

Patient Treatment Records and Ownership

written by Richard Leslie | May 24, 2016

Avoiding Liability Bulletin - September 2005

... One of the common questions asked is who is the owner of treatment records kept by therapists or counselors? The question is asked for a variety of reasons and in a variety of contexts. For instance, suppose a former patient requests or demands that you destroy the treatment records because of her concerns about privacy and confidentiality. She explains that she is a public figure and that exposure of such embarrassing details will be very damaging. When you refuse to comply, the patient claims that these are her records and that you must comply. Is she correct? What is the answer in your state?

While state laws may vary, the general rule is that treatment records kept by the therapist or counselor in the ordinary course of his or her practice are owned by or belong to the therapist or counselor, not the patient. The patient usually has certain prescribed rights to inspect, copy or amend/addend the records under state law. It is generally not a good idea to agree to destroy records. Destruction might be prohibited by state law, and in any event, may later prove to be harmful to either the patient or the therapist, or both. Patients can simply be assured that privacy and confidentiality will be maintained, and where applicable, that the psychotherapist-patient privilege applies, which provides further privacy protections.

... Ownership of records may become an issue when a licensee or pre-licensed person leaves an agency or other place of employment, whether employed as a W-2 employee or as an independent contractor. If the patient were to decide to leave the prior place of treatment and to follow the departing therapist to a new location, the therapist who is leaving the agency may think that he or she has a right to take the original records with him/her. This is typically not so. The records belong to the agency where treatment was being rendered, and the departing therapist and the patient would be expected to request a copy of the records in order to assure continuity of care and appropriate treatment. If the agency balks, they could be setting themselves up for difficulties and liability.

Unfortunately, departing therapists sometimes act rashly and in the heat of the moment (terminations may be contentious) – and instead of requesting a copy, they simply take the treatment file (assuming it was “their patient”) and thereby improperly deprive their former employer of their rightful property. This can have negative consequences for the departing therapist. There is a right way to handle this situation and a wrong way. Be careful, and get help if you need it!