

Coaching: A New Frontier Some Questions and Answers

Eric A. Harris, J.D., Ed.D.
Risk Management Consultant
The Trust

The following article is for informational purposes and should not be construed as constituting legal advice. A psychologist considering practicing as a “Coach” is advised to consult with an attorney familiar with the psychology licensing laws and regulations as well as other statutes that may apply

Coaching is a relatively new area of practice. Some assert it is an integral part of psychological practice; others insist that it is a separate field entirely and should not be regulated by psychology licensing boards. There is a paucity of legal and regulatory history on coaching

What is coaching?

Coaching, as a distinct psychological/mental health specialty, where licensed mental health professionals offer and provide positive, affirmative behavioral science based interventions to individuals who are seeking to improve their lives or their performance, is relatively new. However, the component interventions, skills and knowledge bases have been around for some time. Coaching involves elements of counseling psychology, positive psychology, individual and group dynamics, cognitive behavioral psychology, educational psychology, psycho-dynamic psychology, industrial/organizational psychology, motivational psychology and social psychology. There is a good deal of variation in definitions and descriptions of the components of coaching between commentators.

Although the definition has changed in the most recent iteration, until recently the Ethics Code of the International Coach Federation (ICF, www.coachfederation.org), defined coaching is “an ongoing professional relationship that helps people produce extraordinary results in their lives, careers, businesses or organizations... It is aimed at helping clients discover their goals for improvement, define specific goals and strategies for reaching these goals and then enabling the client, through regular counseling, to achieve these goals. It assumes that “the client is the expert in his or her life and work and that he or she is creative, resourceful and whole.”

Another, more thoughtful definition is provided by Jeffrey Aurbach, the director the College of Executive Coaching, and ICF certified coach training program:

Personal Coaching involves helping generally well functioning people create and achieve goals, maximize personal development, and navigate transitions on the path to realizing their ideal vision for the current and emerging chapters of their lives. Most personal coaching clients are

focused on the development of an ideal future self, an ideal career, or an improved family life. The coach aids the client through the coaching conversation in developing a coaching agenda, incorporating values clarification, identification of strengths and articulation of the client's current life and career purpose. The coach supports the client's efforts to engage in lifelong learning, navigate any obstacles, delegate or let go of energy draining situations, honor challenges, and celebrate successes.

Popular life coach Cheryl Richardson...describes her coaching as involving (1) asking provocative questions; (2) helping her clients access their own inner wisdom to guide their next actions steps, (3) providing direct advice based on her experience of working with others (4) providing focus and support to help clients keep moving forward, (5) celebrating their successes;(6) holding their hands when life gets tough and (7) acting as a steward for the life the client wants. (Jeff Auerbach, 2001, Personal & Executive Coaching: The Complete Guide for Mental Health Professionals. Executive College Press, Ventura, Ca.)

Many psychologists, particularly those who were educated in counseling psychology or industrial/organizational psychology, may feel that the attempt to package coaching as if it were a separate profession represents old wine in new bottles.

Why would a licensed mental health professional want to become a coach?

Counseling, clinical and industrial/organizational psychologists have received advanced training in some if not all of the areas basic to performing coaching services. For decades industrial/organizational psychologists have assisted senior executives and managers improve their skills and enhance their lives. Positive psychology has become a hot area and many psychologists are integrating positive psychology techniques into their practices.

There are some real incentives for psychologists to offer coaching services. It is not a health care service encumbered by heavy regulation. This means that its value will truly be set by the marketplace. While coaches will not have the benefit of an insurance subsidy, they will not have to deal with the limitations of managed care.

Unlike the psychotherapy relationship, where the therapist is said to have significant power over the patient, the coach is seen as a helper in a relationship of equals. The power differential between therapist and patient, an acknowledged and perhaps essential aspect of psychotherapy, is either minimized or not found in the coaching relationship. Theoretically, practitioners that provide coaching services will be able to be more entrepreneurial and less concerned with boundary issues, while still complying with ethical and legal requirements. Those who seek an alternative to psychotherapy's slow pace and focus on human misery may find coaching to be energizing. Psychologists are perceived to be experts, giving them a competitive advantage over non-mental health professionals in the coaching marketplace. However, there are also disadvantages to

being a psychologist professional coach. Psychologists are extensively regulated and the regulatory structure is conservative.

Is coaching included in the scope of practice of licensed psychologists?

The basic techniques used by coaches are generally recognized as part of the expertise and skill base of psychologists. In this sense, coaching would be considered to be within the scope of practice of psychologists and most other licensed mental health professionals as well. In order to accommodate advances in the field of psychology, the definition of practice in psychology licensing laws were written to be quite broad; these statutes maximize the potential for psychologists to do whatever their training qualified them to do. Licensing Boards in Colorado and Florida have issued opinions that coaching is included in the practice of psychology. At least in these two states, and probably many more, licensing boards will take complaints against psychologists from consumers of coaching services and apply regulations and ethics codes affecting psychologists to these activities. The APA Ethics Committee has stated that psychologists moving into new areas of practice are required adhere to the current Ethical Principles. Although some licensing boards may have the authority to directly regulate inappropriate services by non-licensees (i.e., practicing without a license), and may bring charges against unlicensed individuals rendering coaching services, for the most part, coaches who do not have mental health licenses will not be subject to governmental regulation. It is important to note that the licensing board in Colorado, a multi disciplinary mental health regulatory body, determined that coaching is a form of psychotherapy and that those who perform it must be licensed. This ruling was later overturned by the state legislature, but it is suggestive of how state regulators may act, particularly if there are egregious practices by non-licensed coaches, which would rapidly bring the practice of coaching under regulatory control. It is unlikely that psychologists would be able to escape licensing board regulation by opening separate “coaching only” businesses even if they do not represent themselves as psychologists in providing these services. Some psychologists engaging in coaching may resign their psychology license in order to avoid state licensing board regulation.

Is coaching covered by a mental health professional’s malpractice insurance?

This is an open question. It is also an open question if coaching services would subject the coach to potential malpractice litigation. The only definitive way to determine whether a particular activity is covered by professional liability insurance is to get a written opinion from the insurance carrier. The general principle is that a psychologist is covered for any activities that are within the legitimate legal scope of practice as defined by the licensure laws in his or her state unless a specific activity is excluded in the policy. The professional liability policy from the Trust-sponsored Professional Liability Program was modified to specifically include coaching as a covered practice for psychologists. Thus, for example, using psychological knowledge and techniques to coach individuals trying to avoid the most acrimonious aspects of a contested divorce would be covered. On the other hand, giving advice about division of assets or other financial issues would not be covered as such advice does not fall within the definition of the practice of psychology. Providing advice regarding financial matters more appropriately falls within

the jurisdiction of financial managers and there are separate insurance policies to cover these activities.

Can coaches legally provide telephone or internet services from their state of licensure to residents of states where they are not licensed?

If coaching is limited to one's state of licensure, the ability to function in a truly entrepreneurial fashion may be limited. Successful coaches could easily develop a national and international reputation in the marketplace and be in high demand.

While psychotherapy is typically provided in an office based setting, such restrictions do not necessarily apply to coaching. One may ask what specific statutes apply to interstate practice of coaching, whether done in person, telephonic, or over the internet? What law regulates the psychologist coach who is licensed in one state but delivers services in a state where he or she is not licensed? Some argue that the laws of the state where the service originates would control; others believe it might be the state where the client resides. The current state of the law on interstate practice for psychotherapy, let alone coaching, is uncertain and fluid. Many regulators understand that the internet and other electronic advances are going to be very influential in the future of the service industry, and this would apply to mental health and coaching services as well. There are also interstate commerce issues that restrict the ability of a state to regulate certain types of activities. Further, interstate regulation presents a number of administrative complexities that make it difficult for a state to protect its citizen-consumers against the unethical actions of a practitioner in another state.

Traditionally, professional practice has been exclusively regulated by the states. State's laws and regulations are designed to establish minimum acceptable training standards and to protect consumers from incompetent, negligent or exploitative practices. Where there are lots of providers, the laws may be more restrictive. Where there are few providers, the laws may be less limiting. This has led to 50 sets of standards for professional practice, each slightly (or not so slightly) different than the other and one would have to determine which set of rules applied. For example, state abuse reporting statutes only bind practitioners in that state and the immunity that they provide only applies to in-state providers.

While a majority of state psychology licensing laws allow temporary practice by a psychologist licensed in another jurisdiction, many states do not and the requirements for such temporary practice vary considerably. Most national professional associations are aware that the current licensing system could limit practice by their members in a negative way and they are working to find solutions that would allow national practice. The American Association of State and Provincial Psychological Associations (AASPB) has created a Certificate of Professional Qualifications (CPQ) that is accepted by a majority of state licensing boards as demonstrating that the holder has equivalent credentials to those required by the state for licensure. AASPB is also working to develop a credential that would allow psychologists who are licensed in one state to be able to practice in another state based on equivalent credentials.

Koocher and Morray found that there was a difference of opinion between both experts and attorneys general about the current authority of states and the future of regulation of practice. (Koocher, G. & Morray, E., (2000). Regulation of telepsychology: A survey of state attorneys General. *Professional Psychology: Research and Practice*, 31(5), 503-508.) The Licensing Board in California has opined, based on their interpretation of the state's telemedicine law, that anyone who provides "psychotherapy or counseling" to persons in California are required to be licensed in California, regardless of the site of the practitioner. Such licensure permits the consumer to pursue recourse against the licensee should the consumer believe that the licensee engaged in unprofessional conduct.

The California Ninth Circuit Court of Appeals, in a case decided before the legislation was passed, Prince v Urban (49 Cal. App. 4th 1056 (1996)) stated that providing medical services to individual patients was primarily personal in nature, directed towards patients and not towards localities, and the fact that some part of the services crossed state lines was not sufficient to provide jurisdiction to the state where the patient resided. The court applied three factors in determining whether California could exercise jurisdiction. First, they opined that the doctor-patient relationship was not the result of any systematic or continuing effort to provide services in California, but simply was because of a referral to an out-of-state doctor. Second, the services rendered by the doctor were clearly not grounded in any relationship with California. Third, the interest of California in insuring the availability of medical care for its citizens dominated its interest in protecting its citizens from injury by out-of-state doctors. However, the court clearly implied that if the professional engaged in marketing and other activities intended to attract California citizens to utilize his or her services, the outcome might be different. So, would the practitioner having a website which was intended to attract business be said to be marketing those services in California? At this point, it does not appear possible to adequately answer this or a number of related questions.

Another more recent California case, Hagseth v. Superior Court of San Mateo County, (150 Cal App. 4th 1399 (2007)), although not completely inconsistent, has added more grist for the "risk management" mill. Hagseth was a Colorado licensed psychiatrist who was a consultant for an internet prescription company of the sort that readers have probably received spam emails from. He prescribed psychotropic medications to a California teenager which was filled by a Florida pharmacy. The teenager later committed suicide. The state of California decided to prosecute Dr. Hagseth criminally for practicing medicine in California without a California license and sought to extradite him to stand trial. He appealed saying that since he had never been in California and that none of the elements of the crime had taken place in California, California courts had no jurisdiction to prosecute him. The California Court of appeals ruled that if the traditional legal principles were applicable in this case, California had jurisdiction regardless of whether the charged conduct took place in cyberspace rather than in real space. This case is consistent with Prince in that this physician was involved in an effort to attract California citizens to utilize his/her services. However, the length that California went to exert its jurisdiction may be chilling to those who are thinking of engaging in internet coaching. It is important to remember that one's malpractice insurance policy will not cover expenses related to criminal prosecutions, so psychologists who are so prosecuted would be on their own, which could involve considerable expense. Further, a criminal

conviction can have disciplinary consequences in one's own state. However, it is difficult to imagine a state going to the trouble and expense to extradite someone from another jurisdiction for failed coaching.

Suffice it to say that there is no legal precedent that would prohibit a psychologist in one state from providing services from their own offices to a citizen of a different state by telephone or internet. This, however, could change as state and federal governments fashion solutions to the above expressed issues created by the new electronic age. It might be wise for fledgling coaches to refrain from large investments in practices that depend on interstate practice for long term success.

How are psychology licensure boards likely to regulate coaching?

As one commentator describes it:

To understand coaching, it is important to know that the term simultaneously refers to two distinct undertakings—a method and a movement. As a method, coaching is akin to other intervention approaches (for example, solution focused or cognitive behavioral). In the second use, the word describes an emerging practice movement, with its own scope of practice. Although not yet a profession or a discipline in its own right, coaching may be on its way to becoming one. (Caspi, Jonathan, “Coaching and Social Work: Challenges and Concerns, [Social Work, Oct, 2005](#)).

To make a complex subject simple, psychologists licensing boards will undoubtedly focus on the substance of the intervention and not how it is described or labeled. When boards receive complaints about psychologists who are providing coaching services, they will apply some version of the “duck” test. That is to say, if it waddles, quacks, and swims like a duck, it will be treated like a duck, even if you are calling it an elephant. Amos Martinez, who spent many years as the administrator of the multi mental health professional licensing board in Colorado, provided the following guidance:

“There are four determining factors the Boards use in assessing whether personal coaching is psychotherapy. First, does a professional relationship exist between the personal coach and the client? Is there an expectation by the client for the coach to provide any assessment or counseling to assist the client in understanding conscious or unconscious motivations to resolve emotional, relationship or attitudinal conflicts or to modify behaviors that interfere with effective emotional, social or intellectual functioning? If the coach is not a licensed psychotherapist, is the client compensating the coach for his or her services? And last, under what circumstances or for what purpose did the client employ a personal coach? If the coach was employed to attain a promotion or for career enhancement purposes, this practice is generally considered exempt from regulation.” Martinez, A. (2004) Coaching: Is this considered the practice of psychotherapy? Mental Health Trends, State of Colorado

Experience indicates that the rigorous regulation of psychologist health care providers derives in part from the amount of power inherent in a psychotherapist patient relationship. When considering coaching as a practice, licensing boards will look at the substance of the relationship between the coach and client, rather than the label attached to it. The more one's coaching practice resembles psychotherapy, the greater the likelihood that one's professional board may believe it must have oversight on the services and the provider. The more power you have to do damage, the more stringent the board's review is going to be.

In order to develop an ethics and risk management training program for MentorCoach, an ICF certified coach training program, the author developed a system, based on his experience with the licensing board disciplinary process, for assessing the risk of rigorous licensing board oversight in response to a complaint filed against a coach who is licensed mental health professional. According to the "Harris Risk Management Continua" (Harris, Eric, (2004), "Ethics and Risk Management," Master Class, Mentor Coach, a licensed mental health professional who is a coach would assess each coaching relationship on three dimensions.

1. How similar is the subject matter of the problem the client is presenting to the coach to subject matter that would traditionally be addressed through psychotherapy?
2. How much of a power differential actually has developed in the relationship between the coach and client?
3. How psychologically robust are the techniques that the coach is using in his coaching practice?

The closer to psychotherapy, the higher the power differential, the more psychologically robust the techniques, the greater the level of regulatory oversight and the greater similarity of oversight to that provided to psychotherapy.

Some examples might be helpful in understanding the model. Coaching bariatric surgery candidates about regimen compliance or anorexics about increasing their eating are high on the risk continuum and complaints are likely to be treated very similarly to complaints from psychotherapy patients. Divorce coaching to limit acrimonious divorces would also involve high risk of regulatory oversight. Coaching middle aged individuals to create a satisfying retirement or individuals who are seeking to find a more satisfying professional life would probably fall in the middle. However, if coaches were using EMDR, guided imagery or psychologically developed personality inventories, risk would increase. Being hired to coach executives at a major corporation on subjects such as team building or improvement of management skills would be very low on the risk continuum. However, being hired to do executive evaluation and selection would be higher.

This is not to say that coaches will have to describe what they do in terms of psychotherapy rather than coaching, but they will need to explain the services in a convincing and professional manner. When complaints are filed against psychologists, board members are always evaluating the psychologist's level of professionalism, his or

her knowledge of ethical and legal responsibility and competence, and training in the particular area of expertise he or she laid claim to in order to provide services to the client. Coaching will be no exception to this.

Finally, the regulation of coaching will depend on the number and type of complaints that licensing boards receive and the behavior of psychologists that precipitates these complaints. If there are a fair number of egregious activities by psychologist coaches, then the regulation will tighten and one can expect some specific types of opinions and regulations will be enacted to address those activities.

What are the general aspects of a risk management strategy for a coach?

The basics of a recommended risk management strategy are very similar to the strategy noted in *[Assessing and Managing Risk in Psychological Practice: An Individualized Approach](#)* published by the Trust. The first three items are the most important, but the prudent coach will implement all of the suggestions

- 1. Provide full informed consent through a written, signed contract and through integration into the coaching work itself.**

It is important to clearly distinguish between coaching and psychotherapy. The higher the risk of the coaching activity on the Harris Risk Management Continuum, (ibid), the more comprehensive the description of the differences need to be. A draft [coaching contract](#) is posted on the Trust website. The importance of informed consent in providing remote services was emphasized by the California legislature in its landmark legislation regulating telemedicine requiring that the person with ultimate responsibility for the services is required to obtain both verbal and written informed consent. Readers who examine the model coaching informed consent contract developed by the author and available elsewhere on our [website](#) will see how much care (and length) has been taking to describe the difference between coaching and psychotherapy. This is to make sure that full informed consent is given and that clients cannot say that they thought they were getting psychotherapy.

- 2. Keep good documentation of the services you provide demonstrating both that you know what you are doing and that you are a careful, prudent professional coach.**

Obviously, the documentation one keeps for coaching will not be the same as the documentation one keeps for psychotherapy. But the basics are the same. The notes should be able to demonstrate that there was a plan, what took place in the session, what the interventions were and why they were made, how well they worked or didn't work, and what changes might be made to the coaching strategy. If a coaching client maintains his or her own records that are communicated to the coach, those should also be kept in the file

3. Consult with other licensed mental health professionals/coaches on a regular basis and particularly when you recognize problems developing in the client relationship.

The definition of the standard of care for coaching and the standard of care for psychotherapy are the same. You will need to establish that your actions were “reasonable” as that term is defined in the [APA Ethical Principles](#) and that they were “consistent with the prevailing professional judgment of psychologists engaged in similar activities in similar circumstances, given the knowledge the psychologist had or should have had at the time.” (Ethical Principles of Psychologists and Code of Conduct, 2002, American Psychological Association – Effective June 1, 2003)

4. Identify high risk clients and high risk situations.

Remember that licensing board regulation is almost completely complaint driven. Therefore, the types of coaching clients that present the highest risks may be similar to those which present the highest risks in psychotherapy. While psychologist coaches need not necessarily do a differential diagnosis of each prospective coaching client, they should pay careful attention to any danger warning systems. One problem that may draw extensive board scrutiny, unfortunately after the fact, is whether a particular client is appropriate for coaching. If there indicators of serious pathology, the psychologist should probably refer the client for psychotherapy.

5. Maintain and be able to demonstrate competence as a coach.

For most psychologists, coaching is a new specialty despite the fact that many psychologists have already generally been trained in the component skills and experience. Like any new specialty, the Ethics Code requires that psychologists do what is necessary to obtain competence. Psychologists who wish to be coaches in any area of risk for scrutiny by a licensing board should review the literature that is available about coaching, acquire at least some training from an ICF approved training program, and try to get certification from the ICF as a coach. Unfortunately, the ICF training accreditation standards are at an early stage of development and certainly less rigorous than the standards which APA and psychology licensure boards maintain for program certification and licensure. In addition, the psychologist should recruit another psychologist with experience in coaching to serve as a consultant during the first year, if not the first two years of coaching. Psychologist coaches who are insured in the Trust-sponsored Professional Liability Program can always avail themselves of the free, confidential risk management consultation through the Trust Advocate Program (1-800-477-1200). Other sources may be hotlines of state psychological associations.

6. Maintain Appropriate Business Practices

Practicing as a coach permits the psychologist to operate in a business environment utilizing aggressive marketing practices and financial arrangements to promote their services. Since life coaching is relatively new and not currently subsidized by health insurance there are more providers training as coaches than there are coaching customers. Coaches are competing in a national or even worldwide marketplace; effective marketing and promotion are probably required in order to be successful.

Many of the leaders of the coaching movement come from business backgrounds with executive experience. The coaching culture is very different than the culture of clinical psychology. Because psychology has developed as a learned profession, its culture is suspicious of what might be considered crass business practices, particularly aggressive marketing. Prior to the Supreme Court decision that abolished ethical prohibitions on advertising as anti-competitive, all learned professions, including psychology, restricted advertising.

This disparity is clearly illuminated by the former definition of coaching contained in the ICF Code of Ethics referenced above:

Professional coaching is an ongoing professional relationship that helps people produce extraordinary results in their lives, careers, business or organizations. Through the process of coaching, clients deepen their learning, improve their performance, and enhance the quality of life.

If a psychologist used this definition to describe his or her clinical practice, they might well be pulled before a licensing board for making statements that had not been substantiated by reliable, valid controlled research and thus, could be considered false and misleading. One can speculate that this is why this definition was changed by the ICF in 2008. While the APA Ethics Code does distinguish between marketing one's clinical practice and marketing other professional activities, the latter is less restricted than the former. For example, the Ethics Code does not permit the use of testimonials from therapy clients or others who may be particularly vulnerable. On the other hand, by implication, this can be interpreted as allowing testimonials from a coaching client and most coaches engage in this practice. Coaching also seems characterized by clever names, well designed websites, and creative marketing-inspired language.

What psychologists need to avoid are statements that can be perceived by consumers as come-ons and claims of success that cannot be substantiated by data. Many licensing laws prohibit the use of memberships in organizations and certifications from voluntary organizations in promotional material.

Psychologist coaches should carefully check the Ethics Code provisions and state regulations regarding marketing practices and credential representation. It would be wise to check all marketing materials with trusted colleagues, at least one of

which should be someone who is not a coach. If your materials make your colleagues uncomfortable, you will need to make a risk-benefit decision.

Psychologists engaging in coaching who are insured through the Trust-sponsored Professional Liability Program can use its Advocate Risk Management Consulting Service, within reason, for advice on the risks presented by aggressive marketing. These suggestions are conservative and directed to identify risk rather than to provide advice on effective marketing and self promotion.

7. Design and implement an effective dispute resolution process which is clearly described in your informed consent.

Arbitration, mediation, and limited money back guarantees are things to consider. Individuals who are dissatisfied with services are the ones who are likely to file complaints. This is much less likely if they are able to get their issues resolved fairly. On the other hand, coaching is a business and if coaches are too generous, they will be taken advantage of.

8. Provide the best, most efficacious services you can. Satisfied customers are your best marketing and your surest protection against licensing board complaints.