

Conflicting Requests

written by Richard Leslie | May 24, 2016

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... Suppose that a patient has signed an authorization form allowing you to release confidential information to a third party, but after leaving your office calls you to request that the information not be disclosed. Or, suppose the mother of a 10 year-old patient authorizes you to release information to the child's private school, but before you send the records the father calls you and requests that you not send the records until he has had a chance to review them. How should you handle such situations? The answers to these questions depend upon a variety of factors, not the least of which is state law, but there are some general principles that can provide guidance in many such cases.

In the first scenario, the issue involved is revocation of a previously signed authorization form. In other words, should the therapist obey the verbal wishes of the patient and not send the records? If the patient shortly after the oral revocation again indicates that he or she wants the records sent, the therapist's delay in sending the records might, in a given case, cause some problems for the patient. If the therapist were to ignore the patient's verbal revocation request and send the records too quickly, the patient may be very angry and may claim a breach of confidentiality. In order to avoid being in "no person's land," it is important for the therapist to be on top of the situation, to move quickly, and to be real clear with the patient.

While the following basic principles will help in most cases, this situation can on occasion mushroom into a major problem for the therapist or counselor affected. First, patient authorizations to release confidential information to a third party must generally be written and signed. The general rule in most states is that just as a verbal authorization to release confidential information is not valid, a verbal revocation of a previously signed authorization is likewise not valid. Typically, the revocation must be in writing. It is important for the therapist or counselor to get that revocation in writing promptly so that the practitioner does not wind up confused about the course of action to be taken. A fax from the patient, followed by receipt of the original written revocation, should usually suffice.

In the second scenario, it is important to understand that the therapist or counselor may (depending upon state law) be able to act upon the signature of either parent in many situations. It is also important to understand that while either parent may often be able to authorize the release of confidential information pertaining to their minor child, the law may merely allow, but not require, the release of such information. Therefore, some practitioners routinely tell the parents of a child that they will only act upon the signature of both parents, and if there is disagreement, the practitioner will await their resolution of the dispute. This approach may work in many instances, but it also may be problematic.

Suppose that the information is important to a decision that must be made with respect to the child and

that time is of the essence. Suppose further that the parent who has physical custody of the child wants the information to be released and the other parent, who has joint legal custody but no physical custody, wants the practitioner to not release the information until the records are inspected by that parent. In cases like this, it is sometimes helpful to look at the situation in a bifurcated way. That is, the practitioner may decide to let the parent with no physical custody know that there are separate rules with respect to inspection of records and that he or she is free to inspect the records pursuant to the process provided for by the laws of that particular state. With respect to the issue of authorizations, however, that parent can be informed that since either parent may sign the written authorization, the therapist is going to obey the wishes of the custodial parent – that is, the parent with whom the child resides.

Each case must of course be influenced by its own particular facts. What counselors and therapists must be careful to avoid in all cases is allowing themselves to be put in an ambiguous situation that may result in angering the patient (or someone acting on behalf of the patient) and possible legal vulnerability. Get it in writing and get it quickly! Don't allow yourself to be manipulated. Understand the applicable law and be clear with those who give one direction in writing and then change their minds.