

Advertising, Statute of Limitations, Yelling at a Client

Avoiding Liability Bulletin - June 2014

Note: In the [February 2014 issue of the AVOIDING LIABILITY BULLETIN](#), I raised many questions for the reader's thought, research, and discussion with colleagues. The questions were on a variety of topics, arranged alphabetically. Some of the questions, with my answers, follow. The answers are brief and are not intended to be a thorough exploration of the topic.

In the [March 2014 issue of the Bulletin](#), I answered questions raised on the topics of barter, neglect, violence toward patient, and taking a zoo trip with patient. In the April 2014 issue of the Bulletin I answered questions raised on the topics of confidentiality (group therapy), fees, and HIPAA, and in the May issue I answered questions on dual relationships.

A. ADVERTISING: What disclosures should a pre-licensed person make in advertisements? What disclosures must be made? Who should pay for such advertising - the pre-licensed person or the employer? Whose business is being advertised?

With respect to the disclosures that should be made, the pre-licensed person and the employer should be concerned with providing the consumer (the prospective patient or client) with accurate and adequate information in order for the consumer to know, at a minimum, who the owner of the business (the practice) is, the name and pre-licensed status of the person performing the services, and the name and license of the supervisor if the person performing the services is required by law or regulation to work under supervision. Full and accurate disclosure will help those involved with the treatment to avoid liability for false or misleading representations (or the failure to make adequate disclosures).

As to disclosures that are required to be made, reference must be made to applicable laws, regulations, or ethical code provisions. This will likely vary from state to state. With respect to the issue of payment for the advertising, it has long been my view, despite practices by some to the contrary, that the "employer" (whether the pre-licensed person is a paid employee or a volunteer) should pay for the advertising since ultimately it is the employer's business that is being advertised. Furthermore, the employer should decide whether or not the pre-licensed person's services are desired to be advertised. The employer should review the wording of any advertisements to be certain that the advertisement meets the employer's standards and the requirements of law and regulation.

S. STATUTE OF LIMITATIONS: Is there a statute of limitations applicable to disciplinary or enforcement actions by your licensing board? May the Board pursue a complaint if the event complained about occurred more than ten years earlier?

While there is likely a statute of limitations applicable to negligence or other civil actions against

therapists or counselors in every state, there may not be a statute of limitations applicable to disciplinary or enforcement actions by the licensing or regulatory board. A statute of limitations bars actions against alleged wrongdoers after the passage of a specified period of time. Even in a state where there is a statute of limitations applicable to a regulatory board action, there will likely be exceptions that allow licensing board action for a specified period of time or for an unlimited period of time. For example, if fraud is involved, such as where a licensee submits fraudulent information during the application process, the licensing board might be able to bring its enforcement action without a time limitation. A similar exception, or a longer period of time within which an action may be brought, may involve enforcement actions related to sexual relations or sexual misconduct with a patient.

The reason why statutes of limitation exist is because fundamental fairness demands that complaints or other causes of action should not be so old or stale as to deprive the accused person of the ability to recall events, obtain witnesses and records supporting the accused, or otherwise mount a defense. Those who would accuse others of wrongdoing, including licensing boards, have an obligation to file a complaint or bring the appropriate action within a reasonable period of time. The legislature of the particular state sets that time in the statute. Statutes of limitation are tolled (the time within which a licensing board must bring an action does not run during the period of tolling) for a variety of reasons. An example of when the period of time (the statute of limitation) will be tolled is where the wronged person is a minor; the time will not typically run during the period of minority.

In California, the licensing board that regulates MFTs, LCSWs, and LPCCs ordinarily must file its formal Accusation within three years from the date the board discovers the alleged act or omission that is the basis for the disciplinary action, or within seven years from the date the alleged act or omission that is the basis for disciplinary action occurred, whichever occurs first. The seven year period of time is extended to ten years if the matter involves sexual misconduct with the patient.

Is there a statute of limitations applicable to an enforcement action by your licensing board, and if so, do you know how old or stale the complaint and formal accusation may be?

Y. YELLING AT A CLIENT: Does it constitute unprofessional or unethical conduct to yell at a patient? If you admitted to a licensing/regulatory board that you yelled at a patient, would it consider the reasons and circumstances – or would they believe that yelling at a patient is never justified?

I doubt whether any licensing law or regulation directly addresses the issue of yelling at a patient /client. Typically, there will be prohibitions against gross negligence or incompetence in performing a licensee's professional duties, as well as prohibitions against the intentional or reckless causing of physical or emotional harm to a client. While yelling at a client is not the way psychotherapists are expected to act under ordinary circumstances, everything depends upon the particular facts and circumstances involved. Hopefully, the licensing or regulatory board will consider the reasons

for any alleged yelling and the facts and circumstances involved, and they will not conclude or assert, based upon a so-called “expert” opinion, that yelling is never justified.

During the course of one’s career as a mental health practitioner, unusual or extraordinary circumstances may arise that necessitate the raising of one’s voice, even yelling, in order to deal with a particular situation with a patient. I remember one case where a patient began to knock over, damage, and break things in the therapist’s office, including some art work. The therapist yelled! Moreover, the mere raising of one’s voice might be interpreted by a patient as “yelling,” and it is far from inconceivable that an angry patient will exaggerate!

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