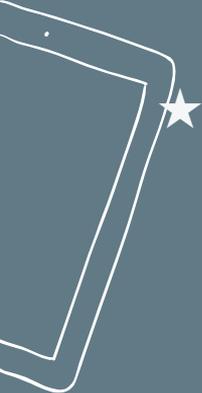
### Concerns

- Differentiation (know what you're using)
  - Bias
    - Decisions based on what is inputted
    - Loss of subjective interpretations
  - Therapeutic relationship difference
  - Confidentiality concerns
  - Replacing our work
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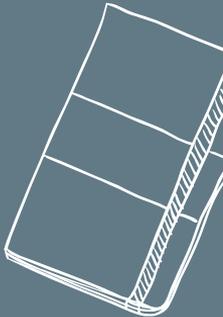


# Artificial Intelligence

## Example



★ AI integrated solution:

- Captures session
  - Analyzes the content
  - Provides a summary of the prominent themes and processes taking place
  - Offers valuable insights for future treatment avenues.
  - Authors record entry and notes.
- 
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# Artificial Intelligence

## Case Examples



- ★ Tessa the eating-disorder treatment chat bot

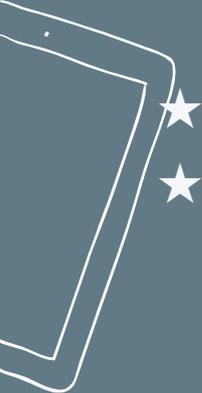
- ★ What if your client does not want you to use AI?





# Artificial Intelligence

## Case Examples



★ Protecting kids from Self-Harm

★ <https://www.nytimes.com/2024/12/09/health/suicide-monitoring-software-schools.html?smid=nytcore-ios-share&referrerSource=articleShare>



# Final Thoughts

- ★ Got it wrong? Try better next time.
- ★ Technology should not be one-size fits all
- ★ Clients need to be given choice (and provided opportunity to understand)
- ★ The future is unknown

**When in doubt, EVALUATE & DOCUMENT:  
Beneficence, Non-Maleficence, Autonomy & Justice**

# Conclusions/Questions

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<https://www.makingthetoughcall.info/thankyouguide>

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## FREE GUIDE FOR MANDATED REPORTERS

Considering making a report to Child Protective Services and not sure where to start?

Download our free guide with Making The Tough Call's Decision Making Framework

DOWNLOAD TODAY



SCAN ME

**MAKING THE TOUGH CALL** Considering Making a Report to Child Protective Services?  
Decision Making Framework  
By Kathryn Krase, Ph.D., JD., M.S.W.

Question	Your Answer
<b>Part 1: Reporting Basics</b>	
What state are you in?	
What is the phone number professional reporters call to make a report to CPS in your state?	
In the state you are in, are Mandated Reporters required to file a report to CPS in your state?	
What is the legal threshold for reporting in your state that requires a mandated reporter to call CPS?	
Does your state's threshold have a specific age or weight children can be left home alone?	
Which types of establishments are included?	
What physical indicators are present, if any?	
What behavioral indicators are present, if any?	
Does legal responsibility for the concerns you have?	
In the alleged perpetrator appropriate to report to CPS?	
<b>Do your concerns meet the definition of maltreatment?</b>	
Yes (Continue on to the next section, Evaluating Your Concerns)	
No (You likely do not need to make a report to CPS, but you can still file a child and family)	
No (You likely do not need to make a report to CPS, for more information, relevant publications & training)	
No (You likely do not need to make a report to CPS, for more information, relevant publications & training)	
<b>Part 2: Evaluating Your Concerns</b>	
Are you required to make a report based on your state?	
Are your concerns related to harm to a child that you already suspected or knew to exist at the time you learned?	
Are you being obstructed? Check your license & biases.	
Are your concerns meet the level of maltreatment that requires a report to CPS?	
<b>Are you required to make the report to CPS?</b>	
Yes (Call CPS or file incident report immediately)	
No (You likely do not need to make a report to CPS, but you can still file a child and family)	
No (You likely do not need to make a report to CPS, for more information, relevant publications & training)	

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