

Ethics and Economics

Contributed by John A. Riolo, PhD, LICSW

There is an old proverb that says: It is about as difficult for a rich man to enter heaven as it is for a camel to slip through an eye of a needle. Perhaps that is so. However, that camel may have an easier time with the needle than a financially struggling and desperate professional mental health practitioner would have keeping his or her clients' interests foremost. Temptations to cut corners can be just too great. {mosgoogle right}

Recently, an author of a book on developing a successful mental health private practice suggested that Internet consultation (a practice employed by many mental health professionals on difficult cases) is an ethical issue not germane to a book on developing a private practice. Another explains anti-trust behavior of some practitioners on the basis that therapists often disobey laws and professional standards with which they don't agree. However, to view such behaviors as only an ethical issue and not one that concerns both ethics and business leaves unanswered questions. For one thing, it fails to answer the question of why some ordinarily law-abiding professionals disregard some laws and professional standards and not others.

There are a plethora of books and articles on ethics. Ken Pope in psychology and Fredric G. Reamer in social work, among others, have written prodigiously on ethical issues. There is also an almost equal number of books and articles dealing with building a successful private practice, written by authors such as Nick Cummings, Ofer Zur, and Walfish and Barnett, to name a few. However, it is as if the authors of these books are writing for totally different audiences. Ethics books tend to focus on ethical issues but rarely address business or financial matters. Business books rarely address the ethics of private practice. But truly successful practitioners need to have mastery of both ethics and business. They and/or their clients will suffer otherwise.

Although a review of the ethics literature still suggests that sexual misconduct is one of the more frequent ethical or legal violations, most other books and articles identify some financial or business practice in one way or another. These violations can include but may not be limited to: client abandonment resulting from the client's inability to pay, failure to obtain adequate consultation or practicing beyond one's level of competence, double billing or billing the client for a service that should be part of the fee, and a host of activities that would come under the category of insurance fraud (Caudill, 2004). The reasons for such behaviors may be greed, poor training, altruism, civil disobedience, or economic desperation.

Greed

Whenever there is misconduct and money changes hands, greed is the obvious possible explanation. However, whereas every profession has members who might succumb to greed, the mental health professions--particularly the helping professions of social work, psychology, and counseling--are not likely to attract many people prone to greed, since there are so many other ways of achieving far greater financial rewards than going through the long tedious expensive process of obtaining a master's or Ph.D. degree, given the remuneration one can expect even in the best of situations. In short, there are far easier ways to make a buck.

Poor Training in Ethics

Inadequate training can be a factor. However, there seems to be no shortage of course content in ethics. In professional schools and in most disciplines, ethics courses are a part of continuing education requirements to maintain one's license. Additionally, although many sections of ethical codes are general and open to interpretation, standards related to deception and fraud are quite explicit. For example, the NASW Code of Ethics, Section 4.04: Dishonesty, Fraud, and Deception, says: Social workers should not participate in, condone, or be associated with dishonesty, fraud, or deception. That is about as explicit as it gets, and it should not take too much training to comprehend (NASW, 1999).

Altruism and/or Civil Disobedience

Often, practitioners are relatively open and unabashed about engaging in insurance fraud. Some see it as a necessity to get patients the care they need, and since the insurance companies are seen in such a negative light, it is at times perceived as a form of civil disobedience to thwart what practitioners see as unfair, arbitrary, and capricious policies. However, as we shall see, such claims lack credibility. It is difficult to have people believe that you are being altruistic when you are making money on an activity that you would not otherwise. And with civil disobedience, the intention is to break the law publicly. Trying to get away with something is not civil disobedience.

Financial Desperation

If greed, poor training, altruism, or civil disobedience cannot explain some unethical or illegal behaviors by many otherwise reasonably decent law-abiding professionals, perhaps like most people who find themselves in a desperately difficult financial situation, their judgment becomes impaired. It's not that they don't know right from wrong; it's that they perceive themselves as having no choice. The reality is that while having a thriving private practice may be the proverbial holy grail of many therapists, it is incredibly difficult to start and grow any small business in the best of times. A professional private practice is no exception. In a managed care environment where people expect to use their insurance, it is all the more difficult. In a recessed economy, a solo private practice may be even more difficult

to maintain.

Examples

Virtually all professional literature on ethics mentions the importance of practicing within one's level of competence. If we encounter a patient whose problems are beyond our experience or training, we need to refer elsewhere or seek appropriate consultation. Few would disagree. However, as any struggling practitioner can attest, referring a patient out when you have empty hours in your schedule means a loss of income. It's tempting to try to hold on.

Taking on a patient who offers a new challenge is not necessarily a problem, if we also seek consultation from an appropriate expert or consultant. However, that may require an expenditure of funds, since many experts offering consultation expect compensation. Large group practices or agencies may address consultation by quid pro quo arrangements in which expertise is shared, but a solo practice usually has to budget for outside consultation. If a solo practitioner has failed to adequately budget for consultation, the temptation is strong to either do without or look for free consults. This may mean asking for favors from colleagues who may have no more expertise on a particular problem area than they do. Or, they may go to one or more of the many online discussion groups and ask for help from hundreds or thousands of other therapists on the Internet. In addition to the obvious informed consent and confidentiality issues, free Internet consultations are truly cases of the blind leading the blind, since no one can truly be sure that anyone is who he or she claims to be. It is no substitute for the real thing.

Virtually every professional organization and ethics expert strongly cautions against obtaining consultation from people with questionable expertise on the Internet. Yet, such requests can be seen regularly on professional discussion groups by solo practitioners (Behnke, 2007). The question remains: Why would any therapist with a successful, thriving practice capable of paying for expert consultation take such foolhardy risks with a patient's care and his or her license?

Ethical prohibitions regarding deception, dishonesty, and fraud could not be clearer. Yet, private practicing mental health professionals will often defend a number of their behaviors, including but not limited to up-coding or giving a more serious diagnosis to patients for insurance purposes, billing for telephone sessions as if they were face-to-face, and the routine waiving of co-payments, which might induce people to accept a service that they would refuse if they had to pay their share (Caudill, 2002; see also Frager, 2008). Collectively, these improper payments add up. In Medicare alone in one year (1998), the amount of improper payment, possibly fraud, in mental health amounted to \$185 million (Medicare Office of Inspector General [OIG], 2001).

The argument practitioners invariably give is that they do it because the patient could not otherwise get help. Such arguments fall flat for at least two reasons. In each example above, the practitioners receive money from an insurer that they would not have received if they played by the rules. Second, if they were truly altruistic, they could have offered the service to the patient at a reduced rate or actually provided the service pro bono (Riolo, 2007). But one needs to be reasonably successful financially to give away services.

Of course, the elephant in the proverbial room when considering the financial plight of the mental health private practitioner is managed care. The resentment that mental health professionals exhibit toward managed care is palpable and nearly universal. Low remuneration rates and loss of autonomy are among the reasons. However, no practitioner is obliged to join any managed care panel. We join for any number of reasons, but most often it is because most of us would not otherwise be able to get enough private paying patients to make a living. But we can always choose to leave any panel (Walfish, S., Barnett, J., Private Practice Principle Number 18: Participation In A Managed Care Plan Is Not A Requirement). What we cannot do, however, is join with fellow private practitioners to boycott a specific managed care panel. It is against federal anti-trust laws, and the penalties are steep (Riolo, 2006). Virtually all professional associations caution their members. However, every so often, after some managed care panel reduces rates, some practitioner will call for a boycott. Fortunately for the practitioners involved, these efforts usually go nowhere, which might explain why the government doesn't bother taking action. However, who but the most desperate of practitioners would take such risks with patients and their futures?

Conclusion

The current downturn in the economy is expected to affect everyone, including mental health therapists (Bernstein, 2008). There is no reason to believe that therapists will be any more recession-proof than any other business. Given the additional financial pressures that non-physician private practitioners will face, it will be all the more important for us to have a solid integration of ethics with sound business principles. Only such a combination can give reasonable assurances that both the clients and the practitioners will benefit.

References

- Bernstein, E. (2008, October 7). Angst is rising, but many must forgo therapy. *Wall Street Journal*. Retrieved from <http://online.wsj.com/article/SB122333797880409755.html#articleTabs=article>.
- Caudill, B. (2002). Malpractice & licensing pitfalls for therapists: A defense attorney's list. Retrieved from http://www.insiderlawethics.com/malpractice_pitfalls.html.

Department of Health and Human Services Office of Inspector General. (2001). Medicare Part B payments for mental

health services. Retrieved from <http://www.oig.hhs.gov/oei/reports/oei-03-99-00130.pdf>.

Fragar, S. (2008, Winter). Dealing with copays. *Independent Practitioner: Bulletin of Psychologists in Independent Practice*. Retrieved from <http://www.division42.org/MembersArea/IPfiles/Winter08/practitioners/copays.php>.

National Association of Social Workers. (1999). Code of ethics of the National Association of Social Workers. Retrieved April 2, 2007, from <https://www.socialworkers.org/pubs/code/code.asp>.

Riolo J. A. (2006a). Anti-trust & the Internet--An interview with U.S. Department of Justice lawyer, Joseph Miller. Retrieved from http://www.insiderlawethics.com/joseph_miller.html.

Riolo J. A. (2006b). An interview with O. Brandt Caudill, Jr. Retrieved from http://www.insiderlawethics.com/interview_brandt_caudill.html.

Riolo, J. (2007). Do you think this orange jump suit makes me look fat? Retrieved from http://www.insiderlawethics.com/billing_phone_calls.html.

Walfish, S., & Barnett, J. (2008). Financial success in mental health practice: Essential tools and strategies for practitioners. American Psychological Association (APA).

John A. Riolo, Ph.D., LICSW, is a retired mental health practitioner and host of educational Web sites and blogs, including Civil Discourse Blog, The Insider, Your Advocate Online, Law and Ethics in Mental Health, and Listen to the Insider Podcast series.