Couple Being Treated

written by Richard Leslie | May 24, 2016

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… Therapists and counselors often let patients know about confidentiality and the exceptions to confidentiality in a disclosure statement, given to the patient prior to the commencement of treatment. Such a statement may be required by law or by regulation. When the identified patient is the couple, it is important to be clear with the couple as to a variety of confidentiality issues and questions that may arise, such as who owns the records, when will information be released to third parties, how will the therapist or counselor react to a subpoena for records, and under what conditions will the therapist or counselor provide a copy of the records to one of the participants in couple therapy.

To the extent that state law may differ with the following information, therapists and counselors should abide by state law. As to the question of who owns the records, typically the records are the property of the therapist or counselor. They are, in essence, the business records of the owner of the business – in this case, a therapy or counseling practice. Patients of course have a substantial interest in the records, and under state law, likely have certain rights of access (e.g., inspection and copying) and perhaps the right to amend or addend. But the records belong to the practitioner. As to releasing the records to third parties, I have usually recommended that this be done only upon a written authorization, signed by both parties.

Participants in couple therapy should be told that one of them alone does not control what happens with the records – they each have the right to confidentiality, and one of them alone cannot waive the other's rights. In other words, both must agree in order for the therapist or counselor to act. For instance, a request for a copy of the records would have to come from both parties, or from one with the authorization or approval of the other. After all, the identified patient is the couple. With regard to a subpoena, the therapist or counselor will usually take the position that both must waive the privilege before the records are released, or if both claim the privilege, then the practitioner would typically continue to assert the privilege until the court orders otherwise. Again, if state law differs with any of the above, practitioners should abide by state law.