Coaching?

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I have consulted with licensed therapists who have asked, in a variety of contexts, whether they can safely (re: their liability) provide the service broadly called “coaching” with members of the public. My answers, as you might expect, always depended upon the facts and circumstances involved. In some cases, my answer and my advice strongly discouraged such activity. In other cases, I had no problem with the practitioner advertising and performing coaching services – as long as the practitioner fully understood the possible implications and the appropriate and safest way to pursue and implement a coaching business. At the time of those consultations, “coaching” was an activity unregulated by the state, and anyone could engage in the business of coaching, regardless of qualifications. Of course, the precise definition of coaching and the nature of the services to be rendered may vary.

Is there more liability in practicing psychotherapy or diagnosing and treating mental disorders than there is in personal lifestyle coaching, relationship coaching, or executive coaching? My answer would generally be “yes.” Most mental health practitioners (licensed by the state in which they practice) carry malpractice or professional liability insurance, which generally covers them while they are engaged in the lawful practice of their profession. The insurer is likely not agreeing to insure for activities or services that are beyond those that are typically and usually performed by the particular licensed profession involved, and thus, there would likely be no coverage under a professional liability or malpractice policy for mental health care providers who are engaged in the business of providing coaching services. Whether and how the practitioner can obtain other reliable insurance coverage for coaching services is outside the scope of this brief article.

It is important for the practitioner who is interested in coaching to be familiar with the field and to know its scope and limitations. Likewise, it is important for the practitioner to understand that a licensed health care professional providing treatment to a client is a separate and distinct undertaking from “coaching” – whatever the definition. It has therefore been my recommendation that practitioners who wish to pursue coaching as their primary business endeavor do so separate and apart from any therapy or mental health practice, if the latter practice will even continue. Separate offices, separate advertising, and separate forms can help to support the practitioner should an issue arise (e.g., an assertion from a client that therapy or mental health care was really being delivered). When the two endeavors are performed from the same office, concerns are raised, especially when the business card contains the title of the practitioner’s license and perhaps the license number.

But why might a practitioner desire to become a coach or to perform coaching services as opposed to providing “mental health care,” “psychotherapy,” “professional clinical counseling” or the “diagnosis and treatment of mental disorder” as a state-licensed practitioner. The answer to this question is varied.

Some may question why they should continue to subject themselves to governmental oversight, to the rigors of third party payment/insurance reimbursement, and to multiple and increasing state mandates, when they can make as much or more money by broadening their services and taking themselves out of the therapist-patient relationship realm. Such a change in providing services to the public may obviate many of the duties and responsibilities applicable to the regulated mental health professional – provided that the change is implemented appropriately, carefully, and in good faith - and if the "facts on the ground" support the change in endeavor. If not done appropriately (and I am familiar with examples of inappropriateness), the practitioner is exposed to significant liabilities - criminal, civil, and administrative.

A common conversation I have had with multiple therapists involves the situation where the therapist is performing or wanting to perform services via telemedicine or telehealth with patients outside of the state in which they are licensed. Because of well-founded concerns that they may be practicing illegally in the state where the patient resides (a state other than the state where the practitioner is licensed), they ask about calling their sessions "coaching," since coaching online is, to the best of their knowledge, largely unregulated by the states. This kind of selective role assignment or perception of one's activity is highly problematic and can lead to liability. Merely calling the actual service performed (therapy/counseling) by another name (coaching) does not mean that therapy is not being provided. If the "coach" had sexual relations with the client, would the licensing authority take the position that the laws addressing sexual misconduct by a licensed professional would not apply? I think not.

A few therapists lost their licenses as a result of disciplinary action taken by the licensing board, and others have attempted to surrender their licenses in anticipation of a consumer complaint or licensing board investigation. Merely "hanging out a shingle" and advertising as a life coach may not protect a licensee or a former licensee from a subsequent charge by the licensing board, or from a referral for criminal prosecution, for practicing the particular mental health profession without a license. Be aware that licensing boards may decide to conduct undercover investigations in order to demonstrate that the former licensee was in fact performing services that were within the scope of practice defined in the licensing law. Scopes of practice within licensing laws are sometimes written to encompass a rather broad, somewhat vague description of services that may lawfully be performed for remuneration.

Practitioners must be careful and thoughtful before making and implementing the decision to practice and advertise as a life coach, relationship coach, executive coach, or other described coach. If not done appropriately and in good faith, the licensee may be held liable as a mental health practitioner, regardless of the assertion that "I was only doing coaching."

COLLATERAL VISITS

It is important to remember that not everyone a mental health practitioner sees in session will or should be categorized as a patient or client. Sometimes the therapist may think it appropriate to

see a member of the family, or a spouse or friend, in order to gain further information or insight into the client's issues.

This would generally be done with the knowledge and permission of the patient, sometimes as a result of the patient's suggestion, and sometimes with the patient present. In such situations, it is important to be clear with both the patient and the person being seen collaterally (third party) as to the nature of the relationship between the practitioner and the third party. More specifically, it is important to let the third party know that you are the therapist for the patient and that the third party is not a patient (that is, no treatment will occur – only the gathering of information and insight in order to treat the patient).

Additionally, it may become necessary to think about such issues as confidentiality and privilege. For example, are the communications between the practitioner and the third party (collateral visit) in any respect confidential? Does the third party know whether the therapist will share some or all of the information and communications with the client, as determined by the practitioner's clinical judgment? If the patient's records were subpoenaed, would the psychotherapist-patient privilege be inapplicable to those portions of the treatment records solely pertaining to the collateral visit because the third party was not a patient? If the patient requests a copy of the treatment records, may the therapist refuse to reveal that portion of the records solely related to the third party collateral visit?

These are just some of the questions that can arise when a third party is seen in a collateral visit. In determining the answers to the questions posed above, and to other related questions, it will be necessary to refer to state laws pertaining to confidentiality, privilege, and patient access to records, and perhaps to the ethical standards (code of ethics) of the practitioner's profession. If the practitioner is clear about who is the patient and who is not a patient, and clear about the purpose of the collateral visit, answers to these questions can be more easily achieved. The practitioner's records should be well- documented when there is a collateral visit so that clarity of role and relationship is apparent.

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