

Dual Relationships

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... Suppose a therapist or counselor allows the payment of a patient's bill to be either fully or partially deferred at the request of the patient who is experiencing financial difficulties. Suppose further that the patient's problems are serious and that the practitioner feels an ethical obligation to continue to treat the patient. Because of the length and frequency of the treatment, and because of the regular and customary fee of the practitioner, the amount owed by the patient soon spirals above \$15,000. Later, when therapy ends, the patient refuses to pay the monies owed. What vulnerability, if any, does the therapist or counselor have? If the practitioner files a lawsuit against the patient to recover the monies owed, could he or she lose? Did the therapist unwittingly allow a dual relationship to occur – that is, did the therapist allow a debtor-creditor relationship to be established?

I remember reading about one trial court decision involving a therapist who sued the patient for a large amount of money owed for past sessions. The court ruled that the therapist, by allowing the patient to be put in a position where he was now in a debtor-creditor relationship with his therapist, waived his right to the recovery of any money. The lesson to be learned from this non-binding case is that therapists should think about either referring the patient to a low or no cost counseling entity, whether private or public, or perhaps continue to treat the patient for a while longer on a pro bono basis. While there may be some cases where the circumstances may warrant the unpaid bill to increase over some period of time, this can be a dangerous practice.

One area of vulnerability for the practitioner might be that it can be claimed that the therapist engaged in exploitative behavior toward the patient by allowing the unpaid bill to mushroom. It can also be alleged that such conduct created a different and distinct relationship between the therapist and the patient – that is, a debtor-creditor relationship. I remember a consultation where a therapist asked me if I knew the name of a good collections attorney. He was going to sue the former patient for monies owed. I asked – “How much does the patient owe you?” He replied, “\$30,000.” I replied – “I don't know the name of a good collections attorney, but I think you may need the name of a good malpractice defense attorney.”