

Conflicts 2

written by Richard Leslie | May 24, 2016

Avoiding Liability Bulletin - September 2008

In the [July 2008 issue of the Avoiding Liability Bulletin](#), which was devoted to the topics of conflict and conflict of interest, I asked readers to ponder each of the following true or false questions and indicated that I would address them in a future issue of the Bulletin. My brief answers to these questions follow below. As I stated in the July Bulletin, the answer to each of these questions may vary from state to state, or perhaps, by profession. Additionally, I stated that reasonable minds may differ as to the correct or most appropriate answer. The answers that follow reflect my views only. They should not be taken as legal advice in any particular situation that may be encountered by a therapist or counselor. In such situations, therapists or counselors will want to consult with a colleague and/or with an attorney. State law or regulation may impact upon some answers, as will the ethical standards that may be applicable in a particular case.

Question #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.

TRUE - Therapists and counselors sometimes sell books, tapes, or other products that are related to their practices. When doing so, they must be careful to avoid exploitation (or the appearance thereof) or any feeling on the part of the client that there is an expectation of purchase. The sale or promotion of products or services, other than the treatment that the client came for, should be done thoughtfully and selectively. If care is not taken, it may appear that the counselor or therapist is furthering his or her own financial interests at the expense of the client. I have sometimes counseled therapists, who had products to sell that were expected to have wide appeal, to sell their products to the general public in some other locale or by some other means than at and through their private practices.

Question #2 - Once a conflict arises between a therapist or counselor and the client, immediate termination is necessary in order to avoid liability.

FALSE -Conflicts do arise during the course of counseling or therapy, and part of the clinical process involves dealing with and working through a variety of conflicts. While termination may be appropriate in some circumstances, not all conflicts need to be resolved by immediate termination. Even where termination is appropriate, the manner in which it is done can also result in problems for the therapist or counselor. Perhaps one or two sessions with the client will resolve the conflict or provide appropriate closure. Some conflicts may be of a minor or inconsequential nature, and others may be more serious. Even with respect to serious conflicts, immediate termination could in some cases lead to allegations of abandonment. Clinical and/or legal consultation would be wise if one is faced with a serious conflict. (I

have previously written more on the issue of termination, which can be found in the Avoiding Liability Bulletin "Archives" on this website. The items are entitled " Termination - Who Is the Patient" and "Termination of Treatment.")

Question #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.

TRUE - Such an arrangement appears to be unlawful. Some states have laws that essentially prohibit the payment of any consideration as compensation or inducement for referring clients or patients to any person. Violation of such a law may constitute a crime. Such a mutual agreement to refer would seemingly mean that referrals would not be made based upon the particular needs of the patient, but rather, the financial needs or interests of the therapists or counselors involved. Referrals ought to be made after careful thought about what the needs of the patient are and not on the basis of some prior agreement, whether formalized in writing or the result of an informal arrangement, between the two practitioners.

Question #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.

TRUE - In most states, there are laws that require a motorist to file a report with the Department of Motor Vehicles, or some other-named governmental entity, when the motorist is involved in a vehicular accident. These state laws will vary in detail, so careful analysis is necessary. Does the law apply to owners of vehicles or only to drivers? Does the accident have to occur on a highway or street in order to be reportable? Is there an exception for accidents occurring on private property? Must there be a personal injury or is vehicle damage over a certain amount enough to trigger a report? As an example, California law requires the driver of a motor vehicle to file a report within 10 days following a motor vehicle accident (including some which occur "off-highway") that has resulted in damage to the property of any person in excess of \$750. If the facts in the question took place in California, then luckily for the therapist or counselor, a report would not have to be filed by the practitioner because he or she was not the driver of the motor vehicle. If the incident took place elsewhere, the therapist or counselor could be placed in the awkward position, depending upon the specific circumstances, of being required to report.

Question #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.

TRUE - If a client commits a crime against a therapist or counselor, the practitioner is not prohibited from reporting the crime and the identity of the actor. Generally, health care practitioners are permitted

to report the crimes committed against them - whether to their person or their property. If the law were otherwise, health care practitioners could have crimes committed against them and be without recourse. Sometimes the crime is committed in the presence of the therapist or counselor, or there may be an admission (after the fact) by the patient or client, or there may have been a prior threat by the patient or client. The practitioner must be very careful, in situations like this, that he or she is using good judgment before making disclosures to the police regarding the suspect's identity. Disclosing the identity upon mere suspicion is unwise. The "evidence" of the patient's guilt must be substantial before a disclosure can be safely made. Additionally, the therapist must take care to limit the amount of information (relative to treatment issues) given to the police.