

April Check-In: Review Your Practice

written by Richard Leslie | April 1, 2020

Avoiding Liability Bulletin - April 2020

NOTE: The purpose of this issue of the Bulletin is to review aspects of practice that may raise questions or dilemmas for practitioners and to encourage readers to think about these topics in some detail. I will be answering these questions in future issues of this Avoiding Liability Bulletin. The laws in each state often differ with the laws in other states, so the answers to these questions may also differ. My answers will, as always, rely upon and reference California law. The reader is encouraged to determine how the law in your state treats any particular issue and how the law may differ with the answers provided by me in future issues of the Bulletin.

Answers appear in the [May 2020 issue](#) of the Bulletin.

1. If an adult patient informs her therapist that she was abused when she was a minor, the therapist is not under a duty to report the child abuse or to investigate the current whereabouts of the abuser.
2. If a parent slaps his or her 17 year old child in the face when he uses foul language at the dinner table, such conduct would not be reportable when the 17 year old child informs his therapist of such conduct.
3. If the slap in question #2 were to cause the boy's lip to bleed from a small cut, a report would not be required if it was determined by the therapist that the injury inflicted was accidental and unintended.
4. If a pre-licensed supervisee was to fail to make a required child abuse report, the licensed supervisor should immediately direct the pre-licensed person to file a report, even though the report would be late as per the applicable child abuse reporting requirements.
5. A licensed therapist is required to report child abuse even if the patient tells the therapist that the abuse now being revealed was previously reported to the authorities.
6. When a licensed therapist is treating a minor who is twelve years of age or older with the consent of both parents, either parent is the holder of the psychotherapist-patient privilege.
7. Licensed therapists are allowed to deny the request of a parent to inspect the records of the therapist who is treating their child, regardless of the age of the child.

8. When a minor patient who is a court ordered emancipated minor informs her therapist that she was abused by her uncle while she was an emancipated minor, there is no duty to report child abuse.
9. Prior to the delivery of telehealth (aka telemedicine) services to a patient, licensed mental health practitioners are required to obtain the consent of the patient, which may be oral.
10. When treating a patient in your state of practice via telehealth, such treatment might need to stop when the patient leaves the state for business or personal reasons and thereafter seeks one or more telehealth sessions while out of state.
11. When treating a patient via telehealth, the practitioner is required to ascertain where the patient is physically located at the start of each session, including the address.
12. When treating a patient via telehealth, practitioners must warn the patient that if he/she leaves the state at any time or for any reason, the practitioner may be prohibited from continuing to treat the patient because the licensing board in the state where the patient is physically located may take the position that the practitioner is "practicing without a license" in that state.
13. Licensed mental health practitioners are generally required to inform patients, prior to the commencement of treatment, of the mandatory exceptions to confidentiality, including the duty to report elder abuse.
14. Licensed mental health professionals are generally permitted to release patient information, such as a diagnosis, to other licensed health practitioners without the patient's signed authorization.
15. If a patient threatens his or her therapist with imminent and serious physical violence, the therapist is permitted to inform the police of the threat and to provide the name and home address of the patient.
16. Supervisors in non-profit corporations are generally not liable for the negligent acts of their supervisees.
17. If a patient demands to see a copy of the treatment records during a therapy session, the therapist has a right to deny the request and to inform the patient that his/her right to access the records is not absolute.
18. When the identified patient is a couple, the mental health practitioner should generally not provide copies of the records to one member of the unit without a valid authorization from the other member.

19. When a licensed mental health practitioner is served with a subpoena for the treatment records of a patient, the practitioner must take care not to assert the psychotherapist-patient privilege until the patient, who is the holder of the privilege, directs the practitioner to do so.
20. The duty of confidentiality and the psychotherapist-patient privilege survive the death of the patient.