

Testimonials

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... At one time it was frowned upon, if not unlawful, for lawyers, physicians, and psychotherapists to advertise their respective services on TV, in newspapers, or in other places. Those times are clearly gone, but advertising still has its limits – both legal and ethical. With respect to the law, all states prohibit false or deceptive advertising by mental health professionals and others. Such conduct is not only criminal in most states, but it also constitutes unprofessional conduct warranting discipline by the state entity regulating the profession. With respect to professional ethics, one of the typical limits upon advertising involves testimonials or endorsements by patients. While ethical standards of the various professions address this issue somewhat differently, there seems to be general agreement that imposing reasonable limits upon the solicitation of testimonials is both necessary and appropriate.

When discussing ethical standards, it must be understood that the federal government, through the Federal Trade Commission, monitors trade groups (e.g., professional associations) to make sure that they are not imposing advertising restrictions on members that would constitute an unreasonable restraint upon trade – that is, that will prevent competitors (e.g., private practitioners) from engaging in commercial free speech. However, there are limits to what can be done in the name of commercial free speech. Thus, in order to meet this happy medium (and established law), most professional associations in the mental health field do not bar the use of testimonials in advertising, but rather, they focus on barring the solicitation of testimonials from patients. The reasons for the prohibition should be obvious. They are essentially the same basic reasons why sexual contact with a patient is prohibited. The words and concepts of the “vulnerability” of a patient and the “exploitation” by a psychotherapist immediately pop into my head.

The question of whether the use of testimonials is a good idea is a different matter. Each individual therapist or counselor (or nonprofit corporation) must evaluate the pros and the cons of using testimonials. It seems to me that nonprofit organizations are more likely to use testimonials than private practitioners – although I have not conducted a survey and I stand ready to be corrected. The use of testimonials by private practitioners is a source of possible liability or vulnerability for the practitioner. It is my view that the use of testimonials or endorsements is generally better suited for businesses that sell a product or provide a service other than the delivery of mental health care, or for charities. I do realize that there is another view, and practitioners are free to advertise as they wish, with limitations. I also realize that there are differing ways that a tasteful, ethical, and legal testimonial may be delivered or communicated, and that testimonials may be better suited or appropriate for some private practices than for others. Of course, practitioners must be sure that any testimonial is accurate and does not contain false or misleading statements.

One of my concerns about the use of testimonials involves the fact that each client or patient is different, and each presents with a different problem. Therapists and counselors generally do not want to give the impression to prospective patients that because the people represented in the testimonials were helped and that counseling or therapy was “successful,” that the prospective patients will see or realize similar results. I would think that mental health practitioners would not want to “guarantee a cure,” or even suggest that there will be successful results similar to those achieved with another. Thus, if one were to use a testimonial, care should be taken to avoid any suggestion that a prospective patient would fare as well in treatment as the person in the testimonial – or would think that the practitioner was as “warm and caring” as asserted in the testimonial!

If a former patient conveys (in a testimonial) his or her experience with a mental health practitioner as typical, when that is not the case, the mental health practitioner would need to disclose the results that prospective patients can generally expect. This could be difficult. Therapists and counselors must be thoughtful and careful about the statements they make about “likely” or “expected” results. If the person giving the testimonial receives some form of payment, monetary or otherwise, this too should be disclosed in the advertisement.