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*Psychologists Can Help
with School Violence:
A Model Letter and Talking Points*



Introducing columns on:

- *Psychopharmacology*
- *Ask the Patient Advocate*
- *The Mentor's Corner*

footsteps. As psychologists we see meds as adjuncts to the practice of psychotherapy and as such can be very useful. We approach the patient in the knowledge that a “*healing relationship*” is the key to the patient’s improvement in their self-esteem, heir relationships with significant other, and their sense of well being.

I am writing from a psychodynamic point of view. However, in all psychological treatments, including cognitive behavioral, systems, psychoanalytic, the “HEALING RELATIONSHIP” is still fundamental. We need to study how this is functioning in the world of telehealth. Articles have been written about telephone analysis indicating it works but the recommendation is for a strong prior relationship to exist before telephone therapy is undertaken. Many of the new online activities are proclaiming that speaking to a psychologist even though you have never met the person can be therapeutic. This is the new frontier and I am not yet familiar with how this works an if it does. We need to evaluate it as it unfolds. Perhaps the healing relationship exists here too.

Often, as we work with a patient, we have a general understanding of what is going on within the patient and between us. But we don’t always know what is driving the associations or what motivations underlie the patient’s verbalizations. We must have faith in the method during those times when we aren’t exactly sure what is going on. It is important not to fault ourselves for this lack of knowledge. It may seem like heresy, but I am claiming that it is all right not to know what is happening at every moment in time. Psychotherapy is a dynamic process and can’t be practices with a manual. A manual maintains that you know what is happening at all times and when the patient does A you do B. That isn’t real therapy. A relationship unfolds just as unconscious material unfolds—slowly in jumps and starts. Therapists are always surprised by what comes next in the process. That keeps the process alive and vibrant. It also provides some of the fun in our work. Using ourselves as the “therapeutic instrument” means we are engaged, involved, experiencing our own feelings as well as responding to the patient’s feelings, all of which enter into the process we call psychotherapy.

Our willingness to engage with our patients in a life-loving interchange and to help them deal with the difficulties in their lives is to be commended. We are not afraid to help them face what they fear. We offer ourselves to our patients with all our talents, our knowledge, our hopefulness, our interest in being helpful, our experience, our joy in life, and our long training. What we give is very special. We offer a “healing relationship” which we call psychotherapy. It is something we can take great pride in.

Stan Moldawsky, Ph.D., is running for President of APA. He is a Past President of the New Jersey Psychological Association, he is a member of CAPP, a Past President of APA Division 42, a Past President and Member of the APA Board of Directors, a Past Chair of the APA Board of Professional Affairs, Visiting Professor and one of the Founders of the Rutgers University Graduate School of Applied and Professional Psychology, and recipient of The American Psychological Foundation Gold Medal Award for Lifetime Achievement in the Practice of Psychology. He can be contacted at 212 Main St., Chatham, NJ 07928, 973-35-9558.

Ask the Patient Advocate

Managed Care & Insurance Q&A *From the Interdivisional (29/39/42) Task Force on* *Managed Care and Health Care Policy*

Ivan J. Miller, Ph. D.

Q. “I have resigned from a managed care company, but I still receive mailings and sometimes get phone calls from clients who were told that I am one of the professionals on its provider list. The patients are misled and my time is wasted. What can be done?”



A. This problem occurs in all areas of health care. Sometimes managed care companies keep professionals on their lists deliberately to inflate the list size because a long list of professionals helps them obtain contracts. Other times, the company is just too incompetent to maintain an accurate list. Regardless of the cause, the result is phantom networks that both mislead the public about the size of the network and waste the time of patients who need to find professional help.

If you are only interested in confirming that you have legally resigned, sending a registered or certified letter will take care of this. However, the systemic problem can be addressed by duplicating a brief research project that was conducted in Colorado, by the Patient Advocacy Coalition (PAC). The PAC heard that it was hard to find a Magellan psychiatrist. It obtained a list of the Magellan psychiatrists from the Internet and called all 35 to find out which ones were alive, actually

Magellan providers, and taking new patients. Only four were taking new patients in the Denver Metro Area, an area with a population of about 2,000,000. As a result of informing the media, a national news story is in press and the news story is putting pressure on Magellan to solve the problem.

Phantom networks are most likely to develop when a managed care company is losing professionals due to onerous contract provisions. It is unlikely that the situation will improve unless it is brought to the attention of the media and insurance commissioners. The PAC investigation took only 12 hours of work. If there is a similar problem elsewhere, this is the kind of project a state psychological association could easily conduct and use to bring problems with phantom networks to the attention of either the local press or the insurance commissioner.

Russ Holstein, Ph. D.

Q. I have contracted with a PPO. Recently, I discovered that not only does the PPO discount payments for health insurance but it also discounts fees for PIP (Auto Personal Injury Protection) claims. Moreover, they do not require utilization review for the former but require it for PIP claims. Is the PPO allowed to restrict and control the treatment or fees of my PIP patients?



A. Some states allow this and some do not. The answer, which also applies to the same question substituting “workers comp” for “PIP,” depends on state law, which virtually always regulates these plans. In some states the statutes and regulations pertaining to PIP and workers comp spell out the payment mechanisms. The rationale for these laws is that when an insurance company owes payment for damages, the damaged person needs to be protected from being forced to seek discounted or compromised services.

I have had success several times with the following method. New Jersey law recognizes either a state “fee schedule” or UCR for these claims. Therefore, when a PPO pays the discounted PPO rate, I indicate that this is an illegal payment mechanism, and therefore the PPO contract that would require me to accept the PPO rate is, in this instance, null and void. I add that no contract can require either party to engage in

a relationship that does not comport with state law or regulation.

In addition, I insist that for the PPOs that I participate in, I should be queried as to whether I would wish to participate in their PIP or workers comp network. When asked I politely decline. PIP and Workers Comp are labor intensive and involve dealing with lawyers, and IME professionals. Finally, payments are delayed or frequently denied until the patient’s lawyer can get before a judge. For this, who wants to be paid a discounted rate? And what grocer would want to have to also discount his grapefruits if he has a sale on oranges?

First, read the statute and regulations, or ask a lawyer to do this. If there is not recognition of a PPO payment arrangement or other discounted services, contact the payor and insist on your rate and/or the payment mechanism designated under law.

If this is too much trouble, contact the payor and tell them that you believe that a PPO arrangement is not recognized under your state law. I call this method punting. At least they are on notice to prove you wrong and they will have their legal department do the work. However, their legal department will represent them, not you.

Finally, the utilization review also may be part of state law and the same research applies. In NJ utilization law now requires review so I must do summaries for PIP as well as write notes that suit lawyers for auto accident victims.

Gordon Herz, Ph. D.

Q. An insurance company sent a letter asking for reimbursement of an “overpayment” of their liability for services that I provided last year. They are asking me to return the money and state that if I do not, they will deduct that amount from future payments to me. Does this mean that I should bill the patient for the refunded amount? Should I agree to the refund?



A. Many practitioners and their billing offices have faced this dilemma, and there are many reports that assertive professionals have successfully refused reimbursement. First, realize that if you do reimburse the insurance company, and indeed what you received was a proper

payment for services provided, the patient may be the one who stands to lose. Unless otherwise prohibited by a contract you signed with the insurer, you would certainly be within your rights to recoup the fee from the patient. If you do not do this, you have taken a loss for services that you did provide and for which you would have billed the client at the time services were rendered.

Second, if you do not reimburse the requested amount and reimbursement for future clients is reduced, those future clients may also stand to lose. Again, unless the contract you have with an insurer prohibits this, future clients whose reimbursement is reduced could be responsible for greater payments than they might otherwise owe.

The following does not apply to Medicare and Medicaid. If these payers send a 'recoupment letter,' your best strategy is to comply, check your facts, and appeal later as appropriate. These particular payers can legally invoke serious penalties beyond recoupment. However, an indemnity insurance company or HMO may not be entitled to recoupment at all.

A number of jurisdictions have ruled on this issue and held that no recoupment is allowed if services were provided and the practitioner received payments in good faith, and the practitioner could not reasonably have known there was an overpayment. An assertive letter, and a convincing threat to follow up legally should "recoupment" from future reimbursement occur, may be all that is necessary. The following is a powerfully written legal format used by one professional.

Dear [Insurance Company],

We are in receipt of a refund request in the amount of \$[] for client [].

We have reviewed this account thoroughly, and according to our records, the claim has been paid and the account is closed. You will be pleased to know we find no balance due from your company, nor do we find any payment that you are entitled to recoup. We have applied all appropriate contractual adjustments, if they apply, and the patient has been balanced billed for their responsibility, if any.

According to federal law, as a third party creditor, we cannot be held liable for mistakes on the insurer's part. We obtained the patient insurance information at the time of service and there was every indication we were entitled to 3rd party payment from your company, based on the patient's representation.

If you are claiming an overpayment, we received your payment and your Explanation(s) of Benefits dated [], copies enclosed] in good faith. Based on your payment and Explanation of Benefits,

we did not bill the patient for the portion covered by the insurance. We have provided services in good faith, and the funds received have been exhausted.

There are several court decisions that bear on this situation. In 1992, the California Court of Appeals held that, if a provider bills in good faith, and the insurance company accidentally pays too much based on the insurance company's own calculation, the company cannot collect a refund from the provider, so long as there was no misrepresentation or fraud on the provider's part in billing (*City of Hope Medical Center v. Superior Court of Los Angeles County* (1992) 8 Cal.App.4th 633). The discharge for value rule, or the innocent-third-party-creditor rule, has also been applied in an analogous situation. Numerous courts have held that an insurer is not entitled to recover payments erroneously made to an insured's health care provider. See *National Benefit Adm'rs, Inc. v. Mississippi Methodist Hosp. & Rehabilitation Ctr., Inc.*, 748 F. Supp. 459, 464-65 (S.D. Miss. 1990). See also *Time Ins. Co. v. Fulton-DeKalb Hosp. Auth.*, 438 S.E.2d 149, 152 (Ga. Ct. App. 1993); *St. Mary's Med. Ctr., Inc. v. United Farm Bureau Family Life Ins. Co.*, 624 N.E.2d 939 (Ind. Ct. App. 1993); *Lincoln Nat. Life Ins. Co. v. Brown Schs., Inc.*, 757 S.W.2d 411 (Tex. Ct. App. 1988).

Similarly, your company, as the insurer, made a payment to discharge a debt owed by the patient, and we are not required to refund the payment based on your calculations and which we received in good faith.

We feel that we have been properly reimbursed for services rendered and no refund will be issued. If, in the future, you elect to deduct the so-called overpayment from benefits payable on behalf of other beneficiaries of yours to whom we provide services, we will see that our legal counsel insures that our rights, and the rights of those beneficiaries as supported by the law, are preserved. Please do not hesitate to call me if you have any questions or need additional information. You can contact me at [Days, times, number].

Sincerely,
Patient Billing Administrator

Of course if you issue this letter you must be sure you had no other reasonable notice at the time services were rendered or payment received that you were not entitled to the payment as received. In the event that the insurance company reduces future payments, you can choose whether to follow through legally. In that event, enlisting help of the future patients whose benefits are short-changed based on so-called overpayment by other beneficiaries, and who become responsible for a larger bill, could be quite useful. In all probability their contract with the insurer does not allow for this possibility. Finally, should you deny repayment in this manner, you of course should judge the relative impact this might have on a potential referral resource or company for which you see many beneficiaries. If these are minor factors, you are on solid ground asserting your right to refuse "repayment."

Readers are encouraged to submit questions about insurance and managed care problems that impact consumers and professionals. E-mail is the preferred method of submission, but written questions will be accepted. When submitting e-mail questions please put Ask the Pt. Advocate? at the beginning of the subject line. The Q&A Editors may not be able to acknowledge or respond to all submissions. Submit questions to any of the following Ask the Advocate editors: Gordon Herz, Ph.D., drhrz@mentalhealth-madison.com, Mental Health Associates, 20 S. Park St., Suite 408, Madison, WI, 53715; Russ Holstein, Ph.D., Brholstein@aol.com, 170 Morris Avenue, Long Branch, NJ 07740; Ivan J. Miller, Ph. D., IvanJM@aol.com, 350 Broadway, Suite 210, Boulder, CO 80305.

The Q&A Editors are providing their best advice; however, readers must use their own judgment about their particular situation and possible benefits and risks.

Membership Appreciation Meeting and Extravaganza

Sunday August 26, 2001

4:00pm – 4:50pm

San Francisco Marriott, Golden Gate Salon A1

Division 42 wants to thank you for being a loyal member. We've been planning all year to come up with exciting and fun ways of showing our appreciation to you.

Don't miss this great event. This will be like no other Division 42 gathering you've ever attended.



Division 42's Annual Social Hour

Sunday, August 26, 2001

5:00pm – 6:50pm

San Francisco Marriott — Golden Gate Salon A2

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Have You Been to 42 Online Lately?

Division 42's web site features:

- **The current and past issues of *The Independent Practitioner* with a Search Engine and Chat Features to Discuss articles online**
- **Meeting information**
- **Practice development materials, including order forms for PICK 42 niche guides and Practice Development Brochures.**
- **News and Views with hundreds of articles not found in the IP**
- **Division governance information**
- **Committees and task force information**
- **A Discussion/Chat room for 10 members at a time.**
- **Practice links**
- **FAQ's for the Division**
- **Division History - a pictorial look at our Division**
- **Continuing education opportunities**
- **Consumer information**
- **Membership information and application**

Visit www.division42.org frequently as new material is being posted weekly.

Public access to the Division pages also begins at www.psychologistshelp.org.

A password system for the Members Area has been implemented. To enter, you need your APA membership number in order to proceed to those areas.