

Avoid These Common Errors

written by Richard Leslie | May 24, 2016

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I typically write about legal and ethical issues affecting therapists and counselors – like child abuse and elder abuse reporting, confidentiality, treating children, HIPAA, privilege, duties with respect to dangerous patients and other somewhat “technical” matters. This month I write about some administrative matters that are perhaps viewed by some practitioners much too casually. There are some routine and seemingly mundane aspects of practice that licensed persons must attend to in their therapy or counseling businesses. It is important that these details of practice be viewed seriously and with “religious” attention to established deadlines.

FAILURE TO RENEW LICENSE

One common error is the failure to timely renew one’s license with the state regulatory board. Depending upon circumstances, failure to renew one’s license can become a major headache or can be an oversight that can be corrected with payment of a late or other additional fee. As to the major headache aspects of this common slip- up, I have seen any number of unfortunate results. Technically, if the license has not been renewed, a person will likely be practicing without a license – perhaps jeopardizing a patient’s right to reimbursement by an insurer, or perhaps causing a supervisee to be denied entry into the licensing exam because a certain number of his or her required hours of experience were supervised by an ineligible (unlicensed) supervisor.

I have talked with practitioners who have said that they did not know that the license had to be renewed! I have talked with therapists who did not renew their licenses for a matter of years, and others who missed the deadline by a week or so. Some were faced with the decision of whether they were going to inform insurers of their failure to renew (their unlicensed status) and going to reimburse the insurer. Others were going to be witnesses in lawsuits and were afraid that they would be cross-examined about their expired licenses and be made to look bad (negligent) and perhaps jeopardize the cases of their patients. Many unexpected problems can arise. Be organized. Know your expiration date. Enter it in your calendar – perhaps in two places. Don’t depend upon the licensing board or the postal service – they can at times be unreliable.

FAILURE TO RENEW MALPRACTICE INSURANCE

Another common error involves the failure to timely renew one’s malpractice (professional liability) insurance. This can be a more problematic matter for the practitioner than the failure to renew one’s license, so practitioners should have or develop a method of calendaring to avoid a lapse of insurance coverage. Probably the worst result of a lapsed policy is the possibility that a claim will be made by a

patient for an alleged act of negligence (or other wrongful act) that occurs during the lapse. A therapist that I consulted with had just such an experience. The case was settled for about \$20,000 and the legal fees were significant (all paid by the therapist), even though the lawsuit was weak and largely without merit. The stress of having no coverage took its toll as the case lingered, and the therapist suffered a physical setback attributed to the stress.

There is another problem with allowing one's malpractice policy to expire (lapse) because of non-renewal. Insurance companies generally view those who allow their policies to lapse as potential problems. It is seen as a possible sign that the therapist does not pay attention to detail and may be otherwise inattentive. More importantly, it presents a problem for all concerned if the insured practitioner (now lapsed) later wants the insurer to provide insurance for the lapsed period. Insurers will likely not be willing to accept payment (and provide coverage) for the period of time covered by the lapse - even where no claim has yet arisen. Furthermore, insurers may be reluctant to cover a practitioner prospectively, even if the lapsed status was the result of a mere clerical error on the part of the practitioner. If a practitioner allows his or her malpractice policy to lapse on more than one occasion, he or she will be in a very difficult position when trying to obtain coverage.

FAILURE TO ATTAIN REQUIRED MCE

Yet another common error involves mandatory continuing education, for those who are bound by such a requirement. Some therapists do not pay attention to the particulars or nuances of the requirements, and by the time it becomes necessary to attest to the fact that they have completed all of the requirements, they may find (or be unaware) that they did not get enough hours in a particular area, or that they counted wrong and they are short an hour or more in a given area. When faced with this reality, therapists sometimes make a big mistake by attesting to the fact that they have met all requirements, hoping that they will not be one of the small numbers of people who will be randomly audited by the licensing board. When the licensing board finds out about the deficiency, some form of enforcement action may occur and a penalty of some kind may be imposed.

FAILURE TO RENEW MCE PROVIDER STATUS

With further respect to mandatory continuing education, some licensees are also providers of continuing education and they may be required to be approved by, for instance, the licensing board. Failure to renew one's CE provider status may result in workshop attendees ultimately being denied CE hours because they received the education from a non-approved provider. This might also happen if the approval status is issued by a non-governmental entity. If attendees are denied credit, it is not uncommon for the provider to be met with multiple demands for a return of the workshop registration fee. If an individual's license renewal is affected by a denial of CE credit, the provider may be under a lot of pressure from some very angry people. The potential loss of a good reputation as a provider of CE is a self-evident result of a failure to timely renew.

FAILURE TO OBTAIN BUSINESS LICENSE

Many jurisdictions throughout the United States require those who conduct business in a city or other local area to obtain a business license. This is usually done by filing a simple form and by paying the annual fee. Failure to comply with such a requirement will usually carry a financial penalty of a late or delinquency fee or something similar. These business licenses are revenue raising measures rather than regulatory measures. I have previously warned those who desire to practice from their homes to be thoughtful about the need to file for a business license, especially if to do so will alert the governmental entity to a possible zoning violation. This is a very delicate area and consultation with an attorney may be necessary in order to make an appropriate decision.

FAILURE TO OBTAIN FICTITIOUS BUSINESS NAME

When a private practitioner conducts business under a fictitious name, there may be requirements that have to be complied with, such as registration or seeking a permit from the licensing board, or the filing of a form with the County Clerk (or some other-named government official) and the publication (in a newspaper) of a notice to the public regarding the use of the fictitious name. Failure to properly file can result in various consequences for therapists, such as being prevented from collecting fees from non-paying clients to getting into a battle with a competitor over who can use the fictitious name. I have spoken with surprised therapists who have sued their patients in small claims court for unpaid bills, only to be met with a successful defense based upon the therapist's failure to file the required fictitious business name form. Although the law will vary from state to state, diligence and attention to detail can help to avoid such problems.