

Board of Psychologist Examiners

PRACTICE ALERTS

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Regulation and Licensing Department
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Diagnosis and Treatment Plans

1. Practice Alerts specify that specific information is to be written in the patient's record “a diagnosis based upon specific features and a treatment plan that is appropriate to that diagnosis” and “information regarding the frequency and length of treatment, method of treatment, treatment goals and prognosis,” This wording is not delineated in NM R&R, with the exception of diagnosis.
2. Practice Alerts specify, “Psychologists would be wise to be aware of the usual treatment approaches in the community in which he or she practices, even if they provide a different method of treatment. This will enable the psychologist to reassure the patient who may have inquiries, the third party payer who represents the patient, and others who have reason to inquire. It may also prevent unnecessary complaints against the psychologist. This information is not present in NM R&R.
3. Practice Alerts specify “Psychologists who use specific diagnostic classification systems, such as the DSM-IV, for recording diagnosis should be familiar with the theory and methodology of such systems since such codes have specific meanings to the various groups that use them.” This information is not listed in NM R & R.

CUSTODY EVALUATIONS

Custody evaluations can be a high-risk practice. Very frequently someone will be dissatisfied, leading to possible disciplinary complaints. Practitioners, therefore, would be wise to take the following precautions when doing custody evaluations:

- Ensure that you are knowledgeable in the competencies needed to perform custody evaluations and be able to document these competencies; it would be useful to consult the Guidelines for Child Custody Evaluations published by the American Psychological Association, available at: (<http://www.apa.org/practice/childcustody.html>) and published in the NMBOPE regulations in effect from 4/24/1995 to 4/15/2000.
- Focus on the Best Interests of the Children
- Avoid multiple relationships
- Keep complete records of the entire process.
- Secure a signed agreement in advance that clarifies and spells out the arrangements for the evaluation, such as:
 - Financial arrangements
 - Who will be evaluated
 - Procedures for and limits on contact with collateral sources
 - Overall limits of confidentiality
 - Time frame for the evaluation, including the report
 - Special procedures in the event of reported child abuse
 - Who will receive copies of the reports, and who is entitled to the report
 - The fact that the report is only a recommendation
- Limit the report to supportable data
- Do not use a single test instrument to form the basis of major opinions or decisions
- Substantiate the source of data for all comments that are made

Insurance Billing and Pitfalls

Insurance billing, though seemingly uncomplicated and straightforward, may easily lead to disputes and/or allegations of misconduct. To avoid this, billing statements, insurance claims, and treatment reports should be simple, clear, direct, and accurate representations of the services provided, the fees charged for each service, and the nature of the patient's/client's evaluation and treatment.

- Psychologists would be wise to have the patient's written authorization to release the information necessary to process an insurance claim or to complete a treatment report for pre-certification, although the patient could give a verbal consent. Verbal consents are difficult to prove when charged by a client with releasing confidential information.
- Psychologists should be aware of precisely what they are stating when signing any insurance form or report. They should be aware that what they are asked to state could and does vary dependent upon the insurance form or report. For example, a signature as provider on the insurance form may be a claim that the signatory directly provided the services him or herself.
- When billing for services provided by employees, psychologists should identify the provider by name and title or degree, if it is required on the form. The same is true when insurance forms ask personally, or directly, provided the service.
- Discussing payment arrangements and insurance issues (including pre-certification) at the first meeting with the patient or client, or soon afterward, could help to avoid any possible misunderstandings and subsequent disputes, for example: co-payments, contract differences, among others. If providing family therapy services (particularly in divorce situations) make certain that each parent has signed an agreement specifying exactly how billing is to be handled.
- Attention to details and making certain that all information is provided when completing insurance forms and reports can help to avoid delays in payment and subsequent misunderstandings and disputes between the psychologist and the patient/client.
- When a patient cancels or does not appear for a session, it is usually considered fraudulent to bill an insurance company for that session unless the insurer had provided for cancellations with the contract. "Cutting a session short" but billing for a full session can result in complaints.
- When providing special services, such as mediation, wise person work, court monitor, etc., be very careful to specify in advance how payments will be handled and how services are to be apportioned between the parties. Be certain to have a signed agreement that clearly states how fees will be apportioned.

Couples and Group Therapy Confidentiality

When psychologists agree to provide services to several persons who have a relationship (such as spouses, significant others, or parents and children) or when doing group therapy, they should be aware of the nature and limits of confidentiality and privileged communication as it applies in these settings. The legal and practical concepts of confidentiality are subject to change.

Psychologists can remain familiar with decisions about confidentiality by reading professional journals, attending conferences and seminars, or by consulting with their attorney if a situation is unclear.

- Confidentiality exists when providing couples or group therapy, but there are differences from the confidentiality that exists in individual evaluation and treatment settings.
- Psychologists should describe at the outset the roles and responsibilities of all parties and the limits of confidentiality; that is, which of the individuals are client/patients and the relationship the psychologist will have with each person.
- This clarification includes the probable uses of the information obtained. Any one of the individuals present may seek copies of the records of these couples or group sessions or may release records to an outside party. Information pertaining to other members may not be redacted.
- When individuals in group or couples therapy are seen on a one-to-one basis, apart from the joint sessions, these communications are treated as typical one-to-one evaluation or treatment sessions unless there is prior agreement that the content of such sessions may be available to the group/couples sessions.
- Psychologists should make notes in the records of the group or couple session that limits of confidentiality have been discussed.

Dual Relationships

Psychologists should be aware that the objectivity and appropriateness of professional services could be jeopardized by the existence of dual relationships. Dual relationships occur when a psychologist has more than one type of relationship with a patient or client, such as:

- A professional relationship and a prior personal relationship
- A business relationship that develops during a professional relationship
- Social or personal relationships that develop during a professional relationship
- Differing professional relationships, such as performing custody evaluations with patients or clients who are in treatment or business relationships

Sexual relationships with patients/clients either during or within at least two years following the professional relationship may not occur.

When psychologists are involved in a mentoring, teaching or supervisory relationship with a student, the psychologist should take care to maintain appropriate boundaries so that his or her professional judgment is not jeopardized.

The relationship of psychologists who act as supervisors for persons who are gaining experience for licensure purposes is principally with the licensing agency and not with the supervisee; that is, the supervisor must attest to the licensing agency that the supervisee has completed the experience in accordance with the regulations for licensure. This means that the supervisee should not employ the supervisor when the supervisee is gaining experience for licensure. In addition, supervisors would be wise to avoid supervising relatives and close friends.

Consultation with Other Professionals

Good practice often involves the need to consult with other professionals to insure the provision of quality care. It is good practice to seek and document consultation with psychologists and other professionals after obtaining the consent of the patient/client.

In agency settings, a psychologist with any question concerning professional practice usually has supervisor and/or staff consultations available. Psychologists in independent practice may be wise to use a consultant whenever they have any doubt concerning their interventions, or have other questions or concerns involving diagnosis, risk factors, or treatment techniques.

It is necessary for the patient to have given informed consent to permit personally identifiable information to be revealed to a consultant or for the psychologist to disguise the information so that the patient cannot be identified. Normally, in a hospital or clinic setting, the patient gives such consent at the outset of care, but this usually is not the case in private practice settings. Obtaining consultation would not relieve the psychologist from the responsibility of patient consent for the release of information in either setting, unless all personally identifiable information has been removed.

Psychologists who attend post-licensure training programs or workshops as a means of improving or learning new techniques should follow the same precautions if information regarding their specific patients is used in these settings: the patients must give consent or all identifiable information must be removed from the presentation.

Fee Disputes

Fee disputes can often lead to complaints of professional misconduct. The Board does not negotiate or resolve fee disputes. Other claims of professional misconduct, however, may arise due to fee disputes.

To avoid these complaints, psychologists could:

- Clarify the billing and payment conditions, including insurance, if applicable, at the outset of the evaluation and treatment, and specify the financial arrangements in terms that the patient/client can understand. It is useful to include an agreement for payment for cancelled appointments.
- Explain to the patient/client that he or she may be responsible for payments for appointments that the patient/client misses that do not fall within the cancellation agreement. It may be considered fraudulent for psychologists to bill insurers for appointments when the patient is not provided service.
- Make the patient/client aware of the costs involved, so the patient/client can, therefore, make informed choices so as not to incur excessive debt.
- Avoid providing any personally identifiable information regarding the patient/client that reveals the professional nature of the relationship when attempting to collect fees. It is wise to determine beforehand if a collection agency will be providing information to third parties, e.g., employees or family members, who should not have access to such information.

Pursuant to Board Rules:

16.22.2.14 FEES AND STATEMENTS

- **Disclosures of Charges for Services.** The psychologist shall provide complete and accurate information about the charge of professional services to the client or patient, a prospective client or patient, or third party payor.
- **Accuracy in Reports to Payors and Funding Sources.** In reports to payors for service or sources of research funding, the psychologist shall accurately state the nature of the research or services provided, the fees or charges, and, where applicable, the identity of the provider, the findings, and the diagnosis.
- **Referrals and Fees.** When a psychologist pays, receives payment from, or divides fees with another professional other than in an employer-employee relationship, the payment to each shall be based on the services (clinical, consultative, administrative, or other) provided and shall not be based on the referral itself. Referral fees are prohibited.
- **Fees and Financial Arrangements.** As early as is feasible in a professional or scientific relationship, the psychologist and the patient, client, or other appropriate recipient of psychological services should reach an agreement specifying the compensation and the billing arrangements.

Dual Relationships with Clients

Dealing with potential dual relationships can be very challenging for a psychologist. The New Mexico Board of Psychologist Examiners Rules and Regulations (2000) present a number of points that every psychologist should keep in mind when addressing this issue.

The general rule is one that all psychologists should know and is fundamental to determining whether a dual relationship exists:

The psychologist shall not undertake or continue a professional relationship with a client or patient when the objectivity or competency of the psychologist is compromised because of the psychologist's present or previous familial, social, sexual, emotional, or legal relationship with the client or a relevant person associated with or related to the client.

Regarding exploitative relationships, the New Mexico rule differs from some other states and from the American Psychological Association Ethics Code. It is very important to be well informed regarding the standard to which New Mexico psychologists are held. This includes the very important point that, if charged, the psychologist has the burden of proof to show that there was no exploitation of the patient or client.

The psychologist, in interacting with a current or former client or patient to whom the psychologist has at any time within the previous 12 months rendered counseling, psychotherapy, or other professional psychological services for treatment or amelioration of emotional distress or behavioral inadequacies, shall not: engage in any verbal or physical behavior toward the client or patient which is sexually seductive, demeaning, or harassing; or engage in sexual intercourse, or sexual contact or other sexual intimacies with the client or patient; or enter into a business or financial (other than fees for professional services) or other potentially exploitative relationship with the client or patient. The prohibitions shall not be limited to the 12-month period but shall extend longer unless the psychologist can demonstrate that the client or patient is not vulnerable clearly to exploitative influence by the psychologist. The psychologist who engages in such sexual activity or financial relationship after the 12 months following cessation or termination of treatment bears the burden of proving that there has been no exploitation, in light of all relevant factors, including (1) the amount of time that has passed since the therapy terminated, (2) the nature and duration of the therapy, (3) the circumstances of termination, (4) the client's or patient's personal history, (5) the client's or patient's mental status, (6) the likelihood of adverse impact on the client or patient and others, and (7) any statements or actions made by the psychologist during the course of therapy suggesting or inviting the possibility of a post-termination sexual or other potentially exploitative relationship with the patient or client.

The next set of issues are not prohibitions, but set a standard of the psychologist being able to demonstrate, usually documented in the record, that precautionary steps have been taken to clarify roles, inform clients and families and to take appropriate precautions in the following areas:

The psychologist shall not serve in varied capacities that confuse the role of the psychologist. Such confusion is most likely when the psychologist changes from one role to another and fails to make clear who is the client or patient. The psychologist is responsible for taking appropriate precautions to avoid harmful dual relationships and is responsible for informing all affected individuals, preferably in writing, when such a change is necessary. Examples of situations requiring extra caution include: treating a person who is the family member of a present current or former patient or client; treating a family as a unit after treating a family member; or, conversely, treating a family member after treating the family as a unit; moving from a confidential role to a non-confidential one, such as from therapist or mediator to evaluator, arbitrator, or "wise-person", and moving from a position of authority into a confidential role, such as from court-appointed evaluator to the role of therapist. If one of the family members is a minor, the psychologist shall ensure that the child understands how the role of the psychologist is changing (for example, moving from therapist for the child to therapist for the family) and shall explain the limits of confidentiality that result from this changed role. When a psychologist agrees to provide services to several persons who have a relationship (such as husband and wife or parents and children), the psychologist shall clarify at the outset (1) which of the individuals are patients or clients and (2) the relationship the psychologist will have with each person. This clarification includes the role of the psychologist and the possible uses of the services provided or the information obtained. As soon as it becomes apparent that the psychologist may be called on to perform potentially conflicting roles (such as marital counselor to husband and wife and then witness for one party in a divorce proceeding), the psychologist shall clarify and withdraw from or adjust roles, as appropriate.

Administering Samples To Patients

1. When a prescribing psychologist administers medication samples to a patient, he or she is expected to follow procedures of the Practitioner's Manual, posted on the Board of Pharmacy's website: <http://www.state.nm.us/pharmacy/practitionermanuel.html>.
2. This manual calls for the psychologist to maintain the following records of samples:
 - A complete and accurate reading of each substance (including samples)
 - Separate records for drugs under Schedules I & II
 - All records must be maintained for at least 3 years.
3. Typical receipt records include:
 - The date received (The DEA requires the actual date received to be documented on the distributor's/wholesaler's invoice)
 - Drug name, strength, dosage form, and amount received
 - Distributor's name, address, and telephone number
4. Prescribing psychologists must keep records of each transaction when dispensing controlled substances:
 - Date of Dispensing
 - Name of patient
 - Name and strength of substance
 - Amount dispensed
5. Sample drugs that are prescription drugs are subject to all the record keeping, storage, and labeling requirements for prescription drugs. Therefore, each sample should have on its face a labeled prescription that includes:
 - The name, address, and federal registration number of the prescriber
 - The name and address of the patient for whom the drug is being prescribed
 - The name and strength of the drug
 - The quantity prescribed
 - The directions for use
 - The date of issue
 - The practitioner's license classification
6. Practitioners must provide effective controls and procedures to guard against theft and diversion of controlled substances. Report of loss or theft of a controlled substance must be reported to the New Mexico Board of Pharmacy within five days of becoming aware of that loss. DEA form 106 must be completed by the registrant and forwarded to the New Mexico Board of Pharmacy and the DEA.
7. The Psychologist should maintain the following record of samples dispensed:
 - Date dispensed

- Name and address of patient
 - Drug name, strength, and quantity dispensed
8. Prescription drugs should be stored in a locked cabinet with the key in the possession of the practitioner or designee. Though this practice alert mentions the broad points to be considered by a prescribing psychologist in obtaining and administering samples, the prescribing psychologist should become very familiar with and abide by the Practitioner's Manual: An Informational Outline written by the New Mexico Board of Pharmacy and available online at:

<http://www.state.nm.us/pharmacy/practitionermanuel.html>.