



Progress Notes

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CPA and APA Go to Court to Defend California Legal Standard Protecting Confidentiality of Psychotherapy Records

The California Psychological Association was recently contacted by attorneys for a man whose psychotherapy record was ordered by a court to be released to an opponent in a civil lawsuit. The attorneys contacted CPA for assistance because they were aware that protecting the confidentiality of psychotherapy is a high priority for the Association.

After reviewing the case with the patient's attorneys, CPA contacted APA for assistance in filing an Amici Brief with a California appellate court. After reviewing the case, APA agreed with CPA about the importance of the case and wrote the Amici Brief which CPA's attorneys filed with the court.

The case is still pending. PROGRESS NOTES will report to its readers the outcome of the case. Below is a summary of the case, as excerpted from the Brief.

"The Superior Court in this case ordered disclosure of psychotherapist-patient communications in the form of the intake records reflecting communications from (the patient) to Dr. Steven Smith, who is a psychologist working at the Betty Ford Center. By ordering disclosure of psychotherapist-patient communications without reference to the psychotherapist-patient privilege in California, the court disregarded the carefully delineated rules prescribed by the California Legislature for preserving the confidentiality of patient-therapist communications. Those rules further the important public policy of encouraging people to seek out and receive mental health counseling and treatment when needed.

In essence, the Superior Court decided to strike its own balance with respect to confidentiality at odds with what the Legislature has determined. In doing so the trial court improperly replaced the carefully delineated statutory scheme with a highly discretionary "catch-all" ground for overriding the psychotherapist-patient privilege. If left to stand, the trial court's decision would severely undermine the policies furthered by this statute by making it difficult for patients to have any confidence that their communications with psychotherapists would remain confidential. APA and CPA urge the Court to grant the petition for writ of mandate, prohibition or other appropriate relief."

The entire Amicus Brief filed by APA and CPA can be found online at:

http://www.cpapsych.org/associations/6414/files/files/publications/progressnotes/2010/APA-CPA_Brief_on_Confidentiality_3_10_Marquez_v_Superior_Court.pdf

Insurance Fraud and Misrepresentation of Services in Billing in Psychotherapy, Counseling and Social Work their Panel of Providers?

By Ofer Zur, Ph.D.

Psychotherapists, social workers, counselors and marriage and family therapists, not infrequently, submit inaccurate insurance bills. Some of the most common justifications for such imprecise billing is to help therapists get paid at a higher rate and to help clients get insurance reimbursements for psychotherapy. One of the methods commonly used to achieve this is when therapists provide CPT and DSM codes that do not accurately reflect the actual services they provided. Adding to that is that many therapists, for very understandable and real reasons, rail against the reimbursement policies of insurance and managed care companies. However, fraudulent billing practices or inaccurate insurance bills are substandard care, unethical and illegal. As false billing practice has become very common, some therapists are not even aware that they are involved in what some people call "theft by deception."

Examples of False Accounting of Services:

Using a 'reimbursable' individual therapy **CPT code**, such as 90806, while providing couple or family therapy, which often is not reimbursed by insurance. As a reminder, 90806 stands for: "Individual psychotherapy, insight oriented, behavior modifying and/or supportive, in an office or outpatient facility, approximately 45-50 minutes face-to-face with the patient."

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Using a **DSM diagnostic code** that is likely to be reimbursed rather than a code that would not. A common example is using the code of Generalized Anxiety Disorder (300.2) rather than Borderline Personality Disorder (301.83) or a V Code, which would probably not be covered by the insurance company.

Using a reimbursable **DSM Code** when a diagnosis does not actually exist. An example is a perfectly healthy client who seeks therapy to explore normal and healthy existential, spiritual or familial concerns but is given an Axis I diagnosis rather than a V code, which is not likely to be reimbursed.

Some clients express understandable concerns regarding the possible **negative effects to their employment, health insurance, life insurance or security clearance** due to having mental health records indicating that they suffer from a "mental illness." Examples of problematic diagnoses might include: substance abuse, major depression, bipolar or personality disorders. In response to these valid worries some therapists record less severe or more elusive diagnostic codes, such as 300.02: Generalized anxiety disorder or 300.00: Anxiety disorder NOS.

Recording CPT codes for **sessions that did not take place** is another form of insurance fraud. If therapists decide to include missed sessions, the records must clearly indicate that services were not provided on these certain dates due to client's late cancellation or due to client's not showing up to a session.

Therapists who **inflate fees** in the insurance bills that are significantly higher than their standard full fee are also involved in insurance fraud. Obviously, therapists who have contracts with managed care or insurance companies will be reimbursed at the contracted fee level.

Finally, therapists are advised not to automatically **waive clients' copayments**. If you choose to waive clients' copayments, do not do it in advance but follow 'acceptable' procedures for forgiving clients' debt.

Additional Resources on Insurance Fraud

For an informative and helpful resource on insurance practices, go to:

[Navigating the Insurance Maze: The Therapist's Guide to Working With Insurance -- And Whether You Should](#) by Barbara Griswold, LMFT.

Principles of Business Ethics

<http://www.humana-military.com/library/pdf/compliance-fraud-prevention-guide.pdf>

Coalition Against Insurance Fraud

http://www.insurancefraud.org/med_providers_report.htm

Theft by Deception. Journal article by Bruce Gross; *Annals of the American Psychotherapy Association*, Vol. 7, 2004

Newly Identified Predictor of Suicide Attempt

Measuring the Suicidal Mind: Implicit Cognition Predicts Suicidal Behavior

from APS Journal *Psychological Science*

Matthew K. Nock, Jennifer M. Park, Christine T. Finn, Tara L. Deliberto, Halina J. Dour, and Mahzarin R. Banaji

People seeking treatment at a psychiatric emergency room completed an implicit association test (IAT--a test measuring automatic associations people hold about various topics) related to life and death/suicide. It was found that those with a stronger association between death/suicide and self were significantly more likely to make a suicide attempt within the following 6 months than were those with a stronger association between life and self. These results suggest measures of implicit cognition may be useful for detecting and predicting clinically important thoughts or behaviors that are unlikely to be reported, such as thoughts of suicide.

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