

The Fact Of The Relationship

Avoiding Liability Bulletin - August 2011

... Confidentiality is the cornerstone of counseling and psychotherapy. Privilege is a concept related to confidentiality, but privilege is different from confidentiality. I have previously written about that – but to repeat, privilege involves the right to withhold testimony in a legal proceeding, while confidentiality involves the duty of a therapist to not share patient information with third parties without the written authorization of the patient. Generally, in order for a communication to be privileged, it must be confidential. There are, of course, multiple exceptions under state laws to the duty of confidentiality. Confidentiality may be broken in specified circumstances and must be broken, at least to some extent, in other circumstances.

Clearly, the communications between patient and practitioner during the course of the professional relationship are confidential. Whether the fact of the relationship is confidential may depend upon the circumstances, unless a state law specifically addresses the subject. For example, you would treat the fact of the relationship as confidential when someone comes into your office and asks whether you are treating a particular patient. The answer I have often recommended, somewhat tongue in cheek, is “I don’t say who my patients are, and I don’t say whether a named person is not a patient. Most respectfully, it is none of your business.” This could properly be said to a process server looking for a patient, a private investigator, or a police officer. On the other hand, the fact of the relationship is typically not confidential (or privileged) when the practitioner sues the patient for monies owed.

A patient could easily be seen and recognized going into or coming out of a practitioner’s office. While careful scheduling may take care of some of these problems, especially in some sensitive practices, most therapists and counselors do not have an office with an entry door and a separate exit door. What would that do to the stigma surrounding mental health problems or treatment? There is typically no stigma attached to entering a doctor’s office, so why should there be a stigma attached to entering a counselor or therapist’s office? While the fact of the relationship may be known to others, the reasons for the professional relationship, the content of the treatment, and the communications between patient and practitioner are and should remain confidential.

On a related and hopefully humorous note, I remember being shouted at by the receptionist in my doctor’s crowded waiting room (he was behind schedule, as usual) – “What are you here for Mr. Leslie?” I was reluctant to publicly share the fact that my _____’s were acting up! Not only was my identity revealed, but my embarrassment must have been obvious as I sheepishly approached the receptionist to whisper my ailment.

