Fees – Reminders

written by Richard Leslie | November 1, 2025

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FEES – REMINDERS

Mental health practitioners confront a variety of issues dealing with fees over the course of their careers. Some practitioners struggle, especially as they enter the profession or start a new business, perhaps online, with the setting of fees for a variety of professional services. Those who advertise their fees must be sure that they do not violate any laws or regulations that deal with false, fraudulent, deceptive or misleading advertising by health professionals. Practitioners must be familiar with the laws and regulations that require specific disclosures regarding fees. Circumstances may prompt a practitioner to think about suing the patient for fees owed, or referring the matter to collections, or abandoning efforts to obtain unpaid fees. Ethical and legal questions may arise for those who use "sliding fee scales." Should patients be informed before the commencement of treatment that the practitioner may terminate treatment if fees are not (or cannot be) paid? Is it improper to maintain a relationship with a patient who is allowed to delay payment of fees owed, and could this be interpreted as the establishment of an unlawful or unethical relationship? Is a practitioner allowed to pay another for referrals? The issues and questions described above might arise unexpectedly or can be the result of intentional or deliberate conduct on the part of the practitioner.

Setting Fees

When starting a private practice, much thought may be given to the kind of practice and the kind of clientele the practitioner wishes to pursue. A license to practice allows the practitioner to establish a usual and customary fee of $75 per hour or $250 per hour, or some other amount, at the start of doing business. Do you anticipate raising fees in the future? Will you raise fees for existing clients or only for new clients? Will there be a fee charged for missed sessions, and will there be circumstances where such a fee will not be charged? What should you disclose regarding these questions?

Remember, you (private practitioner) are or will be competing with other practitioners of like licensure and you will not, due to antitrust concerns, participate in formal or informal agreements with your competitors to fix or set fees at a certain level.

False or Misleading Advertising

State laws must be reviewed in order to determine whether there are any words or phrases that are expressly prohibited for advertising by state licensed mental health practitioners. In California, for example, words or phrases such as “lowest prices,” “and up,” and “as low as” are prohibited. When fees are advertised, other than a standard consultation fee or a range of fees for specific types of services, California law requires practitioners to “fully and specifically disclose all variables and other material factors.”

Required Disclosures

What are the required disclosures related to fees, and when must they be made, for practitioners of your licensure in your state? In California, one statute makes it unprofessional conduct if the practitioner fails to disclose, prior to the commencement of treatment, the fee to be charged for the professional services, or the basis upon which that fee will be computed. Practitioners may want to disclose more than what is required, whether related to fees or otherwise, perhaps encouraged by ethical standards, or perhaps due to one’s general concerns about legal liability. State laws change – so be sure to keep abreast of everything related to required disclosures.

Suing the Patient

Some practitioners find themselves in a position to sue their patients for monies owed. While this is somewhat rare, there are circumstances that can arise that will result in at least a smalls claims court action for monies owed. In such circumstances, practitioners must be sure to respect the duty of confidentiality inherent in the therapist-patient relationship and to not allow their emotions to cause them to reveal more than they need to – whether with respect to written materials or to testimony. The “fact of the relationship” between psychotherapist and patient is typically revealed in the lawsuit since it is not privileged information, but the diagnosis or other aspects relating to treatment are privileged and are not to be revealed (and they are unnecessary to establish a contractual relationship and a debt).

Referring to Collections

It is generally unwise for practitioners to refer matters to a collection agency or business, but circumstances could arise (hopefully rare) where that becomes a possibility. If a practitioner were to pursue such a course, it would be important for the practitioner to have documentation showing, at a minimum, that several requests for payment had first been made and that the patient was informed of the potential for the matter to be turned over to collections if the debt remained unpaid. Additionally, prudence must be exercised in selecting a collection agency.

One might want to select a firm that regularly provides services to health care practitioners or health facilities rather than auto dealerships! A former patient can easily claim that he or she was harassed by

the collection agency and that the practitioner was negligent in selecting the agency. Moreover, the claim may be that harassment by the collection agency allegedly caused emotional harm, and that the possibility of using a collection agency was not disclosed at the commencement of treatment.

Waiving Fees Owed

Even though a patient may owe money to the practitioner, and even though it may seem important to stand on principle or teach the patient a lesson, it is sometimes best to not pursue the patient for monies owed and to make sure that your practices with regard to fees are tightened. Even if a practitioner obtains a monetary judgment against a patient in court, enforcement of the judgment (getting the money) may be difficult and time consuming. Fee disputes sometimes get ugly or nasty, and may result in false or exaggerated claims of wrongdoing against the practitioner.

Sliding Fee Scale

Practitioners have latitude when it comes to setting fees, but sliding fee scales can be troublesome if not properly administered. Generally, non-profit agencies may use a sliding fee scale, but private practitioners generally do not – rather, they have a set fee for their professional services. Fees can be reduced or waived for special circumstances, but a sliding fee scale can be awkward or cumbersome to implement in a private practice. I have cautioned practitioners for years of the following – “make sure that you are not sliding your fee up when you discover that there is insurance coverage for mental health/psychotherapy services.”

Termination If Fees Not Paid?

Practitioners may find it helpful to disclose to the patient, among other things, that the patient has the right to terminate treatment at any time, and that the practitioner may terminate for one or more specified reasons, including, but not limited to, when the patient is unable to pay the fees for the services to be rendered. Such a disclosure may include the fact that one or more referrals will be made and that the termination, depending upon the circumstances, may consist of more than one session. In the event that the termination process requires more than one session, practitioners of course have the option to provide such session(s) on a pro bono basis.

Debtor – Creditor Relationship Created as Unpaid Fees Mount?

If unpaid fees are allowed to mount, the patient may wind up owing so much money that a court or a licensing board might take the position that the practitioner improperly allowed the debt to mount and that a debtor-creditor relationship was thereby established at the same time as the therapist-patient relationship. In such a situation, a court might rule for the patient and a board might consider pursuing disciplinary action. One court held that the therapist forfeited the right to be paid because the therapist allowed the fee to rise to such a significant level as to have inappropriately created a debtor-creditor relationship at the same time as being in a practitioner-patient relationship.

Fee Splitting and Paying for Referrals

It is typically unlawful for a health practitioner to pay for referrals or to give a portion of the fee to an unlicensed person who made the referral or to someone who is licensed but has performed no service other than making the referral. Laws in the various states may differ in fine nuance, but this general principle is well accepted. Some states have enacted laws that regulate, in some manner and to some degree, businesses or entities that act as referral services for licensed practitioners. Such a law may prohibit participating practitioners from paying a referral fee that is dependent upon the number of referrals or the dollar amount of fees paid by the patient to the practitioner.