Disciplinary Actions and Family Law Matters

written by Richard Leslie | May 26, 2016

Avoiding Liability Bulletin – October 2013

Therapists commonly get in trouble for making custody recommendations when they have not been hired to conduct a custody evaluation. There is a difference between saying that a person (the client) would make a good custodial parent and saying that the child would be better off if custody were with the client. Practitioners also get in trouble by writing about (expressing a professional opinion) a person or persons who they have not treated or examined – without stating that their comments are based upon information they have obtained solely from the treatment of the patient and not from the treatment or evaluation of such other person(s). Practitioners must be careful of the representations that they make under oath or otherwise, especially in contested custody or visitation matters!

In many states, disputes between the parties involved in family law matters are more likely to result in a complaint being made against the treating (or evaluating) mental health practitioner than in most other situations. Custody and visitation disputes, especially those in which the therapist or counselor has treated one of the parties or one or more of the children, produce a lot of grist for the disciplinary mill. Hopefully, licensing boards and their investigators are cognizant of the fact that an angry parent who was denied legal or physical custody might lash out at a therapist or counselor who may have treated one or more of the parties to the litigation or a child.

My experience has been that many of these complaints go nowhere. But there are some that proceed forward. Those usually involve the practitioner who has provided some form of written report (or a declaration or affidavit) to the court, wherein the therapist appears to be favoring one parent over the other. This “bias” may in fact be true and justified, or it may be the result of inaccurate and improper involvement of the practitioner. In some cases, the practitioner goes too far in his or her enthusiasm to help the patient. For example, instead of declaring under oath that the therapist has been informed by the patient of the consistent tardiness of the parent with visitation, the careless or overly enthusiastic therapist simply declares that the parent with visitation is consistently late in bringing the child back from weekend visitation.