

Conflicts

written by Richard Leslie | May 24, 2016

Avoiding Liability Bulletin - July 2008

Counselors and therapists often encounter conflicts, or what may sometimes be referred to as “conflicts of interest,” during the course of conducting their private practices and in other situations. This article will explore several aspects or examples of such conflicts. It is interesting to note that the ethical standards for marriage and family therapists and for counselors do not, in large measure, address the subject. The concept of conflict of interest, however, is or may be involved under provisions of the codes that deal with issues such as dual or multiple relationships, prohibitions against exploitation, and gross negligence.

The word “conflict” is used in ethical standards with respect to marriage and family therapists who treat multiple members of a family. Applicable ethical standards (e.g., from the California Association of Marriage and Family Therapists - CAMFT) provide that when treating a family unit, an MFT shall carefully consider the potential conflict that may arise between the family unit and each individual. For example, when an MFT or other practitioner treats a couple, thought must be given to the potential conflict that may arise between the couple (as the identified patient) and the husband and wife (or the domestic partners) in their individual capacities. This same standard instructs the MFT to clarify, at the commencement of therapy, which person or persons are clients and the nature of the relationship(s) the therapist will have with each person involved in the treatment. The American Counseling Association’s (ACA) Code of Ethics contains a similar provision.

If the clarifications mentioned above are not made, an example of a conflict that could arise would be where one of the participants seeks to obtain a copy of the records from the practitioner, without the approval of the other partner involved in the couple work. It would be better for everyone involved if the practitioner had first explained that the couple is the “patient,” and that each of them in their individual capacities do not control the records, or that a signed authorization to release the couple’s records to a third party would require the signature of both participants. [I have previously written about the use of a “no secrets” policy](#) in order to minimize conflicts when treating multiple members of a family. CAMFT is soon to add a provision to its Ethical Standards that essentially states that marriage and family therapists are to take reasonable care to avoid or minimize potential conflicts when providing concurrent or sequential individual, couple, family, and group treatment.

A different kind of “conflict” that appears in some ethical standards deals with the possibility that a counselor or therapist may be faced with a conflict between an ethical standard and a state law or regulation. A provision of the Code of Ethics for the American Counseling Association (Section H.1.b.) provides that “if ethical responsibilities conflict with law, regulations, or other governing legal authority, counselors make known their commitment to the ACA Code of Ethics and take steps to resolve the

conflict.” If the conflict cannot be resolved, the ACA Code gives permission to the counselor to adhere to the requirements of law, regulations, or other governing legal authority. The ACA Code of Ethics also contains a provision (Section H.2.e.) addressing conflicts that may arise within an organization – e.g., where the requirements of the organization conflict with the ACA Code of Ethics. In such cases, the Code provides that counselors are expected to specify the nature of the conflicts, express their commitment to the Code, and when possible, work toward change in the organization to allow full adherence to the Code.

An aspect of practice where the concept of conflict of interest may arise is in the area of self-disclosure. It is generally recognized that health care practitioners may self-disclose in order to enhance the doctor-patient or psychotherapist-patient relationship and thereby advance treatment outcomes. However, if only the needs of the therapist or counselor are being met, and the patient is “taking care of” the therapist or counselor, a conflict of interest arises that often leads to a deterioration of the therapeutic relationship and client assertions of unprofessional conduct. Similar issues are raised and similar considerations are necessary when assessing the appropriateness of accepting a gift (or gifts) from the client or giving one or more gifts to a client.

With respect to a practitioner’s role in the legal system and the duty to remain objective and truthful, the CAMFT Ethical Standards caution MFTs to avoid, wherever possible, performing conflicting roles in legal proceedings and to disclose any potential conflicts to prospective clients, to the courts, or to others as appropriate. Most notably, this standard applies to the situation where a therapist may be acting as a treatment provider to one or more of the parties, and at a later time is called upon to act as an independent custody evaluator. This potential conflict must be assiduously avoided. The ACA Code of Ethics provides that “counselors do not evaluate individuals for forensic purposes they currently counsel or individuals they have counseled in the past.” Additionally, the ACA Code provides that “counselors do not accept as counseling clients individuals they are evaluating or individuals they have evaluated in the past for forensic purposes.”

The American Psychological Association’s Code of Ethics, under that portion of the Code dealing with “Human Relations,” contains a section entitled “Conflict of Interest.” Section 3.06 provides that “psychologists refrain from taking on a professional role when personal, scientific, professional, legal, financial, or other interests or relationships could reasonably be expected to (1) impair their objectivity, competence, or effectiveness in performing their functions as psychologists or (2) expose the person or organization with whom the professional relationship exists to harm or exploitation.”

Following are five true or false questions that in some way involve conflict or conflict of interest. The answer to each of these questions may vary from state to state, or perhaps, by profession. Additionally, reasonable minds may differ as to the correct or most appropriate answer. Take some time to ponder each of these questions. I will address them in some detail [in a future issue of the Avoiding Liability Bulletin](#).

1. It is not unlawful for a therapist or counselor to let his or her clients know that his or her recently

published book about parenting is available for purchase from the office manager?

2. Once a conflict arises between a therapist or counselor and the client, immediate termination is necessary in order to avoid liability.
3. An agreement between two counselors or therapists to refer clients to each other whenever either is faced with a conflict may itself present a conflict.
4. If a client reveals that he backed his car into the counselor or therapist's car in the office parking lot and caused significant damage, the counselor or therapist may be required to report this information to a governmental entity and reveal the name of the patient.
5. If a counselor or therapist is convinced by the circumstances that a client is responsible for burglarizing the counselor or therapist's office and taking a patient file, it would be permissible for the counselor or therapist to report the burglary to the police and to reveal the identity of the suspected burglar.