TERMINATION – Disclosures to Patient

written by Richard Leslie | February 1, 2017

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One of the critical times in the therapist-patient relationship comes at termination. Much can go wrong if the termination is not handled properly, and I have written multiple articles about termination (see archives). Last month I briefly wrote about an ethical duty to terminate when it is clear to the therapist that the patient is no longer benefiting from the treatment and that continued sessions would be solely for the financial gain of the therapist. In situations where treatment has continued for many years, this ethical principle may come into play and could expose the therapist to allegations of wrongdoing or unethical behavior if and when the long-standing relationship sours.

A different situation occurs with patients who refuse to terminate (or refuse to accept or act upon a referral) and who continue to cling to the practitioner – despite the discouragement, even protestations, of the practitioner. The question that I am repeatedly asked, perhaps not in these exact words, is "How do I get rid of this scary/borderline patient without exposing myself to liability." My response usually makes reference to the ethical principle mentioned above – intended to prevent exploitation of the patient. Proper use of this ethical principle may help in situations where the patient is insistent upon not ending the professional relationship.

In previous writings, I have suggested that practitioners might consider including this ethical principle into the written disclosures they give to patients and discuss at the outset of treatment. The precise wording of such a disclosure must be crafted carefully and should be consistent with the actual ethical standard(s) that may apply to the individual licensee involved. When the therapist is properly and in good faith invoking this ethical duty, the therapist is generally in a good position to defend against a claim of abandonment. When the therapist reminds the patient of the discussion that took place at the outset of treatment, or simply refers to the content of the written disclosure, this can put the therapist in a good position and give the therapist more confidence as the termination is effectuated. Of course, the manner of executing the actual termination (often a process) is critically important, as is the clinical justification. Documented consultation regarding the clinical justification can also help to protect the therapist.

Another time when there is a duty (legal and ethical) to terminate is when the therapist determines that the nature or severity of the patient's mental or emotional condition is beyond the competence of the practitioner and that the patient is in need of a higher level of care or more specialized or expert care by other practitioners. When therapists terminate and refer because the patients' problems fall outside of their respective scopes of competence, issues or questions may be raised – but those issues can often be adequately addressed and answered. This ethical principle can also be considered for inclusion in one's disclosure statement. Inclusion of either or both of these two ethical principles (to the extent

that they apply to your profession/licensure) may make the termination process a bit easier or more defensible in some difficult situations. Even if not included, these principles should be kept well in mind.

ADVOCACY –A Caution

One of the items that I wrote about in the January 2017 issue of this Bulletin was the notion that practitioners may sometimes act as advocates for their patients (e.g., contesting insurance denials), and at other times , they would not – such as when giving sworn testimony at a deposition or at trial. I was again reminded of the need to separate the notion of advocacy from the typical role of the mental health practitioner when I read a recent publication of a disciplinary action taken by a regulatory board against a mental health licensee. The practitioner wrote a letter on behalf of a client that was used during the client's divorce proceedings. The letter referred to the client's spouse as abusive. This statement was allegedly made based solely upon statements made by the client during therapy sessions and was not based upon any evaluation of the supposedly abusive spouse. The letter apparently contained no explanation of the limited basis for the conclusion or any cautions regarding the conclusion reached.

What the practitioner could have written was the fact that the patient, during therapy sessions, repeatedly informed the therapist about the abuse and perhaps that the therapist had no reason to disbelieve the patient. But to simply conclude that the spouse was abusive constituted conduct that resulted in disciplinary action by the state. Sometimes therapists will testify or write reports in this manner (making definitive statements or expressing opinions or conclusions about someone they have not treated or evaluated) because they may see themselves, either wittingly or unwittingly, as advocates for the patient. Perhaps they are afraid that if they say "my client stated that…." or "my client informed me that her spouse was abusive…," that the patient will be disappointed or will feel that the therapist is not supportive or doesn't believe him or her. Such thinking can lead to trouble for the practitioner.

A common ethics code provision related to the practitioner's role in legal proceedings cautions mental health practitioners that they shall only express professional opinions about clients they have treated or examined. A related ethics code provision that addresses this issue provides that mental health practitioners do not express professional opinions about an individual's mental or emotional condition unless they have treated or conducted an examination of the individual, or unless they reveal the limits of the information upon which their professional opinion is based, with appropriate cautions. While the case described above does not involve a specific mental or emotional condition of the spouse, being described as abusive, without mentioning the limited basis upon which that conclusion is reached, is problematic and arguably suggestive of a mental or emotional condition.

In any event, your advocacy for clients can get you in trouble if done in inappropriate circumstances or in an inappropriate manner.