

A Reminder : Honesty & Ethics

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... When a therapist or counselor testifies in a legal proceeding, whether at a deposition or at trial, the practitioner must remember that his or her primary legal and ethical obligation is to tell the truth. While this may seem simple and not needing mention, at least one caution is worthy of repeating (I have written about this before).

The caution is that when testifying about the extent of the mental or emotional harm suffered by a patient, the patient's attorney may pressure the practitioner to testify to a degree of harm beyond that seen or believed by the practitioner. This sometimes happens because in a civil action for money damages, the greater the injury and the impairment, the more the case is worth – assuming that it can be demonstrated that it was the defendant's negligence or intention that caused the harm. The practitioner must resist any such pressure and must make clear to the patient's attorney and the patient that the practitioner's testimony will be nothing but truthful, and that his or her professional judgment and integrity will not be compromised.

Cases where an employee was unlawfully discharged from employment and was thereby emotionally and economically harmed, or cases where the patient has suffered physical injury and psychological or emotional harm as a result of the negligence of the defendant, as in the case of an automobile or other accident, or in the case of medical malpractice, are examples of the kind of tort cases that mental health practitioners may encounter. In such cases, the patient will usually waive his or her psychotherapist-patient privilege as a matter of law by tendering the issue in the lawsuit – that is, by putting forth the issue of the alleged harm to his or her mental or emotional condition - thus opening the door to inquiry (including cross-examination at trial) by the opposing party's attorney.

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