

HELPING THE CLIENT IN TOUGH ECONOMIC TIMES?

written by Richard Leslie | September 1, 2020

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NOTE: This article first appeared on the CPH Insurance's website in April, 2009 - at a time when there was a financial crisis in the USA - referred to as The Great Recession. I thought it was timely to republish this article, with minor and non-substantive amendments, while the country is experiencing the Covid-19 pandemic - which has generated financial hardship and more on so many.

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The issues that are discussed in this article are not new, nor are they limited to occurring in the current economic condition existing in the country. However, a tough economy creates pressures on therapists, counselors and clients alike, and as a result, mistakes in judgment (and worse) may be more likely during such times. Mistakes made by patients or clients are usually not actionable by the therapist or counselor, but mistakes made by practitioners are sometimes detrimental to their professional and economic welfare. I suspect that my words below may provoke some into thinking that I am too rigid, too lacking in empathy, too concerned about liability, and perhaps not concerned enough for the general welfare of the client.

Frankly, my concern in this article is for the practitioner. I write this from the perspective, or if you will, the bias, of wanting to protect the therapist or counselor from claims or lawsuits resulting in civil liability and from regulatory board disciplinary action. I have in the past assisted many practitioners who have gotten themselves into some difficulty, and I have been quite effective (if I may say so!) in helping therapists to develop defenses and to argue that they have done nothing wrong or nothing that is actionable. Those interventions were after the fact. I now write from the perspective of prevention.

I have often stated that the best way for a mental health practitioner to help a client is to provide competent and ethical treatment. That is what the client is paying for and what the client expects. Beyond that, therapists and counselors must be careful with how they interact with their clients. Sometimes, simple acts of goodwill may come back to "bite" the therapist or counselor. I remember one case where a therapist had found out from a patient who was a human resources executive for a major, publicly traded corporation that the corporation was embarking upon a large hiring initiative. When the therapist was treating a different patient who happened to mention that she was looking for employment, the therapist told her that she had heard that the XYZ Corporation was now hiring.

As it turned out, the human resources executive ultimately interviewed this woman (the other patient), and when she asked her how she found out that the XYZ Corporation was hiring, the applicant said - "my therapist told me about it." In her next session, the HR executive was very upset with her therapist. "What are you doing telling other patients of yours about information that I shared with you in my private and confidential sessions. I don't need you doing advertising for me or for the XYZ Corporation! I'm upset with you. I don't know if I can trust you." The therapist consulted with me about whether or not this constituted a breach of confidentiality. My conclusion, based upon all of the facts and circumstances, was probably not. But it nevertheless became a problem for the therapist.

What if a client tells his or her therapist or counselor that he or she has been terminated from employment and/or evicted from a rented house? In these tough economic times, this can easily happen - and has happened. How should the practitioner help, if at all? If the practitioner coincidentally has a studio apartment to rent at a much more favorable rate than what the client had been paying for the house, would it be okay to rent the apartment to the client? If the client is unable to pay the practitioner's fee, would it be okay to allow the client to do some work for the practitioner that was unconnected to the practitioner's private practice in lieu of paying the \$125 per hour fee? These few questions are just some of the questions that may arise in such difficult economic times. They involve barter and dual relationship issues.

Before addressing these questions, let me state my general impression of these possible relationships. I don't like them! There is too much of a chance that something will go wrong and negatively affect the practitioner-client relationship and the work being done. What if the work performed by the client is sub par? How do you fire or reprimand your client? What if the client doesn't pay the rent in a timely manner or at all? How do you evict your client? What if the client complains about the rented property being subpar or in violation of housing codes? How much work (how many hours) is the client going to have to perform in order to equal the \$125 charged by the practitioner for a fifty minute session? If the client were to miss a session, would the client have to work that hour off too? How careful (or lucky) would the practitioner have to be in order to avoid a claim of exploitation (e.g., you needed a renter or a worker and you saw an easy target - you used your patient to further your own interests)?

A dual relationship typically occurs when a therapist and patient engage in a separate and distinct relationship concurrently with the therapeutic relationship or during a short period of time following the termination of the therapeutic relationship. The essence of an unethical dual relationship violation is typically the presence of a reasonable likelihood of impairment of the therapist's judgment or the exploitation of the patient. Therapists and counselors are expected to be aware of their influential position with respect to clients, and are expected to avoid exploiting the trust or the dependency of clients. To enter into a separate landlord-tenant relationship with a patient is clearly a dual relationship, as is entering into an employer-employee relationship concurrent with the therapeutic relationship. Practitioners must look closely at the written ethical standards (Code of Ethics) for their respective professions, since some standards may specifically prohibit certain dual relationships (e.g., hiring a patient or engaging in a business relationship with a patient).

While not all dual relationships are unethical, it seems to me that these would likely be found to be unethical. As indicated above, they may be specifically prohibited. The potential for the ongoing therapeutic relationship to be negatively impacted seems great in either example. The likelihood that the patient could prove exploitation by the therapist also seems significant. Of course, if everything worked out well – that is, if the client was relatively well adjusted, if the work was performed well, if the practitioner took great pains to be eminently fair, and if no conflict arose during any of these situations, the practitioner might get lucky. If no complaint or lawsuit is filed because everything worked out, the practitioner comes out unscathed. But **you** might not get lucky. And if you don't, **you** face significant difficulties in your professional life. All it takes for that to happen is for something to go wrong with any of the relationships. The likelihood of that happening seems quite real.

Some comment on the issue of barter is warranted. Most professional associations do not prohibit barter nor do they make barter unethical. If a practitioner were to engage in barter, it would be very important to first carefully review the ethical standards of the practitioner's profession to see what limitations, caveats, or requirements may be present. Reference to state law and/or regulation is also necessary. In the examples described above, however, it seems to me that the central issue is not whether or not the barter arrangement is fair – but rather, the fact that a dual relationship exists, and that such dual relationship may well be unethical on its face. Additionally, a barter arrangement that involves the performance of personal services is more likely to wind up distorting the professional relationship than an arrangement involving the exchange of goods or personal property only. Even with respect to goods or personal property, practitioners should have very good reasons for engaging in barter. Again, a review of the applicable ethical standards is essential.

What should the practitioner do in order to help the client who comes upon tough economic times? First and foremost, and as mentioned above, provide competent and ethical services. That is what the client expects, and that is what should be delivered. Secondly, the practitioner could lower his or her fees or suspend them for a while. Professionals of all kinds are expected to provide some amount of pro bono services to needy clients. If this is done, the practitioner needs to be clear with the client as to the duration of the reduced or waived fee. Documentation is of course important for everyone's protection. Additionally, the practitioner should be in a position to make referrals to relevant social service organizations or governmental entities that might be able to help with temporary shelter, work, benefits, or other support. More broadly, practitioners can also volunteer their services with community based organizations or governmental entities that provide mental health services to the public.