Referrals: Part 2

written by Richard Leslie | May 24, 2016

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Click here to reference the previous blog "Referrals: Part 1."

… When does the duty to refer arise? I was speaking with a mental health practitioner recently who was dealing with a situation where a non-patient was in apparent need of therapy or counseling. The person in apparent need had referred a friend to the therapist, and the therapist was treating the friend. The person who made the referral e-mailed the therapist on more than one occasion, providing the therapist with information (some accurate, some not) about the patient. The therapist in such a situation should usually tell the person that nothing she (the informant) says is confidential, and that she (the therapist) is free to share this information with the patient. The therapist was also going to tell this person not to call or e-mail anymore and wanted to refer the person to a therapist because it was obvious that the informant had her own "issues."

In such a situation, the question arises as to whether or not there is a legal or ethical duty to make a referral. If "yes," then a referral must of course be made. If "no," then the question arises as to whether a referral should be made. My view is that there is no general duty (unless state law, regulation, or ethical standards provide otherwise) to make a specific referral in the scenario described. To do so may create problems for the therapist. Referrals must of course be made with care, and they should be tailored to the individual's needs. The failure to do so could result in allegations of negligence. Clearly, if a therapist or counselor has seen the patient for any amount of time, and then, for one reason or another, must terminate treatment, there typically is a legal and ethical duty to refer. However, if there is no practitioner-patient relationship established (e.g., no fee has been paid for services, and no contract, whether oral or written, has been entered into), and a referral is sought, a different situation is presented.

Some may argue (as do I) that when services are denied or refused for appropriate reasons, no duty to refer arises because no practitioner-patient relationship has been established. If such a duty does exist, it would likely be as a result of an ethical code provision or law or regulation that imposes such a duty. Such a provision can create problems for practitioners if drafted in such a way that the ethical duty to refer arises with those who are not considered patients or clients. Of course, if a practitioner desires to make a referral, that is another thing. There is a big difference between acting voluntarily and being mandated to act. Therapists and counselors must check the applicable ethical standards (or the applicable laws/regulations) in their respective professions and the states within which they practice to determine whether a duty to refer exists in particular circumstances.