

# **Duty to the Patient - Termination of Treatment and Understanding Your Patient - Therapist Relationship and Expectations**

written by Richard Leslie | May 26, 2016

## **Avoiding Liability Bulletin - October 2008**

### ***Termination of Treatment: Part 1***

(May 2005, Volume 1)

... If the termination of treatment process is not properly carried out, the attempt to end the professional relationship can constitute, or at least be argued as, an abandonment of the patient/client. This could lead to a lawsuit for damages, a complaint to the licensing board, and a complaint to the ethics committee of your professional association(s). While patients generally have a right to terminate at any time and for any reason, not so with therapists!

Therapists typically terminate when the patient can no longer pay for services, when the therapist determines that the patient's problem is beyond the therapist's scope of competence or scope of license, when the therapist determines that the patient is not benefiting from the treatment, when the course of treatment comes to an end because of the improvement of the patient, or when the therapist is unable or unwilling, for appropriate reasons, to continue to provide care.

Because the termination process can sometimes be so difficult, the therapist might want to consider adding some provisions to their disclosure statement (given to the patient prior to treatment) that address the issue of termination. Perhaps the patient will think twice about pursuing a complaint against the therapist when reminded that it was disclosed to them, at the outset of treatment, that the therapist is under an ethical duty to terminate when the therapist determines that the patient is not sufficiently benefiting from the treatment and the therapist believes that the patient needs a different level or kind of care (or words to that effect).

### ***Termination of Treatment: Part 2***

(June 2005 , Volume 1)

... Here's a common situation that often creates a dilemma for therapists. Suppose you are treating a minor, eleven years of age, with the consent of both parents. The court had ordered joint legal custody and the court order specifies that: "the consent of both parents shall be necessary in order to make any decisions with respect to the rendering of health care, whether physical or mental, to the minor." Prior

to the commencement of treatment, you obtain the consent to treat from both parents, complying with whatever the requirements are for documenting such approval. Three months later, one of the joint custodians calls the therapist and says that he withdraws his consent. He demands that the therapy end. The other joint custodian wants treatment to continue. Must the therapist comply with the request to end or terminate therapy?

This is not an easy issue to resolve, and a proper resolution will depend upon the interpretations and nuances of state law. Here's what I have successfully argued in several cases over the years: The therapist had the permission of both parents to treat, as per the court order. Now, one of the parents is in essence asking the therapist to terminate treatment. The therapist, however, has determined that the minor needs continued treatment. The therapist does not want to abandon the patient, and since the therapist does not have both joint custodians agreeing to a termination of treatment (e.g., the mother wants her child to get continued care and believes that the father is acting in bad faith and in his own selfish interests) as the court order appears to require, the therapist properly continued to see the child in therapy. The consent to treat was given at the beginning and cannot be "taken back." Now the issue is not consent to treat, but rather, termination.

Caution - whether or not the above line of reasoning or argument will work for you in your state and with your license, is a matter that must be carefully examined. The answer will depend upon the applicable state law or regulation and the wording of the court order, which may be ambiguous.

### ***Expect the Unexpected - Cancel the Appointment***

(June 2005 , Volume 1)

... A therapist called me to consult and indicated that the patient had called and had threatened to kill the therapist at their next appointment. The therapist asked, "What's my duty?" My answer was "cancel your appointment!" And for this, I went to law school!! We also discussed, in detail, the fact that the duty of confidentiality does not require a therapist to suffer physical threats from the patient without the opportunity to take appropriate steps to protect himself/herself.

### ***Termination - Who is the Patient?***

(November 2005 , Volume 1)

... It is not uncommon for therapists to have a difficult time answering the question asked above. Perhaps the identified patient was originally the couple, but it later turned into individual therapy when one of the participants dropped out of therapy. Or, perhaps the therapist was working with an individual, but the therapy later turned into couple or family therapy. While it may be difficult to pigeonhole treatment into one category or another, therapists must pay attention to the question so that they can be clear - both with the participants directly and in the treatment records - as to when the therapist-patient relationship changes. It may be necessary or advisable to let one or more of the participants know that there has been a termination of a prior relationship and that henceforward a different

relationship is in existence.

### ***Termination and Referral - When Does the Duty to the Patient End?***

(October 2008 , Volume 1)

[\(Click here for more information related to when the duty to patient begins\)](#)

... One aspect of termination and referral that I have not previously written about involves the issue of follow-through after a referral is made and communicated to the patient. Referrals are usually made after the therapist or counselor decides to terminate with the patient, which may occur for a variety of reasons. Perhaps the practitioner has determined that the patient is not sufficiently benefiting from the treatment and would be better served by another practitioner – whether of the same licensure or otherwise. Therapists or counselors may terminate because the patient is no longer able to pay the previously agreed upon fee or because a conflict may have arisen requiring, in the judgment of the practitioner, a termination. Additionally, a termination may occur because the practitioner becomes ill or is otherwise incapacitated. It is of course possible that the patient or client will unilaterally terminate treatment for one or more reasons.

Whatever the reason for termination may be, the therapist or counselor is likely to be under the ethical and/or legal duty to refer the patient or client elsewhere – whether to an individual licensed practitioner, or to a governmental agency, such as a county mental health facility, or to a nonprofit organization providing counseling or psychotherapy services. Once the referral is given and the termination occurs, there would seem to be nothing further for the therapist or counselor to do. In fact, many practitioners believe that they owe no further duty to the patient. Therapists and counselors should be sure to carefully and fully document the entire termination process. Doing so could prove critical.

Suppose that the patient is severely depressed and that the referring professional is concerned about self-harm to the patient. Assume further that a referral was made to a psychiatrist because the therapist or counselor determined that the patient was not sufficiently benefiting from the treatment and that the problem was worsening. Would it be sufficient for the referring practitioner to have no further contact with the patient after making the referral in the last session? Might a court determine that the therapist in this case was under a duty to make a reasonable attempt to follow-through with the patient (or the psychiatrist) to see whether the new relationship has begun? Might a court determine that the termination was not handled appropriately and that the therapist or counselor has liability for the harm that came to the patient after a botched termination and referral?

These questions are not easy to answer, and much depends (as always!) on the particular facts and circumstances, and the law in the state in which such a situation occurs. The issues of termination and referral may be covered, to some extent, in state statute or regulation. More likely, common law principles involving the issues of “duty” and “negligence” will be applied to particular cases. Generally, the duty of a therapist or counselor begins when a contract for professional services is entered into –

whether in writing or orally. Likewise, I believe that the duty to the patient should end concurrently with the termination of the therapeutic relationship. This of course assumes that the termination is made in a clinically appropriate manner. It is my view that a proper termination process requires the therapist or counselor to carefully consider whether a referral is necessary or appropriate, and if so, how will the actual referral be handled.

In some cases, such as the one described above, it might be appropriate for the therapist to call or otherwise contact the terminated patient, or ask the patient to communicate with the therapist, for the purpose of assuring that the patient is following through on needed treatment. In some cases, the therapist or counselor may be compelled to take other action (e.g., arrange for an involuntary commitment) when it is determined that the patient is not following through with the referral. Perhaps the post-referral contact reveals something to the practitioner that indicates a worsening of the patient's mental or emotional condition. Unless state law or regulation dictates or specifies when the duty (to provide competent care) to the patient ends, the therapist or counselor may not be able to avoid taking some form of action after a referral is made.

I am not an advocate of the proposition that once there is a therapist-patient relationship, there is always a relationship. Such a belief would keep the therapist or counselor "on the hook," or under a duty to act under certain circumstances, forever. Not a good idea! Likewise, I don't subscribe to the notion, as some propose, that the therapist or counselor is only relieved of a duty to the patient when the referral is "consummated" by the patient. That too would keep the practitioner "on the hook" at the discretion or pleasure of the patient and would place the practitioner in an ambiguous situation. Also not a good idea, in my view! If state law or regulation addresses this subject matter (to wit, when does the relationship and the duty end) practitioners will be guided by any standards thereby established.