Brief Reminders / Topics

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BRIEF REMINDERS/TOPICS

The following reminders/topics are not in order of importance and are only brief comments about a variety of issues – most of which I have written about before in various degrees of detail. I encourage you to easily research those further details.

More detailed bulletins regarding the following topics are linked in the topic header.

FEES – Collections

… Suppose that the patient owes you money after therapy is terminated. The typical options are – forgive the debt, make one or more oral and then written requests, send the matter to collections, or sue in small claims court. I would generally avoid the collections option because, among other reasons, it could trigger a complaint or claim from the aggrieved patient, especially (but not necessarily) if the collections agency acted improperly or in an abusive manner. If the collections option is for some reason used, careful selection of the company is necessary. Additionally, it is important to make sure, to the extent possible, that the former patient has been given notice of the fact that the matter (the debt) will be turned over to a collections company if the debt is not paid (or if payments do not commence) by a certain date. In any event, do not act out of anger or retribution, but rather, out of longer term self-interest.

RECORDS – Ownership

Patients have certain rights to inspect, copy, amend, or addend records, but they do not own the records. The records are owned by the practitioner (the sole proprietor). Most states (and HIPAA) give patients broad rights to access the records, but those rights are not absolute. Requests to access (inspect or obtain a copy) the records may be denied in certain circumstances, and a summary of the records may be given in lieu of the actual and complete record under other circumstances. When the practitioner is an employee of an organization or entity, the organization or entity is the owner of the records. Disputes often arise when professional employees leave an agency and want to (or do) take the records with them, even when the patient does not follow the departing professional employee. Employers are properly concerned, since they are legally responsible for the maintenance, control, and eventual destruction or storage of the records.

TERMINATION LETTERS

Think twice about initiating a termination by writing a letter of termination to the patient. Unfortunately for some, it is the letter itself that provides the evidence and triggers a complaint or lawsuit alleging abandonment and perhaps other wrongdoing by the practitioner. It may be better to first meet with the patient (where possible) in order to initiate the termination, or the termination process, and to then document your records accordingly. A telephone conversation with the patient, where an in-person meeting is not possible, followed by appropriate documentation, may also be helpful. In either case, a letter that confirms the meeting(s) and the discussion(s) that took place can then be written, if deemed necessary or appropriate. If a letter is written, great care must be taken with respect to its contents. Each word and each sentence should be "scrubbed" before a letter is sent. You can be certain that if a dispute or lawsuit ensues, your letter will be scrutinized and interpreted every which way!

INFORMED CONSENT

Know the difference between informed consent and required disclosures. Sometimes this is difficult to do because licensing boards and others get the two concepts confused or may blur the differences between the two. With respect to required disclosures, licensees must obviously disclose everything that law or regulation requires, and must do so in the manner prescribed. With respect to obtaining the informed consent of the patient, there generally is ample discretion in what should be covered and how it should be documented. Physicians in California, for example, are not required to obtain the patient's informed consent for a simple and common procedure involving risks or dangers that are remote and commonly understood to be remote.

Most people understand the benefits, or potential benefits, of psychotherapy and counseling, but what about the risks? Is psychotherapy or counseling a simple and common procedure? Does psychotherapy or counseling involve inherent risks and dangers? Are the risks and dangers of psychotherapy or counseling remote and commonly understood to be remote? Do the answers to these questions depend to some extent on the particular situation (for example, the kind of presenting problem and the diagnosis)? What are the risks of psychotherapy or counseling that must or should be disclosed?

ELDER ABUSE – Definitions Matter

It is important to know the definition of specific terms and words – such as "child" for purposes of the child abuse and neglect reporting laws, and "elder," for purposes of the elder abuse reporting law in your state. In California, an elder is not just a person who is sixty-five years of age or older, but is also one who resides in the State of California. The element of residing in the State of California is not applicable to the definition of "child" in the California's Child Abuse and Neglect Reporting Act, which simply provides that a child is someone who is under eighteen years of age. If one does not pay attention to this kind of "fine nuance," a report could unnecessarily and wrongfully be made regarding an elder residing outside of California which could result in a lawsuit by the patient alleging breach of confidentiality.

ETHICS COMMITTEES

Professional association ethics committees may be dangerous to your professional health. As with inquiries from a licensing board, an ethics committee inquiry should be taken seriously (including when you are convinced that you have done nothing wrong), which usually means that legal advice or representation would be wise – especially if done at an early time. Under certain circumstances, an ethics committee may be required to report its final actions to the licensing board, thus exposing the practitioner to additional jeopardy. With an ethics committee, you are in a sense being judged by your competitors, and that is why antitrust concerns are raised when an ethics committee is, for example, attempting to restrict the professional activities of a member by enacting and enforcing overbroad restrictions on advertising, fees, or practice of the profession.

LICENSING BOARDS

The licensing board is the regulator and licensees are the regulated. I have always believed that there should be a healthy tension between a licensing board and the profession regulated. The Board's basic and primary mission is to protect the public – from you and other licensees! It has been my experience that licensing boards (government), if not closely monitored and challenged, will abuse their power – either with respect to the promulgation of onerous and unnecessary regulations, or through the enforcement and disciplinary process, where licensees and applicants for a license are the targets. Licensees should be particularly concerned about, and protective of, their limited due process rights so that they can adequately defend themselves from false allegations/charges and excess zeal by the government.

REFERRALS

It is important to know how the state regulates referrals, if at all. For example, states often make it unlawful for a licensed health professional to pay or receive any money or other consideration as compensation or inducement for the referral of patients, clients, or customers. Such conduct is typically considered to be unethical, unprofessional conduct, and/or a misdemeanor. While such arrangements may be lawful in other industries, it is typically called "illegal fee-splitting" when it involves a licensed health professional. Referrals should be made based upon the needs of the patient, and not pursuant to some prior arrangement, contractual or informal, between the practitioner and the other person.