DISCLOSURES TO PATIENTS AND OTHERS

written by Richard Leslie | April 30, 2021

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NOTE: This article is not intended to provide a complete listing or description of disclosures to patients or others, but rather, is a description of different kinds of disclosures that may be mandated/required or prudent during the course of one's practice. Mental health practitioners should be familiar with how the various disclosures discussed below are addressed in their state(s) of practice.

When mental health practitioners commence professional relationships with patients, there is a requirement to provide or disclose specified information to new patients. These disclosures are typically specified in state statutes or regulations. The information that must be disclosed varies widely, depending upon circumstances. While other disclosures may be wise and ethically sound, they may not be mandatory. A failure to make a required disclosure can result in disciplinary action by the licensing authority should the failure come to the licensing authority's attention – usually by way of a complaint from a patient or former patient.

The most common mandatory disclosure imposed upon practitioners involves the fee to be charged. In California, for example, it is unprofessional conduct to fail to inform the patient or prospective patient, prior to the commencement of treatment, of the fee to be charged for professional services or the basis upon which that fee will be computed. Another mandatory disclosure that may be imposed upon practitioners relates to informing patients or prospective patients that complaints against a licensee can be filed with the licensing authority. The manner of informing the patient may require the practitioner to post a notice in a conspicuous place in the practitioner's office and may specify the required content of the notice, which usually includes the ways in which the licensing authority can be contacted.

Some states may require practitioners to inform patients that communications between patients and practitioners are confidential and may require practitioners to inform patients of one or more of the exceptions to confidentiality. For those practitioners who are "covered providers" under HIPAA, the required Notice of Privacy Practices must contain certain basic information about confidentiality, including some relevant (to health care insurance) exceptions thereto. With respect to pre-licensed employees or volunteers, there may be legal or ethical requirements to, among other things, inform patients of the name of the employer and that the pre-licensed person is not licensed and works under the supervision of a licensed person. These disclosures should be made, whether required or not, because they are fundamental to the patient's understanding of the true nature of the professional relationship upon which they are about to enter.

There is a requirement in many states for a licensee to inform the licensing authority in the event that

the licensee has been convicted of a crime (for example, driving under the influence of alcohol or drugs). Failure to do so in a timely manner may result in disciplinary action. Another kind of disclosure occurs when applicants for the license (or for malpractice insurance) complete the application or other forms and, for example, fail to disclose the conviction of a crime or disciplinary action that may have been taken against them while practicing in another state. Such failures to disclose can result in adverse consequences. For those conducting business under a fictitious business name, there may be a requirement to inform patients, prior to the commencement of treatment, of the name and license title(s) of the owner(s) of the business.

The need for disclosure may occur when a patient informs the licensed practitioner (or pre-licensed person) of previous sexual involvement with a current or prior therapist. Under such circumstances, there may be a requirement to provide the patient with information published or approved by the state that covers the issue of sexual relations with patients and includes relevant information for consumers – for example, how to seek one or more remedies. There may also be a requirement to discuss the contents of the brochure with the patient. There may be other disclosure requirements in such situations, and practitioners should be familiar with the particulars, if any, in their respective state(s) of practice.

Another type of disclosure relates to advertising, as that word is defined in state law. In some states, an advertisement, whether online, in newspapers, radio or TV (to name a few), may include letterhead and business cards. State law may require persons licensed as mental health practitioners to include in any advertisement their license number, their true name, or the full title of their license, or a combination thereof. Another disclosure that may be required occurs when a practitioner is disciplined by the licensing authority and where probation is imposed. The terms or conditions of probation may require the practitioner to make certain disclosures to new or existing patients regarding practicing while on probation.

Ethical standards of national and state professional associations related to mental health treatment/psychotherapy may require or suggest certain disclosures to patients. For example, practitioners may be required to inform patients or former patients of their use of collection agencies in order to collect past due fees, or their intent to soon refer the matter to collections. Other ethical provisions that may require disclosures to patients involve situations where a therapist's personal values, attitudes or beliefs interferes with the practitioner's ability to provide appropriate care, or where a conflict of interest arises. These provisions may require specified disclosures to the patient and may provide other options for practitioners.

The principle or requirement of informed consent typically requires disclosure when sessions are to be videotaped or audio-recorded, when third party observers will be involved, or when hypnosis is to be utilized. With further respect to informed consent, there may be circumstances where the practitioner will be required to explain the risks and benefits of mental health treatment (for example, if the treatment is novel or experimental, if the treatment is via telehealth). If there is a statute in your state of practice mandating the disclosure of risks and benefits in all cases, so be it. My view, expressed in

multiple articles regarding informed consent and mandatory disclosures, is that explaining the risks and benefits in every case should not be required. Ordinary psychotherapy is not inherently risky. Physicians, for example, typically do not obtain informed consent for routine examinations or treatments.

The child abuse reporting laws, elder adult reporting laws, and other laws that mandate the reporting of criminal conduct represent other forms of mandatory disclosure. In such circumstances, the disclosures are typically made by telephone or online and by filing reports required by the state. These reporting laws typically specify the kinds of information that must be disclosed. When a practitioner is subpoenaed to produce records or to testify at trial or at a deposition, the practitioner may initially assert the psychotherapist-patent privilege. Thereafter, the court may rule that the privilege does not apply and that the practitioner must produce and disclose the records subpoenaed and must testify as to the communications between practitioner and patient, including the diagnosis made by the practitioner.

As noted above, the disclosures discussed in this article, whether or not required, are not a complete listing of disclosures that must, may, or should be made in a variety of circumstances. And, as I have often written, the nuances of state law or regulation vary from state to state, so it is important for practitioners to be familiar with how the law treats this subject matter.