

Gifts - To and From Patients

Avoiding Liability Bulletin - October 2007

... I have been asked to comment on how I feel about a therapist or counselor giving or receiving a gift from or to a patient. Is it legal? Is it ethical? Is it wise? Is it to be avoided at all costs? Can one get in trouble? As I cautioned in last month's Bulletin regarding hugging and informed consent, the answer to such questions are not as easy as they first appear to be, and accurate and helpful answers depend upon the precise question asked - as well as the context. Is the mental health professional primarily interested in avoiding risk, or is he or she desiring to act in a certain manner - so long as it lawful and ethical - even if controversial or unconventional.

Forgetting about legalities and the questions asked in the prior paragraph, let me first make a few comments about how I feel about gifts exchanged between patients and therapists. I start with the position that generally (there are exceptions), gifts should not be accepted nor should they be given. Without careful thought and analysis, such activity can often lead to unexpected trouble for the unwary practitioner. Even where careful thought has occurred, trouble may bubble up unexpectedly. I lean in favor of this position because it forces the person I am speaking with to overcome my bias against gift giving or receiving by articulating why such activity, in a given instance, may fall within an exception to the general rule and may be both supportable and appropriate.

Much of my exposure to the issue of gifts has occurred when a therapist was in some degree of trouble because he or she received one or more gifts from a patient (or the patient has received one or more gifts from the therapist), and later the patient or someone in the patient's family complains about some aspect of the gifting and may misinterpret its meaning or purpose. Often, there is more involved in the matter than a mere gift. Each case is different. Each question presented is different because everything depends upon the particular facts and circumstances involved - such as the issue, problem, or disorder the client/patient is being seen for, the nature of the relationship between therapist/counselor and patient/client, the theoretical orientation of the practitioner, and cultural factors.

Giving or receiving a gift, depending upon circumstances, may be lawful and ethical. It does not necessarily have to be avoided at all costs, unless there is a specific prohibition in state law, regulation, or a controlling ethical standard. But licensing boards and ethics committees, as well as any number of expert witnesses, often take the positions that there are problematic "boundary issues" connected with gifting and that gifting may be evidence of an improper dual relationship. Because of this perception, therapists and counselors would be wise, in my view, to generally avoid giving or receiving gifts if they want to maximize the avoidance of risk. If gifting does take place, the results of a complaint or lawsuit often depends upon the factors mentioned above, as well as such other factors as the nature and frequency of the gifting, the value and form of the gift, and whether other problematic conduct is occurring.

Too rigid an approach (as with the issues of touch and dual relationships) is stifling for the mental health professions and for the patients or clients they serve. But, sometimes, state agencies (e.g., licensing boards) are overly zealous, for any number of reasons, in their efforts to protect the public. Litigants (including state agencies) can easily hire expert witnesses to testify to just about anything. Because of possible injustice, or because of issues involving the costs and expenses of litigating, or just recognizing how the system works, therapists and counselors must be cautious.

Ponder this scenario: A wealthy deceased patient leaves 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 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. Is it okay for the therapist to accept the bequest or must (should) it be returned to the estate? What would your lawyer say? What would your professional association say? What would be the position of your licensing board?

Author:

Richard Leslie