Using Patient Information in Public Presentations

written by Richard Leslie | May 24, 2016

Avoiding Liability Bulletin – October 2007

… It is not unusual for therapists to talk with colleagues about the work they are doing with certain patients or clients, either informally or as a presenter at a workshop. The question sometimes arises as to whether or not the therapist or counselor needs to obtain the authorization of the patient or client before they share any information with others. It is generally well established that written authorization is not required and that the patient or client need not first be informed that information about his/her treatment is being shared with others. Generally, therapists and counselors simply mask the identity of the patient or client by changing details that have no direct impact on the integrity of the clinical information presented. They of course change the name of the patient/client. Ethical standards generally (verify this with your profession's ethical standards) recognize this practice and do not require that authorization or consent first be obtained.

A more difficult situation is encountered if the therapist or counselor desires to write a book – for commercial gain – and wants to include particulars about a case (e.g., information about a patient or family members) that he or she has handled. This idea usually unfolds after the termination of therapy, and sometimes, after the death of the patient. In such situations, the practitioner's concern is usually to do adequate masking of the identity of the patient(s) and to change some of the less important details of the case so as to protect patient privacy as much as possible. There is, however, or there should be, an additional concern.

Since the patient and perhaps the patient's family know the identity of the therapist or counselor who is the author, they are more likely to have an easier time than the general public would in recognizing that the book is about them. The therapist or counselor who has not first obtained a written authorization or consent from the patient (or the patient's representative) before venturing forward with this commercial venture may hear from the patient, or an attorney representing the patient. The claim may be that the therapist has usurped confidential information from the patient and used it for commercial gain (exploitation will likely be alleged, among other things) without the knowledge or consent of the patient.

The patient may also seek damages for breach of confidentiality and may seek a portion of the revenue derived from sales. Thus, if the therapist or counselor desires to minimize risk, it would be advisable to obtain the patient's consent or authorization to proceed with the story – even where the identity of the patient or client is going to be masked. The manner in which this is done (and in some cases, whether or not it needs to be done), and the form and content of the authorization or consent, are matters usually requiring consultation with an attorney and perhaps others (e.g., publishers).