

## Case Notes and Divorce: A Parent's Rights

Mr. Jones asks for copies of his son's case notes and signs the HIPAA release form. Later that day, Mrs. Jones shows up irate. She is divorcing her husband and the court has given her responsibility for making medical decisions for her son. You've just angered one of your client's parents—and placed yourself in legal jeopardy.

If you counsel children, you can avoid this situation by understanding parental responsibilities during and after divorce.

### Who decides?

The time a parent spends with a child and decision-making for the child are separate issues in child custody matters. When addressing decision-making responsibility, the courts take "in the best interest of the child" to heart.

Courts may decide to split up decision-making responsibility by area. For example, both parents might be responsible for a child's education, but only one parent is responsible for a child's religious training.

Healthcare and access to the child's case reports are usually clearly stated in the separation agreement that both parents sign. A separation agreement is basically a contract



between the divorcing parents. If the language in the contract is ambiguous, the court considers the intent of the contracting parties. For example, the separation agreement might state both parents have joint decision making in school, religion, and extracurricular activities, but fails to mention healthcare decisions. The courts would likely construe there is joint responsibility for healthcare decisions too. The court routinely incorporates the separation agreement into the final divorce decree.

### In the meantime...

Let's back up a bit and talk about what happens before the divorce is final. Most states require a period of time between when the petition for divorce is filed with the court and when the divorce can be finalized through a decree. That time is usually 90 days, but in some cases, it can take up to a year for the divorce to be final. During this interim time, divorce proceedings involving children typically have what are called "temporary orders". These court orders outline how parents will handle matters—such as medical decisions—before the divorce is final.

The temporary orders and the separation agreement deter-

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mine parental rights during and after the divorce respectively. These two documents dictate to the healthcare provider who has access to the child's case notes.

### Releasing records

If a parent who is divorced or in the process of a divorce asks you for the child's medical records, you must have the parent sign a HIPAA compliant release form. You'll also want to ask for a copy of the temporary orders if the divorce is pending, or a copy of the court approved separation agreement if the divorce is final. Check the legal document to see if it states that the parent has a legal right to the child's case notes. If it does, you can proceed. If it doesn't, releasing the record may constitute a breach of client confidentiality. One way to resolve the situation is to have both parents sign HIPAA forms to ensure the child's privacy rights have been met.

Keep the HIPAA compliant release and request in the child's case notes. This way, there is a record in the child's chart of who requested records and when they were requested.

### Protect yourself

Child custody only determines who the child spends time with and when—not if the parent has the right to the case notes. Although it would be unusual for a custodial parent not to have access to the child's medical records, you still need to follow proper procedure to protect yourself from liability claims.

# Why Incident Reports Are Important

When is it important to file incident reports with HPSO? An incident report should be filed whenever an unexpected event occurs. Any time a patient or client makes a complaint, a medication error occurs, a device malfunctions, or anyone—patient, staff member, or visitor—is injured or involved in a situation with the potential for injury, an incident report should be filed, and right away.

You may be concerned about filing an incident report. But an incident report, in and of itself, will not necessarily have any negative impact on your policy. Remember, a claim could be filed against you years after an event, and you will be responsible for recreating the event for your attorney if a lawsuit is filed against you. You may not be able to rely on memory to recall facts pertinent to the incident, but you can refer back to the incident report for those details.

## How to report an incident

HPSO makes it easy and convenient to submit incident reports. You can call us at (800) 982-9491 to provide the information

over the phone, or use the on-line incident report available at [www.hpso.com/incident-report](http://www.hpso.com/incident-report). This report can be submitted electronically, or a printed copy can be faxed or mailed.

To complete an incident report, you'll need:

- Your policy number
- Your telephone number and best time you can be reached
- An address where you can receive mail
- The date of the incident
- A brief description of the facts of the incident (if available)
- The injured party's name (if available).

Remember to also complete an incident report at your facility, following policies and procedures, and file it with your risk manager. Don't make reference to it or put it in the patient's medical record. This could allow a potential plaintiff's attorney to obtain the report.

For more information about incident reporting, visit the FAQs in the Customer Service section of the HPSO Web site at [www.hpso.com/faqclaims](http://www.hpso.com/faqclaims).

# Speak up to avoid liability risks

Many lawsuits brought against healthcare organizations and providers have their roots in poor communication. And, if you witness inappropriate care and fail to speak up, you, too, could be held liable.

## Address the *right* problem

Before taking action, think carefully about the problem you witnessed, the action or lack of action by your co-worker, and what behavior or solution should have occurred. Let the person who committed the inappropriate care know exactly what was expected and what was observed. Then end with a question that invites the other person to respond ("What happened?").

People can become defensive when confronted, so make sure you create an environment of safety. Do this by sharing your good intentions and seeking common ground. Let the person know why you're bringing the



problem up and that you want to be a part of the solution.

Learning to speak up and confront problems effectively takes time, but the good news is that it can be learned. While some people may be naturally competent at confronting problems, the rest of us can become proficient at the skills to do so.

## REFERENCE

1. Patterson K, Grenny J, McMillan R, Switzler A. *Crucial Confrontations: Tools for Resolving Broken Promises, Violated Expectations, and Bad Behavior*. New York, NY: McGraw-Hill; 2005.

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# The Internet-license connection



You're a marriage and family therapist intern working under supervision. You roll your chair up to your computer and log onto the Internet to conduct some online counseling sessions. Does this "telemedicine" time count towards the experience you need to obtain your license as a counselor?

What if you're already licensed as a counselor, and you're taking an online education course to brush up on your skills? Do those hours count toward license renewal?

With online counseling and education programs booming, you need to know the answers so you can meet the legal requirements for licensure.

## Range of regulations

When it comes to obtaining your license, some state laws either don't address the issue of accepting online hours or use vague terminology. For example, if you live in Virginia, state regulations require you to have "direct client contact" for 240 of the 600 hours of intern experience to become a marriage and family therapist. But, the regulation doesn't define whether that contact must be face-to-face in an office setting or if online counseling with a video camera is acceptable. Other states may allow online counseling hours.

Licensing boards may be reluctant to accept online counseling experience because of concern that candidates for licensure would submit all online hours to meet the requirement. Would that truly be in the best

interest of the public? States need to clarify what's acceptable—and what's not. Keep in mind that you still need to obtain informed consent even when the counseling is online.

A new set of issues arises when the therapist is licensed in one state and provides online counseling to a client in another state. Therapist state boards may take a page from the National Council of State Boards of Nursing's interstate compact, which provides for mutual recognition of licensure in different states. The Federation of

State Medical Boards developed a model so that physicians can go through an abbreviated licensure process to practice in other states. Several states have also adopted this model.

## Some clarification in California?

California may have helped clarify the muddy waters of online counseling and licensure. As of January 2008, applicants for a marriage and family therapist license can receive credit for "providing personal psychotherapy services via telemedicine." The California Association of Marriage and Family Therapists and the (California) Board of Behavioral Sciences supported the change.

Online counseling time is limited to 125 hours to avoid a situation where a licensure candidate obtains all of his or her client contact hours online.

## Log on for CE

The license situation is clearer when it comes to continuing education requirements. Some states don't specify how many hours of education credit may be earned online. In other states, you may be limited to a certain percentage of online courses you can take in order to meet licensure requirements. It's important to keep current on the requirements. For example, a proposed change to the regulations in California would increase the number of self-study courses allowed (most of which are taken online) from one-third to one-half. This change is expected to

take place later in 2008.

Don't forget to check for any specific topics for which you are required to obtain credit so you can receive your license renewal. Ohio, for example, requires 3 hours of ethics training as part of the 30 hours of continuing education credit that marriage and family therapists must earn every 2 years.

## Protect yourself

Your state association is one of the best places to find more information related to licensure and online counseling. By taking the time to become informed about this new form of obtaining hours, you can protect yourself from liability in the future.

### EARN A 10% PREMIUM DISCOUNT

**Take HPSO's Continuing Education program just for Counselors and earn contact hours!**

To review and take the National Board for Certified Counselors (NBCC) approved tests online, go to [www.hpso.com/conce](http://www.hpso.com/conce). After you score a passing grade, simply print and mail your certificate to HPSO, 159 East County Line Road, Hatboro, PA 19040-1218; or fax it to 800-758-3635. If you have any questions, please call HPSO directly at 800-982-9491.

## MOVING?

Have you changed your e-mail address? Have you moved or are you planning to move? Report your new e-mail address or change of mailing address by e-mailing us at [service@hpso.com](mailto:service@hpso.com), writing to us at HPSO *Risk Advisor*, 159 E. County Line Road, Hatboro, PA 19040-1218, or calling HPSO at 800-982-9491. You can also change your address online via the Virtual Customer Service Representative (VCSR) by logging on [www.hpso.com](http://www.hpso.com) and clicking the My Account button.

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## LESSONS FROM COURT

### Wrongful diagnosis of multiple personality disorder

A female registered nurse, about 50 years old, was seeing a psychologist for therapy. The psychologist conducted hypnosis therapy with the patient, although he had no specific training in this area. During this mix of psychological treatment and hypnotic induction sessions, the woman began "remembering" past child abuse. The woman was subsequently seen by two different psychiatrists and diagnosed with multiple personality disorder. The plaintiff later claimed that the memories of abuse had been "planted" by the psychologist and two psychiatrists and that she had been wrongly diagnosed. She claimed she was completely disabled and could not work outside of her home. The plaintiff also claimed that the defendants failed to provide any information regarding the risk of false memories. The jury found that none of the professionals had been negligent.



Staff. (2004). *Medical Malpractice Verdicts, Settlements & Experts*, 20(4), 60.

#### Advice from the expert:

*Although the psychologist may have acted outside the scope of his practice act or clinical*

*skills in performing hypnosis, it does not appear that the hypnosis caused harm to the client. However, healthcare providers should clearly understand their State's Practice Act and what is contained within their scope of practice. Additionally, all healthcare providers should perform self-assessments and not perform services outside their competence just because their Practice Act allows for the performance of the services. Healthcare providers should not hesitate to refer clients to other practitioners when necessary. A final reminder: you should always get informed consent to perform treatments and the informed consent should note that you explained the risks and benefits of said treatment.*

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