Writing Letters Re: “Comfort Animals” / Procedural Due Process

written by Richard Leslie | May 24, 2016

Avoiding Liability Bulletin – January 2015

Writing Letters RE: “Comfort Animals”

A reader has asked for my thoughts regarding requests by patients to have treating mental health practitioners write letters requesting permission for “comfort animals” to be allowed in apartments, on airplanes, in “no pets allowed housing”, in on-campus, college housing and otherwise. The reader commented that sometimes patients will openly admit that they want to bring their pets on vacation and do not want to pay kennel fees, and that a letter verifying that their pet is a “comfort animal” will allow them to do so. The reader acknowledges that there are instances where a pet would in fact serve the function of a “medically necessary animal.” I profess no expertise on the subject matter, and my comments below are intentionally brief and general (and limited to dogs).

Some may refer to comfort dogs as therapy dogs, which are often seen making the rounds in hospitals and other facilities to comfort patients. The reader did not define the term “comfort animal,” and I took it to mean that the animal is not medically or psychologically (due to a mental disorder or disability) needed, and that the person requesting a letter merely wants to assert that the animal comforts them, makes them feel better or more relaxed, or provides emotional support. While many practitioners might have no problem making such a statement on behalf of a patient, such a statement may not suffice in particular circumstances. For example, in some homeowner associations, where pets may be restricted, “comfort dogs” that merely make one feel relaxed or emotionally supported may not be enough to attain approval from the association’s board of directors.

If in fact the patient is requesting a letter merely as a ruse or phony excuse, the practitioner would be wise to be clear and direct in denying the request. The practitioner may want to educate the patient about professional ethics. I would not want to be used by my patient, and I would set limits with regard to requests that are bogus, stretched, or are simply and plainly an attempt to get me to lie or mislead. I would also want to remind the patient about the importance of his/her confidentiality and the dangers of making false or exaggerated statements about one’s mental condition. You can let the patient know that you are willing to write a letter that is accurate, truthful, and clinically supportable. You would not want to state that the patient had a mental disorder or condition unless you were confident of its existence.

Practitioners generally do not want to be placed in situations where they will have to determine the precise standards that have to be met in given situations. The patient may have to do the necessary

research, or obtain the help of an attorney or other person (private or governmental) to determine precisely what is needed. This can be daunting and confusing. For example, under the Americans with Disabilities Act (ADA), federal regulations provide, among other things, that dogs are service animals and that a service animal is a dog that is individually trained to do work or perform tasks for a person with a disability. Title II of the Act affects public accommodations and commercial facilities. “Disability” could include a physical or mental disability. Reminding a person with mental illness to take prescribed medications or calming a person with PTSD during an anxiety attack are examples given by the federal government of such work or tasks by the service dog. There is also a category called “assistance animal” (not required to be trained) under the federal Fair Housing Act and a “service animal” (cannot be a mere pet, but can be an emotional support animal) under the Air Carrier Access Act (ACAA). While airports are generally covered by the ADA, most air carriers are covered by the ACAA.

There may be state or local (county, city, town) laws that also define these or similar terms for particular purposes. With respect to other animals, research would have to be done to determine which animals would be covered, what the limitations or exceptions may be, and any other technicalities. What might be easiest and helpful for the therapist or counselor to do is to ask the patient what he or she wants the letter to say, and to whom the patient wants the letter sent (I have concerns with letters that are addressed to “To Whom It May Concern”). With that information in hand, the practitioner can tell the patient whether or not he or she is comfortable writing such a letter or can modify the proposed letter so that it is consistent with a realistic (truthful/accurate) assessment of the patient’s condition.

Procedural Due Process

This term generally involves the basic legal principle that if an administrative agency of the government is going to take away a person’s right to practice his or her profession, the government must give adequate notice of its proposed action and an opportunity for the licensee to be heard. In licensing board actions, also referred to as administrative or enforcement proceedings, these rights to notice and an opportunity to be heard are critical. The timing of the notice, the required content of the notice, and the manner and extent of the opportunity to be heard will vary from state to state, and may also vary depending upon the particular violation involved. For example, in more serious cases, where public safety is deemed at serious and imminent risk, prior notice can be extremely short. The concept of procedural due process is also an important concept in cases brought by ethics committees of professional associations against their respective members.

While many mental health professionals may be familiar with various provisions of their respective codes of ethics relating to prohibited acts or behaviors, most are likely not familiar with, or interested in, the procedures that the particular association uses to investigate, resolve, or “prosecute” complaints. Again, the concepts of notice and an opportunity to be heard are paramount. Some state laws specify fair hearing procedures that govern not only hospital staff privileging actions, but professional society peer review proceedings as well. There are federal laws that govern these proceedings, but states may opt out of those requirements and enact their own requirements. Some have expressed concerns about the lack of fairness in professional association ethics proceedings because, among other things, the

accused member may be scrutinized too harshly by competitors and because the opportunities for face-to-face interactions with the ethics committee are often limited.

With respect to the opportunity to be heard, this typically means that before final action is taken, the charged person is entitled to a hearing before a hearing officer (e.g., an Administrative Law Judge) in the case of a state regulatory body or, in an ethics proceeding, before an arbitrator or a panel of unbiased individuals who have not acted as an accuser, investigator, fact finder, or initial decision maker in the matter. The right to a hearing in licensing board actions may involve a variety of other rights that will be enumerated in law or regulation, such as the right to present and rebut evidence, the right to be informed of the procedures to be used by the agency, and the right to challenge the presiding officer for prejudice or bias. The hearing would typically be open to public observation and the decision would be in writing and would include a statement of the factual and legal basis for the decision. In the case of a professional association’s ethics committee proceeding, one must review state laws/regulations and those portions of the applicable code of ethics related to procedures in order to determine the rights of the accused member.