

Duty to the Patient - When Does it Begin?

Avoiding Liability Bulletin - September 2010

...Therapists and counselors often discuss the issue and process of termination of treatment, including the question of when the termination becomes effective, but not as much discussion occurs with respect to the question of when the therapist-patient or counselor-client relationship begins. When I write about this topic I do have a bias in thinking about the consumer of mental health services as the “patient,” and not as the “client.” Lawyers have clients. Prostitutes have customers. Retail establishments have consumers. Practitioners who provide mental health services, or who seek to diagnose and treat mental or emotional conditions or disorders, do so, in my view, with patients. The psychotherapist-patient privilege is granted to patients, not clients. “Patient,” for purposes of the privilege, may be defined as a person who consults a psychotherapist or submits to an examination by a psychotherapist for the purpose of securing a diagnosis or preventive, palliative, or curative treatment of his or her mental or emotional condition. Thus, I discuss the duty to the patient below!

Some may think that the relationship with the patient begins when the first session begins, or perhaps when it ends. Others may peg the beginning of the relationship to when the patient pays for the first session. Others may argue that the relationship begins when there is an oral (or written) agreement to provide services at an agreed upon fee, or after the patient receives the therapist’s disclosure or “informed consent” form. While this is a rather technical question and usually not of great importance, I am reminded of the situation where a therapist receives a telephone call from a prospective patient referred by a former patient of the therapist. The prospective patient tells the therapist that his wife has just informed him of her desire for a divorce, that he needs some help during this trying period of time, and that the therapist was highly recommended. The therapist tells him that he has an opening on Friday afternoon and that his fee is \$125 per hour. The prospective patient makes an appointment for Friday, some four days later.

Suppose that on Wednesday before the scheduled meeting the “prospective” patient calls in crisis – talking of possible violence aimed at his wife and her new companion. Suppose further that the therapist has second thoughts about taking on such a difficult case and thinks about telling the “prospective” patient of his reluctance to proceed and his desire to make a referral to a therapist who deals with this kind of acute problem. Finally, suppose that the “prospective” patient insists upon seeing the therapist that evening. What is the duty of the therapist?

My view is that the therapist is under a duty to see the new patient, to assess the situation, and by doing this, to thereby commence “treatment” (hold a first session). Consultation may be needed. Referral for appropriate reasons may soon be necessary. However, the failure to see the patient for the initial visit, for which an appointment was made, could result in liability for the therapist. An effort to refer the patient prior to the first session, under these facts, would in my view create a liability problem for the therapist in the event that the patient was to object.

Author:
Richard Leslie