I. Introduction

The COVID-19 pandemic brought swift changes to the legal field, including increased reliance on technology to serve clients.\(^1\) Traditional, in-person law office conversations took a backseat to socially distanced technology tools like Zoom, Teams, and remote access to law firm databases.\(^2\) Though this appears to be a temporary solution to a worldwide problem, this set of circumstances points toward a need for the legal industry to embrace longer-term technological solutions.\(^3\)

\(^1\) See How technology contributed to law firm success throughout the pandemic, THOMSON REUTERS (Sept. 22, 2021), archived at https://perma.cc/CD3G-2LNV [hereinafter How technology contributed to law firm success] (noting “[i]f there was one nearly undeniable truth for law firms across the globe during the pandemic, it was the need for remote connectivity to technology.”).

\(^2\) See generally AJ Shankar, The Pandemic Might Be The Tech Disruptor The Legal Industry Needs, FORBES (Feb. 8, 2021), archived at https://perma.cc/KNS6-KEHP (explaining that the legal industry has been slow to embrace technology due to risk-averse attorneys, the slow pace of courts, and the traditional law firm partnership structure).

\(^3\) See id. (noting that “[t]his pandemic-prompted digital transition is just the beginning of a larger evolution for the legal profession that will lead to more efficiency, stronger security and better client service.”).
Utilizing technology across the legal field raises three significant issues regarding legal ethics. First, attorneys may be breaking licensing requirements by practicing in a jurisdiction in which they are not licensed, or by assisting clients located in jurisdictions in which the attorney is not licensed. Second, substantial concerns have been raised regarding client confidentiality in remote settings, and third, the legal profession may lack the technological training needed to remain competent in today’s interconnected world. These ethical considerations could create a barrier to the legal field adapting to, and keeping pace with, the rise of technological solutions to serve client needs. The legal industry may be able to draw on the models of other industries, such as the medical field, for ideas on how to meet ethical restrictions while still taking advantage of the benefits of technological solutions.

4 See Raymond H. Brescia, Lessons From the Present: Three Crises and Their Potential Impact on the Legal Profession, 49 Hofstra L. Rev. 607, 621–22 (2021) (explaining that the legal profession had few options other than to proceed using remote technologies during the pandemic, but that there are ethical considerations remaining to be addressed).


7 See Shankar, supra note 2 (elaborating on ethical considerations and why they have slowed down the legal industry’s ability to embrace new technologies).

The business of law, the sensitive nature of legal information and the need to respect attorney-client privilege put unique requirements on lawyers. Regulations governing record-keeping as well as data privacy and compliance requirements make safeguarding security and data privacy critically important. Lawyers who are risk-averse and culturally resistant to change were reluctant to take a chance on moving data from the corporate data center to the cloud. Surprise – security concerns held them back.

Id.

This Note will explore the legal ethics constraints placed on the legal industry’s ability to embrace long-term technological solutions. While ethical constraints exist within the industry, the crucial obstacle is the legal industry’s historical inability to adapt to changes in practice. Drawing on models from other industries, such as the medical field, which similarly battles physician licensing and client confidentiality requirements, would serve the legal industry well in an effort to embrace technological solutions longer term. The COVID-19 pandemic has brought to the forefront the legal industry’s historical avoidance of technological solutions. Though ethical considerations should not be glanced over, the legal industry should adapt and introduce a new licensing and practice model using technological solutions to meet client needs beyond the pandemic’s timeframe.

II. History

A. History of Regulation of the American Legal Profession

1. Self-Regulation and Quality Control

During the late 1800s and early 1900s, the rise of corporate clients led to a need for lawyers to provide advice on complex business questions. Due to the broad range of knowledge required to serve those needs, law firms grew larger and developed specialty practices. To be successful, attorneys needed technical expertise and prudent judgment, not simply courtroom finesse. The power and distinction of the corporate bar led to the innovation of “social trustee professionalism.” Amid growing concerns that the legal profession

10 See id. (describing the impact of a new kind of client, large American corporations).
11 See id. (noting that the rise in corporate clients led to lawyers needing a different set of skills). See also Ed Walters, The Industrial (Legal) Revolution, L. PRAC. TODAY (Dec. 14, 2016), archived at https://perma.cc/G4H5-MED3 (explaining that during the twentieth century, the advice of a lawyer was expensive and therefore only available to large corporations and wealthy individuals).
12 See Moran, supra note 9, at 461–63 (giving an overview of social trustee professionalism). “The organized bar has embraced a model of ‘social trustee professionalism,’ which treats law as a learned profession with public-regarding obligations.” Id. at 455. See also Michael Ariens, The Rise and Fall of Social
was not serving the needs of everyday people, but rather only the elite, social trustee professionalism offered a solution by grounding lawyers’ authority and status in knowledge, skills, and an obligation to serve the greater good. This commitment to public service enabled the bar to justify self-regulation of its members. A risk still existed, however, that lawyers would act single-mindedly to advance clients’ interests. In response, the bar focused on highlighting the need for quality control in the profession to protect society from unfit practitioners.

Founded in 1878, the American Bar Association (“ABA”) addressed this issue in two ways: (1) adopting a Canon of Ethics, and (2) increasing the educational requirements for admission to practice.

First, in 1908, the ABA adopted a Canon of Ethics, which was quickly embraced by the states. This Canon prohibited advertising and aggressive solicitation of clients, and subjected contingent fees to special scrutiny. This Canon was intended to codify a vision of

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13 See Moran, supra note 9, at 461–62 (describing how lawyers’ authority and status led to a commitment to public service and a self-regulation model).
14 See id. at 462 (explaining how social trustee professionalism led to self-regulation and monopoly privileges for lawyers). See also Fred C. Zacharias, The Myth of Self-Regulation, 93 MINN. L. REV. 1147, 1148–49 (2009) (explaining that courts, commentators, and regulators continue to see the legal industry as self-regulated). See also MODEL RULES OF PRO. CONDUCT, Preamble & Scope (AM. BAR ASS’N 2020) (stating “[t]he legal profession is largely self-governing.”).
15 See Moran, supra note 9, at 462 (demonstrating that self-regulation of the legal industry still raised risks as to quality control).
16 See id. (emphasizing the legal industry’s desire to ensure appropriate quality of all attorneys). The legal profession created the ABA and increased the educational requirements for admission to practice, “both designed to preserve elite prerogatives.” Id. at 463–64.
17 See id. at 463–64 (explaining the two main ways the ABA sought to preserve the corporate bar’s prerogatives). See also History of the American Bar Association, UPCOUNSEL, (Oct. 22, 2021), archived at https://perma.cc/L55F-YRPJ (comparing the origins of the American Bar Association to its current mission and goals). “Today, the stated mission of the American Bar Association is ‘to be the national representative of the legal profession, serving the public and the profession by promoting justice, professional excellence and respect for the law.’” Id.
19 See Moran, supra note 9, at 463 (describing the initial Canon of Ethics and its requirements).
practice, where bar members shared values, communication styles, and mutually agreed upon educational, religious, and social practices. Second, by increasing the educational requirements for admission to practice, the ABA campaigned to raise legal entrance standards in order to keep the elite status of the profession and exclude those it felt did not meet certain, often discriminatory, requirements. Bar leaders believed that shifting training from unregulated apprenticeships to standardized formal training would distinguish lawyers and maintain their powerful status. It was also thought that a common educational experience could weed out unworthy applicants and unify the profession.

2. History of Legal Ethics Considerations and Jurisdictional Rules

In the 1920s, as local bar associations grew, a movement began to produce rules or statutes requiring all practicing lawyers to belong

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20 See id. (elaborating that the intent of the original Canon of Ethics was to increase homogeneity in the legal field).
21 See id. at 464 (explaining why the ABA campaign for heightened legal education requirements began). “This approach worked well for attorneys in small towns as well as for the tight-knit, upper-class bar in large cities. However, the strictures hampered urban lawyers who served poor, immigrant, and working-class clients unfamiliar with how to obtain legal assistance.” Id. at 463.
22 See id. at 463 (describing the shift in legal education training).

By treating law as a calling rather than an ordinary occupation, social trustee professionalism distinguished lawyers from tradesmen motivated by wages as well as entrepreneurs motivated by profits. The esoteric nature of legal expertise coupled with a public-spirited commitment to service enabled the bar to justify special treatment for its members, most notably self-regulation and monopoly privileges.

Id. at 462.
23 See Moran, supra note 9, at 462 (elaborating on the ABA’s vision for the legal field and its standards).

This strategy turned on highlighting the need for quality control in the profession to protect society from unfit practitioners. Elite members of the organized bar were alarmed that immigrant and Jewish lawyers had been entering the profession in unprecedented numbers. Bar leaders feared that these newcomers would lower the esteem in which the profession was held . . . [t]ill . . . powerful practitioners had to appear principled and public-minded even as they sought to thwart the influx of new attorneys.

Id.
to a state bar organization. This enabled these organizations to collect fees, control admission to the bar, and discipline lawyers. These efforts led to the promulgation of the ABA’s Code of Professional Responsibility in 1969. This Code replaced the Canons of Ethics and was adopted by the majority of the states as a disciplinary mechanism.

Stemming from the promulgation of the ABA’s Code of Professional Responsibility, on March 14, 1980, 4,208 bar applicants from six states took the first Multistate Professional Responsibility Exam (“MPRE”). This multiple-choice exam was required for bar admission in those six states. Soon thereafter, many other states followed suit, with over 56,000 applicants taking the exam by 2001. Today, achieving a passing score on the MPRE is required to obtain bar admission in all but one state: Wisconsin. With the passage of this requirement for admission in the majority of jurisdictions, a national bar examination on legal ethics was established.

24 See Zacharias, supra note 14, at 1158-160 (explaining the rise of a movement leading to professional standards of ethics).
25 See id. (describing the rise in power of local bar associations). “State bar associations subsequently continued to develop, usually consisting of successful, like-minded lawyers who hoped to influence the way society viewed and regulated the profession.” Id. at 1160.
26 See id. at 1162 (summarizing the origins of the ABA’s Code of Professional Responsibility).
27 See id. at 1162 (explaining the original purpose of the ABA’s Code of Professional Responsibility). “The profession itself established the norms governing lawyers. Although the professional codes were enforced through state disciplinary mechanisms, the state supreme courts (and in some cases the legislatures) adopted the bar-promulgated norms unquestioningly and, in some instances, used local bar associations and private volunteers to enforce those norms.” Id. at 1162–163.
29 See id. at 1299 (describing the original six states who participated in the first MPRE administration). “The six states were California, Minnesota, Kansas, South Carolina, New Hampshire, and Wyoming.” Id. at n.2.
30 See id. at 1299 (providing statistics on the rise in MPRE test takers between 1980 and 2001).
31 See Multistate Professional Responsibility Examination, NCBE (Jan. 9, 2023), archived at https://perma.cc/CB22-M4XP (noting the only jurisdictions that presently do not require a MPRE passing score to obtain bar admission).
32 See Hayden, supra note 28, at 1299 (stating “[i]n the span of two decades, we have thus seen the flowering of a remarkable phenomenon: the establishment of a national
In addition to passing the MPRE, to obtain a license to practice law, most law school graduates must apply for bar admission through a state board of examiners.\textsuperscript{33} This board is most often an agency of the highest state court in the jurisdiction.\textsuperscript{34} The criteria for eligibility to take the bar examination or to otherwise qualify for bar admission is set by each state.\textsuperscript{35} Licensing is typically based on two requirements: (1) competence, and (2) character and fitness.\textsuperscript{36} For initial licensure in most jurisdictions, competence is demonstrated by showing an applicant holds an acceptable educational credential from an accredited law school, and by achieving a passing score on a bar examination.\textsuperscript{37} Additionally, bar examiners inquire into the character and fitness of applicants by seeking background information that is relevant to granting a professional credential.\textsuperscript{38}

\textsuperscript{33} See Basic Overview, AM. BAR ASS’N (June 26, 2018), archived at https://perma.cc/L2A9-4B7M (stating an overview of bar admissions requirements). But see Elizabeth Olson, Bar Exam, the Standard to Become a Lawyer, Comes Under Fire, N.Y. TIMES (Mar. 19, 2015), archived at https://perma.cc/RE52-66PQ (stating that while the professional standard in nearly all states and the District of Columbia continues to be passing a bar exam, this standard is facing a new round of scrutiny). 

“All states but one, Wisconsin, require passing the bar exam to become a licensed lawyer, but bar associations in states including Arizona and Iowa have been exploring alternatives.” Id.

\textsuperscript{34} See Basic Overview, supra note 33 (explaining that state board of bar examiners are typically connected to the highest court of a state).

\textsuperscript{35} See id. (stating that criteria for bar admission are set by each state, not by the ABA or the Council for the Section of Legal Education and Admissions to the Bar). See also Jurisdiction Information, NAT’L CONF. BAR EXAM’RS (2021), archived at https://perma.cc/YHQ9-Q8YT (offering an interactive map with summaries of bar admission information specific to each jurisdiction and contact information for each jurisdiction’s bar admission agency). See generally Basic Overview, supra note 33 (describing how bar admission requirements are set by each state). See generally NAT’L CONF. OF BAR EXAM’RS & AM. BAR ASS’N, COMPREHENSIVE GUIDE TO BAR ADMISSION REQUIREMENTS v (Judith A. Gundersen & Claire J. Guback eds., 2021) (providing an overview of bar admission requirements).

\textsuperscript{36} See Basic Overview, supra note 33 (defining the two main criteria for licensing).

\textsuperscript{37} See id. (explaining the requirement of “competence” for bar admission). See generally Minimum Scores, NAT’L CONF. BAR EXAM’RS (Nov. 21, 2021), archived at https://perma.cc/7WBB-U3GW (listing the minimum passing Uniform Bar Exam score by each U.S. jurisdiction). See also L. Adrienne Wichard, The History Of Bar Exams And LSAT, LAWCROSSING (Oct. 21, 2021), archived at https://perma.cc/5SUA-MQCY (detailing the history of the first written bar exam).

\textsuperscript{38} See Basic Overview, supra note 33 (describing how bar examiners investigate the character and fitness of bar applicants). See generally Understanding the Character
3. Multijurisdictional Practice of Law

Typically, practicing law in multiple states means a lawyer will have to pass the state bar exam in each state in which he or she wishes to represent clients. There are exceptions to this rule, however, the most prominent of which is states that accept the Uniform Bar Examination (“UBE”). The UBE is standardized so a test taker’s score may be transferred to multiple states. In theory, this uniform examination is increasing attorneys’ ability to practice across jurisdictions. Realistically, however, the benefits are diminished because states can utilize some or all portions of the UBE, as well as

and Fitness process for bar admission, BARBRI (Mar. 26, 2021), archived at https://perma.cc/S2XK-66SG (listing requirements and disclosure questions typically asked by bar examiners in the Character and Fitness application). See also Wichard, supra note 37 (noting that “[i]n 1931, the National Conference of Bar Examiners (or NCBE) was established to help ‘develop, maintain, and apply reasonable and uniform standards of education and character for eligibility for admission to the practice of law.’”).

See Kamron Sanders, How to Become a Multi-State Lawyer, NAT’L L. REV. (May 24, 2021), archived at https://perma.cc/3RWG-HA2Z (explaining that most states require State Bar exam passage prior to practicing in that state). See also Willie Peacock, A Guide to Practicing Law in Multiple States, CLIO (Nov. 17, 2021), archived at https://perma.cc/EYM7-XZ42 (noting that “[e]ven fields of law that are primarily federal—bankruptcy, immigration, etc.—may require a State Bar license.”). But see Rittenhouse v. Delta Home Improvement (In re Desilets), 291 F.3d 925, 931 (6th Cir. 2002) (holding that a lawyer who practiced bankruptcy law in Michigan while carrying only a Texas bar license should be admitted to the federal court and did not engage in the unauthorized practice of law).

See Sanders, supra note 39 (noting that there are key exceptions to the rule). “In the District of Columbia (D.C.), for example, a lawyer may practice law without passing the D.C. State Bar exam if you have practiced law for at least five years in any state.” Id. See also Shari Davidson, Reciprocity: Guide to states where you can practice law, JD SUPRA (Aug. 19, 2021), archived at https://perma.cc/BB5F-W4JF (explaining that “[t]he UBE is a set of three testing devices prepared by the National Conference of Bar Examiners. The UBE concentrates on general legal concepts as opposed to intricacies of any particular state’s laws in an effort to provide a uniform way to measure performance across the country”). See also List of UBE Jurisdictions, NAT’L CONF. BAR EXAM’RS (Jan. 26, 2022), archived at https://perma.cc/PVG4-JGKM (providing a list of each U.S. jurisdiction that accepts the UBE for licensing requirements).

See Davidson, supra note 40 (stating the states that have adopted at least part of the UBE: Alabama, Alaska, Arizona, Colorado, Idaho, Iowa, Kansas, Minnesota, Missouri, Montana, New Hampshire, New Mexico, New York, North Dakota, Utah, Washington, and Wyoming).

See Sanders, supra note 39 (noting, however, that UBE scores must be transferred within a certain amount of time after taking the exam, and that the length of time UBE scores can transfer varies across states).
set their own scoring criteria, taking away from the uniformity.\textsuperscript{43} This uniformity, therefore, is limited to a select group of states and also does not account for the restricted timeframe that a UBE score may be transferred.\textsuperscript{44} Moreover, this restricted timeframe is heightened since the UBE examination is only administered twice per year.\textsuperscript{45} Due to these limitations, many attorneys opt to take multiple bar exams immediately after law school to increase their chances and flexibility in finding employment.\textsuperscript{46} Furthermore, obtaining licenses in multiple jurisdictions allows attorneys to expand their client base and increase geographical flexibility for residential purposes.\textsuperscript{47}

\textsuperscript{43} See Davidson, \textit{supra} note 40 (explaining how states can adapt the UBE as they see fit).

\textsuperscript{44} See \textit{id.} (noting that the UBE helps uniform licensing in theory, but not necessarily in practice).

In theory, the UBE fosters portability of law licenses, especially with respect to states like Minnesota and Idaho that accept passing UBE scores from any state within a certain window of time (between two to five years). But this practice is limited to a select group of states, and even in those states you will need to sit for the bar exam or find another way to get admitted if you apply outside the window of time wherein your UBE score still counts. Moreover, other states that administer or plan to administer the UBE (like New York) require applicants to take a separate course and test on state subjects for admittance.

\textit{Id.}

\textsuperscript{45} See Peacock, \textit{supra} note 39 (noting that the bar exam is only offered twice per year, therefore limiting an attorney’s ability to move between states). \textit{See also} Sanders, \textit{supra} note 39 (explaining the impact of geographical restrictions due to licensing).

It is much easier to practice law in a single jurisdiction for the entirety of your career, but there are often events in life that require relocating. Since states only offer a bar exam biannually and there may be additional requirements that must be met before being able to work in another state, this can delay the process by a considerable amount of time, which can easily extend from months to years.

\textit{Id.}

\textsuperscript{46} See Peacock, \textit{supra} note 39 (stating that “[a]dmittedly, it is so much easier to just practice in one state. However, there are many benefits to becoming a multi-state lawyer, including increased flexibility and opportunities to grow your legal practice.”)

\textsuperscript{47} See \textit{id.} (explaining that by being a multistate lawyer, it is possible to open up a larger client base and more easily make personal life decisions such as moving to a new residence). \textit{See also} James Geoffrey Durham & Michael H. Rubin, \textit{Article: Multijurisdictional Practice and Transactional Lawyers: Time for a Rule That Is Honored Rather Than Honored in Its Breach}, 81 LA. L. REV. 679, 687–88
4. History of Multi-Jurisdictional Practice Limitations

Since attorneys are only licensed to serve clients located within their authorized jurisdiction, ethical consideration questions may arise as to whether a lawyer is engaged in the unauthorized practice of law merely by being physically located in a jurisdiction where they are not authorized to practice law.48 ABA Model Rule of Professional Conduct (“MRPC”) 5.5 states that “(b) [a] lawyer who is not admitted to practice in this jurisdiction shall not: (1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or (2) hold out to the public or otherwise represent that the lawyer is admitted to practice in this jurisdiction.”49 The California state equivalent of this rule led to a widely publicized case, Birbrower v. Superior Court, involving a New York City law firm representing a California subsidiary of a New York client, centering on settling a dispute in California.50 The California Supreme Court found that the firm violated a statute making the unauthorized practice of law a misdemeanor criminal offense by engaging in activities in the state and creating a continuing relationship with the California client that (describing a Pennsylvania court case commenting on the unauthorized practice of law activities of a lawyer not admitted to practice in the county where a writ was granted). “[I]t is apparent that the underlying issue was not the competency of the lawyer but rather the attempt of local attorneys to create a geographic barrier to protect their practices.” Id. at 688.

48 See generally Peacock, supra note 39 (explaining considerations lawyers must take into account when analyzing how to avoid the unauthorized practice of law).
49 See Model Rules of Prof. Conduct r. 5.5 (Am. Bar Ass’n, 2020) (defining multijurisdictional practice of law). See also Durham & Rubin, supra note 47, at 712–17 (giving an overview of the Birbrower case).
50 See Birbrower, Montalbano, Condon & Frank, P.C. v. Superior Ct., 949 P.2d 1, 5 (Cal. 1998) (analyzing a violation of an unauthorized practice of law statute and holding that the firm violated the statute). See also Durham & Rubin, supra note 47, at 712 (noting that California’s rules have since been changed, but that the case is still instructive). “Even though California rules have been changed and the current formulation of Model Rule 5.5(c)(4) has obviated the ethical concern that out-of-state lawyers had in handling arbitrations and mediations, the facts in Birbrower neatly frame the modern-multijurisdictional quandary transactional lawyers continue to face.” Id. at 714. “The California Supreme Court found that the firm had engaged in the unauthorized practice of law in California and could not collect fees rendered for services in California.” Id. at 715. See also David A. Grossbaum, Esquire, Stepping Over the State Line: Your License to Practice Law Has Its Limits, AON ATT’YS ADVANTAGE (Nov. 17, 2021), archived at https://perma.cc/2TN6-H6X6 (giving a high-level overview of the Birbrower case).
included legal duties and obligations. 51 The Birbrower court further noted that a lawyer could practice law in violation of the California statute even though not physically present in California “by advising a California client on California law in connection with a California legal dispute by telephone, fax, computer or other modern technological means.” 52 The law firm, therefore, was not entitled to any part of its California fee agreement. 53

Due to the extensive criticism the Birbrower v. Superior Court decision received, the legislature passed an amendment to the California Code of Civil Procedure to adjust the impact of the decision. 54 This amendment states that an attorney admitted to the bar of any other state may represent the parties in the course of, or in connection with, an arbitration proceeding in California, provided that the attorney meets three requirements. 55 This practice by states, in

51 See Grossbaum, supra note 50 (explaining how the law firm violated the California statute). See also Durham & Rubin, supra note 47, at 715–16.

When the New York-based law firm incorporated ESQ-Cal as a California entity, this action appeared to be covered by the text of current Model Rule 5.5(c)(4), for it arose out of and was ‘reasonably related’ to the firm’s practice in New York and with its prior work for Kamal . . . [but] [e]ven though the firm had drafted the agreement in New York on behalf of its New York clients and was trying to resolve a dispute related to that agreement, the California Supreme Court held that the firm had engaged in the unauthorized practice of law and was not entitled to collect any of its fees generated from practicing law in California.

Id.

52 See Birbrower, 949 P.2d at 5–6 (stating that a lawyer could violate the California statute on multijurisdictional practice by using remote technologies).

53 See Grossbaum, supra note 50 (explaining the holding of Birbrower).


55 See id. (stating the three requirements for an out of state attorney to represent a party in California arbitration).

(i) [H]e or she timely pays a fee and serves a certificate on the arbitrator(s), the other parties and the State Bar stating that he or she is a member in good standing of an out of state Bar, is not a resident of California, and details regarding the case; (ii) [t]he attorney’s appearance is approved in writing on that certificate by the arbitrator(s) or the arbitral forum; (iii) the certificate bearing approval of the attorney’s appearance is filed with the State Bar of California and served on the parties.
which each state establishes criteria for admission but has reciprocal agreements with other states, has become fairly common.\textsuperscript{56} This opens the practice of law to out-of-state applicants who have already been admitted to the bar of another state.\textsuperscript{57} Some states require prospective candidates to take that state’s bar exam, while others accept a combination of passing the UBE and a minimum number of years in practice in another state.\textsuperscript{58}

\textbf{B. The Legal Field’s Traditional Avoidance of Technology}

Traditionally, many law firms have not believed the practice of law is conducive to remote work settings for three main reasons: (1) the practice of law requires lawyers to be able to collaborate easily and quickly in a face-to-face fashion; (2) it would be impossible to monitor the work of employees if they were not together; and (3) work product would suffer without constant communication between supervising lawyers and their junior counterparts.\textsuperscript{59} Furthermore, beyond the walls of law firms, the legal profession as a whole has numerous in-person interactions including court appearances, arbitrations, client meetings, and negotiation sessions.\textsuperscript{60} In addition, there are widespread views in the industry that adopting technology will lead to lag times, and

\textsuperscript{56} See Reciprocity, USLEGAL (Nov. 19, 2021), archived at https://perma.cc/6RPB-BP6K (explaining that reciprocal agreements between states are common).

\textsuperscript{57} See id. (elaborating that reciprocal agreements between states allow more flexibility for out-of-state applicants).

\textsuperscript{58} See id. (describing states’ differing requirements for out-of-state applicants to be admitted).

\textsuperscript{59} See Brescia, supra note 4, at 618 (explaining that the legal industry has resisted remote work settings in the past). “While many employers in industries other than law had already begun the process of exploring ways to offer their employees more flexible schedules and enable more work-from-home opportunities prior to COVID-19, the legal profession had not been eager to embrace this trend.” Id. \textit{See also} How technology contributed to law firm success, supra note 1 (noting that “[f]or perhaps the first time in many of their histories, firms were forced into new ways of doing business, including supporting a remote workforce, finding alternatives to in-person meetings, and adjusting to the needs of concerned clients”). \textit{But see} Jenia I. Turner, Remote Criminal Justice, 53 TEX. TECH L. REV. 197, 199 (2021) (explaining that “[m]ost states permitted limited use of videoconferencing in criminal proceedings even before the COVID-19 outbreak.”).

\textsuperscript{60} See Brescia, supra note 4, at 619 (describing various in-person interactions lawyers must attend).
therefore, to lost profits. Many law firms believe that adopting technology will lead to time spent learning how to use the technology, making their attorneys less productive in comparison to working on client matters in ways they already have knowledge of.

III. Facts

A. Shifting to Remote Work Settings

Due to the COVID-19 pandemic, many drastic shifts to the practice of law took place almost overnight, including the shift to remote work. This shift, though potentially temporary, has been particularly significant because the legal profession has largely avoided remote settings in the past. The COVID-19 pandemic and its social distancing protocols forced the legal industry to adapt its traditional in-person practices to remote substitutes, such as video conferencing portals including Zoom and Microsoft Teams. In many cases, attorneys and clients have benefitted from the ease of remote...
technologies, connecting them without the costs and time restraints of pre-pandemic travel.\textsuperscript{66}

The biggest challenge the legal community faced in shifting to remote work was not the availability of technology, but rather attorneys’ use of it.\textsuperscript{67} The technology underlying remote work, including Zoom and Microsoft Teams meetings, has been available for years.\textsuperscript{68} The pandemic’s true value-add to the legal profession was its acceleration of attorneys’ more widespread use of these technologies, breaking down the historical avoidance of technological innovation in the legal field.\textsuperscript{69} Now, even some of the most conservative attorneys and judges are acknowledging the benefits of technological solutions for legal work.\textsuperscript{70}

\textbf{B. Legal Ethics Considerations}

The legal profession’s shift to using remote technologies was out of necessity, and as a result, legal ethics considerations took a backseat.\textsuperscript{71} This drastic change was initially implemented as a temporary approach, but as the pandemic has stretched on, many legal professionals have begun to wonder whether this remote, flexible

\textsuperscript{66} See 100 Positive Reviews Show LegalMatch Helps Attorneys Thrive During Pandemic, PR NEWSWIRE (Sept. 17, 2021), archived at https://perma.cc/97L2-L4WY (explaining the successes of LegalMatch, the nation’s oldest and largest online legal matching service, during the COVID-19 pandemic). “Even under such conditions, LegalMatch has continued to increase in case retentions and case submission volume. This is reassuring news for both attorneys and clients alike, who must find ways to connect even though in-person meetings and interactions have been limited.” \textit{Id.}

\textsuperscript{67} See Benjamin Barton, Symposium: Technology and Litigation Practice: Part I: Overview Perspectives: Technology: Constant Change and Future Trends, 96 THE ADOVOC. 11, 11 (2021) (noting that the legal field already had these technologies, but the COVID-19 pandemic forced their usage to increase).

\textsuperscript{68} See \textit{id.} (noting that “[w]e have had the technology to run online courts for years, but outside of video arraignments in some county jails, remote, video court was pretty uncommon. The Covid-19 pandemic changed all of that”).

\textsuperscript{69} See \textit{id.} (noting that “the pandemic’s leap forward . . . forced almost every lawyer to learn how to use these technologies, and unsurprisingly, even some luddite lawyers learned to appreciate working from home[,]”).

\textsuperscript{70} See \textit{id.} (describing how conservative attorneys and judges have created a barrier to adoption of technological solutions in the legal field). “For years the biggest barrier to technological innovation in the courts (and in law practice) has been the natural small-c conservatism of judges and lawyers.” \textit{Id.}

\textsuperscript{71} See Brescia, \textit{supra} note 4, at 620 (explaining that the shift to remote technologies was out of necessity, not convenience).
approach to work may extend too. 72 This issue of whether lawyers can embrace remote options moving forward is largely a question of existing ethical constraints. 73

First and foremost, lawyers have a duty to maintain the requisite knowledge and skill to appropriately service their clients. 74 This requires that lawyers be able to use technological tools competently, as well as know the benefits and risks associated with each technology. 75 Under MRPC Rule 1.1, competent representation requires a lawyer to have and maintain the legal knowledge, skill, thoroughness, and preparation reasonably necessary to serve a client. 76 Comment 8 of this Rule elaborates on this requirement and explicitly notes that, “a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology.” 77 This Comment lends particular significance to the rapid change to legal practice as a result of the COVID-19 pandemic. 78 Lawyers unable to keep pace with the rapidly changing work environment may find themselves violating the ethical duty of

72 See id. at 623 (explaining that legal ethics considerations were not initially questioned because of the pandemic’s restrictions).
73 See id. at 622 (noting that “[i]n some ways, the question of whether lawyers should embrace such remote options moving forward likely rests on whether they can under existing ethical constraints”).
74 See Brescia, supra note 4, at 625–26 (describing how lawyers have a duty to keep abreast of the risks and benefits of new technologies to provide competent services to their clients).
75 See id. (describing that lawyers must maintain requisite knowledge and skill, including changes associated with relevant technology). See also LEGAL ETHICS DURING THE COVID-19 PANDEMIC, BBO (Nov. 19, 2021), archived at https://perma.cc/8VLZ-A6LR (noting that “[a] lack of technology or a lack of facility with technology does not exempt lawyers from their ethical obligations to their clients”).
76 See MODEL RULES OF PRO. CONDUCT r. 1.1 (AM. BAR ASS’N 2020) (stating “[a] lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation”).
77 See MODEL RULES OF PRO. CONDUCT r. 1.1 cmt. 8 (AM. BAR ASS’N 2020) (stating how lawyers should maintain competence).
78 See HEATHER L. LA VIGNE, FROM TECHNOPHOBIE TO TECHNOLAWYER: A LAWYER’S DUTIES RELATED TO TECHNOLOGY COMPETENCE AND PREVENTION OF INADVERTENT DISCLOSURE 1–2 (2018) (explaining that with the rise of technology usage during the COVID-19 pandemic, “lawyers have an ethical duty to keep up” with the changes). “While Comment 8 emphasizes the increasing role of technology in the practice of law, Rule 1.1.’s broad mandate that lawyers provide competent representation to their clients always included technology competence.” Id. at 2.
competence, such as by being unable to file court documents in a timely manner or being unable to remotely access law firm databases for pressing client needs.79

1. Regulatory Bodies’ Response to Multijurisdictional Practice

Because all attorneys have had to keep pace with this rapid shift to remote work settings, several regulatory bodies have published best practices for remote work, as well as relaxed certain legal ethics requirements, in the midst of the COVID-19 pandemic.80 One key consideration that has been highlighted with the shift to remote work environments is whether an attorney is engaged in the unauthorized practice of law merely by being physically located in a jurisdiction in which they are not authorized to practice law.81 For example, many attorneys have crossed state borders during the pandemic to move to areas with lower population densities in an effort to find more comfortable and safer accommodations.82 In response, the ABA issued Formal Ethics Opinion 495, which states that physical presence

79 See Brescia, supra note 4, at 626 (explaining the technological difficulties lawyers faced during the pandemic).

[T]here was at least one highly publicized incident in the midst of the pandemic in which lawyers found themselves unable to file court documents in a timely fashion because they were unfamiliar with how to use the technology that facilitated the remote preparation of work and drafting of those filings. Id. See also LA VIGNE, supra note 78 (stating that lawyers, at a minimum, should learn and understand how to use computers, mobile devices, operating systems, and software applications).

80 See Brescia, supra note 4, at 642 (noting that “in June 2020, the Pennsylvania Bar Association issued guidance on remote work, emphasizing the duty to preserve confidentiality of client information and laying out best practices with respect to maintaining confidentiality while working remotely.”). See also Me. Prof. Ethics Comm’n, Op. 189 (2005) (concluding that lawyers working remotely in another state are not engaged in the unauthorized practice of law). See also Utah Ethics Advisory Comm., Op. No. 19-03, 1 (2019) (stating that an out-of-state attorney does not engage in the unauthorized practice of law by representing clients from his private location in Utah as long as he or she does not establish a public office in Utah or solicit Utah business). See generally LEGAL ETHICS DURING THE COVID-19 PANDEMIC, supra note 75 (listing frequently asked questions and answers about legal ethics for lawyers during the COVID-19 pandemic).

81 See Brescia, supra note 4, at 643 (explaining that “questions [may] arise as to whether a lawyer is engaged in the unauthorized practice of law merely by being physically present in a jurisdiction where they are not authorized to practice law”).

82 See id. (elaborating that this consideration has been heightened due to attorneys moving to safer accommodations during the pandemic).
in a jurisdiction where an attorney is not licensed to practice law does not amount to the unauthorized practice of law, as long as the lawyer does not: hold themselves out as licensed to practice law in that jurisdiction; advertise as having an office in the local jurisdiction; or provide or offer to provide legal services in the local jurisdiction.\textsuperscript{83} The ABA reasons that the lawyer’s physical presence in the local jurisdiction is only incidental to, rather than for, the practice of law.\textsuperscript{84} However, the ABA leaves open the possibility that though an attorney is not violating any ethical requirements by representing clients in the local jurisdiction, the local jurisdiction itself could still find the lawyer’s activities to be an unauthorized practice of law.\textsuperscript{85}

2. Client Confidentiality

Another question facing lawyers during the COVID-19 pandemic is whether remote work ensures the confidentiality of attorney-client communications and work product.\textsuperscript{86} Under MRPC Rule 1.6, lawyers have an ethical obligation to ensure the confidentiality of information relating to the representation of a

\textsuperscript{83} See ABA Comm. on Ethics & Pro. Resp., Formal Op. 495, \textit{supra} note 5, at 2–3 (stating advice on how lawyers may appropriately meet ethical obligations while working remotely). “If the lawyer’s website, letterhead, business cards, advertising, and the like clearly indicate the lawyer’s jurisdictional limitations, do not provide an address in the local jurisdiction, and do not offer to provide legal services in the local jurisdiction, the lawyer has not ‘held out’ as prohibited by the rule.” \textit{Id.}

\textsuperscript{84} See \textit{id.} at 2 (defining the local jurisdiction and providing an example of inappropriate conduct).

[A] lawyer may practice law pursuant to the jurisdiction(s) in which the lawyer is licensed (the ‘licensing jurisdiction’) even from a physical location where the lawyer is not licensed (the ‘local jurisdiction’) under specific parameters . . . The lawyer’s physical presence in the local jurisdiction is incidental; it is not for the practice of law. Conversely, a lawyer who includes a local jurisdiction address on websites, letterhead, business cards, or advertising may be said to have established an office or a systematic and continuous presence in the local jurisdiction for the practice of law.

\textit{Id.}

\textsuperscript{85} See \textit{id.} (stating that the ABA Committee will not opine on the unauthorized practice of law under the laws of specific jurisdictions). “If a particular jurisdiction has made the determination, by statute, rule, case law, or opinion, that a lawyer working remotely while physically located in that jurisdiction constitutes the unauthorized or unlicensed practice of law, then Model Rule 5.5(a) also would prohibit the lawyer from doing so.” \textit{Id.} at 1–2.

\textsuperscript{86} See Brescia, \textit{supra} note 4, at 624 (explaining ethical confidentiality concerns with respect to remote work settings).
client.\textsuperscript{87} Furthermore, subsection (c) of this Rule states that a lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of this information.\textsuperscript{88} There are several factors that determine the expectations of lawyers with respect to protecting client confidentiality, including the sensitivity of the information and the likelihood of disclosure if additional safeguards are not employed.\textsuperscript{89}

The use of technology for legal work in remote settings raises two main considerations stemming from the legal ethics constraint of confidentiality.\textsuperscript{90} First, the use of technology increases the possibility that confidential information may be breached when compared to discussions in a traditional privileged setting of a law office.\textsuperscript{91} The key issue here is whether lawyers can provide sufficient guarantees that the new technological tools they are using to communicate and remotely access law firm repositories are secure enough to prevent unauthorized access to confidential information.\textsuperscript{92} Unfortunately,

\textsuperscript{87} See Model Rules of Prof. Conduct r. 1.6 (Am. Bar Ass’n 2020) (stating that “[a] lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by [one of the exceptions to the Rule]”).

\textsuperscript{88} See id. (stating “[a] lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client[.]”).

\textsuperscript{89} See Brescia, supra note 4, at 625 (noting the factors include “[t]he sensitivity of the information, the likelihood of disclosure if additional safeguards are not employed, the cost of employing additional safeguards, the difficulty of implementing the safeguards, and the extent to which the safeguards adversely affect the lawyer’s ability to represent clients[.]”). See also Model Rules of Prof. Conduct r. 1.6 cmt. 18 (Am. Bar Ass’n 2020) (elaborating on how lawyers should act competently to preserve confidentiality).

\textsuperscript{90} See Brescia, supra note 4, at 624–25 (explaining the confidentiality ethical obligation and how it relates to remote work settings).

\textsuperscript{91} See id. at 625 (comparing confidentiality considerations of remote technologies to in-person conversations with clients). See also Legal Ethics During the COVID-19 Pandemic, supra note 75 (noting that to ensure client confidentiality when working from home lawyers must take reasonable steps such as securing confidential documents, conducting conversations in a way that maintains client confidentiality, and protecting confidential information with data security techniques).

\textsuperscript{92} See Brescia, supra note 4, at 624–25 (explaining that lawyers must be able to prove that the new tools they are using, such as video conferencing, Slack channels, and remote access to law firm databases and repositories, are sufficiently secure from unauthorized access). See also Lavigne, supra note 78 (noting that “[j]ust as
there have been several data security incidents involving infiltration of law firm systems where hackers were able to gain access to confidential information.\(^93\) Second, lawyers working in remote settings may be overheard by third parties such as roommates and family members, which heightens the risk that a waiver of the attorney-client privilege will result.\(^94\)

The ABA similarly updated its best practices on maintaining client confidentiality in remote settings by issuing Formal Opinion 477, Securing Communication of Protected Client Information.\(^95\) Though published prior to the COVID-19 pandemic, the ABA recognized a need to provide renewed guidance due to lawyers’ increased use of electronic means to communicate with clients.\(^96\) The Opinion notes that each electronic device and storage location used by lawyers offers an opportunity for the inadvertent or unauthorized

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\(^93\) See Brescia, \textit{supra} note 4, at 626 (recalling several high-profile security breaches, like the SolarWinds breach, where “it is likely that hackers were able to gain access to a wide range of otherwise confidential information.”). \textit{See also} ABA Comm. on Ethics & Prof. Resp., Formal Op. 477, 6 (2017) (noting that “[e]lectronic disclosure of, or access to, client communications can occur in different forms ranging from a direct intrusion into a law firm’s systems to theft or interception of information during the transmission process[,]”).

\(^94\) See Brescia, \textit{supra} note 4, at 625–26 (elaborating on use cases of how using technology for remote work increases the possibility of confidential information being overheard). \textit{See also} ABA Comm. on Ethics & Pro. Resp., Formal Op. 498, \textit{supra} note 5 (advising that in virtual practice “client-related information also should not be visible or audible to others when the lawyer or nonlawyer is on a videoconference or call[,]”).


\(^96\) \textit{See id.} (describing the increased use of technology by attorneys to communicate with clients). “Unlike 1999 where multiple methods of communication were prevalent, today, many lawyers primarily use electronic means to communicate and exchange documents with clients, other lawyers, and even with other persons who are assisting a lawyer in delivering legal services to clients.” \textit{Id.}
disclosure of information relating to the representation of a client. Though the Opinion notes that ethical requirements do not differ based upon the method by which a lawyer communicates with a client, there are additional considerations a lawyer should make when using a technological method. Again using a set of factors to determine what constitutes reasonable efforts in protecting client confidential communications, the ABA expanded the list to include: the multitude of possible types of information being communicated, ranging from highly sensitive information to insignificant; the methods of electronic communications employed; and the types of available security measures for each method.

3. Supervision

The third legal ethics consideration arising from legal work in remote settings is that supervisors have an obligation to ensure a firm’s junior lawyers and non-lawyers competently serve their clients and exercise appropriate professional judgment. The use of remote technologies may make it more difficult for supervising lawyers to maintain the same quality and frequency of contact with staff members in comparison to traditional, in-person settings. Under MRPC Rule 5.1, if this level of oversight drops significantly and no longer satisfies the supervisory lawyer’s standard of care, the supervisor fails to meet.

97 See id. (noting that lawyers regularly use multiple devices to communicate with clients including desktop, laptop and notebook computers, tablet devices, smartphones, and cloud resource and storage locations). “Each device and each storage location offer an opportunity for the inadvertent or unauthorized disclosure of information relating to the representation, and thus implicate a lawyer’s ethical duties.” Id.

98 See id. (explaining that “[t]he Model Rules do not impose greater or different duties of confidentiality based upon the method by which a lawyer communicates with a client. But how a lawyer should comply with the core duty of confidentiality in an ever-changing technological world requires some reflection[.]”).

99 See ABA Comm. on Ethics & Pro. Resp., Formal Op. 477, supra note 92, at 5 (listing the factors to be considered when determining whether an attorney took reasonable efforts to protect client confidential information from unauthorized disclosure or access).

100 See Brescia, supra note 4, at 627 (explaining that “[s]upervisors have a responsibility to ensure that a firm’s subordinate lawyers and non-lawyers deliver services to clients in a competent fashion and exercise appropriate professional judgment[.]”).

101 See id. (noting that social distancing protocols and remote work settings may lead to supervisors not meeting the requisite level of oversight).
their ethical obligations to ensure their subordinates are compliant with their own ethical obligations.\footnote{See generally \textit{Model Rules of Professional Conduct} r. 5.1 (American Bar Association 2020) (explaining the responsibilities of supervisory lawyers).}

ABA Formal Opinion 498 includes a list of potential issues involving supervision of associates and staff in remote work settings.\footnote{See \textit{ABA Formal Opinion} 498, \textit{supra} note 5, at 3 (stating that supervisory lawyers have ethical duties that do not change with the shift to virtual settings).} The ABA notes that because adequate supervision is more difficult to achieve in remote settings, supervisors should ensure that the firm has updated policies and procedures in place, and that all firm employees have been trained on those policies.\footnote{See \textit{ABA Comm. on Ethics & Professional Responsibility}, \textit{Formal Op. 498}, \textit{supra} note 5, at 8 (listing several responsibilities of supervisory lawyers in connection with remote work settings).} Furthermore, the Opinion explains that the lawyer must ensure that law firm tasks are completed in a timely, competent, and secure manner, and that all vendors and other assistance services comply with the lawyer’s ethical duties.\footnote{See \textit{ABA Formal Opinion} 498, \textit{supra} note 5, at 3 (stating that supervisory lawyers have ethical duties that do not change with the shift to virtual settings).}

\section*{C. \textit{Comparison to the Medical Field}}

Like the legal industry, the medical field has similarly battled licensing and client confidentiality issues while adapting to remote
work settings. Risk has been added to medical practices by allowing their physicians to work remotely, the most critical of which regards licensing and its impact on possible medical malpractice lawsuits. Regardless of where a patient is located, these lawsuits can be filed against the physician and the medical practice in the remote physician’s state. Furthermore, similar to the legal field, states have different licensure requirements for physicians. During the COVID-19 pandemic, physicians have been advised that at a

106 See Jason Newton, The Doctor Is Out: Key Risk Considerations With Physicians Working Remotely, CURI (Oct. 6, 2021), archived at https://perma.cc/HF59-54WR (noting that “[w]hile the flexibility of fully remote and temporary remote work provides obvious benefits to a practice and its physicians, there are multiple risks that must be considered prior to approving this kind of work.”). See also Providing patient care remotely in a pandemic, AMA (Apr. 8, 2020), archived at https://perma.cc/K77R-TSGC (stating that “remote interactions between patient and physician can range from providing general information anonymously on a health-related website to providing clinical care through [sic] telemedicine. Physicians must uphold their fiduciary obligations to patients across that continuum.”). See generally AMA Code of Medical Ethics: Guidance in a pandemic, AMA (Apr. 14, 2020), archived at https://perma.cc/X4Q3-NCKZ (providing an overview of the AMA Code of Medical Ethics, which offers foundational guidance for healthcare professionals and institutions during the COVID-19 pandemic). See also Dustin Leek, What to Expect with Continuing Remote Work in Healthcare, HEALTHTECH (Sept. 2, 2021), archived at https://perma.cc/68U6-6K34 (describing how the shift to remote work will transform traditional physical healthcare office spaces). See generally Elliott Jones, Remote Care Is Here To Stay: How To Overcome The Remaining Obstacles And Build Better Healthcare For All, FORBES (July 2, 2021), archived at https://perma.cc/ZM9K-F23L (describing the immediate and potential long-term impacts to the healthcare industry due to the shift to remote operations during the COVID-19 pandemic).

107 See Newton, supra note 106 (advising medical practices to have policy limits on remote venues to avoid this increased risk of medical malpractice lawsuits).

108 See id. (noting that because these lawsuits can be filed against the physician and the practice in the remote physician’s state, there may be a less favorable lawsuit outcome and a physician may become “a magnet for malpractice suits in a remote jurisdiction.”). See generally Navigating state medical licensure, AMA (Nov. 21, 2021), archived at https://perma.cc/A65K-UFGZ (describing how medical licensing varies by U.S. state and can depend on each jurisdiction’s resources, regulations, and state laws). See also About the USMLE, U.S. MED. LICENSING EXAMINATION (Jan. 21, 2022), archived at https://perma.cc/PF9Z-GH3Z (describing why there is one national medical licensing examination).
minimum, remote physicians need to be licensed in the state in which the patient is located at the moment of treatment.110

The Office for Civil Rights ("OCR") at the Department of Health and Human Services ("HHS") provided guidance to physicians during the COVID-19 pandemic, and noted that health care providers subject to Health Insurance Portability and Accountability Act of 1996 ("HIPAA") Rules could communicate with patients, and provide telehealth services, through remote communication technologies.111 The guidance noted that some of these technologies may not fully comply with requirements of the HIPAA Rules, but that OCR will not impose penalties for noncompliance with these requirements in connection with the good faith provision of telehealth during the COVID-19 pandemic.112 OCR elaborated that this enforcement discretion applied to telehealth provided for any patient reason, not just to patient services related to the diagnosis and treatment of health conditions attributed to COVID-19.113 Healthcare providers were also

110 See Newton, supra note 106 (noting a general rule for physicians to follow while treating patients remotely).
111 See Notification of Enforcement Discretion for Telehealth Remote Communications During the COVID-19 Nationwide Public Health Emergency, HHS.GOV (Jan. 20, 2021) [hereinafter Notification of Enforcement Discretion], archived at https://perma.cc/284M-USXQ (noting that due to the COVID-19 national emergency, healthcare providers subject to the HIPAA Rules may seek to communicate with patients and provide telehealth services using remote communication technologies that do not fully comply with the requirements of the HIPAA Rules). See also Colleen Healy Boufides et al., FAQ: COVID-19 and Health Data Privacy, NETWORK FOR PUB. HEALTH L. (June 22, 2020), archived at https://perma.cc/XD5G-MHZQ (noting that "'[t]he federal Health and Human Services’ (HHS) Office for Civil Rights (OCR), which enforces HIPAA, has issued several Notifications of Enforcement Discretion indicating that they will not impose penalties for specified HIPAA violations during the COVID-19 nationwide public health emergency.").
112 See Notification of Enforcement Discretion, supra note 111 (stating that “OCR will exercise its enforcement discretion and will not impose penalties for noncompliance with the regulatory requirements under the HIPAA Rules against covered health care providers in connection with the good faith provision of telehealth during the COVID-19 nationwide public health emergency. This notification is effective immediately.”).
113 See id. (providing examples of the various reasons healthcare providers may wish to examine patients using remote technologies, including: COVID-19 symptoms, a sprained ankle, a dental consultation, or a psychological evaluation). See also CLIENT ALERT: Compliance with Federal Patient Confidentiality Laws and Regulations During and After COVID-19, FELDESMAN TUCKER LEIFER FIDELL LLP (Nov. 21, 2021), archived at https://perma.cc/3ADZ-HMH9 [hereinafter CLIENT
encouraged to use HIPAA-compliant video communication products and to enable all available encryption and privacy modes when using these technologies.  

This guidance is similar to how the medical field has provided guidance to healthcare workers regarding best practices during previous emergencies. In 2006, the Uniform Law Commission passed the Uniform Emergency Volunteer Health Practitioner Act (“UEVHPA”). This model legislation allows any state to recognize out-of-state licenses for a variety of health practitioners during a state of emergency. Participating states must maintain a registration system and all volunteer practitioners must register. Eighteen states

**ALERT: Compliance with Federal Patient Confidentiality Laws** (noting that “[t]he Notice of Enforcement Discretion for Telehealth applies to use of non-public communication technologies to assess or treat any condition that a covered health care provider believes, in their professional judgement, can be provided through telehealth, including providing psychological evaluations and mental health counseling.”).  

See Notification of Enforcement Discretion, supra note 111 (listing appropriate third-party vendors that healthcare providers may use to communicate with patients, as well as listing three technologies (Facebook Live, Twitch, and TikTok) that should not be used in the provision of telehealth). See also **CLIENT ALERT: Compliance with Federal Patient Confidentiality Laws**, supra note 113 (explaining how OCR temporarily waived potential HIPAA penalties during the COVID-19 pandemic).

On March 17th, OCR announced that it will temporarily waive potential HIPAA penalties for covered entities that serve patients through non-public communication technologies during the COVID-19 public health emergency. Under the Notice of Enforcement Discretion for Telehealth, covered entities may use non-public communications technologies, such as Facetime, Skype and Zoom . . . .

**Id.**

See Hentze, supra note 8 (noting that “[t]emporary suspension of occupational licensing laws in emergency situations is a common approach states take to help manage short-term crises.”). “Typically, states will lift licensing restrictions on aid workers, including those providing health care, infrastructure and other services critical to disaster recovery.” **Id.**

**Id.** (describing the origins of the Uniform Emergency Volunteer Health Practitioner Act).

**Id.** (explaining the intent of this model legislation). “The legislation allows any state that has enacted it to recognize out-of-state licenses for a variety of health practitioners during a state of declared emergency. Participating states must maintain a registration system under which all volunteer practitioners must register.” **Id.**

**Id.** (describing the requirements of the Uniform Emergency Volunteer Health Practitioner Act).
and the District of Columbia have enacted UEVHPA legislation between 2006 and 2020.\textsuperscript{119}

The Centers for Disease Control and Prevention (“CDC”) has also provided guidance to healthcare professionals regarding how to maintain client confidentiality and consent during the COVID-19 pandemic.\textsuperscript{120} Medical professionals are expected to use data and security protocols while working in remote work settings, such as using password-protected computer access, locking storage cabinets, and shredding and disposing of notes and paper records.\textsuperscript{121} Furthermore, protocols should include instructions on how to protect confidential data and how to conduct confidential conversations in remote settings, including making telephone or video-conferencing calls from private rooms to avoid the conversation being overheard.\textsuperscript{122}

IV. Analysis

The COVID-19 pandemic caused a sudden shift to the practice of law, pushing the boundaries of a profession typically resistant to change.\textsuperscript{123} Legal professionals adapted quickly to remote operations and many benefits, including cost savings, were immediately

\begin{itemize}
  \item \textsuperscript{119} See Hentze, supra note 8 (providing statistics on the number of jurisdictions that have passed this model legislation). “The states with enacted UEVHPA legislation are: Arkansas, Colorado, District of Columbia, Georgia, Illinois, Indiana, Kentucky, Louisiana, Maine, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, Tennessee, Texas, Utah, Washington, and West Virginia.” Id.
  \item \textsuperscript{120} See generally Confidentiality and Consent, CTRS. FOR DISEASE CONTROL & PREVENTION (May 26, 2020), archived at https://perma.cc/HY6N-U9WB (providing guidance to healthcare professionals on legal and ethical concerns for privacy and confidentiality).
  \item \textsuperscript{121} See id. (describing expectations of data and security protocols medical professionals can follow while working in remote settings).
  \item \textsuperscript{122} See id. (elaborating on how to avoid client confidential conversations being overheard while working in remote settings). \textit{See also COVID-19 Confidentiality and Your Right to Privacy, NAPOLI SHKOLNIK PLLC} (May 13, 2020), archived at https://perma.cc/3KXS-AUDE (describing typical ways that patient confidential information is exposed, including staff discussing cases in public spaces and medical files being left in public areas).
  \item \textsuperscript{123} See Brescia, supra note 4, at 622 (stating that “[t]he legal profession has traditionally resisted efforts to make the work of lawyers more flexible, and there is likely to be some lingering opposition to maintaining remote work options once the pandemic subsides and employees can get back into the office.”).
\end{itemize}
apparent.124 Fortunately, fears of rising legal malpractice claims due to this shift in operations have not yet come to fruition.125 Because the legal profession has been able to temporarily embrace technological change, and remote operations are likely to persist in some form, the legal profession should consider making these operational changes permanent.126 However, the concept of state licensing and practice, and certain ethical guidelines, may need to change.127

Throughout the COVID-19 pandemic, several legal regulatory bodies have provided guidance to attorneys on how to manage legal ethics requirements during times of emergency and remote

124 See id. at 621 (describing benefits of lawyers’ work settings shifting from in-person to remote).

This shift, for paying clients at least, could translate into cost savings. Where a lawyer might travel across the country to conduct a deposition or convene with a client for what might amount to a brief, in-person meeting, now, can be carried out without travelling, while expending less energy, and while charging their clients for less time.

Id.
125 See id. at 623 (noting that expected rises in malpractice claims have not yet occurred).

Although some providers expressed fear that legal malpractice claims would rise in the wake of the pandemic, there is little to show that the work product during this period diminished in quality, or that lawyers faced increased charges of incompetence for reasons related to remote work or other aspects of the pandemic’s restrictions on practice.

Id.
127 See Brescia, supra note 4, at 621 (stating that legal ethics considerations should be considered both during and after the COVID-19 pandemic).

Out of necessity, the legal profession had few options other than to proceed using remote technologies. Because of that, it is difficult to question the legal ethics of this approach, at least as far as the change took place in the midst of the pandemic. But that does not mean we should not assess the virtue of remote work for lawyers, now, and once the immediate threat of the pandemic passes.

Id.
This is similar to other traditionally in-person professions that have temporarily shifted to mostly remote operations, including the healthcare profession. Many in the healthcare field already see the benefits of shifting operations remotely, past the pandemic’s timeframe. Lawyers should embrace a similar mindset in order to plan for a longer-term solution to keeping some operations remote.

A. Regulatory Response to Current Circumstances

The ABA states in its Formal Opinion 498 that “a lawyer’s practice may be entirely virtual because there is no requirement in the Model Rules that a lawyer have a brick-and-mortar office.” The ABA goes on to note that while the Model Rules of Professional

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128 See LEGAL ETHICS DURING THE COVID-19 PANDEMIC, supra note 75 (explaining that lawyers may assist clients outside of their typical practice area under exigent circumstances, but that these services should be limited).

129 See CLIENT ALERT: Compliance with Federal Patient Confidentiality Laws, supra note 113 (explaining how the Office for Civil Rights (OCR) has issued a waiver of certain HIPAA penalties during the COVID-19 pandemic).

While OCR’s waiver of certain HIPAA penalties related to telehealth during the COVID-19 public health emergency currently provides flexibility, the enforcement waiver is temporary. Covered entities that have launched or expanded telehealth during this period should evaluate whether they will continue such services after the COVID-19 public health emergency and, if so, execute a business associate agreement with a HIPAA-compliant telehealth vendor.

Id.

130 See Dustin Leek, supra note 106 (describing how the shift to remote work will transform traditional physical healthcare office spaces). “Such spaces, formerly dedicated to employees who now work remotely, could be repurposed as revenue-generating sites; specialty clinics, for example, or outpatient imaging or exam rooms.” Id. See also Jones, supra note 106 (stating that “[m]oreover, with the enormous cost burden on both patients and healthcare facilities – and the convenience driven by the capability in today’s connected consumer technologies – remote healthcare may be becoming the preferred way to deliver healthcare in the 21st century for both patients and providers.”).

131 See How technology contributed to law firm success, supra note 1 (stating that “[w]hile it’s difficult to know what lies ahead with COVID-19, one thing is certain: Successful firms are preparing for the future by investing in the cloud.”). See also Bruno & Vizzi, supra note 6 (predicting that “[a]torneys will likely continue working remotely for several months and many firms may transition to some form of permanent remote working[.]”).

Conduct allow lawyers to practice virtually, they must fully consider and comply with their ethical duties, especially competence, diligence, communication, confidentiality, and supervision. Overall, the ABA Opinion is reasonable in its expectations that attorneys use appropriately secure hardware and software systems, virtual meeting platforms and videoconferencing, and secure access paths to virtual document and data exchange platforms. Some of the Opinion, however, notably does not keep pace with lawyers’ ability to practice virtually, and technological devices that may be nearby.

For example, the Opinion notes that any client-related information should not be seen or heard by others in the household, office, or other remote location. While attorney-client confidentiality is certainly important, this restriction is too broad. This guideline does not take into account factors such as childcare and sharing office space that an attorney may not have control over, at least without significant expense. Furthermore, the Opinion states that lawyers should disable any devices with listening capabilities, including smart speakers, virtual assistants, and the like. This is impractical because the majority of technological devices today have some sort of listening capability. Though the ABA has good reason to want to restrict these scenarios, these guidelines do not keep pace

133 See id. (describing commonly implicated ethical rules regarding virtual law practice).
134 See id. (providing guidance on how attorneys may meet ethical obligations by using secure platforms to access client information and communicate confidentially).
136 See ABA Comm. on Ethics & Pro. Resp., Formal Op. 498, supra note 5 (stating that “any client-related meetings or information should not be overheard or seen by others in the household, office, or other remote location. . .”).
137 See Bruno & Vizzi, supra note 6 (noting various precautions attorneys must take when working remotely).
138 See id. (noting the risks inherent in attorneys working from home).
139 See ABA Comm. on Ethics & Pro. Resp., Formal Op. 498, supra note 5 (declaring that “the lawyer should disable the listening capability of devices or services such as smart speakers, virtual assistants, and other listening-enabled devices while communicating about client matters.”).
140 See id. (narrowing the smart device declaration only by excepting listening-enabled devices that are “assisting the lawyer’s law practice.”).
with the realities of remote settings and the technological innovations of today.\(^{141}\)

Furthermore, the ABA has provided attorneys with guidance on how to continue practicing remotely without violating the ethical restraint of multijurisdictional practice of law.\(^{142}\) Though these Opinions have allowed attorneys to adapt to changing circumstances, they do not account for local jurisdictions’ restrictions.\(^{143}\) Therefore, it is possible that an attorney who takes care to follow these ABA Opinions may still violate a local jurisdiction’s restriction on the unauthorized practice of law.\(^{144}\) This not only restricts an attorney’s ability to assist clients and expand their clientele, it also creates a confusing patchwork of restrictions for attorneys to juggle.\(^{145}\)

\(\text{\footnotesize 141 See generally Shankar, supra note 2 (describing the negative results of legal teams being slow to embrace technological change).}\)

\(\text{\footnotesize 142 See ABA Comm. on Ethics & Pro. Resp., Formal Op. 495, supra note 5 (stating that lawyers may practice across jurisdictional lines during the pandemic, but noting several restrictions).}\)

Lawyers may remotely practice the law of the jurisdictions in which they are licensed while physically present in a jurisdiction in which they are not admitted if the local jurisdiction has not determined that the conduct is the unlicensed or unauthorized practice of law and if they do not hold themselves out as being licensed to practice in the local jurisdiction, do not advertise or otherwise hold out as having an office in the local jurisdiction, and do not provide or offer to provide legal services in the local jurisdiction.

\(\text{Id.}\)

\(\text{\footnotesize 143 See Webb Daniel & George, supra note 105 (stating that “the first thing a lawyer should do before practicing in a state in which they are not licensed is to check the rules in that jurisdiction.”). “And if practitioners are practicing in other jurisdictions for any extended period, they should consider becoming admitted in those jurisdictions.” Id.}\)

\(\text{\footnotesize 144 See ABA Comm. on Ethics & Pro. Resp., Formal Op. 495, supra note 5, at 3–4 (noting that the Committee believes “a lawyer may practice the law authorized by the lawyer’s licensing jurisdiction for clients of that jurisdiction, while physically located in a jurisdiction where the lawyer is not licensed” as long as there is no “local jurisdiction’s finding that the activity constitutes the unauthorized practice of law . . . ”).}\)

\(\text{\footnotesize 145 See Sanders, supra note 39 (noting that it is easier to practice in a single jurisdiction, but that “[i]f you feel as though the advantages are worth the cost and time it would take to obtain multiple bar cards, it could give you increased opportunities and allow you to expand your business.”).}\)
B. Siloed jurisdictional requirements pose an obstacle to change

The legal field is notoriously opposed to change and state licensing models tend to exacerbate this issue. Though an attorney may have a solid legal educational background, years of practice, and diligently follow ABA Opinions, it is possible the attorney could still be accused of the unauthorized practice of law merely by having a Zoom call across state lines. It is likely that some form of remote operation will persist beyond the pandemic’s timeframe so it is crucial that jurisdictional ethical requirements stay up-to-speed with technological change.

Though the state licensing model has made some changes to account for attorneys practicing in an ever-increasingly interconnected society, not enough has been done to adapt to attorneys’ ability to use technology to assist clients. The creation of the Uniform Bar Exam and a national legal ethics exam, the MPRE, have been steps in the right direction, but they are porous at most. As of January 2022, the UBE is still only accepted in forty-one U.S. jurisdictions, including the District of Columbia. This leaves a significant population that is

146 See Shankar, supra note 2 (stating that “[l]aw is among the slowest industries to adopt new technology...[t]hose problems are amplified by attorney-client privilege, the requirements of trust and keeping data and communications confidential and secure.”).

147 See Sanders, supra note 39 (explaining that “[r]emote work has become more common, but that doesn’t mean every state makes it easy to telecommute. There are state-specific rulings regarding multi-state lawyers, as well as rulings on what constitutes the unauthorized practice of law. Do your due diligence before attempting to practice law remotely in any area.”).

148 See Bruno & Vizzi, supra note 6 (hypothesizing that “while COVID-19 upended the legal industry last year, it appears that working remotely, at least in part, is here to stay.”).

149 See id. (noting that ethical practice is more difficult in the context of remote work due to technological implications). “ABA Model Rule 1.1 requires that attorneys practice competently. While this is generally thought of as a very basic requirement, it is more taxing in the context of remote work. Attorneys working remotely must understand the technology they are using and any risks associated with that technology.” Id.

150 See generally NAT’L CONF. OF BAR EXAM’RS & AM. BAR ASS’N, supra note 35, at v (listing bar admission requirements).

151 See List of UBE Jurisdictions, supra note 40 (listing each U.S. jurisdiction that currently accepts UBE scores to obtain a state license to practice law). See also NAT’L CONF. OF BAR EXAM’RS & AM. BAR ASS’N, supra note 35, at 30 (listing the non-uniform bar examination jurisdictions). The current non-uniform bar
unable to use this exam to meet state licensing requirements. Furthermore, there is not a uniform passing score across these forty-one jurisdictions. It is therefore possible that two law students, with the same law school GPA and same score on the UBE could have different practice outcomes — one may pass in the jurisdiction in which he or she wishes to practice, while the other may not meet a jurisdiction’s higher score requirement, and is therefore left without a license. Drawing on the legal field’s initial focus on applicants’ common educational experience to weed out unworthy applicants, this seems like a less than ideal result. Leaving bar applicants with the decision whether to take the bar in multiple jurisdictions to avoid this result seems like a band-aid at most. As attorneys have the ability to use technology to seamlessly communicate with clients across state examination jurisdictions are: California, Delaware, Florida, Georgia, Hawaii, Louisiana, Michigan, Mississippi, Nevada, Pennsylvania, South Dakota, Virginia, Wisconsin, Guam, Northern Mariana Islands, Palau, and Puerto Rico. Id. See List of UBE Jurisdictions, supra note 40 (indicating the U.S. jurisdictions that do and do not allow UBE scores for licensing requirements). See generally Minimum Scores, supra note 37 (depicting the minimum passing scores for each jurisdiction that accepts the UBE). See also, NAT’L CONF. OF BAR EXAM’RS & AM. BAR ASS’N, supra note 35, at 19 (stating that minimum passing UBE scores vary by jurisdiction and range from 260 to 280). Furthermore, minimum passing MPRE scores vary by jurisdiction, ranging from 75 to 86. Id. at 25. See generally id. at 38–39 (listing grading and scoring criteria for bar examinations).

A local jurisdiction has no real interest in prohibiting a lawyer from practicing the law of a jurisdiction in which that lawyer is licensed and therefore qualified to represent clients in that jurisdiction. A local jurisdiction, however, does have an interest in ensuring lawyers practicing in its jurisdiction are competent to do so.

Id. See Sanders, supra note 39 (noting that most state laws require an attorney to obtain a state bar license specifically for practicing in that jurisdiction, even for cases that are fundamentally federal in nature, such as immigration and bankruptcy matters). “Being a multi-state lawyer usually means you’ll have to pass the State Bar exam for each state in which you wish to represent clients.” Id. There are also restrictions on how long a UBE score may be transferred from state to state. Id. This timeframe varies from state to state. Id.
lines, this scenario of one score creating two separate outcomes seems inadequate.157

Some jurisdictions allow attorneys to waive into the jurisdiction after certain examination scores and years of practice, but this again does not seem like a robust solution.158 Furthermore, certain reciprocal agreements exist among states, allowing certain attorneys to practice across state lines, but these patchwork agreements are not as effective as a nationwide approach may be.159 As technology continues to rapidly develop and attorneys become more and more comfortable with the concept of working remotely, a stronger solution will be needed.160 This will not be a simple lift and shift, but the legal field can draw from other professional fields, such as the healthcare industry, when creating its approach.161

C. Embracing Remote Operations in the Long-Run

1. State Licensing

Though the medical field still requires medical licenses to be issued by each state, the American Medical Association (“AMA”) has created some efficiencies to offset the state-specific requirements.162 For example, although each state’s licensing process may be different, the licensing applications are usually similar.163 Furthermore, the

157 See generally NAT’L CONF. OF BAR EXAM’RS & AM. BAR ASS’N, supra note 35, at 1 (listing the varying requirements for passing the UBE, MPRE, and non-uniform bar examinations by jurisdiction).
158 See Sanders, supra note 39 (providing an example of an exception to passing the State Bar exam in each jurisdiction in which an attorney wishes to practice). “In the District of Columbia (D.C.), for example, you may practice law without passing the D.C. State Bar exam if you have practiced law for at least five years in any state.” Id.
159 See id. (noting that “[s]tates that offer reciprocity typically require a certain amount of experience practicing law, and/or may allow you to practice if you have passed the bar in a state they have deemed allowable.”).
160 See id. (explaining that “it is always going to be easier to simply practice in a single jurisdiction,” which points toward the inference that today’s practice model is insufficient when it comes to an increasingly interconnected world).
161 See generally Navigating state medical licensure, supra note 110 (providing a high-level summary of state medical licensure).
162 See id. (giving an overview of how to apply for a state medical license and the similarities and differences between states’ requirements).
163 See id. (describing the application process for a state medical license). “Although each state’s licensing processes may be different, the applications and requested information are usually similar. You can save time by retaining copies of completed materials to reuse on multiple applications.” Id.
United States Medical Licensing Examination ("USMLE") program has created one national examination system accepted in every state.\textsuperscript{164} The legal field could draw on this model and similarly offer one national examination system accepted in every state, as well as streamline the application process by ensuring states require similar information to be submitted by applicants.\textsuperscript{165}

2. Attorney Mindset and Competency

To embrace a longer-term solution to remote work operations, attorneys need to be competent to perform their duties diligently using technology.\textsuperscript{166} Today, the use of technology is not comprehensively taught in preparation to practice law.\textsuperscript{167} This lack of technological skillset in legal education and training programs may factor into

\textsuperscript{164} See About the USMLE, supra note 110 (answering why there is one national medical licensing examination).

USMLE was created in response to the need for one path to medical licensure for allopathic physicians in the United States. Before USMLE, multiple examinations (the NBME Parts examination and the Federation Licensing Examination [FLEX]) offered paths to medical licensure. It was desirable to create one examination system accepted in every state, to ensure that all licensed MDs had passed the same assessment standards – no matter in which school or which country they had trained. Today all state medical boards utilize a national examination – USMLE for allopathic physicians, COMLEX-USA for osteopathic physicians.

\textsuperscript{165} See generally NAT’L CONF. OF BAR EXAM’RS & AM. BAR ASS’N, supra note 35, at vii (stating the requirements of different bar examiners, and noting that there may be inconsistencies). “They are offered solely in the hope that they will afford guidance and assistance and will lead toward uniformity of objectives and practices in bar admissions throughout the United States.” \textit{Id.}

\textsuperscript{166} See MODEL RULES OF PRO. CONDUCT r. 1.1 (AM. BAR ASS’N 2020) (stating that “[c]ompetent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.”). \textit{See also} MODEL RULES OF PRO. CONDUCT r. 1.1 cmt. 8 (AM. BAR. ASS’N 2020) (noting that comment 8 to this rule points out that “[t]o maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology . . . ” \textit{Id.}

\textsuperscript{167} See Brescia, supra note 4, at 626–27 (noting that in order for attorneys “to perform their duties competently and protect their clients’ confidences . . . firms and law schools will need to do more to ensure lawyers and law graduates have basic technological competence.”).
attorneys’ initial aversion to remote law practice. By offering more technological training in law schools and law firms, attorneys may feel more comfortable incorporating technology into their practice techniques, ultimately creating greater opportunity for client and law firm cost and time savings.

3. Confidentiality in Remote Settings

Though client confidentiality is of utmost importance, adjustments need to be made to ethical requirements to account for remote operations. It is not reasonable to expect an attorney to be able to prevent any and all dependents, roommates, or listening-enabled devices from seeing or hearing client-related documents or meetings in remote settings. Instead, guidelines should be created

168 See id. (arguing that it would be beneficial for law firms and law schools to incorporate more technological training into educational programs).

The deployment of such new technologies – and the risks they pose, not just for embarrassment, but also for the possibility that lawyers will not be able to perform their duties competently and protect their clients’ confidences – suggests that, at a minimum, firms and law schools will need to do more to ensure lawyers and law graduates have basic technological competence.

169 See id. at 621 (describing benefits of attorneys shifting to remote work settings).

In their efforts to respond to the crisis by carrying out many of their functions remotely, lawyers found that much of what they had assumed required them to be in person worked just fine over video links. As a result, lawyers have spent less time traveling to and from the settings where these in-person functions usually occurred. Lawyers could therefore devote more time to their work, eliminating otherwise unnecessary time and effort.

Id. See also As Courts Go Remote, supra note 63 (quoting Albany Law School professor and Community Economic Development Clinic director, Edward De Barbieri, who argued that law schools should teach students the benefits of providing legal services remotely). “One way we can train the next generation of lawyers is by teaching them to facilitate meetings with video conferencing platforms and deliver legal content remotely too… Integrating that into our teaching offerings increases the ability of lawyers to meet the needs of clients these days.” Id. See generally Legal Tech Education Guide, supra note 63 (providing a list of educational options at the intersection of law and technology).

170 See Bruno & Vizzi, supra note 6 (providing examples of extra precautions attorneys must take when working remotely).

171 See id. (describing the many extra steps attorneys must take to protect confidential information when working remotely).

Attorneys should also turn off any smart speakers, virtual assistants and other listening-enabled devices, such as Google Home or Amazon Alexa, as many of these devices automatically
to assist attorneys in communicating the importance of client confidentiality to others that may share the remote space.\textsuperscript{172} These guidelines could also recommend distances of how far away to leave listening-enabled devices during client calls.\textsuperscript{173}

V. Conclusion

The COVID-19 pandemic has pushed the legal profession, an industry historically opposed to change, to adopt technological solutions for remote practice. Some form of remote practice is likely to persist past the pandemic’s timeframe, indicating that the legal profession may need to transition these short-term solutions into longer-term solutions. However, this will likely require adjustments to the state licensing model and certain ethical requirements, especially competency and confidentiality. The legal industry should look to other professions, such as the medical profession, for ideas on how to adapt in an increasingly technologically-driven society. One national examination for licensing, increased technological training in law schools and law firms, and more practical guidelines on how to practice in remote settings would be beneficial. The legal industry has embraced technological solutions in the short-term; now it should evolve state licensing models and ethical requirements to meet technological developments in the long-term.

Id. \textsuperscript{172} See id. (explaining the significance of extra precautions attorneys must take in remote environments to comply with ethical obligations, states’ mandates, and court procedures).

Id. \textsuperscript{173} See id. (noting what attorneys should do to keep confidential information protected from listening-enabled devices).