Consent vs. Authorization

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… These two words are often misused and misunderstood, not only by therapists and counselors, but also by state legislation (law) and by some professional organizations. HIPAA regulations (specifically, the "Privacy Act"), from the beginning, properly recognized the essential difference between the two words. Although HIPAA regulations do not apply to many private practitioners (those who are not covered entities/covered providers), it is helpful to look to those regulations as an example. In essence, a written authorization (as opposed to a "consent to release") is the document or form that a patient signs allowing the health care provider to release confidential information, including the treatment records, to a third party. Many states have passed laws or regulations that specifically detail the required provisions to be contained in a valid authorization form. For those who are governed by HIPAA, the content of a valid authorization form is specified by the federal regulations.

As to consent, this word typically relates to the patient consenting or agreeing to treatment at the beginning of the doctor or therapist-patient relationship. It is an accepted principle of health care law that in order for one to properly consent to medical or other health care, they must possess the mental capacity to consent to treatment. Therapists do not typically test or examine potential patients in order to determine if they have the requisite mental capacity to participate in psychotherapy – it is generally inferred from the circumstances. Thus, if a husband and wife are seeking marital therapy or couples counseling, the therapist would typically make an appointment and commence treatment without much ado. Of course, where law, regulation or ethical standards mandate that certain disclosures be made prior to the commencement of treatment, therapists and counselors must be sure to comply with such requirements, which are sometimes referred to as "informed consent" (to be discussed more fully in a future Bulletin).