

Conflicts

written by Richard Leslie | November 30, 2021

Avoiding Liability Bulletin - December 2021

NOTE: The following article was first published on the CPH Insurance's website in July 2008. It appears below with significant additions and other changes. In the [August 2021 Avoiding Liability Bulletin](#), I wrote about conflicts that may arise when treating multiple members of a family. This article explores the subject of conflicts more generally.

Mental health practitioners may encounter conflicts, or what is also referred to as “conflicts of interest,” during the course of conducting their private practices and in other situations. Conflicts may arise suddenly and unexpectedly. If not handled promptly and appropriately, unresolved conflicts can lead to increased liability for practitioners – whether with the licensing authority, or in a professional liability claim or suit, or in an ethics complaint. Licensing laws for the various mental health professions (at least in California) do not directly address the issue of conflicts or conflicts of interest in the sections of law related to unprofessional conduct. The issue is more likely addressed, perhaps indirectly, under provisions of state licensing laws addressing issues such as dual or multiple relationships, sexual relationships, sexual contact or behavior, exploitation, impairment of judgment, and gross negligence or incompetence. Ethical standards of the various state and national professional associations address the issue of conflicts more directly.

In essence, a conflict of interest arises when the practitioner’s obligation to the patient is negatively affected or threatened by the practitioner’s self-interest. The concept of conflict of interest is addressed, for example, in ethical standards with respect to marriage and family therapists who treat multiple members of a family. Applicable standards (from the Code of Ethics of the California Association of Marriage and Family Therapists) provide that “when treating a family unit(s), marriage and family therapists carefully consider the potential conflict that may arise between the family unit and each individual member.” For example, when a marriage and family therapist 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 other dyad) in their individual capacities. This same ethical standard instructs the marriage and family therapist to clarify, “at the commencement of treatment and throughout treatment, which person or persons are clients/patients and the nature of the relationship(s) the therapist will have with each person participating in the treatment.” The American Counseling Association’s 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 conjoint therapy. 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. Another provision of the CAMFT Code of Ethics addressing the issue of conflicts states that "marriage and family therapists carefully consider potential conflicts when providing concurrent or sequential individual, couple, family, and group treatment, and take reasonable care to avoid or minimize such conflicts."

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 of the American Counseling Association provides that "if ethical responsibilities conflict with the law, regulations, and/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 Code gives permission to the counselor to "... adhere to the requirements of the law, regulations, and/or other governing legal authority." The ACA Code of Ethics also contains a provision 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, counselors are expected to "specify the nature of such conflicts and express to their supervisors or other responsible officials their commitment to the *ACA Code of Ethics* and, when possible, work through the appropriate channels to address the situation."

Another aspect of practice where the concept of conflict or 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 practitioner are being met, and the patient is in essence "taking care of" the practitioner, a conflict of interest arises which often leads to a deterioration of the therapeutic relationship and client assertions of unprofessional conduct. Similar issues may be raised and similar considerations may be 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 Code of Ethics cautions marriage and family therapists to avoid, whenever 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 should be assiduously avoided. 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." That section 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.”

The National Association of Social Workers’ Code of Ethics also contains comprehensive provisions related to conflicts of interest. While mental health practitioners are not bound by the ethical standards of a profession other than their own, the various ethical standards discussed in this article should be instructive to those who seek to identify and avoid conflicts of interest. It should be obvious that the primary intention of these various ethical principles is to help the practitioner to avoid a conflict in the first instance. A practitioner who fails to avoid a conflict of interest as the result of negligence, gross negligence, or incompetence, or a practitioner who exercises due care but nevertheless experiences a conflict, are both faced with a basic question – that is, how does one resolve this situation with a minimal amount of risk or jeopardy? The issue of termination and referral often arises when there is a need to resolve a conflict of interest, and that process has its own pitfalls and dangers if not handled appropriately. I have written several articles addressing termination issues, and they can be found on the CPH Insurance’s website.

In most of the cases involving conflict of interest, consultation with an attorney and consultation with a “expert” clinician may be necessary. The practitioner must of course keep the best interests of the patient in mind when attempting to professionally and ethically resolve or minimize the conflict. This generally accepted ethical principle sometimes conflicts (no pun intended) with the practitioner’s desire to do what is best in order to protect the practitioner’s license – and sometimes, career. It has been my experience over many years that many conflict of interest cases involve knowing or intentional misconduct on the part of the practitioner – as opposed to the conflict arising when the practitioner is acting in good faith but in a negligent manner. When conflict of interest cases arise suddenly and unexpectedly and through no fault of the practitioner, the ethical obligation to resolve the conflict in an appropriate manner remains paramount. Careful documentation of the steps taken to resolve the conflict (with the best interests of the patient in mind) can help the practitioner establish or prove that the actions taken were both reasonable and ethical.