

## Person-Centered Tech Continuing Ed Trainings

### “Put It On The Card”: Legal-Ethical Issues in Electronic Payments for Mental Health Pros

Roy Huggins, LPC NCC Instructor

[www.personcenteredtech.com](http://www.personcenteredtech.com)



**Disclaimer:** This training covers a lot of ground that is still shifting. The information I give you today could change tomorrow, so please regard this training as it is intended: an educational opportunity to learn what is happening now and be better prepared to take ethical, legal and clinically effective action to help your clients and your practice in the 21<sup>st</sup> century practice environment.

## Today's 3 Main Topics

**1. Money, Credit and Clinical Boundaries**

**2. How Does This Stuff Work?**

**3. Legal-Ethical Issues in Electronic Payments**

# **1. Money, Credit and Clinical Boundaries**

## Plastic: What Is It Good For?

**Payment card:** Credit cards, debit cards, HSA and FSA cards, prepaid cards, etc.

### Poll: Do you accept payment cards for clinical services? Yes



- Sometimes
- Thinking about it
- No

### What Can Credit Cards Help Us With?

- Access to Care
- Cashless
- Can affect clinician-client relationship...

---

## Money: The Great Divider

A great way to polarize a room full of therapists is to bring up the subject of money in therapy.

### Poll: To me, money in my practice is...

*(choose all that apply)*



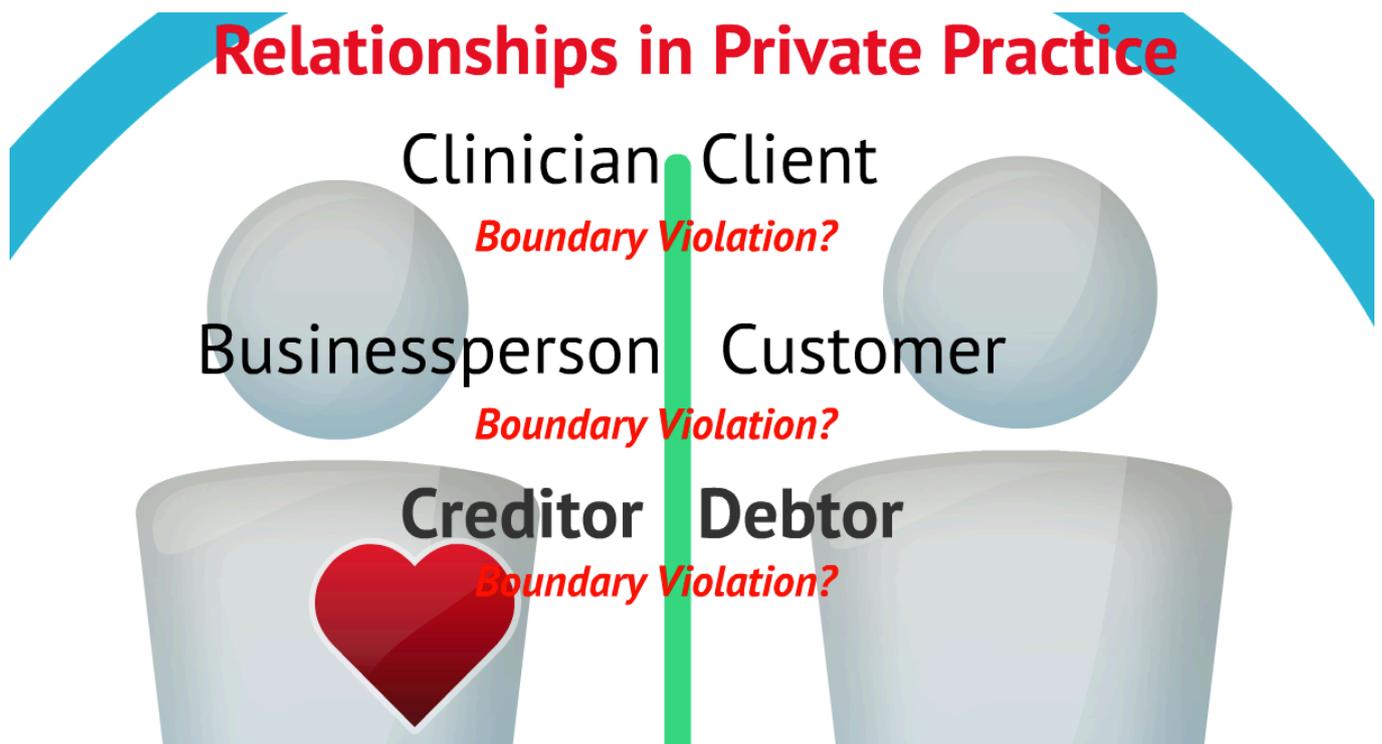
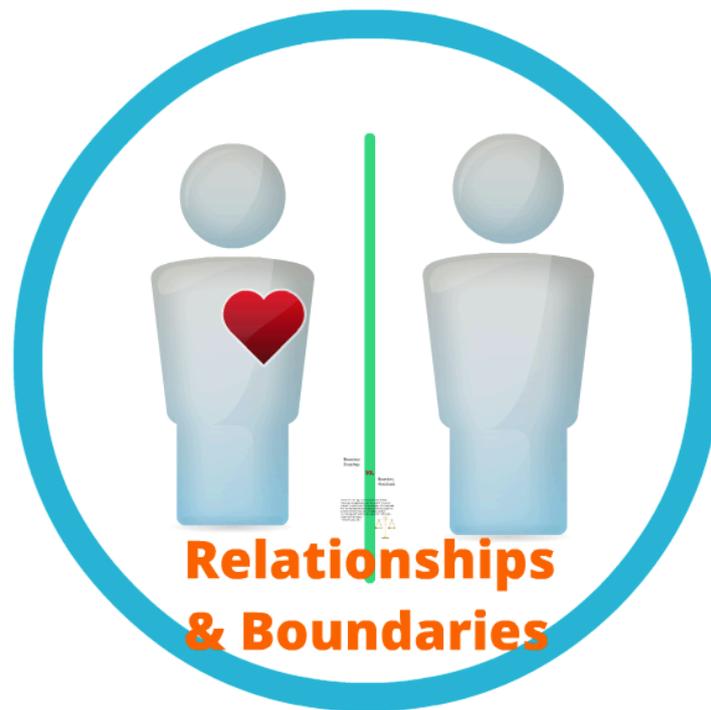
- A necessary evil
- Something I need/want more of
- A barrier to clinical relationships
- A tool for establishing healthy clinical boundaries
- Something else

---

## Money and Clinical Boundaries

*Money is a boundary in the sense of defining the business nature of the therapeutic relationship. This is not love, it's work.*

(Gutheil & Gabbard, 1993)



**Boundary Crossing:** When a dual/multiple relationship exists. This term is value-neutral, and could represent a beneficial neutral, or harmful relationship.

**Boundary Violation:** A harmful boundary crossing.  
(Zur, 2011) (Remley & Herlihy, 2012)

**Poll: I see the following relationships as inherent boundary violations...**



*(choose all that apply)*

- Clinician-Client
- Businessperson-Customer
- Creditor-Debtor

---

## **Client-Clinician Debt and Boundary Crossings**

*I remember reading about one trial court decision involving a therapist who sued the patient for a large amount of money owed for past sessions. The court ruled that the therapist, by allowing the patient to be put in a position where he was now in a debtor-creditor relationship with his therapist, waived his right to the recovery of any money.*

(Leslie, 2013)

**Poll: Which of the following is the most well-suited to being a creditor?**



- Mental Health Clinicians
- In-Laws
- Bartenders
- Banks

**→ Credit cards allow clients to use debt to pay for therapy without taking on debt to the therapist**

**→ Let's see hands on the next items. Please find the "raise hand" button on your control panel.**

### **With Credit Cards...**

- Debt is to the issuing bank and not the therapist (*good? bad? mixed?*)
- Collection of debt is done completely independent of the therapist (*good? bad? mixed?*)
- If the courts get involved to collect on the client's debt, the therapist may have no awareness of this fact (*good? bad? mixed?*)
- The therapist is paid for services immediately (*good? bad? mixed?*)
- Modern tech makes merchant banking account immediately and cheaply available to small businesses, including private practices (*good? bad? mixed?*)
- The client can make decisions around using debt on his/her own without bringing it to the therapist (*good? bad? mixed?*)

---

## Is Revolving Debt Healthy?

Revolving Debt: A special kind of credit account wherein the debtor can continuously take on more debt so long as the total debt kept at one time does not exceed a certain amount, called a “credit limit.”

➔ A common concern among therapists is that the use of revolving credit in the US is already rampant, and those therapists state they are not comfortable with their clients’ taking on revolving debt for therapy.

➔ **Let’s see hands**

- Clinicians should monitor when clients are using credit cards vs. debit cards or other payment cards that don’t use revolving debt *(yes? no? depends?)*
- I want to be involved in my client’s decision to use revolving debt to pay for my services *(yes? no? depends?)*
- I do not want my clients to take on revolving debt to pay for therapy *(yes? no? depends?)*

---

## Credit Debt and Ethics of Fee Setting

➔ All the major professional ethics codes address the setting of fees. They differ, but agree on the point that the client’s “ability to pay” should be considered when setting fees.

**Poll: When setting fees, is the client’s possession of a credit card part of their “ability to pay?”**



- Yes
- No
- Maybe
- Not Sure

---

## Passing on Credit Card Fees to Clients

This is a controversial topic, so I’ll just give a quick run-down of the facts:

- Legal to do at the Federal level following a court case in January of 2013
- Not legal for debit cards
- Extra fee must be called a “surcharge,” and listed separately on receipts
- Illegal in 10 states
- May cause problems if done with insurance copays

Alternatives:

- Give a discount for paying cash
- Set fees to account for credit card charges

---

**★ Resource: Passing Fees to Clients: [personcenteredtech.com/feepassing](http://personcenteredtech.com/feepassing)**

## **☑ Money, Credit and Clinical Boundaries**

### **2. How Does This Stuff Work?**

### **3. Legal-Ethical Issues in Electronic Payments**

## **2. How Does This Stuff Work?**

## Payment Cards

- **Credit cards**
- **Debit Cards**
- **HSA and FSA cards:** Cards used to draw on funds from a Health Savings Account (HSA) or Flexible Savings Account (FSA.)
  1. You may have to go through a special process with your merchant services provider to be able to accept such cards.
  2. Your client may need receipts or other documentation to accompany HSA and/or FSA payments.
  3. If you run an HSA or FSA card successfully and get payment, that is not a guarantee that the services you provided are covered by the HSA or FSA.
    - On the off chance that your services are not covered, and the payer decides to reject them, you may be required to return those funds.
    - In this instance, you may (rightly) require the client to pay the fee out of pocket, much like you would with a rejected insurance claim. Just as with the rejected insurance claim, your policy around rejected HSA and FSA payments needs to be included in your **informed consent regarding fees** before you can ethically pursue reimbursement from the client.
- **Pre-Paid Cards**
- **Wireless Card Payments (EMV and Apple Pay):** In October of 2015, the “card brands” will start requiring all merchants (that’s you) to accept EMV cards if the customer (that’s the client) presents one. If you do not comply, the consequence will be that you will become 100% liable if the client’s payment is fraudulent.

---

## Accepting Payment Cards

- **Classic Credit Card Terminals**
- **Mobile Payment Services**
  - Square
  - PayPay Here
  - Intuit GoPayment
  - PropPay Jak
- **Online Funds Transfers**
  - PayPal
  - Venmo
  - Many other Venmo-like services popping up

### Poll: How do you take cards?

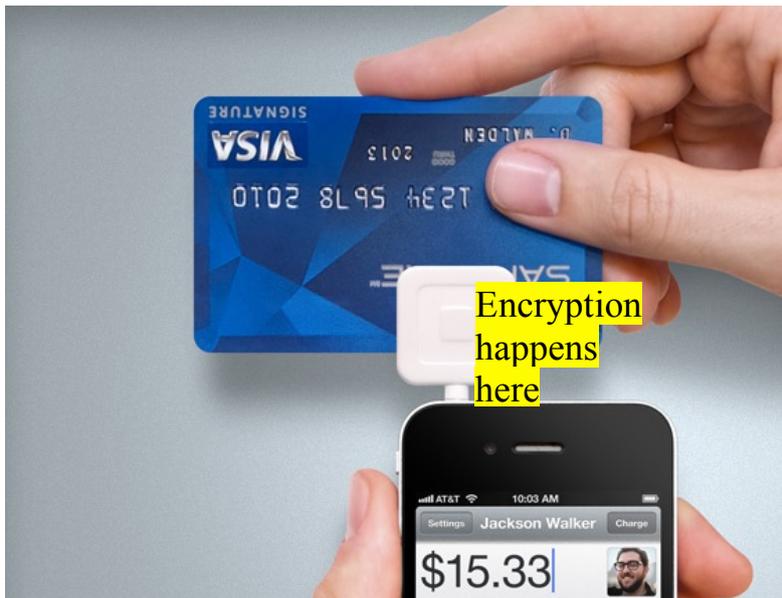


(choose all that apply)

- Mobile App (e.g. Square, PayPal Here, etc.)
- Online Transfer (e.g. PayPal)
- Card Terminal
- Other

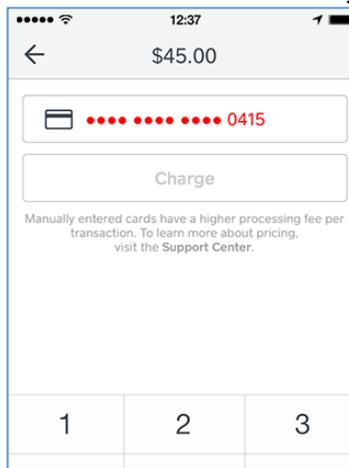
I don't

## Mobile Device Card Readers



➔ The invention of Square caused the **PCI Counsel** to change the PCI DSS standards (more in the next section.) After that change, mobile device card readers always encrypt card information before the information even enters your device

➔ What happens if you key in the card number manually, however?



➔ We recommend you regard mobile devices used for taking payments as devices requiring security. Include mobile payment apps in your HIPAA Security Risk Analysis

★ **Resource: Mobile Device Security: [personcenteredtech.com/mobilesec](http://personcenteredtech.com/mobilesec)**

**☑ Money, Credit and Clinical Boundaries**

**☑ How Does This Stuff Work?**

### **3. Legal-Ethical Issues in Electronic Payments**

## **3. Legal-Ethical Issues in Electronic Payments**

---

## HIPAA Business Associates

### What's a HIPAA Business Associate?

Business Associates are people and organizations who, in the normal course of business, handle protected health information *on your behalf*. Examples:

- Billing services
- Collection agencies
- Record storage companies
- Attorneys
- Accountants

### Business Associate Agreements (“BAA”)

HIPAA covered entities must have a contract with business associates in which they agree to safeguard your information in the same ways you do. This is called a Business Associate Agreement.

*A covered entity may permit a business associate to create, receive, maintain, or transmit electronic protected health information **on the covered entity's behalf** only if the covered entity obtains satisfactory assurances that the business associate will appropriately safeguard the information.*

45 CFR §164.308 (b)(1) emphasis mine

### This Is Where HIPAA Security Gets Rigid

**IF** a person or group qualifies as your Business Associate  
**THEN** no BAA = HIPAA Violation

### Poll: Do you have any Business Associate Agreements?



- Yes
- No
- Not Sure

---

## Cloud Services and the HIPAA Business Associate Rule

Cloud providers are generally Business Associates. Thus you will generally need a Business Associate Agreement from these providers if you must comply with all rules of HIPAA.

Here's that list of cloud provider examples again:

- Email services (especially those that you access through a Web browser, such as Gmail or Yahoo Mail)
- Online Data Backup Services
- Cloud-based EMR and all EHR systems
- Online Practice Management Systems
- PayPal?? Wait a minute...

---

## Business Associates and Financial Institutions

### HIPAA and payment service providers

→ Financial institutions are **not** HIPAA business associates in their capacity as businesses that **process payments**

*The HIPAA Rules, including the business associate provisions, do not apply to banking and financial institutions with respect to the payment processing activities identified in §1179 of the HIPAA statute, for example, the activity of cashing a check or conducting a funds transfer.*

(US Dept. of Health and Human Services, 2013)

*Thus, unlike other entities, whether financial institutions must comply with HIPAA does not turn on their receipt, disclosure, or use of PHI. If this were the test, all banks would be business associates according to experts who have estimated that 40% of the information contained in most bank lockbox accounts meets the definition of PHI. However, OCR instructs that the focus is [not] on the nature of the information but on what financial institutions are **doing** with the information.*

(Augsburger, 2013)

### Mixing/value-add services: a great way to become a HIPAA business associate

→ Generally, nearly no financial service provider will execute a BAA with you

→ Sometimes financial services may provide "value-added" services. Using these services will technically turn them into business associates. Some examples:

- Square will send a receipt for payment on your behalf by email or text
- A handy feature of PayPal, especially for distance therapists, is invoicing services
- Some credit card processing services double as billing services

→ **Simply do not use the services that trigger a BA relationship**

★ **Resources:** Banks and HIPAA: [personcenteredtech.com/bankhipaa](http://personcenteredtech.com/bankhipaa)

→ As an alternative, you can:

- Provide a paper receipt
- Provide receipts using whatever secure communication service you and your clients use
- Handle your own invoicing (however you do that), but accept direct payments through PayPal

→ To be sure, it is advised that you not enter any more information into your payments than you need to

- E.g. when running a Square charge, do not add any info in the comments field

---

## “Value-Add” Services and Client Expectations

→ Clients don’t generally expect these things when they pay with a credit card:

- Receiving an email with a receipt for their therapy services (*danger?*)
- Seeing their payment for therapy services show up in a social feed on Venmo (*danger?*)

→ Informed consent is always a powerful ethical tool. Be sure to inform clients about potential risks of unexpected “side effects” in modern payment systems ahead of time.

★ **Resources:** Banks and HIPAA: [personcenteredtech.com/paydisclose](http://personcenteredtech.com/paydisclose)

---

## PCI-DSS

“Credit Card HIPAA”

**Poll: Have you ever done a PCI audit?**



- Yes
- No
- Not Sure

**Another Regulation I Have To Comply With????**

**What is PCI DSS? How Does It Differ From HIPAA?**

- Merchant levels and expectations
  - The majority of us are “Level 4,” meaning our requirements for proving PCI compliance are low
- Legal backing/requirements around PCI
  - NV requires it by law, protects compliant merchants
  - WA doesn’t require it, but protects compliant merchants

→ Two Approaches: Face It or Minimize It

**PCI DSS and “Scope”**

**What Does “In Scope” Mean?**

→ If your device is “in scope,” PCI requires you to secure out

- Mobile payment swipers encrypt data so as to **keep merchant devices out of scope**
  - **This is big!!**
- Manually entering card data would put mobile device in scope
  - So keep those devices secured
- If you store client credit card information, your storage system is in scope.
  - MN law restricts doing so.

TECH SUPPORT: 800-263-6317

### **Protecting Your Gear That Is “In Scope”**

- WiFi/networks in general
- Credit card terminals
- Mobile devices

### ***What Will I Have To Do For PCI DSS Compliance?***

#### **It Depends On What You Use For Collecting Payments**

- Classic terminals always require attestation and audits by companies like Trustwave
- Square requires nothing
  - Will this last forever?
- PayPal requires nothing but PCI is still a consideration
- Intuit GoPayment requires attestation

#### **Protecting Your “Point Of Sale” (POS) System**

Your mobile device + WiFi becomes a POS when using mobile payment apps

- Protect your mobile device (overlaps with HIPAA)
- Protect your WiFi (overlaps with HIPAA)

## Today's 3 Main Topics

☑ **Money, Credit and Clinical Bound (Remley & Herlihy, 2012)aries**

☑ **How Does This Stuff Work?**

☑ **Legal-Ethical Issues in Electronic Payments**

### Person-Centered Tech Offerings:

- **Monthly, Live Ethics Trainings on Security & HIPAA Especially for Mental Health**
  - Limited enrollment
  - Live and interactive
  - Supportive, fun, and not dry at all
  - [www.personcenteredtech.com/webinars](http://www.personcenteredtech.com/webinars)
- **Just about weekly “Office Hours” service online**
  - Four times per month, 90 minute live group consultation online
  - 1 year of group consultation subscription costs about the same as 1 hour of individual consultation.
  - Subscription gives access to every Office Hours recording ever
  - Ask questions live on the webinar or ask them before-hand and watch the recording afterwards
  - [www.personcenteredtech.com/officehours](http://www.personcenteredtech.com/officehours)
- **Coming soon: Mental Health Professionals’ Workbook for HIPAA Security Compliance!**
  - A simple, directed, and highly supportive workbook
    - Videos
    - Worksheets
    - Step-by-step instructions
    - Pre-created policies and forms tailored to mental health clinicians
  - [www.personcenteredtech.com/goworkbook](http://www.personcenteredtech.com/goworkbook)

## References

- American Association of Marriage and Family Therapists. (2012). *Code of Ethics* . Alexandria, VA: Author.
- American Counseling Association. (2014). *ACA Code of Ethics*. Alexandria, VA: Author.
- American Psychological Association. (2010). *American Psychological Association Ethical Principles of Psychologists and Code of Conduct* . Washington, DC: Author.
- Augsburger, M. (2013, Feb 13). *The Convergence of Health Care and Banking*. Retrieved Jan 11, 2014, from Health Care Law Matters: <http://www.healthcarelawmatters.com/compliance/the-convergence-of-health-care-and-banking/>
- Gutheil, T. G., & Gabbard, G. O. (1993). *The Concept of Boundaries in Clinical Practice: Theoretical and Risk-Management Dimensions*. Retrieved April 26, 2013, from Articles, Research, & Resources in Psychology: <http://kspope.com/ethics/boundaries.php>
- Leslie, R. S. (2013). *Dual Relationships*. Retrieved May 2, 2013, from CPH Avoiding Liability Bulletin: <http://www.cphins.com/legalresources/bulletin?category=11>
- National Association of Social Workers. (2008). *Code of Ethics* . Washington, DC: Author.
- National Board for Certified Counselors. (2012). *Code of Ethics* . Greensboro, NC: Author.
- Remley, T., & Herlihy, B. (2012). *Ethical, Legal, and Professional Issues in Counseling* (4th ed.). Upper Saddle River, NJ: Merrill Prentice-Hall.
- Trustwave. (n.d.). *PCI DSS for Merchants*. Retrieved April 4, 2013, from Trustwave: <https://www.trustwave.com/pci-dss-merchants.php>
- US Dept. of Health and Human Services. (2006). *HIPAA Administrative Simplification* . Washington, DC: Author.
- US Dept. of Health and Human Services. (2013). *HIPAA Omnibus Final Rule* . Washington, DC: Author.
- Visa. (2013). *Merchant Surcharging – Understanding Payment Card Changes*. Retrieved April 29, 2013, from Visa: [http://usa.visa.com/personal/using\\_visas/checkout\\_fees/index.html](http://usa.visa.com/personal/using_visas/checkout_fees/index.html)
- Zur, O. (2011). *Dual Relationships, Multiple Relationships & Boundaries In Psychotherapy, Counseling & Mental Health*. Retrieved May 20, 2013, from Zur Institute: <http://www.zurinstitute.com/dualrelationships.html>