

Bequest from Patient

Avoiding Liability Bulletin - October 2007

... In last month's issue of the Avoiding Liability Bulletin (October 2007), I asked readers to ponder a scenario that involved a wealthy deceased client who left her former therapist a \$10,000 bequest in her will in appreciation for her work with the patient and other family members over a long period of time. The fact of the gift is first disclosed to the therapist two months after the patient's death and one year after the termination of therapy. The deceased patient's spouse is supportive of the bequest and is the one who tells the therapist about it.

I asked several questions in that article, the first of which I address below. The remaining questions are for others to answer. The questions asked were as follows: a) Is it okay for the therapist to accept the bequest or must/should it be returned to the estate? b) What would your lawyer say? c) What would your professional association say? d) What would be the position of your licensing board?

It is important to read the October 2007 Bulletin to understand my general bias against the giving or receiving of gifts and the reasons why I feel that way. I do recognize, however, that there are exceptions to my general rule and that circumstances may arise where the giving or receiving of a gift may be appropriate, supportable, and lawful. The scenario referenced above appears from the facts presented to be just such a circumstance, despite the large amount of the bequest. In my view, it is okay for the therapist to accept the bequest and there is no need to return it to the estate. Of course, if a state law, regulation, or ethical standard prohibited the gift's acceptance, a different answer would be given.

The therapist was apparently unaware of the bequest when it was made. There apparently was no discussion of a bequest or gift between the therapist and patient during the course of therapy. There appears to be no family outrage or opposition. To the contrary, the family seems to be supportive of the idea. There was apparently no pattern of prior gift-giving or receiving and there appear to be no issues of dual relationship, exploitation, boundary violations, or anything other than a good will gesture motivated by appreciation for services rendered. The fact that the client was wealthy is helpful when thinking about the size of the gift. In the absence of a specific prohibition against accepting and keeping the gift, there appears to me to be no valid reason requiring refusal or rejection of the bequest.

It is unlikely that a situation like this would escalate to a point where a complaint would be filed with a licensing board or an ethics committee, especially if the therapist is able to properly assess the situation and the people involved. Generally, in a situation such as this, it is unlikely that information about the bequest will be widely known, if at all. But – since anything can happen, therapists must always be thoughtful and reflective about such issues. Ethical standards should be carefully reviewed and consultation with an attorney may be appropriate – depending upon

circumstances. In the category of “anything can happen,” I have seen cases where the spouse of the therapist, who is privy to information about the therapist’s practice, such as the receipt of a gift by the therapist-spouse, is the one who files a complaint. Obviously, this might take place after the couple has bitterly parted ways or when they are battling in a custody dispute!

In this particular case, even in the unlikely event that the bequest would come to light and result in a complaint to an ethics committee or a licensing board, the therapist should have no liability before either body because he or she has apparently not engaged in prohibited conduct. While one or both of these bodies may decide or be required to investigate, the therapist should not have any vulnerability – other than the stress and expense of going through such a proceeding. Based upon the facts presented in this case, the investigation should be brief and the complaint should be dismissed early – unless the committee or the board acts arbitrarily and without sufficient justification. This would hopefully be rare, although it can and does happen.

Remember - each case is different, and each case is to be decided based upon the particular facts and circumstances involved. This means that if one material fact changes, the advice to be given or the result to be reached may be different. So, if the facts in this scenario were to change, and the patient told the therapist (while the patient was still in treatment) of the intent to leave a gift by will, a different situation would be presented. Likewise if it was revealed that the therapist had told the wealthy patient of her financial difficulties during the course of therapy and a bequest was later made. But in this case, as the facts are presented, and assuming that no law, regulation, or ethical standard is violated, the therapist has in my view done nothing wrong if he/she accepts the bequest.

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