

# Upon “Retirement” - Should You Stay Licensed and Insured?

written by Richard Leslie | May 24, 2016

## **Avoiding Liability Bulletin - November 2012**

... Once again a reader has asked me to write about a particular subject, and it is one that most practitioners face and that many will soon face. A decision to retire involves many different issues, some of which I have written about before. For example, I have written about the topic of closing a practice, which can occur for a variety of reasons, and discussed some of the legal considerations practitioners must think about. The inquiry from the reader asks how he can do volunteer work, after he retires, without liability. Most importantly, he wants to use his hard earned therapy skills, he says, but wants to avoid the necessity “to keep up the rather expensive and time consuming effort to be licensed” and avoid having malpractice insurance. He also inquires about the wisdom or necessity of maintaining a voluntary certification that he acquired from a private organization.

First, I am unaware of how he could engage in various kinds of “volunteer work” after retirement without liability. While each state has its own laws, it is the general rule that individuals are liable for their negligent acts, whether employed or volunteering. There may be some protection under federal law or state law for those who volunteer in nonprofit and charitable corporations – sometimes referred to as 501(c)(3)s – but one would have to research that and be certain of the conditions and parameters of any such protection. While there might be some protection from liability in specified circumstances, the need to hire a lawyer remains a distinct possibility – even if it is to assert immunity in order to have a meritless lawsuit dismissed. One cannot always rely upon the entity where the services are being performed, since their first motivation might be to protect the entity.

I am not comfortable concluding or stating that one can simply let the license lapse or become invalid, cease to possess malpractice insurance, and stop taking continuing education that otherwise would have been required, and then practice as a volunteer without liability. Some might say that the practitioner can avoid liability by practicing competently. But it is no secret that a complaint can easily be made against a mental health practitioner, or a lawsuit for damages can be filed alleging negligence, malpractice, or other wrongdoing. Although the claim or suit might be without merit, the practitioner will likely need advice and perhaps a defense, likely requiring the hiring a lawyer. If suit is filed, the costs of mounting a defense can be substantial. Likewise with respect to complaints made to a licensing board – the costs of a defense can be substantial. Those without insurance covering the risks inherent in providing mental health care to others must be prepared for considerable financial exposure. If unable to afford those costs and expenses, this might lead some to not vigorously defend themselves.

For those who decide to “retire,” the actions they take with respect to maintaining the license and

malpractice insurance (after the retirement decision has been made) depends upon the individual practitioner's plans after retirement, his or her financial condition, state laws regarding license status (inactive status, retired status, and the ability to reactivate), and other factors. Without knowing a lot of this information, it is hard to give one answer that will be appropriate for each reader, but my views on this subject (and my suggestion) may help some to better navigate or think about this situation when it first arises.

With respect to malpractice insurance, it is important to understand that an occurrence based policy protects the licensee, to a limited degree, after the premiums are no longer being paid. For example, if a claim is made after the policy term has ended the claim or lawsuit would be covered by the insurer if the claim or lawsuit alleges negligence or other unprofessional conduct occurring during the period of time that the policy was in effect. But, whether one retires from practice or not, there is no coverage for acts that occur after the occurrence-based policy is no longer in effect. If one were to retire from practice and never again see a patient or client, there might be no need to maintain such coverage. However, my experience in talking with therapists over many years is that sometime after retirement there develops a need or desire to see one or more clients for one or more sessions. It could be an emergency situation, or involve a friend or family member, or it could be a desire to do a favor for someone, or a desire to do some volunteer work. I have spoken with some who have completely changed their minds about the retirement that has already occurred – and have done so for any number of reasons.

Thus – my opinion is that generally, malpractice insurance premiums (for occurrence form coverage) should continue to be paid, at least until such time as the licensee is absolutely certain that the retirement from practicing psychotherapy (that is, therapy, counseling, providing mental health care etc.), whether as a volunteer or otherwise, is absolute and without exception. Of course, if the practitioner is willing to take the risk and “go bare” (not be insured for professional liability), and believes that the work that he or she will be doing involves minimal risk, that is an option – but not one that I recommend. I have heard too many stories where the unexpected happens. And I have seen the harm that can come to an individual who has toiled hard for decades, but who has allowed his or her coverage to lapse – coverage for \$1,000,000 or more that costs relatively little when compared to other health care practitioners and other professions. Remember, the policy typically covers not only the liability one may incur, but provides coverage for the costs of a defense.

What I am really recommending – said differently than the paragraphs above – is that when you first decide to retire – that is, to no longer see clients or patients for treatment of their mental or emotional conditions – to no longer practice psychotherapy or engage in any conduct for which a license is required – mark the date down. For many, such as for those in private practice, there will be a winding down period before that date can be ascertained. For those who are employed, the timing of the retirement – and the finality of it – can be more certain. In any event, once that date is written down – the date after which you intend not to engage in the practice of your profession – keep the license and the insurance alive for another year. You may change your mind. You may decide to do some “light” volunteer work in a non-profit. You may respond to an acute situation.

The license was likely earned by a lot of hard work and expense, and one should not easily or quickly decide to let their license expire or change the status of the license, if available, to inactive or retired, or in some other way “surrender” the license. One should take into account that unexpected things happen in life and in one’s career and that allowing the license to not be in full effect, is a risk that can be easily avoided. I suspect that many retirees from practice want to reduce not only the licensing fees charged by the state, usually accomplished by allowing the license to go on inactive or some other status, but also want to avoid taking (and paying for) the continuing education that is likely mandated by the state.

Unless the retirement is firm and without exception, you should consider renewal of the license and “biting the bullet” – continue to obtain the required MCE. After all, retirement might provide you with more time and flexibility to take the required coursework. When you add up the cost of malpractice insurance, renewal of the state license, and the required CE – practitioners should remember how much it cost to initially obtain the license – both in terms of money and in time and commitment – before one allows it to lapse or be inactive. Remember, it is an expenditure that you are making for a limited period of time (one year) – at which time you can re-evaluate your position. Figure out what this will cost you in dollars and plan for it in advance.

We live in litigious times, and the risk of litigation is more pronounced in certain states, regions, or jurisdictions. The security of mind that you will have when the time comes for you to do some counseling or therapy (unexpected though it may be) is, in my view worth the investment of time and money in keeping the license active and the malpractice coverage in effect – for one more year. With respect to a voluntary certification that the practitioner may have with some private entity that certifies practitioners, one would have to evaluate the burden created by the requirements to keep the certification active (often, another continuing education requirement) and the benefits and detriments in allowing it to lapse. Of course, if the practitioner is going to hold himself/herself out as certified in a given area of practice, the certification should be current.

You are of course free to completely discount my answer to the reader, either because your situation is different, or because you disagree for any number of reasons. For example, some may believe that since they are volunteering at a nonprofit corporation, they do not need a license and that the corporation would insure them if they were performing services in the course of their work as a volunteer, or that they were protected from liability by some applicable law. Others may be willing to take limited risks or may simply believe that their retirement is complete and will be without exception. Each person is free to navigate through “retirement” as he or she sees fit. I offer only one simple suggestion!