

Do You Know Your ABCs?

Avoiding Liability Bulletin - February 2014

Here's something different. These questions, a few of which may seem far-fetched or odd, have arisen in the past in actual practice situations. They are included here to stimulate thought, research, and perhaps some discussion among colleagues. Some of these questions may be addressed by me in future Bulletins.

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?

B – Barter. What are the legal and ethical limitations upon bartering with clients? May the mental health practitioner lawfully initiate the idea of barter?

C- Confidentiality. What is the right of an individual participant in group therapy to confidentiality? Should (or must) practitioners ask group participants to sign a form where they each promise to keep as confidential the content of group member communications?

D - Dual relationships. Do you know the difference between an ethical dual relationship and an unethical dual relationship? Does your licensing board know the difference? Are all dual relationships unethical? Are some dual relationships unavoidable?

E – Executor. Is the executor of a deceased patient's will the holder of the psychotherapist- patient privilege? Does the executor have the right to access the deceased patient's records?

F – Fees. Under what circumstances is it appropriate to raise a patient's fee during the course of therapy? Does raising one's fee during the course of therapy raise the issue of exploitation? Is there a limit to the size of the increase? Is a twenty-five percent increase ethically permissible?

G – Guardian ad litem. If the court appoints a guardian ad litem to represent the interests of a minor in litigation, is the guardian ad litem the holder of the privilege? Does the guardian ad litem have access to the minor's psychotherapy records?

H- HIPAA. What agency of government investigates patient complaints for a violation of HIPAA's Privacy Rule? Is it a complete defense to such a complaint that the practitioner is and was not a "covered entity?"

I – Immunity from liability. What are the various statutes in your state that provide mental health practitioners of your licensure with immunity from liability in different situations?

J – Joint holders of the privilege. What does the law provide with respect to whether two or more persons may be joint holders of the therapist-patient privilege? Are members of group therapy considered to be joint holders of the privilege? Does the answer to the prior question depend upon the nature and purpose of the group?

K – Kids. What right, if any, does a minor patient have to amend or addend their own records? How old must the minor be in order to enjoy such a right?

L – Lost records. Under state law, what is the duty of a therapist or counselor who discovers that a patient's records have been lost? Would the answer be different if you were a "covered entity" under HIPAA?

M – Missed appointment. May you lawfully charge a patient for a missed appointment if you have not first disclosed your intent to do so in a written disclosure statement? Is it unlawful or unethical for the amount charged for a missed appointment to be greater than the amount charged for an actual session? May you provide a receipt for a missed session indicating that an hour of individual psychotherapy was performed?

N – Neglect. Is there a difference between general neglect and severe neglect in your state's child abuse reporting law? Is a report required if there is a reasonable suspicion of general neglect?

O – Online therapy or counseling. Is it appropriate to practice therapy or counseling online with a patient who resides in another state? May you do so if you describe your services as life coaching?

P – Psychological testing. If competent by reason of the practitioner's education, training, or experience, are marriage and family therapists or professional clinical counselors permitted to perform psychological testing in your state and to call it psychological testing? Are there any limitations to this right?

Q - Quitting employment. If a mental health practitioner leaves his or her place of employment, may he or she ethically and lawfully inform patients of the impending departure and the willingness to see patients at a new location? Do patients, regardless of the contractual arrangement between the practitioner and the practitioner's employer, have the right to choose where they will be treated?

R - Reporting child abuse. Are you required to report child abuse when the sixteen year-old who was abused has previously been declared by the court to be an emancipated minor? Does it make a difference whether the abuse is physical in nature or involves consensual sexual intercourse?

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?

T – Telemedicine or telehealth. Is it lawful to provide psychotherapy or professional clinical counseling via the Internet with a patient who resides in your state of licensure, but is temporarily out of state? Are there any special requirements, such as written informed consent, that you must comply with under such circumstances?

U – Unfounded child abuse reports. Does the state’s immunity law for mandated reporters who report child abuse provide immunity from liability where, following an investigation, it is determined that the report of suspected abuse was “unfounded” (as opposed to unsubstantiated)?

V – Violence toward patient. Is it ever permissible for a mental health practitioner to be physical or violent with a patient, such as pushing, slapping, or striking the patient?

W – Warning others. Are you under a duty to protect anyone other than your patient? If so, under what circumstance (s) does that duty arise? Are you permitted to break confidentiality in order to protect someone other than your patient? If you warn a third party of your patient’s dangerousness, what information is permitted to be shared?

X – Exemption from licensing. May a person in your state practice your profession without a license if the services are performed while properly employed by a non-profit and charitable corporation? May that person lawfully diagnose and treat a mental disorder if competent to do so? Are you permitted by law to supervise that person’s work, or would you be aiding and abetting unlicensed practice?

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 they consider the reasons and the circumstances – or would they believe that yelling at a patient is never justified?

Z – Zoo trip with patient. Does it constitute a violation of any law or ethical principle for a therapist or counselor to accompany a patient to the local zoo if this is done for therapeutic reasons or treatment purposes? In such a circumstance, may (or should) the practitioner charge his or her usual and customary fee for the time spent at the zoo? Who should pay for the peanuts?

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