

## HOME BASED OFFICE and ETHICS

### Avoiding Liability Bulletin – December 2022

A CPH-insured reader asked about conducting a mental health practice in one's home and was interested in learning of any tips for practicing ethically and avoiding liability. Rather than write a lengthy article (which I might do at a later time), I thought I would raise a series of questions that practitioners might want to explore before embarking upon practicing from one's home – that is, seeing patients in-person (rather than via telehealth, which I trust is now widely done). The following questions are not meant to be an exhaustive list, but rather, an example of some of the necessary considerations before embarking upon establishing a home-based office.

- Will the practice from your home, whether with a separate entrance or not, violate the zoning codes or regulations of the appropriate governmental entity?
- Will the nearby neighbors (if there are any) have a problem with mental health patients (to the extent they are informed or eventually figure it out) "coming and going?"
- Is there anything in the state laws or regulations pertaining to your license that prohibits or otherwise limits your right to conduct a practice in your home?
- Do the ethical standards or code of ethics of your national or state professional association address this issue in any way, whether directly or indirectly?
- Have you thought about your own privacy issues and your own safety issues before embarking upon a home-based practice?
- Have you thought about the possibility of a dangerous patient or an unsatisfied patient or some other kind of situation with a patient that might make you sorry that the patient was aware of your residence and perhaps other family information?
- Will all patients be welcomed or will you develop some sort of a screening process?
- Will you be disclosing to health insurers or other payers that services were rendered from your home?
- Will there be a separate entrance from your home's main entrance and will that entrance be accessible to those with physical impairment?

- Will you be conducting therapy in a room within your living quarters, and if so, what protections will you have to avoid disturbances, interruptions, noise, etc?
- What assurances and disclosures will you make to patients regarding their privacy and confidentiality when they come to your home office – will it be any different than those who you would see in a business office or clinic?
- Where will patient records be kept and what protections will there be against inappropriate access by family members or others?
- Will you be disclosing to your home owners insurance company the fact that you are practicing from your home, and what will be the consequences from that disclosure?
- Are there restroom facilities available to patients that would be appropriate and non-intrusive to your personal living arrangements?
- Will patients be able to park their vehicles in a manner that presents no problems upon arrival and departure?

*Note: The following article was first published on the CPH and Associates' website in September 2009. It appears below with minor changes.*

## **MAKING HOME VISITS**

Michael Jackson's death, and the investigation of several doctors, including one or more "concierge doctors," raised the question of home visits for me. What would a state licensing board do if it found out that a licensed clinical social worker, licensed psychologist, or licensed marriage and family therapist was living with a patient or client in order to provide around the clock monitoring and care for the serious mental health problems of the patient? What if this were done with a suicidal patient? I suspect that the licensee would be in considerable jeopardy, both ethically and legally. The licensing board might argue that such action did not constitute a mere home visit, but involved something more – perhaps an unethical dual relationship (not all dual relationships are unethical or unlawful in many jurisdictions).

On the other end of the spectrum is the simple home visit to a patient or client who for any number of reasons, including convenience, may prefer or need to be seen in his or her home. There is nothing wrong, in my view, with a licensed mental health professional seeing a patient or client in that manner. In the fine tradition of family medicine, as it was practiced for many years in our country, and in recognition that home health services are an important part of our current and future health care delivery system, home visits should not garner undue concern. One can certainly

argue that when services are delivered in the home, the mental health practitioner might gain useful knowledge about the patient that might otherwise not be apparent. That does not mean that there aren't ethical and legal considerations and issues involved with respect to home visits.

For example, if a pre-licensed person working under supervision for a nonprofit and charitable corporation or for a private practitioner were to make home visits, what special considerations or issues might there be? One that comes to mind is the possible liability for the employer in the case of an accident on the way to the client's home or from the home. If the supervisee is at fault in an auto accident, the employer might have some liability since the driving was for business purposes. Additionally, I would assume that in many states, since the employee was injured on the job (or on the way to or from the job), the employer might have liability under the state's workers' compensation system.

There may also be issues with respect to supervision that will arise. Will the supervisor make one or more home visits? Will the supervisor assure that home visits are appropriate for a particular patient with this particular pre-licensed person? What time of day or night will these visits be made? Suppose that an associate or intern engaged in sexual relations with the patient at the patient's home. Suppose further that the supervisor had not made a home visit to examine the environment or to observe and talk with the patient first. Suppose that the supervisor never observed any of the therapy sessions? Might not the supervisor and the employer have some vulnerability? Of course, these same issues can arise in an office setting as well.

On a separate but important note, employers should make sure that patient treatment records are not being transported out of the employer's place of business, or if they are, persons are adequately trained or educated about the necessity to safeguard the records and the manner in which that can be done. If this topic is neglected, a confidentiality crisis can unexpectedly appear when records are lost, misplaced, or stolen, or when the records are kept in the home of the employee. Also of concern is the issue of insurance billing, to the extent that becomes relevant. Practitioners must be careful not to misrepresent the place where the services were rendered by using incorrect procedure code numbers. Confidentiality and privacy concerns are always relevant. For example, where will services be rendered – in what room? Will anyone else be in the house or likely to visit? How will patient privacy and confidentiality be protected? Will the client or patient tell the other people that may be present that you are a psychotherapist – or will they want that information to remain private?

None of the above considerations, however, seem to me significant enough to deter one from deciding to deliver services by making home visits. One must simply think of the different issues that may arise and be prepared to deal with them in an ethical and lawful manner. I've advanced a few of my thoughts in this short piece about

home visits, but certainly have not touched upon all of the issues and considerations that may be involved in any particular situation. And, of course, one must be aware of state law and regulations that may relate to this subject matter, as well as professional ethics codes and standards of practice.