

# Dual Relationships 2

written by Richard Leslie | May 24, 2016

## **Avoiding Liability Bulletin - May 2014**

NOTE: In the [February 2014 issue of the Avoiding Liability Bulletin](#), I raised many questions for the reader's thought, research, and discussion with colleagues. The questions were on a variety of topics, arranged alphabetically. Some of those questions, with my answers, follow. The answers are brief and are not intended to be a thorough exploration of the topic. In the [March 2014 issue of the Avoiding Liability Bulletin](#), I answered questions raised on the topics of barter, neglect, violence toward patient, and taking a zoo trip with patient. In the [April 2014 of the Avoiding Liability Bulletin](#), I answered questions raised on the topics of confidentiality (group therapy), fees, and HIPAA.

DUAL RELATIONSHIPS: Do you know the difference between an ethical dual relationship and an unethical dual relationship? Does your licensing board know the difference? Are all dual relationships unethical? Are some dual relationships unavoidable?

With respect to the first question, hopefully this article will help you to arrive at a "yes" answer. As to whether your licensing board knows the difference between an ethical or unethical dual relationship, you better hope that they do - should you ever be faced with a consumer complaint. I suspect that some licensing boards may at times be over-zealous in their negative views toward dual relationships (also sometimes referred to as multiple relationships or the extension of counseling boundaries). I will explain below. As to the question of whether all dual relationships are unethical, my answer is an emphatic "no." And "yes," some dual relationships cannot be avoided.

It is important to understand at the outset of any discussion about dual or multiple relationships that professional associations for the various mental health professions may treat the subject matter differently, either in the way that their respective ethical standards are written, or the manner in which they are interpreted by ethics or peer review bodies. Additionally, some states may address the subject matter, either directly or indirectly, by statute or regulation. Some who discuss this topic make it sound as though one must avoid dual relationships (or the extension of counseling boundaries) at all costs, while others are more tolerant, even embracing, of the concept - arguing that psychotherapy may at times put patient and practitioner in dual or multiple roles, and that competent practitioners will handle and manage those relationships in the best interest of the patient and absent of exploitation or the impairment of the practitioner's judgment.

Many years ago, the California Psychology Examining Committee (now called the Board of Psychology) proposed a regulation that would have directly outlawed dual relationships for licensed psychologists. A memorandum from the California Attorney General's Office helped to stop the Board from moving forward with the proposed ban. The memorandum said, in part, "Initially I believe there is considerable

difficulty in legislating the subject of prohibited dual relationships. It is a very broad area, subject to so many variations and permutations ...that it prohibits conduct that either should not be prohibited or cannot be avoided in many instances. While therapists are often put in the uncomfortable circumstances on the fringes of dual relationships, sometimes these are necessary in order to effect the principle goal of aiding the client.”

In contrast to that line of thinking, a letter from the licensing board for marriage and family therapists, written at about the same time (mid to late eighties), stated, in pertinent part, “In the four and one-half years I’ve worked for the Board of Behavioral Science Examiners, I have not seen even one case involving a dual relationship that did not result in charges of unprofessional conduct against the therapist.” That same licensing board, more than twenty-five years later, brought a case against a marriage and family therapist wherein they alleged, among other things, incompetence, gross negligence, and dual relationship with a patient. I wrote about that case in the *Avoiding Liability Bulletin* not too long ago ([March 2012 - “Dual Relationship – Expert Testimony”](#)).

In that case, the board used an expert witness who first testified that all dual relationships are unethical. After cross-examination, and after being confronted with ethical standards that stated that not all dual relationships are unethical, he agreed that a dual relationship that did no harm to a client was not unethical: however, he could not think of any type of dual relationship that did not harm a client. The judge hearing the case ruled against the board and rejected the entirety of the testimony of the board’s expert. The above history regarding two separate licensing boards is why I ask whether your licensing board knows the difference between an ethical and unethical dual relationship. It is always possible that government may get things wrong!

All dual or multiple relationships (and all extensions of counseling relationships) are not unethical – nor are they necessarily ethical – since each situation is different – as is, or as may be, each code of ethics, statute, or regulation addressing this subject. Some actions that appear to indicate the existence of a dual relationship may simply be a single relationship – that of therapist and patient – where the therapist is acting as a therapist rather than in a separate and distinct role or relationship with the patient (e.g., social relationship). I have often thought that there has long been great and justified concern about the stigma attached to those who seek counseling or therapy for their mental health problems or needs. One way to increase the stigma (not desirable!) is to be over-zealous about, or to misunderstand, dual or multiple relationships or the appropriate extension of professional boundaries.

Psychotherapy (and counseling), I believe, is both a science and an art – and it is a healing art. Having interactions or secondary relationships with clients, to varying degrees, for various reasons, and under many different circumstances, may be either appropriate or unavoidable. The key earmark of an unethical dual relationship appears to be where professional judgment is reasonably likely to be impaired by the separate and distinct secondary relationship or role, or “could be” impaired, or where the secondary relationship is reasonably likely to lead to exploitation (or other patient harm), or “could lead” to exploitation. Where the risk of exploitation, harm, or impairment of judgment exists because of a dual relationship, practitioners are expected to take appropriate precautions. If they do, there may

well be no ethics violation. One must look at the actual language of the particular code provision when involved with this issue, because as may be apparent, there may be “fine nuance” – or, just a difference of opinion or perspective – based upon one’s role in any controversy involving dual or multiple relationships or boundary violations.

The ethical standards of the American Psychological Association declare, among other things, that multiple relationships that would not reasonably be expected to cause impairment or risk exploitation or harm are not unethical. The ethical standards of another mental health professional association state that not all dual relationships are unethical and that some are unavoidable. The ethical standards of other organizations can reasonably be interpreted to be consistent with these general principles.

While these general principles might permit many different kinds of dual relationships, it must also be remembered that certain dual relationships or extensions of boundaries may be specifically prohibited – and may also be unlawful and/or illegal. Sexual relationships or sexual contact between patient and practitioner, or former patient and practitioner, including sexual involvement with others related to the patient or former patient, comes readily to mind as prohibited dual relationships or extensions of boundaries. One association’s code of ethics names a few examples (not an exhaustive list) of unethical dual relationships – borrowing money from a patient, hiring a patient, engaging in a business venture with a patient, or engaging in a close personal relationship with a patient.