

Avoid These Mistakes

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I have previously written in the Avoiding Liability Bulletin (January 2007, Volume 1 - "Avoid These Common Errors") about some administrative aspects of practice that therapists and counselors need to pay attention to in order to avoid unexpected problems, such as renewal of license, renewal of malpractice insurance, renewal of continuing education provider status, obtaining of a business license, and filing the required forms for use of a fictitious business name. This item addresses some areas of practice where a mistake (error) could lead to substantial consequences.

In law, a "mistake" is broadly defined as an unintentional act, omission, or error arising from ignorance, surprise, forgetfulness, or misplaced confidence. Therapists and counselors (and others) from time to time make mistakes, which will often constitute negligence. A failure to pay attention to seemingly minor details can easily result in consequences that may complicate the practitioner's life. As an example, suppose that a practitioner mistakenly believes that it is permissible to report child abuse in a state other than where the practitioner is located.

For example, suppose the practitioner is located in California and is told by her patient in California of child abuse that occurred in Nevada some years earlier. On occasion, some therapists in California have mistakenly believed that they were permitted to make child abuse reports directly to the authorities in Nevada (or some other state), where the child abuse occurred and where the abuser resides. This mistaken belief may be due to the fact that the authorities in the state where the therapist resides assert (in error) that they will not take the reports and that the reports should be made in the state where the abuse occurred. Sometimes the therapist may believe that it is best to be cautious and to make sure that the alleged child abuser is investigated in the state where he or she resides, especially since the alleged abuser may have convenient access to children as a result of his or her job – e.g., custodian in a school. Such a mistake could prove costly. It could constitute a breach of confidentiality, resulting in a civil suit for monetary damages or a licensing board disciplinary action. How does the law in your state deal with this issue, if at all?

Another mistake (omission) that could prove costly may occur when making a referral to another practitioner. For example, how many practitioners check the license status of the practitioner to whom they are referring the patient or client? What if the practitioner makes a referral to a colleague in the same office and against whom there may be one or more complaints before the licensing board that have resulted in the filing of formal charges or an accusation, or a final action of some kind? And, what if the practitioner making the referral does not check with the licensing board to ascertain the status of the colleague's license? Depending upon circumstances, this scenario could prove to be a problem for the referring practitioner, even if there is no statute or regulation that requires such diligence.

There are many other examples of mistakes, but one that I think some will be able to relate to is the

mistake of agreeing to see a patient or client when instinct tells you that you should decline the opportunity. Perhaps some practitioners have difficulty in saying “no thank you” (or more appropriate words!) to a prospective patient, but sometimes, that is the best thing you can do. Each individual must be the sole judge of such situations. There are many reasons why practitioners may say “no.” It could be because the client is unable to pay the full fee and has asked for a sliding scale, it could be because the person’s problem is not within your sphere of interest or competence, or it could simply be something intangible that makes you uncomfortable. Even though you may be building a practice and desirous of obtaining new clients, sometimes the best and most cost effective thing you can do is decline to see a prospective client.

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