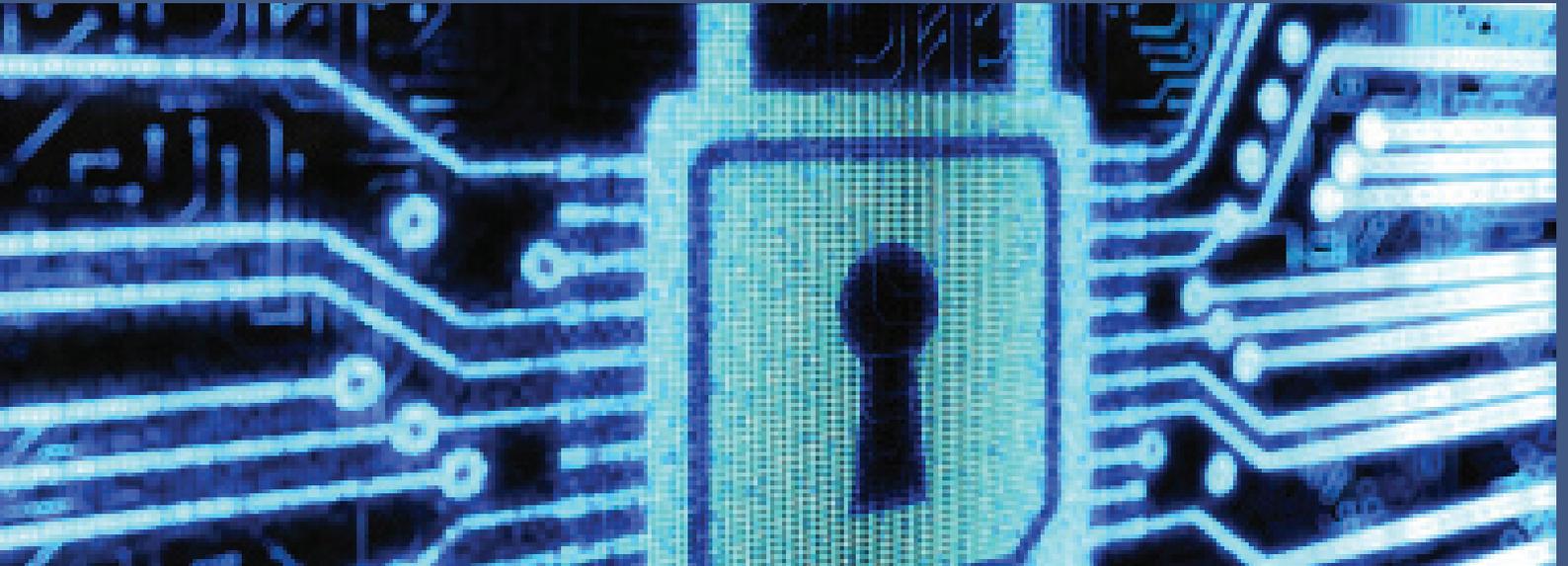


BY FRANK TANEY, JR.

Virtual Therapy vs. Professional Obligations



Millions of people participate in virtual world environments, for a wide range of reasons. For these people, virtual worlds are immersive and engaging, and enable them to have experiences that would be difficult or even impossible outside of a virtual world.

Therapists are among those who are exploring virtual worlds as a treatment modality, and some see virtual worlds as having much promise in this regard. While virtual worlds certainly have potential, the environment raises a number of legal issues of which therapists should be aware and which they should address before providing therapy within virtual worlds.

As an initial matter, and at the risk of stating the obvious, a virtual world is an online environment. Therefore, a therapist should first determine whether the jurisdiction in which the therapist resides allows or places any restrictions

on providing therapy. These regulations may govern issues like informed consent, data privacy and security, and reporting obligations. I will discuss the implications of virtual worlds for these concerns in further detail later in this article.

Therapists also need to consider licensure. Because virtual worlds connect people from all over the world, the therapist must first determine whether the jurisdiction where the client resides will allow the therapist to treat the client without obtaining a license in that jurisdiction. Further, because virtual worlds allow participants to be anonymous or pseudonymous, a therapist should have some reliable means of determining a client's age and location.

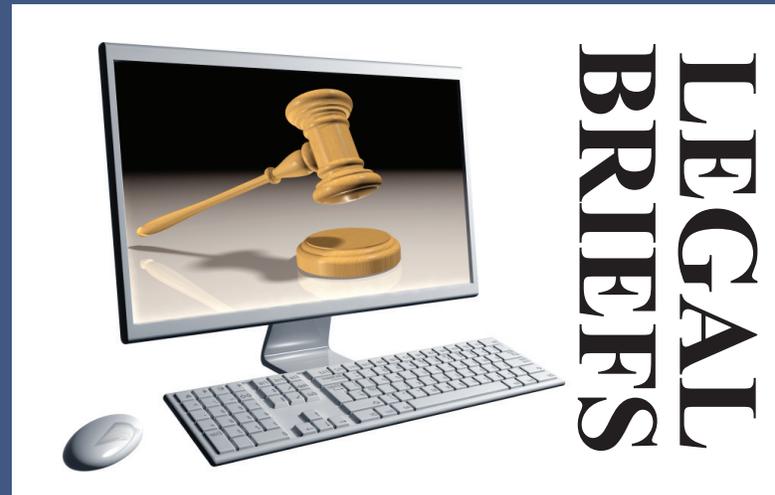
Virtual worlds also raise significant privacy and security issues for therapists seeking to treat clients within virtual worlds. A number of virtual world environments are hosted by third party

service providers who may have technical access to confidential client data to an extent that may contravene applicable regulations. Further, virtual world proprietors typically require users to consent to so-called "terms of service" or "terms of use" that govern user behavior within the environment. These terms of service may require users to grant the proprietor, and even other users, certain licenses with respect to the use of information or content placed within the virtual world. These conditions may also conflict with applicable regulations.

From a security standpoint, therapists should also determine whether the virtual world enables the therapist to preclude third parties from monitoring or eavesdropping on therapy sessions. Further, the therapist should determine whether any confidential information that will be necessarily stored within the virtual world will in fact be secure from security breaches.

Virtual worlds terms of service present additional issues for therapists who seek to place content of a general informational or instructional nature within the virtual world. To the extent that a therapist wishes to retain and/or protect the therapist's intellectual property rights in such content, the therapist should ensure that the terms of service do not claim ownership of the intellectual property inherent in content placed within the virtual world, or require the grant of licenses to such content that conflict with the therapist's intended uses of the content.

Finally, as with other potential online treatment modalities, virtual worlds also require therapists to address their obligations with obtaining informed consent from clients with respect to treatment. In addition, therapists must take care to comply with the obligations that the applicable jurisdictions impose with respect to notifying authorities about situations involving physical risk to the client or third



parties that become apparent from the therapy sessions. Similarly, virtual worlds do not affect a therapist's potential liability for common law tort claims that may arise from a therapist's treatment, such as malpractice and negligent or intentional misrepresentation, as well as claims for breach of contract.

In sum, while virtual worlds present significant promise as a therapy modality, therapists must understand that the virtual nature of the therapy space does not lessen their professional obligations in the slightest. Further, virtual worlds require attention to additional technical and legal issues not applicable to therapy delivered outside of virtual worlds. Therapists exploring virtual worlds as a means of providing therapy should therefore proceed with caution.

Francis ("Frank") X. Taney, Jr. is a shareholder in the law firm of Buchanan Ingersoll & Rooney PC, where he serves as the chair of the information technology litigation practice group and is a member of the technology transactions group. This article is general and informational only and does not constitute legal advice.