

Death of Patient

written by Richard Leslie | May 24, 2016

Avoiding Liability Bulletin - April 2016

While thankfully not an everyday occurrence, it is not a rarity that a patient unexpectedly dies during the course of treatment or shortly after termination. Death may result from natural causes, from a long standing illness, from an auto or other accident, from a criminal act, or from an unexpected suicide. The sadness of such situations is obvious, and the loss will obviously affect the therapist's psyche and provoke a variety of thoughts. Very quickly, however, the therapist's thoughts may turn to the issue of confidentiality.

One or more family members, or a spouse or partner may be aware of the fact that the deceased was in treatment with the practitioner and may make inquiry. If the death is of a suspicious nature, the police or other investigators will likely inquire. The county coroner or medical examiner may contact the mental health practitioner in an effort to determine the cause of death. Or, the practitioner may fear that someone close to the patient will assert that the practitioner failed to recognize the danger that the patient was in immediately prior to the time of a suicide. While no one rule will govern every situation that can occur, there is one principle that will help in most situations - that is, the principle, recognized in most state laws, that the duty of confidentiality survives the death of the patient.

As I have written before, the first instinct that therapists and counselors should have when someone is seeking information or records concerning a patient, former patient, or deceased patient, is to resist. The instinct to resist will help to prevent a technical, inadvertent, or negligent release of confidential information - as when a therapist may be trying to console a grieving spouse or family member, or to convince someone that appropriate treatment was rendered. Resistance can change to compliance when there is a proper authorization presented, signed by someone with authority to sign, or when the practitioner knows or learns that compliance is required or permitted (without a signed authorization) under applicable law.