SO YOUR CLIENT WANTS TO SEE HER FILE.....

It's one of those special therapist's nightmares. Your client leaves a message on your voice mail that tomorrow, during her appointment, she wants to come in and look at her file. You know that your progress notes contain impressions that she will surely misinterpret and that a perusal of the file is definitely *not* in her best interests. Or even worse, in the middle of a session, the client you have provisionally diagnosed as flagrantly narcissistic and who is in deep denial, would like to see what you have written about him.....now.....here!

What to do? Do you stumble, "Well, you know, I'm really not sure it's in your best interests to look at your file"? If this response feels like just the ticket, or on the other hand, woefully inadequate, you may want to take a closer look at Washington law to either, in the first instance, give you a dose or reality, or in the second, a bit of succor.

In 1991, the Washington Health Care Information Access and Disclosure Act (Revised Code of Washington (RCW) 70.02) became law. Our legislature acknowledged that patients have a need to access their own health care information to make informed decisions about their health care. (RCW 70.02.005(2)). However, they understood that there were times when it would be inappropriate for a health care provider to reveal the content of a patient/client's records to them. So, a specific procedure was outlined to give therapists and all other health care professionals guidelines for how to proceed. These rules are found in RCW 70.02.090.

I'm going to give you a brief summary of this law and then show how a Court of Appeals interpreted it in the context of a dispute between a therapists and a father embroiled in a nasty divorce case.

RCW 70.02.090 does permit the therapist to "deny access to health care information" under certain circumstances, <u>none of which</u> include a determination by the therapist that it would not "be in the best interests of the client" to obtain that information. In fact, there are only <u>five</u> acceptable reasons for denial. These are:

1. Knowledge of the health care information would be injurious to the client's health;
2. Knowledge would reasonably be expected to lead the client to identify a person who provided information in confidence to the therapist under conditions in which confidentiality was appropriate;
3. Knowledge could reasonably be expected to cause danger to the life or safety of a person;
4. The information was compiled and is used only for litigation, quality assurance, peer review or administrative purposes or;
5. Access to the information is otherwise prohibited by law.

This law acknowledges that conditions (1) and (3) (the most common) will most likely be based on judgment calls by the therapist, so there is a special provision for these exceptions. If either apply, then the therapist must permit examination and copying by another therapist who is licensed to treat the client for the same condition. You must advise the client that they have the right to have this other therapist make the review (at the client's expense).

If we're lucky, the court of appeals will have an opinion with an interesting set of facts that explain how this law operates in practice. Such luck is definitely with us, here, because in 1997, Ray Neel tried to force the therapists at Life Net in Snohomish County to reveal his daughter's counseling records. Here's the story.

Ray and Georgia were divorced in 1995. This must have been a pretty heated divorce, because the parenting plan specifically provided that the children should have therapy. While parents may often engage their children in counseling around the divorce, specific directives that this occur are on the rare side. The judge's order also confirmed that both parents would have access to their children's counselors. (There is a statute in Washington that clearly permits both divorced parents to have access to children's medical care records regardless of who the kids are living with primarily. (RCW 26.09.225))

In 1997, Ray filed to modify the parenting plan - this being done in an environment of intense continuing parental conflict and allegations of child abuse. When Ray found out that his 8-year old daughter was receiving treatment from Life Net, he demanded that they give him access to her records. Life Net simply did not respond. Ray filed a separate legal action to compel disclosure. The judge ordered that Life Net submit the records for it's own review and after reading the file, the court ordered that it would not be in the child's best interests to release the records. Ray appealed, saying he had clearly been given the right by the Parenting Plan to review his daughter's records.

In 1999, the Court of Appeals in *Neel v. Luther Child Center* (which can be found at Volume 98 Washington Appellate Reports, page 390) said, essentially, "You're both wrong." Citing the Health Care Information Act, the Court said that the therapy center could *not* just refuse to release the records without explanation. (In fact, Life Net did the worst thing you could do. They simply did *nothing*. One of the strongest messages you can take from this case, and this column, is: If you receive something that may have legal significance, never do nothing. These things never just "go away" if we ignore them.)

The Court said that the law gives a very clear procedure for handling demands for records that you don't want to release. You *must* tell the client the reason for your refusal; it cannot be simply because it isn't in their "best interests." One of the five justifications in 70.020.090 has to cited. You also *must* advise the client that they have the right to get another therapist to review the records and make an independent determination on release.

However, Ray missed the boat as well. The Court said that the law allowing a parent access to a child's medical records exists so that the parent can support the child's care. Here, Ray wanted the records for *his own purposes* - to see if his daughter had complained about child abuse. This was not a permissible justification for records release.

Thus, when the dust had settled, the Court upheld the refusal to release. The lessons from the case are: (1) If you don't want to release information, you've got to cite an acceptable reason (harm to the client, for example); (2) Probably harm can be found in the damage to the therapeutic relationship occasioned by review of the file; (3) Make sure you dot your i's and

cross your t’s and, finally, (4) If you are treating people or their children in the wake of a bitter divorce, don’t ever be surprised if you have to deal with lawyers and the courts.

Happy New Year to all.