



Board of Behavioral Sciences

Memo

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To: Committee Members

Date: November 3, 2023

From: Rosanne Helms
Legislative Manager

Subject: Discussion of Online-Only Therapy Platforms

Overview

The increasing use of online-only therapy platforms and alternative methods of therapy such as texting raise the question of whether these methods pose any new public protection concerns that the Board needs to address.

The Telehealth Committee (Committee) prepared and administered a survey for licensees and registrants who have had experience working for an online-only therapy platform, in order to gain more information about their experiences and identify potential areas of concern.

The survey was open from April 10 through May 15, 2023. The Board utilized its social media, email subscriber lists, and also sought the help of its professional organization stakeholders in order to distribute the survey. The survey received over 1,700 responses. The full results for multiple-choice questions are shown in **Attachment B**. (Responses to open-ended questions were summarized and discussed at the June 8, 2023 Committee meeting.)

The survey results were discussed in detail at the Committee's June 8, 2023 meeting. The Committee identified three potential areas of concern based on the results:

1. Concern related to reporting from some therapists that an online-only therapy platform had matched them to clients in states where they were not licensed.
2. Concern related to how the custodian of record and informed consent agreements were managed.
3. Concern about lack of an emergency plan.

The survey results related to those three areas of concern are summarized as follows:

1. Matching to Clients in States Where Therapist Not Licensed

Question 12: Did the platform ever match you to clients in states where you are not licensed?

The majority (82%) indicated they were not ever matched to clients in states where they were not licensed. However, 18% indicated that they were.

Question 13: Did the platform provide you with any instructions regarding treating clients located in states where you are not licensed? If so, please describe.

A large number of responses indicated that no instructions were provided. However, many reported being instructed that practice in a state where not licensed was not allowed, and to have any incorrectly matched out-of-state clients re-referred. Many noted that they had the ability to decline a client if they were out-of-state. Some were told it was their responsibility to know each state's requirements for practice in that state.

A few responses did indicate they were asked to see clients out of their license jurisdiction, or told it was ok briefly for continuity of care if a client was travelling. A couple responses mentioned that they were allowed to accept international clients.

2. Custodian of Record and Informed Consent Agreements

Question 20: How was the client informed consent agreement handled when you worked for, or contracted with, the online-only therapy platform?

A majority (70%) indicated the platform handled the informed consent agreement and maintained it as part of the client's records. 19% indicated that they handled the informed consent agreement and maintained it.

In the comments, several respondents indicated that they also did this themselves, even though the platform did as well.

Question 21: Who served as the custodian of record for client health information and records when you were working for or contracting with the online-only therapy platform?

65% indicated the online-only therapy platform served as the custodian of record. Only 17% indicated they served as custodian of record.

In the notes, several therapists indicated that even though the company was the custodian of record, they also kept their own files for their records.

Question 22: How did the online-only therapy platform communicate its privacy policy and data sharing practices to your clients?

Most indicated that these were delivered in writing by the company to the client, prior to beginning services (56%). However, 29% indicated that they did not know how this information was communicated to clients.

3. Emergency Plan

Question 25: Did the platform have a clear emergency plan in place for clients in crisis?

60% responded yes; 40% responded no.

Question 26: Please briefly summarize the emergency plan.

Below is a sampling of answers:

- Crisis team in place for emergencies with a protocol for therapists to follow.
- Emergency resources provided for each county they serve in CA (spread sheet available to all clinicians). Clinical staff are available for consultation by phone or on secured chat.
- Contact platform director to discuss case and need for 5150, or 911 call.
- They had a brief training on their crisis procedure. Basically the therapist would have access to the crisis team who was able to contact local emergency services (911, pmrt, etc) the client based on their location (also could cancel the therapist's other clients while on a crisis call). Then if they were contacted we would work with the crisis team to stay on the line with client until help arrived. Afterwards we were to write up a report about the crisis and submit to the clients file.
- Clients were required to contact 911. The platform stated they were not a crisis facility and clients were to be referred to a crisis line, emergency contact.
- There was a button on each client's platform where therapists could request help with a client and platform would provide full name, address, phone, and, contact person for the client.
- List of phone numbers on safety plan
- Each client required to complete a safety plan in initial session with Therapist. Saved electronically.
- Client notified if emergency please call 911 or go to nearest emergency room. Client also provided information of National Suicide Prevention Line and also Text Crisis Line numbers.

Committee Direction

After identifying and discussing the above areas of concern, the Committee directed staff to take two actions in advance of its next meeting.

1. **Meet with Staff Members from the Senate and Assembly Business and Professions Committee**

The Committee asked staff to meet with these committees' staff to discuss the survey results, the identified issues of concern, and the Board's consumer protection mandate as it relates to regulating individual practitioners versus online-only therapy platforms.

Staff met with the representative assigned to the Board from both the Senate and Assembly Business and Professions Committees. Staff provided them with the

survey results, relayed the Board's areas of concern and discussed how the areas of concern relate to the Board's mandate.

The Committee staff were appreciative of the meeting and the survey results. They both indicated that they would report the information to their respective committee chairs, and reach out with any further feedback and questions.

2. Draft a Letter Providing Guidance to Online-Only Therapy Platforms
A draft of the letter is shown in **Attachment A**.

Recommendation

Conduct an open discussion regarding the Committee's concerns about online-only only therapy platforms and potential next steps for the Board to take.

Attachments

Attachment A: Guidance Document: A Note About Use of Online-Only Therapy Platforms

Attachment B: Online-Only Therapy Platform Survey Results

Attachment A
Guidance Document
A Note About Use of Online-Only Therapy Platforms

The utilization of online-only therapy platforms, both as a place to obtain mental health services for consumers, and as a place of employment for mental health providers, has significantly increased since the COVID-19 State of Emergency in 2020.

As the use of these platforms becomes common, the Board of Behavioral Sciences (Board) has been monitoring them to identify if any consumer protection concerns have arisen from their increased use.

The jurisdiction of the Board lies with licensing and regulating competent marriage and family therapists, professional clinical counselors, educational psychologists, and clinical social workers in order to protect the public from incompetent, unethical, or unprofessional practitioners. Although the Board's regulating authority does not extend directly to businesses or companies, the Board's licensees and registrants who are working for these companies are still required to follow the telehealth [laws](#) established by the Board. This includes, but is not limited to, the following:

- Determining the location of the client to ensure they can legally provide telehealth services in the jurisdiction where the client is located.
- Ensuring that there is an emergency response plan in place in case of a client emergency.
- Following the Board's telehealth laws and regulations.
- Being familiar with the therapy platform's policies regarding custodian of record, and practitioner access to client records.
- Ensuring sessions and client records are secure and confidential, in alignment with their professions' code of ethics.
- Verifying the client's identity in order to protect confidentiality.

When considering the use of an online platform to deliver services, a licensee should determine whether the online platform will provide them with the necessary tools to uphold their legal obligations. The Board has compiled numerous resources to serve as

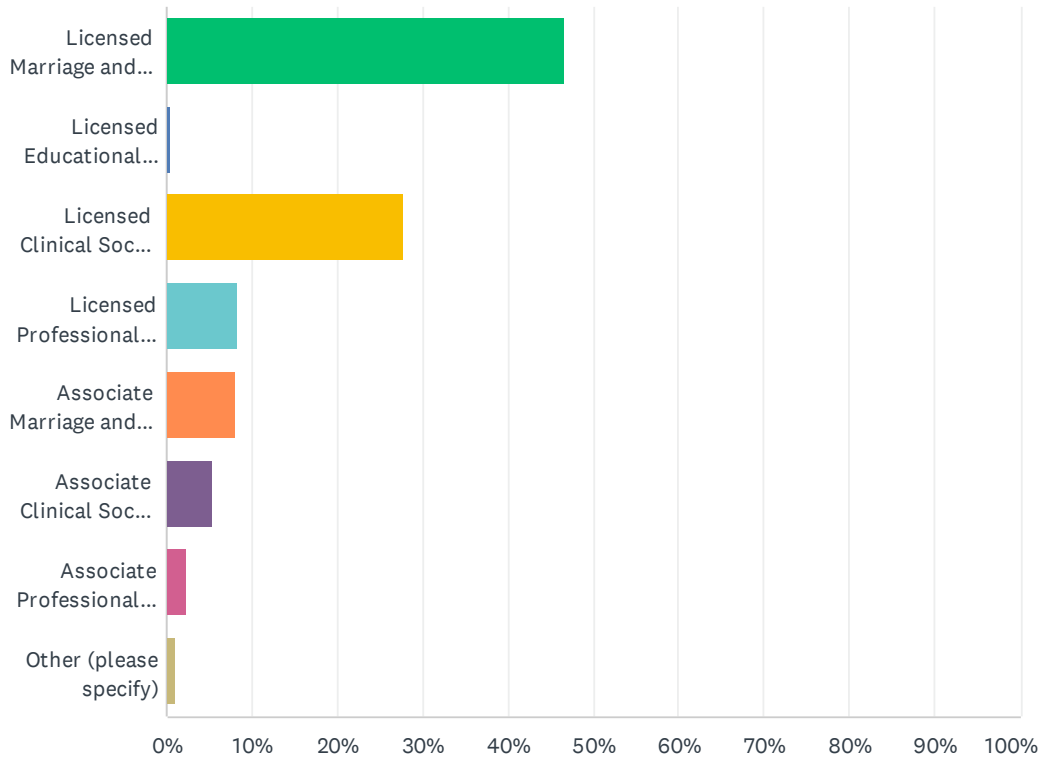
a guide for those that are providing services via telehealth or supervising those who are doing so, and also for consumers who are seeking mental health services via telehealth. Further information and resources can be found here:

- [Providing Mental Health Services via Telehealth](#)
- [Supervision via Videoconferencing](#)
- [Considering Mental Health Services via Telehealth as a Consumer](#)

ATTACHMENT B ONLINE-ONLY THERAPY PLATFORM SURVEY RESULTS

Q1 Please indicate your license or registration type:

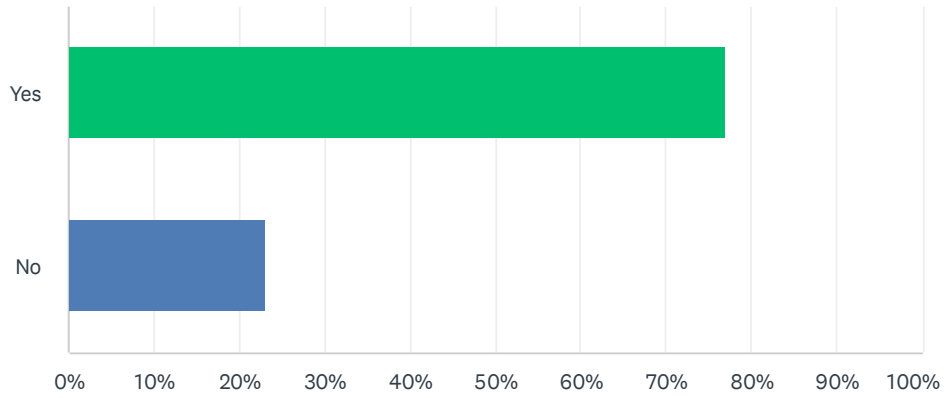
Answered: 1,785 Skipped: 0



ANSWER CHOICES	RESPONSES	
Licensed Marriage and Family Therapist	46.67%	833
Licensed Educational Psychologist	0.34%	6
Licensed Clinical Social Worker	27.79%	496
Licensed Professional Clinical Counselor	8.35%	149
Associate Marriage and Family Therapist	8.12%	145
Associate Clinical Social Worker	5.32%	95
Associate Professional Clinical Counselor	2.30%	41
Other (please specify)	1.12%	20
TOTAL		1,785

Q2 Have you worked for or contracted with an online-only therapy platform?

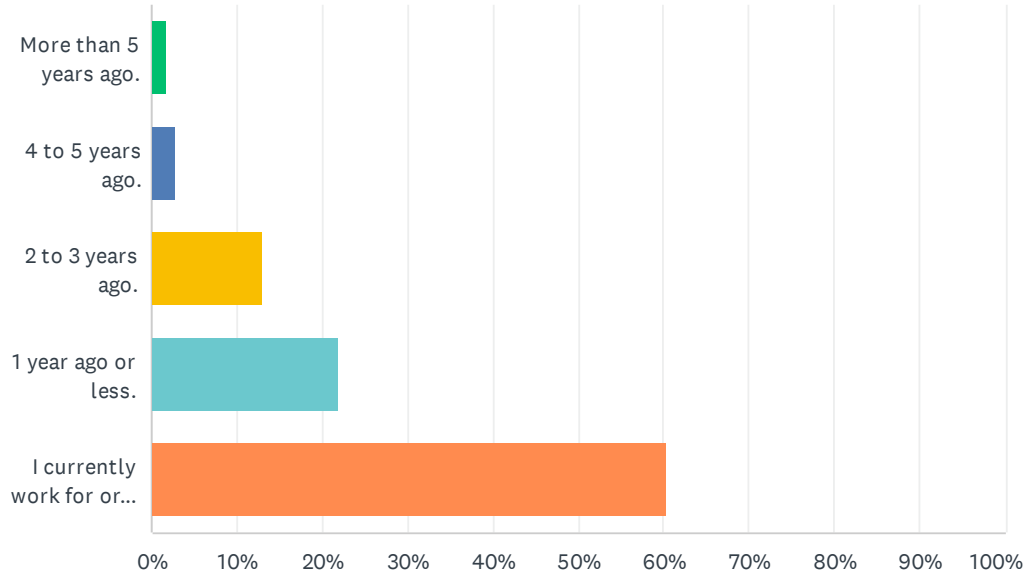
Answered: 1,785 Skipped: 0



ANSWER CHOICES	RESPONSES	
Yes	76.97%	1,374
No	23.03%	411
TOTAL		1,785

Q3 When did you last work for or contract with an online-only therapy platform?

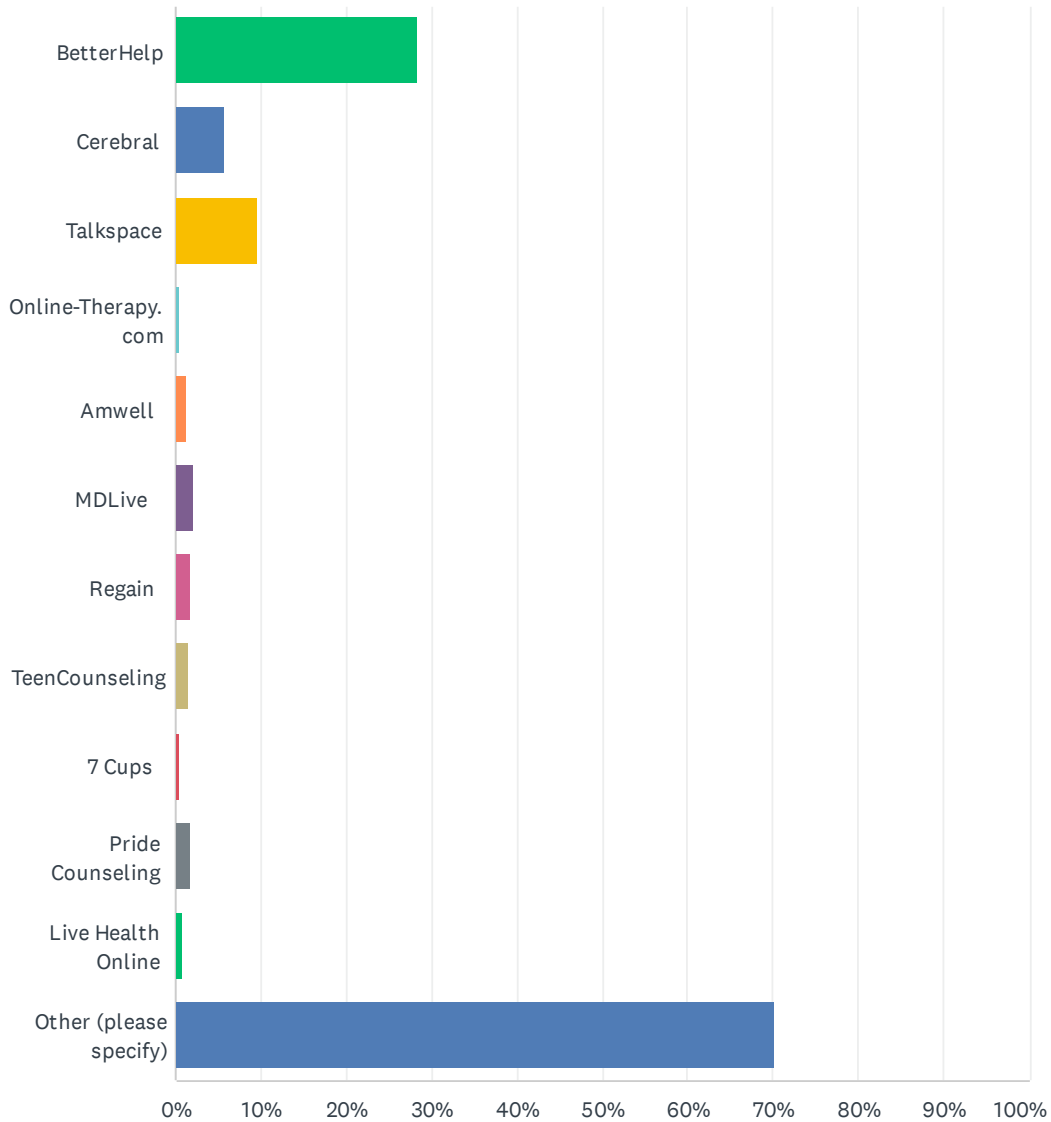
Answered: 1,342 Skipped: 443



ANSWER CHOICES	RESPONSES	
More than 5 years ago.	1.79%	24
4 to 5 years ago.	2.83%	38
2 to 3 years ago.	13.04%	175
1 year ago or less.	21.91%	294
I currently work for or contract with an online-only therapy platform.	60.43%	811
TOTAL		1,342

Q4 Which online-only therapy platforms have you worked for or contracted with: (Select all that apply)

Answered: 1,031 Skipped: 754

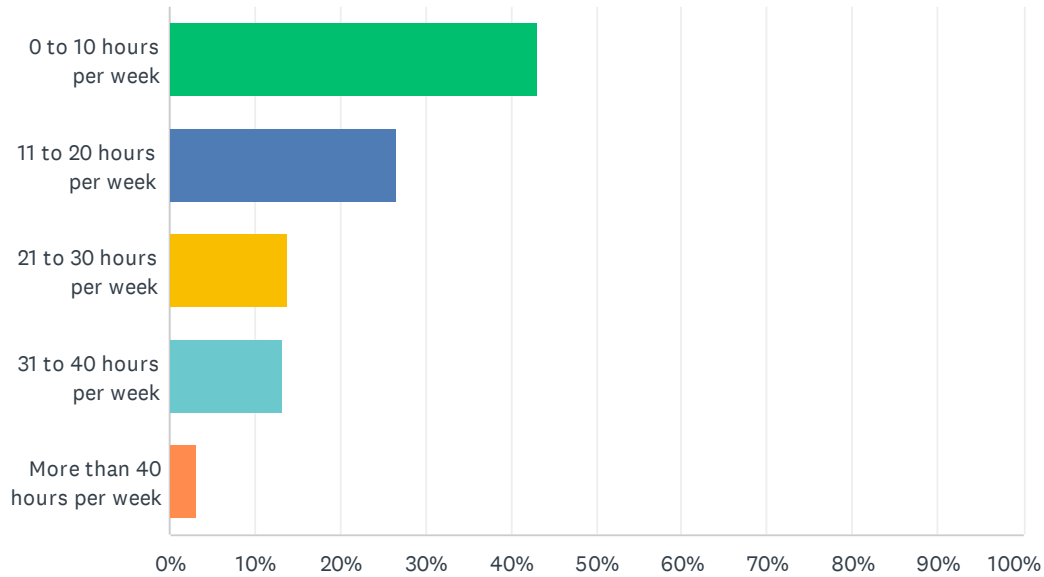


Online-Only Therapy Platform Survey

ANSWER CHOICES	RESPONSES	
BetterHelp	28.32%	292
Cerebral	5.72%	59
Talkspace	9.51%	98
Online-Therapy.com	0.39%	4
Amwell	1.36%	14
MDLive	2.04%	21
Regain	1.65%	17
TeenCounseling	1.55%	16
7 Cups	0.48%	5
Pride Counseling	1.75%	18
Live Health Online	0.78%	8
Other (please specify)	70.22%	724
Total Respondents: 1,031		

Q5 How many hours, on average, did you work for or contract with the online-only therapy platform?

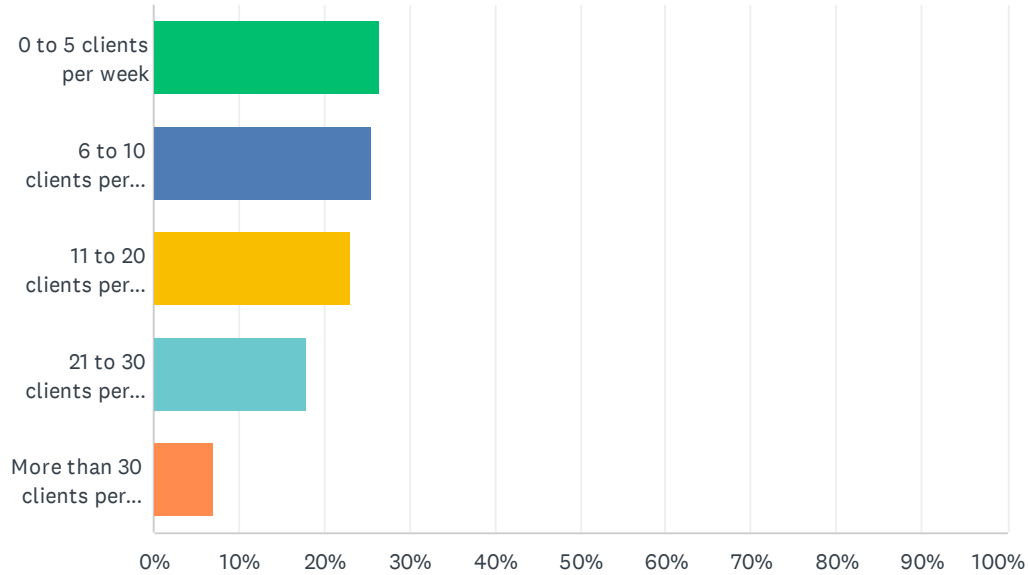
Answered: 1,031 Skipped: 754



ANSWER CHOICES	RESPONSES	
0 to 10 hours per week	42.97%	443
11 to 20 hours per week	26.67%	275
21 to 30 hours per week	13.87%	143
31 to 40 hours per week	13.19%	136
More than 40 hours per week	3.30%	34
TOTAL		1,031

Q6 How many clients, on average, did you see per week working for or contracting with the online-only therapy platform?

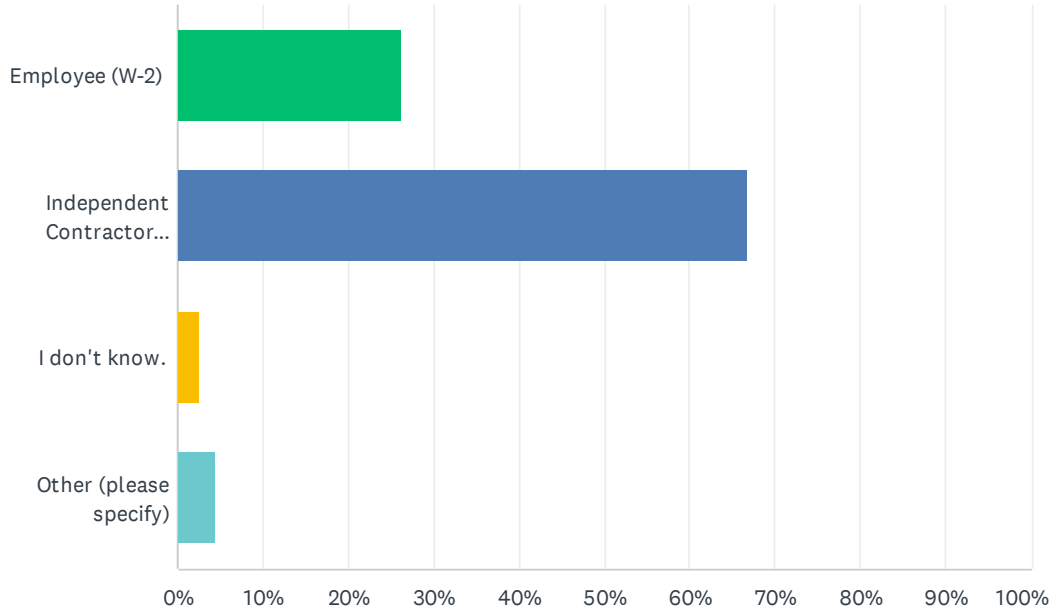
Answered: 1,031 Skipped: 754



ANSWER CHOICES	RESPONSES	
0 to 5 clients per week	26.48%	273
6 to 10 clients per week	25.51%	263
11 to 20 clients per week	23.08%	238
21 to 30 clients per week	17.94%	185
More than 30 clients per week	6.98%	72
TOTAL		1,031

Q7 Were you considered an employee (issued a W-2), or an independent contractor (issued a 1099)?

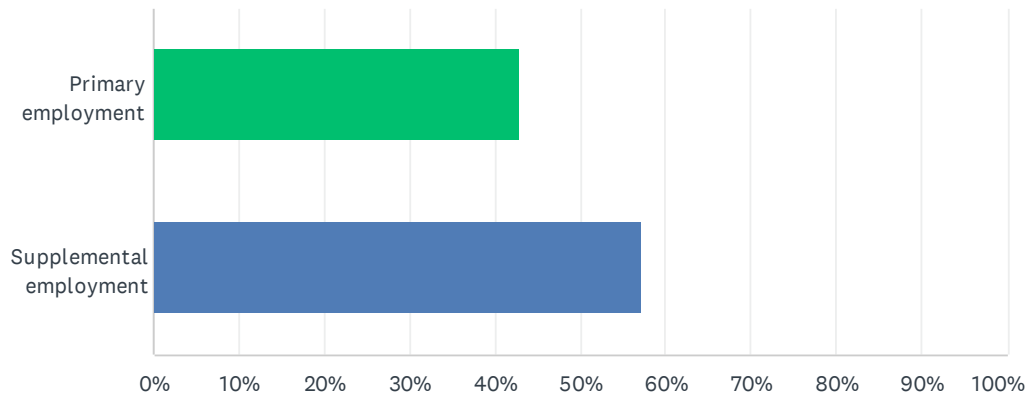
Answered: 1,031 Skipped: 754



ANSWER CHOICES	RESPONSES	
Employee (W-2)	26.29%	271
Independent Contractor (1099)	66.63%	687
I don't know.	2.62%	27
Other (please specify)	4.46%	46
TOTAL		1,031

Q8 Was this primary employment, or supplemental employment?

Answered: 1,031 Skipped: 754



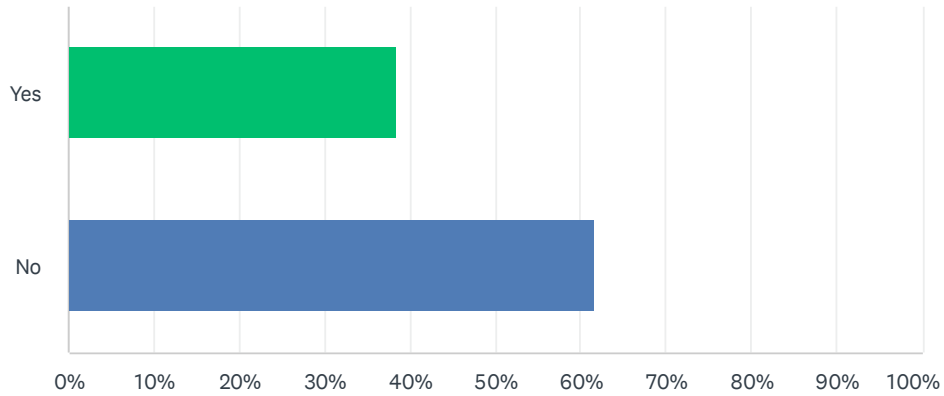
ANSWER CHOICES	RESPONSES	
Primary employment	42.77%	441
Supplemental employment	57.23%	590
TOTAL		1,031

Q9 Please explain how you were paid and your pay rate. (This is optional.)

Answered: 746 Skipped: 1,039

Q10 Did the platform provide you with any type of bonus or incentive structure?

Answered: 1,031 Skipped: 754



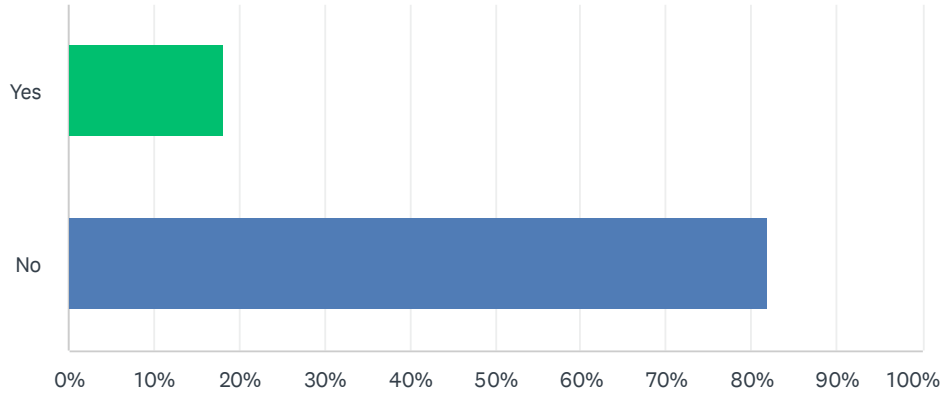
ANSWER CHOICES	RESPONSES	
Yes	38.41%	396
No	61.59%	635
TOTAL		1,031

Q11 Please explain the bonus or incentive structure the platform used.

Answered: 320 Skipped: 1,465

Q12 Did the platform ever match you to clients in states where you are not licensed?

Answered: 956 Skipped: 829



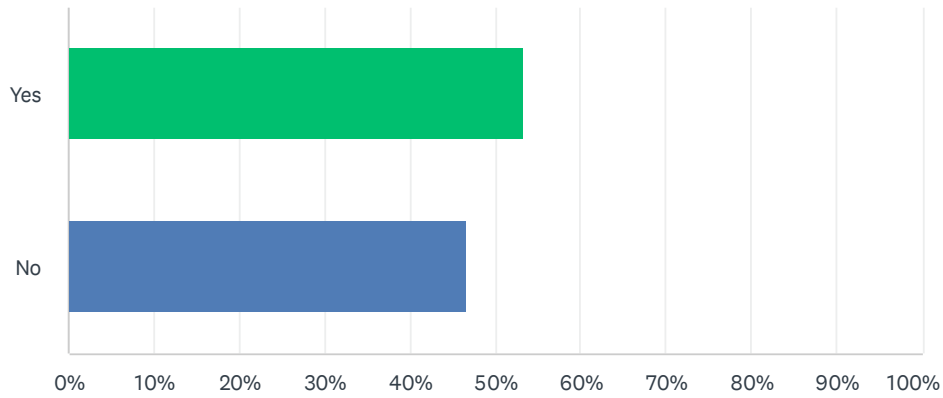
ANSWER CHOICES	RESPONSES	
Yes	18.20%	174
No	81.80%	782
TOTAL		956

Q13 Did the platform provide you with any instructions regarding treating clients located in states where you are not licensed? If so, please describe.

Answered: 809 Skipped: 976

Q14 Did the platform provide you with a way to verify the client's legal name (versus allowing the client to be anonymous, use a pseudonym, etc)?

Answered: 956 Skipped: 829



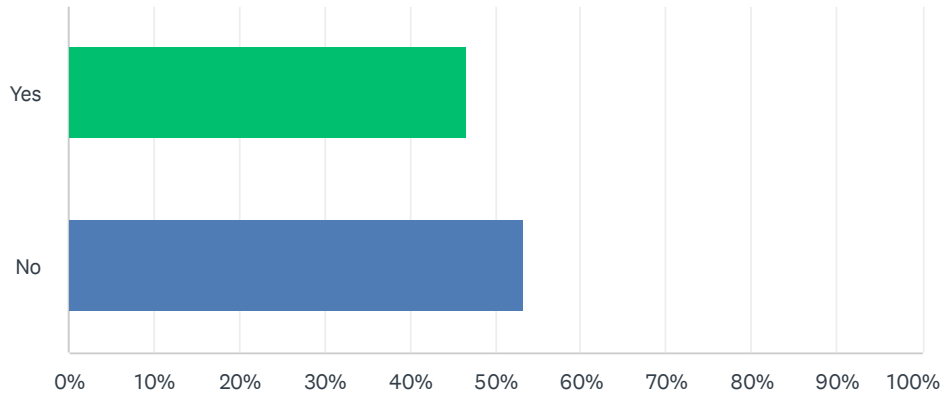
ANSWER CHOICES	RESPONSES	
Yes	53.24%	509
No	46.76%	447
TOTAL		956

Q15 Please explain how the client's legal name was verified.

Answered: 439 Skipped: 1,346

Q16 Did the platform provide you with a way to verify the location of the client?

Answered: 925 Skipped: 860



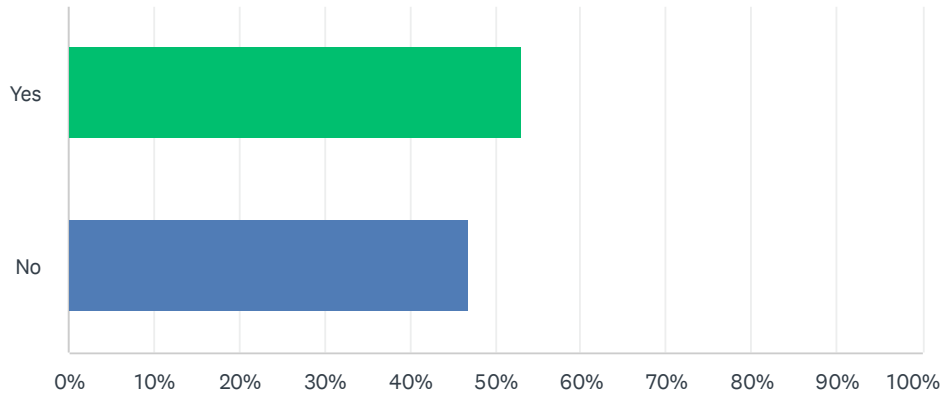
ANSWER CHOICES	RESPONSES	
Yes	46.59%	431
No	53.41%	494
TOTAL		925

Q17 How were you able to verify the location of the client?

Answered: 389 Skipped: 1,396

Q18 Did the platform share information with you regarding how they collect and store client health information?

Answered: 907 Skipped: 878



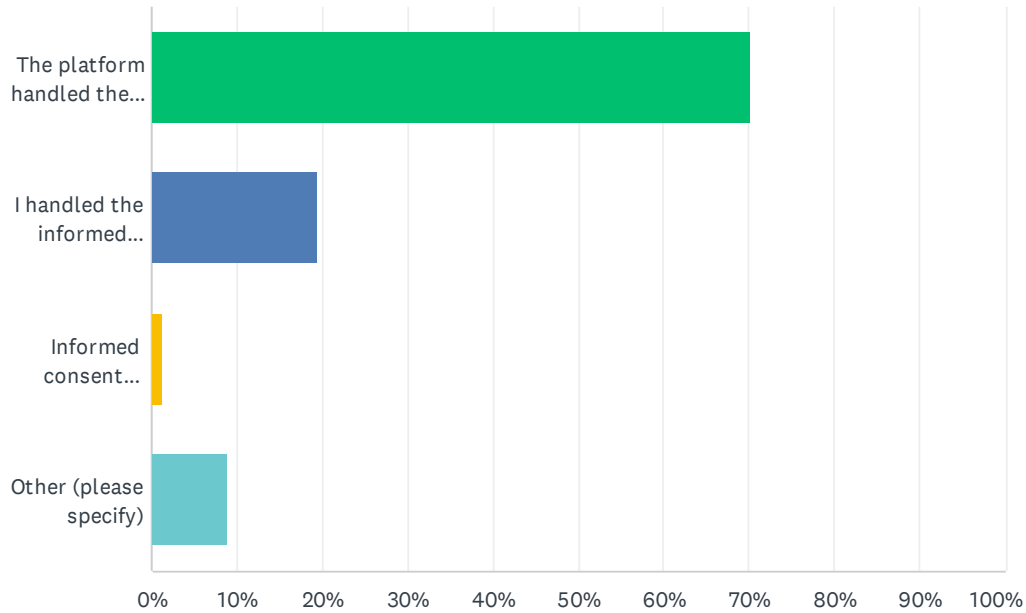
ANSWER CHOICES	RESPONSES	
Yes	53.14%	482
No	46.86%	425
TOTAL		907

Q19 If yes, please explain.

Answered: 377 Skipped: 1,408

Q20 How was the client informed consent agreement handled when you worked for, or contracted with, the online-only therapy platform?

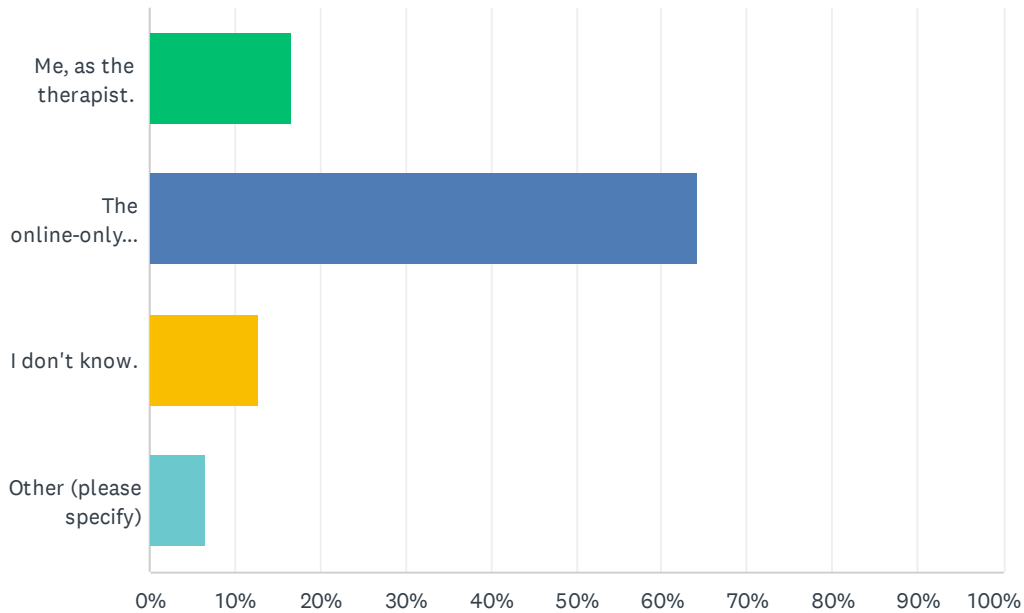
Answered: 827 Skipped: 958



ANSWER CHOICES	RESPONSES	
The platform handled the informed consent agreement and maintained it as part of the client's records.	70.25%	581
I handled the informed consent agreement and maintained it as part of the client's records.	19.47%	161
Informed consent agreements were not done.	1.33%	11
Other (please specify)	8.95%	74
TOTAL		827

Q21 Who served as the custodian of record for client health information and records when you were working for or contracting with the online-only therapy platform?

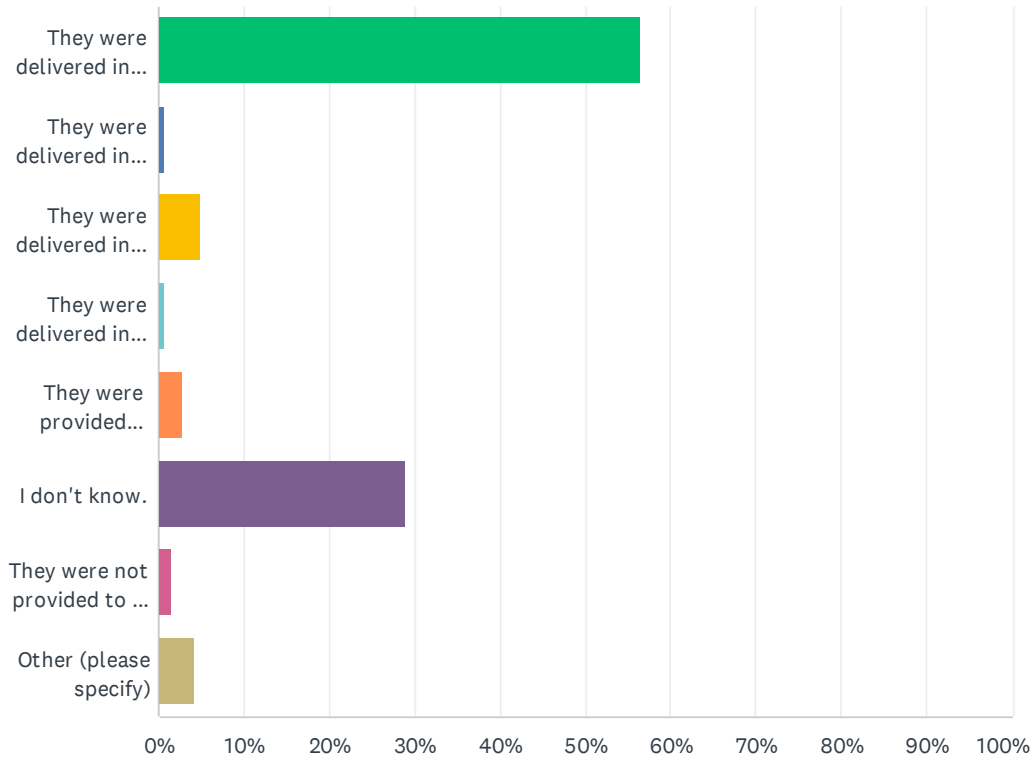
Answered: 827 Skipped: 958



ANSWER CHOICES	RESPONSES	
Me, as the therapist.	16.69%	138
The online-only therapy platform.	64.09%	530
I don't know.	12.70%	105
Other (please specify)	6.53%	54
TOTAL		827

Q22 How did the online-only therapy platform communicate its privacy policy and data sharing practices to your clients?

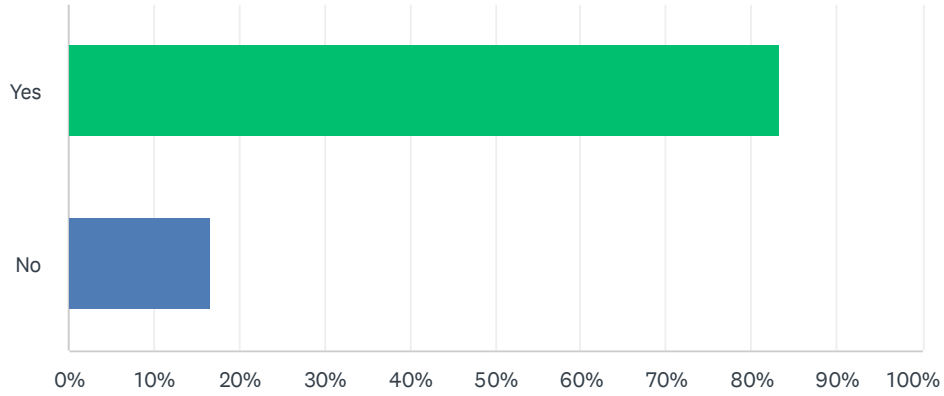
Answered: 827 Skipped: 958



ANSWER CHOICES	RESPONSES	
They were delivered in writing by the company to the client, prior to beginning services.	56.47%	467
They were delivered in writing by the company to the client, upon the client's request.	0.60%	5
They were delivered in writing by the therapist to the client, prior to beginning services.	4.84%	40
They were delivered in writing by the therapist to the client, upon the client's request.	0.60%	5
They were provided verbally by the therapist to the client, prior to beginning services.	2.78%	23
I don't know.	28.90%	239
They were not provided to the client.	1.57%	13
Other (please specify)	4.23%	35
TOTAL		827

Q23 Were your clients generally familiar and comfortable with the online-only therapy platform's privacy policy and data sharing practices?

Answered: 827 Skipped: 958



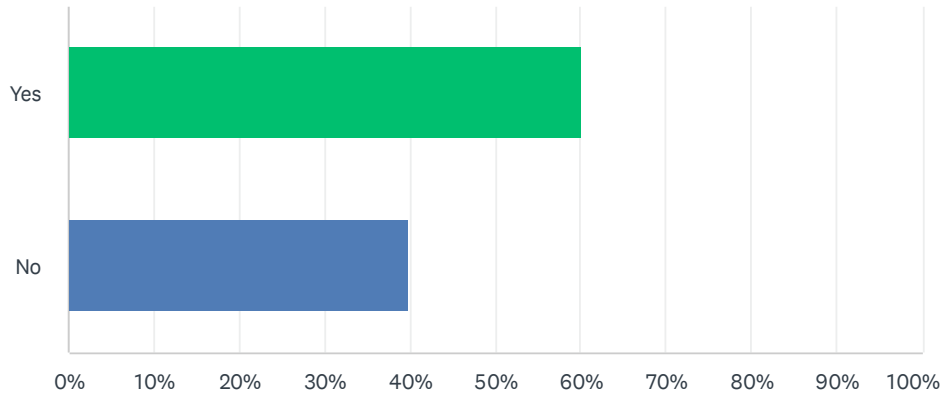
ANSWER CHOICES	RESPONSES	
Yes	83.43%	690
No	16.57%	137
TOTAL		827

Q24 Were there any concerns that your clients commonly expressed to you regarding the online-only therapy platform's privacy policy and data sharing practices? Please explain.

Answered: 671 Skipped: 1,114

Q25 Did the platform have a clear emergency plan in place for clients in crisis?

Answered: 820 Skipped: 965



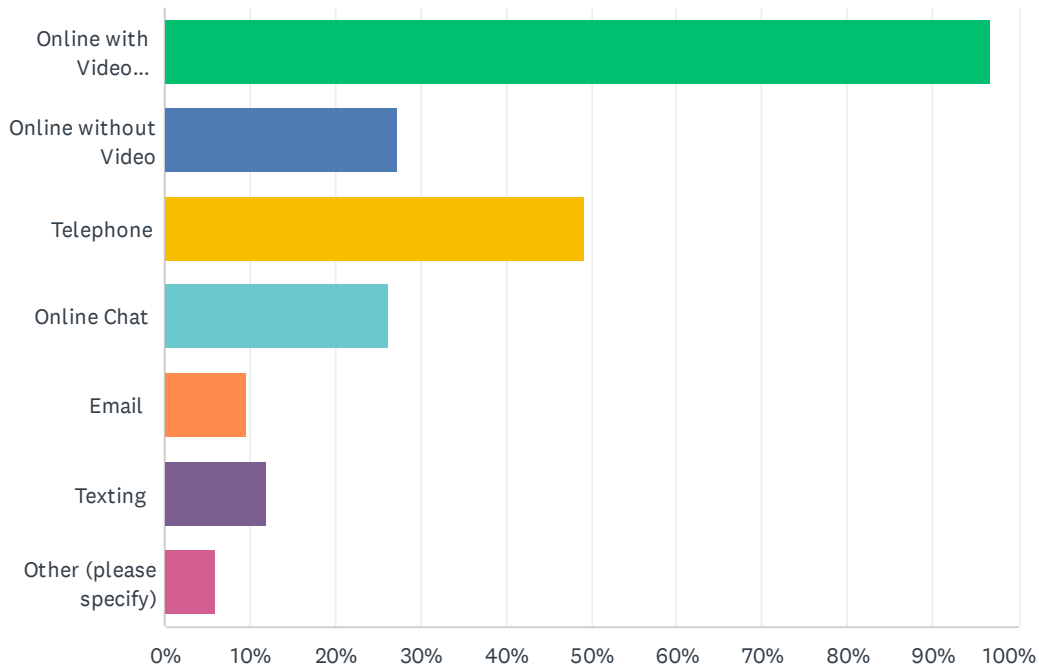
ANSWER CHOICES	RESPONSES	
Yes	60.12%	493
No	39.88%	327
TOTAL		820

Q26 Please briefly summarize the emergency plan.

Answered: 417 Skipped: 1,368

Q27 What methods did you use to provide psychotherapy services to clients when working for or contracting with the platform? Please check all that apply.

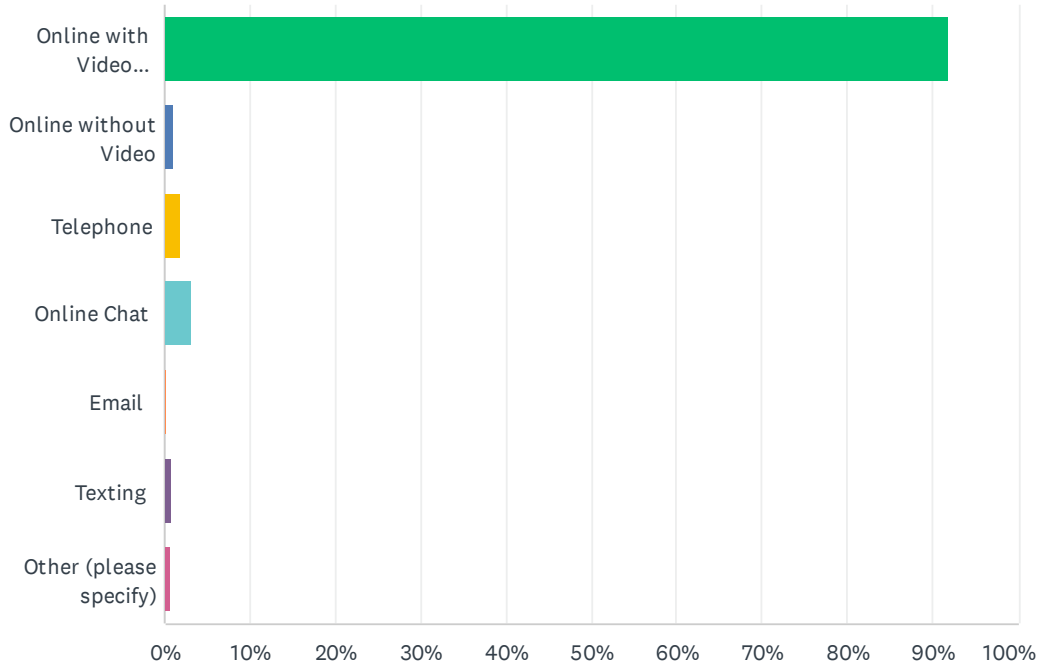
Answered: 795 Skipped: 990



ANSWER CHOICES	RESPONSES	
Online with Video (Videoconferencing)	96.86%	770
Online without Video	27.30%	217
Telephone	49.18%	391
Online Chat	26.16%	208
Email	9.56%	76
Texting	11.95%	95
Other (please specify)	5.91%	47
Total Respondents: 795		

Q28 What method did you primarily use to provide psychotherapy services to clients when working for or contracting with the platform?

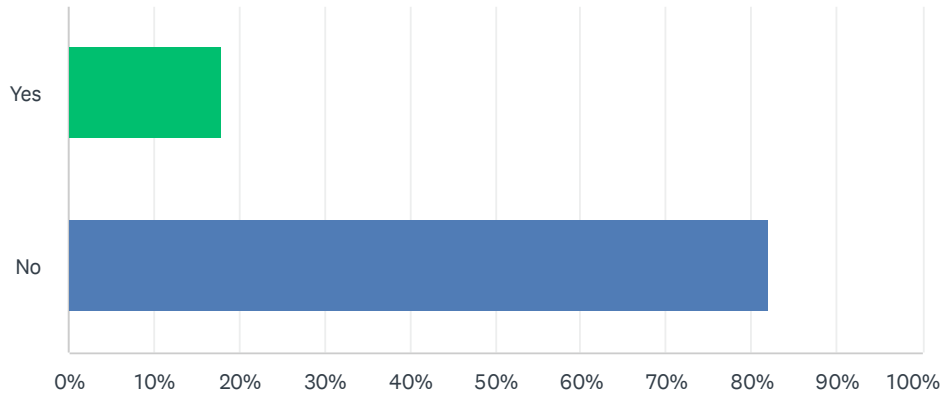
Answered: 795 Skipped: 990



ANSWER CHOICES	RESPONSES	
Online with Video (Videoconferencing)	91.95%	731
Online without Video	1.13%	9
Telephone	1.89%	15
Online Chat	3.27%	26
Email	0.25%	2
Texting	0.88%	7
Other (please specify)	0.63%	5
TOTAL		795

Q29 Did you ever use texting to provide therapy to your clients when working for or contracting with the platform?

Answered: 795 Skipped: 990



ANSWER CHOICES	RESPONSES	
Yes	17.99%	143
No	82.01%	652
TOTAL		795

Q30 Please explain how you integrated texting into therapy with your clients.

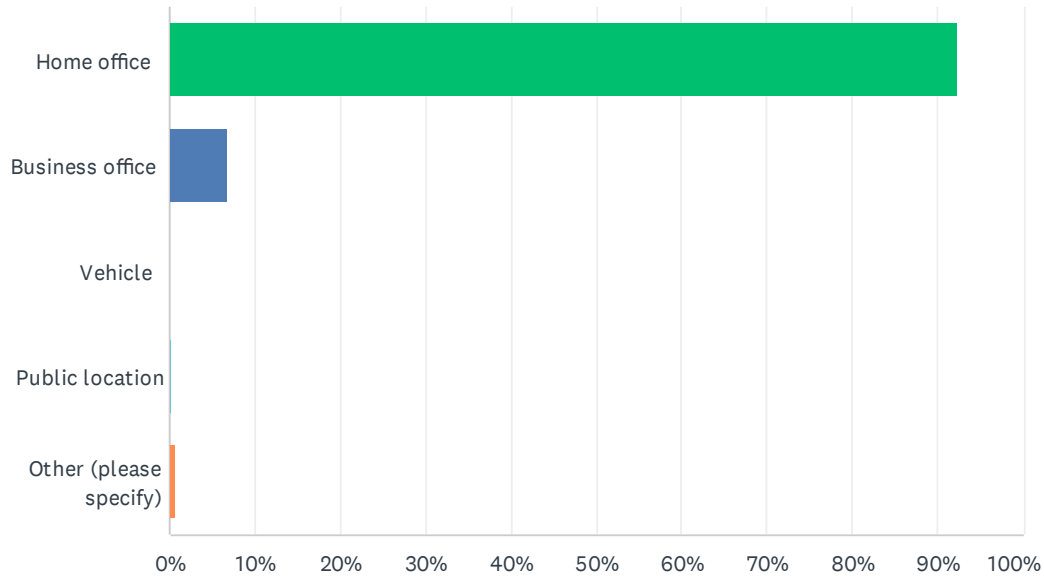
Answered: 111 Skipped: 1,674

Q31 Please explain the procedure for verifying client's identity when providing therapy via texting with them.

Answered: 112 Skipped: 1,673

Q32 Where were you primarily located when you provided therapy services on this platform?

Answered: 751 Skipped: 1,034



ANSWER CHOICES	RESPONSES	
Home office	92.28%	693
Business office	6.92%	52
Vehicle	0.00%	0
Public location	0.13%	1
Other (please specify)	0.67%	5
TOTAL		751

Q33 What confidentiality measures were taken to mitigate for the separate location of the therapist and the client?

Answered: 661 Skipped: 1,124

Q34 Did you experience any advantages to working for or contracting with an online-only therapy platform, versus working on your own or for a company with a physical site?

Answered: 687 Skipped: 1,098

Q35 Please describe any problems you encountered when working for or contracting with the online-only therapy platform.

Answered: 664 Skipped: 1,121

Q36 Do you have any other comments or concerns you would like to share related to your experience working for or contracting with an online-only therapy platform?

Answered: 576 Skipped: 1,209