# Advertising as “Doctor/Dr.”

written by Richard Leslie | March 1, 2021

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**ADVERTISING AS “DOCTOR/Dr.”**

As I have previously written, probably on more than one occasion, the general rule for advertising by licensed health professionals is that advertising is permissible so long as it is not false, fraudulent, misleading or deceptive. Some or all of these four words describing unlawful advertising by health professionals may be defined in state law or regulation. Each state may treat this subject somewhat differently, so reference to the particular state’s law is necessary. With respect to the word “doctor” or the letters or prefix “Dr.,” state law (the Medical Practice Act) in California makes it a crime (misdemeanor) for any person(s) to advertise by using the word “doctor” or the letters or prefix “Dr.” when referring to themselves in advertising (e.g., on the Internet, a business card, sign, letterhead) unless the person is licensed as a physician and surgeon.

Some licensed mental health practitioners that have a PhD or other related doctoral degree that qualifies them for licensure refer to themselves in advertising as “doctor” (or as “Dr.”) without using the PhD after their name and without disclosing their actual license title. Some may do this by mistake, while others may do it intentionally. Also, some practitioners refer to themselves in advertisements by a title that doesn’t exist as a state-issued license (e.g., “licensed psychotherapist“) and neglect to disclose in the advertisement the actual license that they hold.  Such advertisements are problematic at best. Depending upon state law or regulation, such advertisements may constitute unprofessional conduct, may subject the practitioner to criminal charges, and may result in civil liability.

In any criminal prosecution or licensing board disciplinary action involving wrongful advertising by a licensed health professional, the entire advertisement is relevant. The courts and licensing boards will typically look at the “four corners of the advertisement.” Even if the law is not violated by a particular advertisement, proper ethical behavior and transparency would seem to dictate that the consumer is entitled to know the exact kind of license that is held by the practitioner.

Why would licensees not disclose their actual licensure? Why would licensees be so desirous of being referred to as a “doctor” or as “Dr.” as described above or not disclose their actual license?” The answer, it might be alleged, is that the licensees want to mislead consumers into believing that they have a “greater” or different license than they actually possess. Over the years, and just as one example, I have seen several situations where therapists appearing in various media do not disclose

their actual license titles. Patients, consumers, and the public deserve to know what kind of license the practitioner holds.

***The article appearing below was originally published on the CPH Insurance's website in May 2008 and appears below with some additions and non-substantive changes.***

**RECORDS – DESTRUCTION AT THE REQUEST OF THE PATIENT?**

Mental health records kept by licensed mental health practitioners belong to the practitioner, but patients have rights with respect to accessing the records. These rights are usually defined by state statute, and typically include the right to inspect, the right to obtain copies, and the right to amend or addend the records. State law may also proscribe the length of time that records must be kept. Some states may not have laws that specify the length of time that patient records must be maintained, but may leave it to the discretion of the practitioner and perhaps applicable ethical standards. Many states, however, do have laws that specify the length of time that patient records must be kept by licensed mental health practitioners. Do any of these laws provide for any discretion by the practitioner to comply with the wishes of the patient/consumer for early destruction?

Suppose that a high profile patient shares with his or her therapist information of a highly personal or embarrassing nature. Suppose further that after the passage of three years from the time of termination, the patient asks the practitioner to destroy the records in order to protect the patient's privacy. If the practitioner agrees to do this, is it permissible (legally or ethically)? What if the practitioner, in order to preserve some record, decides to write a summary and destroy the more revealing full record and the patient agrees in writing? Is this permissible, and if not, why not? If the practitioner agreed to destroy the records (upon the written request of the patient), would the practitioner be vulnerable to disciplinary action by the licensing authority? If the applicable law contains no exception to the required time frame for keeping records, the answer would likely be "yes."

Should applicable laws be amended to allow for the right of the patient, assuming agreement from the practitioner, to destroy or summarize the records after a period of time and assuming that the records are not being presently sought in litigation? Should the answer to these questions depend upon the circumstances and the nature of the services being rendered or should there be an inflexible rule – despite a patient's informed request for privacy protection?

***The article appearing below was originally published on the CPH insurance's website in February 2008 and appears below with minor and non-substantive changes.***

**FAMILY LAW – "JOINT CUSTODY"**

How is the term "joint custody" defined in the statutes governing family law matters (e.g., child custody/visitation) in the state where you practice? Does the term refer to physical custody, legal custody, or both? Why does it matter? In answer to the latter question, it matters because proper parental consent to the treatment of a minor and a valid parental signature (or signatures) on an

authorization form may depend upon the meaning of this term, as it is defined in a particular state's statute. There may also be other related terms that bear on the answer to the latter question – such as legal custody, physical custody, joint or sole legal custody, and joint or sole physical custody.

In one state, the term "joint custody" means joint legal custody and joint physical custody. In that state, "joint legal custody" means that both parents shall share the right and responsibility to make the decisions relating to the health, education, and welfare of a child. This does not mean that both parents must sign an authorization form to release information pertaining to the minor's treatment, for example, but rather, it means that either parent can sign the authorization form. Likewise, either parent may consent to treatment. Of course, a state law or court order may specify otherwise – such as, that the authorization or consent of both parents shall be required for certain actions or that there be notification of one parent by another.

In that state, the term "joint physical custody" means that each of the parents shall have significant periods of physical custody. The law specifies that joint physical custody shall be shared by the parents in such a way so as to assure a child of having frequent and continuing contact with both parents. Generally, physical custody does not entitle a parent to consent to treatment or to sign an authorization form on behalf of the minor. Those issues are resolved, in the state being discussed, by determining the "legal custody" arrangement. Of course, each state has its own laws with respect to when (at what age) and under what circumstances a minor can consent to mental health treatment without parental knowledge or consent.