Confidentiality and Collateral Visits

written by Richard Leslie | May 24, 2016

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… Suppose that a mental health practitioner is seeing a couple for couple therapy. Suppose further that the practitioner desires to see the adult child of the couple for one or two sessions in order to better assess and treat the couple. This is generally considered to be a collateral visit, which usually involves a spouse, partner, sibling, or other family member related to the identified patient. With respect to insurance billing and reimbursement, a collateral visit is generally understood to be medically or psychologically necessary for the treatment of the patient, and it is primarily for the purpose of information exchange regarding the patient or for implementation of the treatment goals for the patient. Typically, the identified patient would pay for the session to be held with the person seen collaterally since the collateral visit is intended to further the interests of the patient.

What degree of confidentiality is the adult child entitled to, and what should the practitioner be telling the child and the couple regarding the nature of the relationship between the practitioner and the adult child? Perhaps the most important thing to be communicated to the adult child is that he or she is not considered by the therapist to be a patient and is not present for the purposes of his or her own diagnosis or treatment. Rather, the adult child is being seen by the practitioner in order to further the interests of the couple in their treatment. The practitioner must be careful when making these statements because in some states the definition of “patient” may arguably be broad enough to include someone who is being seen in a collateral visit.

For example, California’s laws on confidentiality define “patient” as any natural person, whether or not still living, who received health care services from a provider of health care and to whom medical information pertains. “Medical information” might arguably include information obtained from the person seen collaterally since that term includes information about the person’s medical history, mental condition, or physical condition. However, there is the question of whether the person being seen in the collateral visit received “health care services” from the practitioner? I would argue “no.” Thus, in California, the typical collateral visit does not in my view result in a therapist-patient relationship entitled to the full protections of the duty of confidentiality and the full protections of the psychotherapist-patient privilege.

While it is possible that state law or professional ethical standards may address this subject matter and provide some guidance, my impression is that there is not much directly addressing these issues. It seems to me that most practitioners would want to let the person who is being seen collaterally know that his or her communications with the practitioner are not entitled to the same confidentiality as that enjoyed by the patient. For example, practitioners will usually want to inform the person being seen collaterally that the practitioner is free to share the information gained in those individual sessions with

the patient (in this example, the couple) to the extent that the practitioner deems clinically necessary or appropriate – unless there is an express agreement to the contrary. If the person being seen collaterally requests that certain information be kept confidential and that it not be shared with the patient, the practitioner must be mindful that the patient may later allege that the therapist was wrongfully keeping secrets from the patient at the request of a non-patient. While such an assertion might be adequately answered in some cases, the request for confidentiality of certain information should only be agreed to when clinically appropriate or necessary.

The person being seen collaterally can reasonably expect that the practitioner will fulfill his or her duty of confidentiality owed to the patient being seen. In other words, the information and the records will be shared with no third party, unless disclosure is required or permitted by law, or unless the patient signs an authorization allowing some or all of the information to be released to a third party, such as an insurance company or an HMO. Thus, in effect, there is a considerable degree of confidentiality protection for the person who is seen collaterally. The therapist and the patient should remain mindful of the fact that there is information in the file relating to the person who saw the therapist collaterally so that efforts can be made, if appropriate, to protect that information from disclosure when there is a request for records or a subpoena for records .

The practitioner may also want to let the person being seen collaterally know that because he or she is not the patient, the records of these sessions will be kept as a part of the treatment records of the couple – and are considered a part of the couple's records. Thus, if the patient has a right to inspect or copy his or records under state law, the confidentiality of the person seen collaterally may be compromised. In some states, practitioners may be able to remove information from the records that was received in confidence from someone other than the patient or another health care provider, if and when the patient seeks access. While practitioners typically do not get into discussions about the psychotherapist-patient privilege at the outset of the professional relationship, and while state law may vary, it is my view that the patient (in this case, the couple) is the "holder of the privilege" and may therefore assert or claim the privilege when any part of their records (including the records kept re: the collateral visit) is subpoenaed.

Caveat: The discussions that a practitioner would have with the patient and with the person being seen collaterally about confidentiality, privilege, and the nature of the relationship with the person being seen in one or more collateral visits, may vary with the circumstances presented and with applicable ethical principles and state law or regulation. Such discussions should, at a minimum, be documented in the patient's treatment records.