Ethical Issues with Fees, Billing, and Collections

Part 1: Interview with Barton Bernstein, JD, LMSW

BARBARA ALEXANDER: We are going to talk today with Barton Bernstein, an attorney and licensed master social worker who has written two books on legal and ethical issues for mental health professionals. He will share his position on fees, billing, and collections.

Mr. Bernstein is co-author of The Portable Lawyer for Mental Health Professionals and The Portable Ethicist for Mental Health Professionals, both published by John Wylie & Sons. During the past five years he has participated in seven educational videos, authored or co-authored over seventy-five articles and book chapters, and delivered over one hundred professional lectures. He has served on the faculties of Texas Women's University, Southern Methodist University, and the University of Dallas at the Irvine Campus. He is currently an adjunct professor at the University of Texas Southwestern Medical Center, Department of Psychiatry, and the University of Texas at Arlington's Graduate School of Social Work.

ALEXANDER: Mr. Bernstein, I want to say that your book, The Portable Ethicist, is really very remarkable.

BERNSTEIN: Thank you very much.

ALEXANDER: The thing that I found the most useful was that all the ethical issues you discuss in the book are backed up by examples from the various professional ethics codes, and I realized how very helpful the ethical codes can be.

BERNSTEIN: What we have in the book is basically the ethics codes of the major professions: psychologists, social workers, counselors, marriage and family therapists. These are the broad umbrella groups, and that is very important.

Remember, many states have individual ethics canons. You can be discharged from membership in a major national organization for an ethics violation, but you still have your state license unless the national organization reports you to the state licensing board. The state licensing board can take away your license to practice your profession. It is terribly serious if individuals are not familiar with their state's licensing laws and they violate them. They can lose their license to practice their chosen profession the same way that a doctor can use lose his/her medical license and a lawyer can lose his/her license to practice law.

ALEXANDER: The first question I would like to ask you about is setting the fee. How do therapists determine what a reasonable fee is, and is there something in the ethics codes about that?

BERNSTEIN: There is nothing objectively that authorizes any individual to charge any specific fee. That is not promulgated by the national canons, and it is not promulgated statewide in the
sense that the state is going to tell you what you can charge per hour. So, it is still supply and demand to some extent. Certain people historically charge more; other people historically charge less. What you cannot do is charge someone more because he/she has insurance, or conceivably charge someone more because that person is in a precarious situation.

For example, a person calls you on his cell phone and says that he is going to jump off the Brooklyn Bridge. You know that this person is a millionaire. However, you can't charge him a million dollars an hour because he is in a precarious situation, and you know that he is rich. You still would have to charge him your standard fee. Now, your fee may be higher than someone else's fee, but it's got to be reasonable under the circumstances for that individual even though that person is able to pay more.

ALEXANDER: There has been a lot of talk about sliding fee scales. I know that therapists think about it in terms of making their services more available for people who can only afford to pay less. In fact, certainly that is the practice of agencies, mental health centers. What about where the person can, in fact, pay more? Can the scale slide upward?

BERNSTEIN: Well, yes, but the main concept here is that it can always slide up. The main concept is that you cannot charge more simply because a person has insurance. What every individual practitioner has to do is create an objective scale for creating the sliding fee scale. Factors can include, for example, family situations, earnings, ability to pay, size of the family, obligations of the family, health of the individual. You can use an objective criterion of five or ten different elements that you create, and those are some of them. What you cannot do is say, "If you have insurance, I will charge you more." In other words, when an insurance company asks what your average fee is - what your charted fee is - you can tell them $80.00 an hour. However, you cannot charge $80.00 an hour for everybody who has insurance and $30.00 an hour for everyone who doesn't, in absence of all these other objective criteria - all of which ought to be on your intake form so that you have the backup data on exactly why you established a particular fee for this individual client.

Now, the laws of every state that I know of, and most of the national canons, require that you tell people what you are charging. That includes not only what you charge for therapy sessions, but what you charge for going to court, what you charge for writing a report, what you charge for telephone calls, whether you charge or do not charge for a missed appointment -- all of this has to be in your intake form. Also, your intake form ought to show the hourly rate and then the criterion for the hourly rate. How did you establish the particular fee that you are charging that particular client? That should be written in - either as a broad category, i.e., that everybody in XYZ company is charged so many dollars per hour - or as an individual, i.e., that this particular individual client is being charged so many dollars per hour.

ALEXANDER: Back to the $80.00 number. Let's say that if somebody has insurance, you charge that person $80.00 per hour. Now, if somebody else comes to see you who could never pay $80.00 out of his/her own pocket, but who could pay you $35.00 out of pocket, that is a sliding fee scale, isn't it?

BERNSTEIN: That is a sliding fee scale, but your intake form should show other criteria in addition to the fact that they do not have insurance. You should include all the other criteria in the intake form: Size of the family, the reason why they cannot pay more, and so forth.

ALEXANDER: Or, this client is a student. Something like that?
BERNSTEIN: A student, family expenses. You would have to have some other criterion in there over and above insurance as a factor. Otherwise, it is insurance fraud. If you tell an insurance company you charge $80.00 an hour, and you don't charge anybody $80.00 an hour except those people with insurance, then you have to tell the insurance company what you actually charge, because that is your actual, realistic fee per hour. It is not what you charge people who have insurance; it is what you charge the person who comes into your office. And, what you charge them is your standard fee.

ALEXANDER: What about waiving the co-pay?

BERNSTEIN: Well, you can waive the co-pay as an unpaid bill, but you still have to let people know your standard fee is $80.00 an hour, and then you bill them $80.00 an hour. If they don't pay the co-pay, then you can waive it. Or, you can simply not pursue collection efforts, which is about the same thing coming through another door. In other words, you are not forced to turn every unpaid bill over to a collection agency, a credit agency, or to sue people. If you charge $80.00 an hour, and this person pays you, in fact, $50.00 an hour, and the client builds up five weeks at $30.00 an hour, or $150.00, you don't have to pursue that payment. You can just write it off. Now, it is a work of art. Are you waiving the fee or writing it off? If you write it off, there is no problem.

ALEXANDER: If you waive the co-pay, could you be in trouble with the insurance company or the managed care company?

BERNSTEIN: If you waive it as a company policy, then you are never charging more. So, when the insurance company comes to you and says, "Ms. Alexander, what do you charge per hour?" and you say "$80.00 per hour," and they audit your books, and they find that nobody pays you $80.00 an hour except insurance people, then it indicates that you are misleading them, deceiving them to some extent by suggesting that you have one hourly rate when you actually do have another hourly rate.

ALEXANDER: How does an insurance company have the right to look at all your patients' billing records?

BERNSTEIN: Well, you could de-identify the records of your other patients, but insurance companies do have a right when they offer to pay you, and you accept insurance company payments. You surrender certain rights, and generally one of the rights that you surrender in writing is the right to the absolute confidentiality of your billing records. So, you may have to de-identify your records, and the insurance companies would have the right to audit your books to see what you charge people per hour, so that they can verify if the amount you are quoting them - $80.00 - is the actual amount. Or, is that an amount you would like to get, and you only get it from them.

ALEXANDER: What about the other side of the payment issue? What about payments in cash?

BERNSTEIN: Payments in cash are payments. So, when someone hands you $50.00 for a session, it's income to you, and the Internal Revenue Service has the right to know about it. It doesn't really matter if you are paid in cash, by check, or by MasterCard or Visa.

ALEXANDER: What if a person says to you, "Some day I may have a career in politics. I don't want it ever known that I have seen a therapist. I am going to pay you in cash." Can you accept that?
BERNSTEIN: Oh, yes, you can accept it, and you can put it down as a cash payment if you wish. The main thing you cannot do, though, is you cannot represent - to this actress, to this future politician, to this future vice-president - you cannot represent to that person that you will not keep clinical records. As soon as you offer therapy, you have to open a clinical record, and you have to keep and maintain that clinical record. Now, the only way that cash would be helpful - and some therapists have done this with famous, or soon to be famous people - you keep the record in your office under another name, so that anyone breaking into your office searching your records, hacking into your computer, could not locate who the real person is.

But, if you were subpoenaed into court, or if there were a criminal problem and someone wanted to view that record, you would have to show that you kept and maintained an accurate record of every single client contact, including when they came in, how much time they spent with you, their billing record, whether or not they paid, and with the traditional medical model - the diagnosis, prognosis, and treatment plan.

If another therapist was covering for you while you were on vacation, that therapist would need to know the diagnosis, what the mental health problem was, the treatment plan, and the prognosis. The covering therapist would have a right to know that, and the insurance company making the payment on the claim has a right to know it, also. The fact that somebody paid in cash only indicates that he/she doesn't have an outstanding check, so that someone who might subpoena the records would not come upon a MasterCard charge or a canceled check.

ALEXANDER: What if - and I used the example of the television program, The Sopranos, with another expert I interviewed -- what if the therapist suspects that the source of the cash is corrupt, or crooked, or illegal?

BERNSTEIN: Well, I don't think that suspicion would carry very much weight anywhere. I don't know how much you are talking about, but if you were talking about $50.00, or $100.00, or $200.00, I don't think that historically you have got to go to the source of the greenbacks and find out where that money came from. I never have heard of such a case. It doesn't mean that it doesn't exist, but I have never heard of a case where you, a therapist, would be accused of money laundering because the person who paid you money was receiving it from illegal sources.

Now, if you remember the movie, Analyze This, with Billy Crystal, you remember that he was working for a mob boss who needed psychiatric help. Lord only knows where the money came from, but one question that never came up in the movie was the question of, "Was this legally or illegally obtained money?" I don't think you have to go back and check that out. I think that you can make the assumption, in the absence of proof to the contrary, that you have a right to take money from this client when the client tenders it to you. You don't have to look at the source of the money you get anymore than you have to check to see if the client paid his taxes.

ALEXANDER: Years ago, there was a therapist, and subsequently this person did lose his license (as I had hoped at the time), who told his clients that if they paid him in cash, he would give them a discount - because then, of course, he would not be declaring it as income. Again, this person did subsequently lose his license. I remember being totally appalled when I heard that. Would you agree that this is an unethical action?

BERNSTEIN: If you charge $100.00 an hour and you want to give a discount of 25% for people who pay you cash because it is easier for you to run through your books, you are not doing
anything illegal at all, because essentially you are on a cash basis of $75.00 an hour. As long as
you declare that as income on your income tax, you are okay. My guess is that this individual
was not paying his taxes.

ALEXANDER: Right.

BERNSTEIN: So, you had someone who was accepting cash - essentially in cahoots,
conspiring with his clients to pay him cash so that it would not be on their record as a payment -
because they couldn't deduct it anyway, and it wouldn't be on his record as income. He was
cheating the Internal Revenue Service, which is fraud, and most states and national codes
would indicate that if you commit tax fraud, you can lose your license, and that is probably what
happened here. Remember that most therapists on are a cash basis (e.g., in accounting terms)
in the sense that the income the therapist has is the income clients pay the therapist with. It's
only when the check clears the bank that it is income to you. So, if you have clients who don't
pay the bill, for example, you cannot write it off as an unpaid bill and get a deduction like you
can in some other circumstances. Most therapists are on a cash basis, and they have to declare
every single nickel they take in.

ALEXANDER: Speaking of bad debts, can you ethically stop seeing somebody because they
have not paid their bill?

BERNSTEIN: Yes. Now, what I would suggest strongly, and this is discussed in the book, The
Portable Lawyer, is that you have people sign a form when they come in that essentially sets
forth the terms of payment - something to the effect that when you see Ms. Alexander as your
therapist, you agree with Ms. Alexander that you will pay her either each time you visit, or on a
monthly basis. (We have provided these forms in the book.) And, then, you further agree by
contract that if the client does not pay the monthly bill within two or three weeks after the end of
the month, the therapy services may be terminated without there being any problem of
abandonment. You are not obligated to see people for free, so if people don't pay you, you may
always terminate treatment, but only without abandoning a client.

You have to be very, very sure that you terminate appropriately, which means that you have to
give the person notice, supply the person with a list of competent therapists in your area who
are available to them, and if it is a money problem rather than a choice they're making not to
pay you, then you ought to provide them with a list of local agencies where they can go and get
either a sliding fee scale or free services so that their therapy can continue. At that time, of
course, I would suggest a letter of termination where you advise the individual to continue in
therapy by paying for it themselves or by using insurance or by a sliding fee scale and give them
a list of the local charities where they can get continuing treatment free.

There is no reason, in other words, for the individual not to seek further treatment when that
treatment is available in their community at a lower rate than what you want to charge. People
who go into the therapy field are professional people, and they are absolutely entitled to be
compensated. Smart therapists review their intake and consent forms, and there should be a
clause in the form - the amount the client is expected to pay, when and how payment should be
made, and that if the client doesn't pay, the therapist can terminate the therapy. You can write in
there that if they don't pay you when they are two or three weeks behind, there will be a
termination interview; you will give them a list of other therapists or agencies they can go to, and
then the termination is effectively enforced.

ALEXANDER: Now, would you recommend that this be done in the first session?
BERNSTEIN: Yes, because most state licensing laws provide that the conditions of payment (fees) be established at the very first session, and some states, Texas, for example, require that you tell people what your fees are before therapy begins. This information can either be in a contract, or very often, a therapy center will put this information in a booklet that is given to the client when therapy begins. The person signs a receipt for the booklet - acknowledging that they received the booklet and warranting that they will read the booklet within a week, or two, or three, but that they will read it and that they are responsible to read it.

Now, if they get angry at a later date, and they want to sue the therapist for abandonment, the burden is then on them to show that they were inappropriately terminated. Their lawyer is going to have to show why they didn't read a booklet that was handed to them and why when they said they would read the booklet, they didn't read it.

Keep in mind - and this is something that a lot of therapists have a problem with - you are in the practice of therapy, but your relationship with a client is contractual. It is a business relationship, and the business is governed by the contract you make with the client. That contract should be in writing and signed by both parties, and if you were one of my therapists -- that is, a therapist who looks to me for legal advice, I would tell you to draft the agreement very carefully with your attorney - so that it protects you the same way as when you sign a contract with a physician for medical services, or a lawyer for legal services.

That contact is drawn by the professional's attorney to protect the therapist. The other rule that every lawyer knows, but that clients don't think about very often, is that someone coming to you for help is going to sign a reasonable contract - because if you are asking people to pay you on time, that's not unreasonable. The client ought to know that.

ALEXANDER: Would you set aside, say, fifteen minutes in the first session to go over these things? This plays a big part in establishing the relationship in the first place. Now, if you are in a clinic setting, all of this is done in the front office. But, if you are in private practice setting, you have to do it.

BERNSTEIN: Yes, I would take ten or fifteen minutes in the first session to say, "I charge so many dollars per hour, and you are expected to pay for every session within ten days following the end of the month. If you don't pay, services will be terminated," and then I would say, "Sign here so I can commence serving you." Then I would give them a copy of the contract. We would both sign. I would sign, and they would sign. I would then give them a copy of the signed contract, put it in an envelope, and say, "Mrs. Smith, please take this home and read it carefully, and if you have any questions, let me know next week, and we will talk about it further." Some people, lawyer clients, will read the contract. Other people won't bother to read it. You will never hear from them again. I mean you will hear from them, but not questioning the contract.

ALEXANDER: This is the informed consent policy that you have in your book, is that right?

BERNSTEIN: There is no such thing as consent that is ill informed or uninformed. All consent is informed, if it's really to be consent.

ALEXANDER: Could I make a copy of this available to people who buy this program?

BERNSTEIN: You could make a copy available to the people who buy the program, but remember the limitation of any printed form, and that is it is a general form. Now, a given
therapist might want to make an adjustment. You would want to make an adjustment in the form if you were showing it to your lawyer and if you had some reason to adjust it. For example, if you were going to treat a minor and the parents of a minor needed to sign the form, you would put that on the form. If you were a therapist who was a play therapist, you would adjust it for play therapy. If you were an addiction's counselor, there are special problems with addictions, so you might put something in the form about the obligations of a client who promises, in a sense when they come in, that they have an alcohol or drug addiction and they are not going to violate your agreement by taking a drink or smoking marijuana--that kind of thing.

If you were doing marriage and family therapy where people come in and say, "We want you to make our marriage better," and you know as a therapist that some people get marriage therapy and get a divorce, you would want to put that warning in there - something to the effect that "I am offering competent marriage and family therapy, but the client understands that there are risks in marriage and family therapy, and one risk is that people do get a divorce." Ninety percent of what we have in the form would be perfect for anybody, but ten percent of the form has to be adjusted - tweaked - so that it applies to that particular therapist and that particular target group of clients. For example, if the clients are criminals, you are doing therapy in a criminal setting. Similarly with a hospital setting, or a geriatric setting, you want to make very sure that you have accounted for that in the form that clients are asked to sign when they come in - so that the target population is accommodating what you want. Do you see what I mean?

ALEXANDER: Yes.

BERNSTEIN: It makes a little bit of a difference. You can never take a standard form and use it for everybody. What we suggest is that people take that form, run it through their scanner, and then with their lawyer in tow, add to it to accommodate any national requirements, or any state requirements that might be a little bit different.

ALEXANDER: Again, look to the codes?

BERNSTEIN: Oh, of course. For example, if you were in California, you might have a duty to warn under the Tarasoff case. If you were in Texas, you don't have a duty to warn, and Tarasoff doesn't apply. Now, you might have something in the form that accommodates the duty to warn, or, if you have a high risk population, you might have something in there that says, "If I think you are a danger to yourself or others, you waive confidentiality in writing so that I can notify the identifiable, potential intended victim that they are in danger." The client waives confidentiality in writing. Or, "In the event that you are going to commit suicide, or in my professional judgment, I think you might, you waive confidentiality so I can notify your family or call the following people and have them prevent the suicide."

ALEXANDER: So, all of these things would be specially designed in the therapist's own informed consent policy?

BERNSTEIN: Yes, that's right. You have your own informed consent policy that protects you, the therapist.

ALEXANDER: I would like to continue with some specific questions regarding fees. What about patients/clients who call and ask if you will give them a first session for free? They are checking out any number of people, and they want to know if you will see them for free for the first session.
BERNSTEIN: Well, my answer to that would be that if you limit the conversation, you are okay. You might - we don't have a form in our book on that - you might even create a little form that says something to the effect that Mrs. Jones agrees that she is visiting with therapist Smith for the purpose of determining therapist Smith's competence as a therapist and for the purpose of determining if Mrs. Jones wants to seek therapy from Ms. Smith - something to that effect. And then the purpose of the meeting is very clear.

ALEXANDER: Oh, that's great.

BERNSTEIN: It's very clear that this is an interview of the therapist. This is not a therapy session. What you don't want to have happen - and this could be really tricky - you don't want to have a person come in and see you, start to tell you about his/her problem, and then leave and say, "I have decided not to use you," or leave and say, "Well, I will call you if I need you." You don't think he/she is a client because that's not why the person came to see you, but the person thinks that he/she has gotten a lot of therapeutic advice from you. You see, you need to put in writing that they acknowledge that they are not seeing you in your capacity as a therapist - because you don't want one of the elements of negligence in there - namely, that you have acquired a duty to treat that specific individual. So, if people say they want to interview you (rather than tell you their problems), I would suggest that there always be a writing indicating that the person is interviewing you.

ALEXANDER: What about missed therapy sessions?

BERNSTEIN: You mean, can you bill for them?

ALEXANDER: Yes.

BERNSTEIN: You bet you can. But, it has to be in your contract. Well, there are two things I might say. Number one, always put in the contact that "If you do not cancel twelve, twenty-four, forty-eight hours in advance, you will be billed at my customary rate of X number of dollars per hour." Then, if they don't pay you, if they don't show, you can bill them.

Now, if your second question is How hard should I pursue that payment? I would say, not hard at all. If a client stands you up two or three times, or even once, and doesn't offer to compensate you, I would figure out a way to terminate that client.

As a general principle, my co-author in the book, Tom Hartsell, and I don't even suggest that you ever vigorously pursue a bill. If a person gets behind in the bill, and you don't feel that they are going to pay you, we just consider that a credit or business risk. We would recommend that you write it off. I think Dr. Woody in his tape certainly agrees that you do not ever vigorously pursue a bill that is owed to you because as soon as you are vigorous, the client is going to say that you were negligent in your treatment, and then you have to turn it over to your malpractice carrier to defend because the client is threatening malpractice. Or worse, the client gets even with you by filing a complaint with your licensing board, and then you have to defend it at tremendous expense. So, it simply is not worth it.

ALEXANDER: But, let's say that this person is going to sue you for malpractice. Well, then the client goes to a malpractice lawyer, and a malpractice lawyer says, "Okay, I will take this case, but I need a $1,000 retainer." How likely is that going to be?

BERNSTEIN: That is going to be very, very likely.
ALEXANDER: How likely is it that a client would actually come up with the $1000 when all he/she owes is $350? Would the client give the lawyer $1,000 when he/she wouldn't give the therapist $350?

BERNSTEIN: Now, that's correct, but remember, if the lawyer says, "Okay, I will tell you what. For $50, I will write a letter to the therapist threatening suit," never intending to file the case. You have to take that threat seriously and turn it over to your malpractice carrier. Then comes the end of the year, and you want to renew your malpractice policy. There is going to be a question on the renewal form, "Has anyone ever brought suit or threatened you with malpractice?" And, you are going to have to say, "Yes." And, then the malpractice carrier may raise your premium or refuse to give you a policy.

This same thing may happen if you apply to renew your license as a social worker. It might say on the renewal form, "Has anyone threatened litigation?" And, you have to say "Yes" because that letter is out there.

Now, the other thing that the lawyer might say is, "Look, you don't have a malpractice claim, but why don't you go ahead and file a complaint with the licensing board saying that this therapist was either incompetent or negligent or didn't pay enough attention to you, or did something else wrong." Then the licensing board will investigate. And, when you go to fill out an application for hospital privileges, renewal of your malpractice insurance, renewal of your license, you have got to disclose that there was a complaint filed against you. You are very, very vulnerable, and the guy who owes you $300, or $200, or $100 - that person is not vulnerable at all. In fact, he couldn't care less.

ALEXANDER: This is one of those "life isn't fair" moments.

BERNSTEIN: This is a "life isn't fair" moment because we professionals are always vulnerable. Anybody can sue us; anybody can write a complaint to the licensing board, and the client who is having a good time doing this is totally not vulnerable. The most you could do is sue the client to win payment, and no lawyer is going to take a collection case for $100, or $200, or $300. Now, I know lawyers who gave really good, competent advice, but the clients didn't like it, and they filed a complaint with the bar. Then, when the attorneys went to renew their malpractice insurance, the malpractice carrier spent hours trying to find out why this complaint was filed. The main thing to keep in mind is that, as professionals, we want to avoid any complaint with the licensing board, and we want to avoid the client ever going to a lawyer. You simply have to write off bad clients and consider bad debts as business risks, not as collection problems. I look at them as credit problems, not collection problems.

ALEXANDER: And, you go to your dentist about grinding your teeth! (Laugh)

BERNSTEIN: (Laugh) Right. Or get a hobby.

ALEXANDER: Yes. Mr. Bernstein, there is one more thing I would like to ask you about. I have spoken to a number of agency directors who tell me that collections are a big problem for them - collections both from managed care companies as well as from individuals. One agency told me that they have an outstanding debt of $8,000 from a managed care company. The agencies themselves do not have the personnel to handle all of these collections. Also, agencies have many patients who really just walk away from their fees. These clients have the fantasy that the agency is getting all of this state money or has all of this endowed money, so they just walk
away. I wonder if you have any advice for agencies on how to handle these collections in an ethical manner.

**BERNSTEIN:** Yes, but the situations are very, very different. Where an agency or a company has an agreement, or an individual, too, has an agreement with a managed care company, they have to be very careful about what's in the contract in terms of the amount of payment, the method of payment, and the time of payment. One of the big problems is that a lot of times the individual therapist, or the agency, is so anxious to work with managed care that they sign whatever is presented to them, and they don't read over the contract personally. They don't seek out an attorney to go over the contract to make sure it protects the agency. Every contract between an agency and managed care ought to specifically set out the amount of payment, when it is to be paid, where it is to be paid, and some penalty if it is not paid on time. For example, if the bill is not paid within thirty days, it should accrue interest of ten, twelve percent per annum, so that there is a reason to pay on time.

The big problem is that in many of these contracts, managed care promises to pay, but the contract doesn't say when it is supposed to pay. As a result, the therapist or the agency calls and says, "When am I going to get paid?" and if there is not a time certain, payment can be stalled for months. Now, if it is a matter between an agency and managed care, the agency has an absolute right to sue for the amount due, and in most states you cannot only sue for the amount due, but if you send a letter indicating the amount due, and your accounting is good, you can get additional attorney's fees, interest, and if you have to file suit, you can get court costs. So, as between an agency and managed care, that is a matter of contract.

My only admonition is that when you engage in a contract with managed care, you should very specifically set out the terms - and especially the time of payment - because I have known managed care companies to wait six - nine months before they make a payment, and the therapist is living on his/her own money until the check comes in.

Now, non-payment by an individual is quite different. The individual therapist dealing with an individual client has a collection problem and a credit problem and a malpractice problem all rolled into one. The main thing is that every contract between the therapist and a client, between an agency and a client, or an individual and a client - every one of those contracts should state very clearly the terms of payment. For example, if the bill is not paid within ten days after the end of the month, then the therapist has the right to terminate therapy without being liable for any problem of abandonment. In other words, when the person signs on to get therapy, they get therapy, and they promise to pay at a certain time. If they don't pay, then the therapist can terminate treatment without having an abandonment problem. Then, the only thing that the therapist does if the person doesn't pay is to say, "I won't treat you anymore, but here are three names or four names of agencies that you can go to who don't charge anything or that have a sliding fee scale, and you can get your treatment from them."

Now, if the next question is, Should you ever sue a client for an unpaid fee? the answer, in my opinion, is definitely never, absolutely never. Because as soon as you sue a client for not paying a bill, the client is going to turn around and sue you for a misdiagnosis or some problem that they perceive could have happened. And, inevitably, when the client gets a lawyer, the lawyer writes a letter to the therapist, the therapist calls his/her own lawyer, the therapist's lawyer is going to say, "Look, forget it. Whatever the fee is, even if it's $1,000, forget the fee because you don't want to be defending either a malpractice suit or a claim filed with the licensing board."
ALEXANDER: So if an agency or a mental health center doesn't establish this kind of an agreement when the client first comes in, the agency simply has to write this off and say that it is uncollectible?

BERNSTEIN: Always write it off as being uncollectible, and never aggravate a patient by taking aggressive collection methods, because the patient will then file suit against you for harassment. And remember this - the therapist is always liable. You have no recourse against the client except the unpaid bill. But, the client can claim all sorts of emotional damage because of the aggressive collection efforts by either the therapist or by a collection agency.

ALEXANDER: Is this true for a non-profit agency as well as for a therapist in private practice?

BERNSTEIN: I would never advise an agency to pursue payment vigorously on an unpaid bill. When the patient starts treatment, the initial contract must state when that bill is to be paid, and if it isn't paid, then either the accounts-receivable person or the individual therapist should tell the patient that until the bill is paid, treatment is terminated. Many states provide that fees have to be discussed before therapy begins so that clients know what is expected of them. And, that would include the fact that you have a right to terminate in the event the bill is not paid. Now, I would never terminate a homicidal client or a suicidal client without taking some sort of steps to make sure that danger doesn't befall the client or someone else. But, for a person who is coming in for other types of problems, then I would say, you can terminate for an unpaid bill, and there is no reason that you have to treat someone free.

ALEXANDER: What about small claims court? Do the same rules apply in small claims court as in a larger civil matter?

BERNSTEIN: Generally, the answer is yes. Now, in some states, small claims go up to $5,000, but I would never ever, never have, never will, advise any therapist to file a suit against a patient for an unpaid bill in a small claims court, because the patient can go ahead a file a cross action for damages and move it out of small claims into a higher court. Then you have a malpractice problem; you have a licensing problem; you may even have a national issues problem if someone wants to write to the national organization and say that you are so money hungry that you pursued them in court knowing that by virtue of their being served by a lawsuit they would be emotionally damaged.

With regard to a managed care contract, I would hope that any agency dealing with managed care would terminate the managed care agreement if the managed care company owes them too much money and the agency is not getting paid on a systematic basis, and/or, if every time the agency calls over to managed care, they just keep punching buttons on the telephone and talking to people who refer them to other people, and they can never get anything done.

I would also advise any therapist who is treating someone where the bill starts to build up and gets higher and higher, that at some point you have an automatic cut off point - $100, $200, whatever the therapist is comfortable with - and when that point is reached, the therapist would terminate treatment with a proper referral to someone else, because when a person owes money beyond their ability to pay easily, they are going to terminate anyway. They are going to skip, or just not show for the appointment.

ALEXANDER: Would you send the managed care company a registered letter informing the company of what it is you are going to do?
BERNSTEIN: I would send the managed care company a registered letter or a certified letter, or regular letter, telling them what you are going to do, but remember, with managed care you are bound by the terms of your agreement with them. Before any agency sends a letter to managed care, agency officials have to review their contract and make sure that they have complied with everything in the contract.

I have known of individuals and agencies that get furious at managed care. They write an insulting or abrasive letter. Managed care then calls back and says, "We don't owe you anything because you did not fill out this form or that form," or "You didn't submit your claim in on a timely basis," or "We didn't get the information we needed." In other words, before you get angry at managed care, you have to make sure that you have fully complied with the contract with them. Arrangements with managed care are not clinical; they are contractual, and you have to make sure that you have fulfilled your half of the bargain.

ALEXANDER: What about bartering? There are therapists who want to, or clients who say, "I will trade you this. I can't pay you, but I grow great tomatoes, and I will keep you supplied in marinara sauce."

BERNSTEIN: The social workers' national code of ethics kind of implies that you can trade out as long as it is reasonable. But, they place the burden on you to make sure that if you are trading, you are being fair. It is never a good idea. Your beautician says, "I will keep your hair in style, and you give my child therapy." Sounds fine, sounds wonderful. One day you go into your beautician; she takes care of your hair; you walk out, and the next day your hair turns green. Now, can you keep your therapeutic objectivity when talking with that child or when dealing with the mother? The chances are you would lose it. You buy a car from a client. You drive it off the lot. Two weeks later it absolutely crashes, or a computer absolutely crashes. You bartered. You thought you had a deal. But the dual relationship that is created can cause you very easily to lose your therapeutic objectivity. And, that would be the same thing if you sell a car to a client, and they don't want to pay for it. Or, they don't pay for it, and you have to reposes it. You can see what that would do with the relationship.

In one case that we had, it was a music organ. This person wanted to trade the organ for therapy. So she did; she traded the organ for therapy. Now the therapist took the organ, which he loved, had it refurbished and put it in his house, and later, when the therapeutic hours were used up, he had the beautiful organ, and the client, who was borderline, was still quite sick. Now, the brother came in and claimed fraud, saying that the organ was worth a lot more than the therapy, and he got an appraisal that showed in its refurbished condition, it was worth ten times the trade-out value. The therapist had to pay tremendous damages. It was both a malpractice suit for client exploitation, as well as a licensing complaint. So, you see, the trouble is you never know how it is going to play out. You only know what is on the surface.

ALEXANDER: The unintended consequences, right?

BERNSTEIN: The unintended consequences that occur, not because it's your fault or her fault or anybody's fault, but just because it happens. And, here again, you trade out for a painting, and it turns out to be a Rembrandt. Now, who would ever suggest that you were objective? They would assume that you knew that this was a valuable painting, and the client didn't know, and you exploited the client. And, if it went to court, who do you think that the jury is going to believe, you or the client? They are going to believe the client, always.

ALEXANDER: Well, now that I am quaking in my boots here, we are running out of time.
BERNSTEIN: I don't think that you are quaking. There is a light bulb theory. When someone suggests trading out, dual relationships, improper boundaries, losing therapeutic objectivity, a light bulb goes on in your head that says, "This is very thin ice," and you just don't do it.

ALEXANDER: Is there anything else you would like to add before we close?

BERNSTEIN: The main thing that I would to like to add is that certain things - like trading, boundary violations, working with a client to cheat an insurance company - the average therapist knows that when they do these things, they are inappropriate. The problem with every one of these kinds of arrangements is that the client is not vulnerable, but the therapist is. Whenever the therapist's license is at stake, the therapist has to be very, very careful. This is where you ought to call a lawyer, take him/her to lunch, discuss the situation, and if you still wonder about it, and even if it is financially advantageous, please don't do it.

ALEXANDER: What I am getting an understanding of is that therapists are more vulnerable in terms of license violations than they are in terms of malpractice suits?

BERNSTEIN: Yes, and the reason is that in a malpractice suit, the client has to engage an attorney and be involved in the suit. With a licensing violation, the licensing board, in a sense, represents the consumer. That's the client, and the licensing board will take the flag and charge. The client can just sit back and watch the therapist feel uneasy - or squirm, to put it another way.

ALEXANDER: Forewarned is forearmed.

BERNSTEIN: Hopefully, forewarned is forearmed, but when you are aware of all the problems, you don't create the infractions.

ALEXANDER: Thank you very much, Mr. Bernstein, for your time.

BERNSTEIN: Thank you for visiting with me.


Part 2: Client Information and Consent - Sample Form

**SAMPLE FORM**

**CLIENT INFORMATION AND CONSENT**

*Therapist*

The undersigned therapist is a licensed professional and chemical dependency counselor and a licensed marriage and family therapist engaged in private practice providing mental health care
services to clients directly and as an independent contractor/provider for various managed care entities. In addition, as shareholder and employee, the undersigned therapist provides all mental health services through [Name of company], Inc., d/b/a [Name of company].

**Mental Health Services**

While it may not be easy to seek help from a mental health professional, it is hoped that you will be better able to understand your situation and feelings and move toward resolving your difficulties. The therapist, using his [or her] knowledge of human development and behavior, will make observations about situations as well as suggestions for new ways to approach them. It will be important for you to explore your own feelings and thoughts and to try new approaches in order for change to occur. You may bring other family members to a therapy session if you feel it would be helpful or if this is recommended by your therapist.

**Appointments**

Appointments are made by calling (___) ___-______ Monday through Friday between the hours of 9:00 a.m. and 5:00 p.m. Please call to cancel or reschedule at least 24 hours in advance, or you will be charged for the missed appointment. Third-party payments will not usually cover or reimburse for missed appointments.

**Number of Visits**

The number of session needed depends on many factors and will be discussed by the therapist.

**Length of Visits**

Therapy sessions are 45 minutes in length but may take longer for psychological testing.

**Relationship**

Your relationship with the therapist is a professional and therapeutic relationship. In order to preserve this relationship, it is imperative that the therapist not have any other type of relationship with you. Personal and/or business relationships undermine the effectiveness of the therapeutic relationship. The therapist cares about helping you but is not in a position to be your friend or to have a social or personal relationship with you.

Gifts, bartering, and trading services are not appropriate and should not be shared between you and the therapist.

**Cancellations**

Cancellations must be received at least 24 hours before your scheduled appointment; otherwise YOU will be charged the customary fee for that missed appointment. You are responsible for calling to cancel or reschedule your appointment.

**Payment for Services**

The charge for your initial session is _________ and the charge for any subsequent sessions is _________. The undersigned therapist does not normally accept assignment of insurance benefits but may be required to do so in connection with certain managed care contracts. The
undersigned therapist will look to you for full payment of your account, and you will be responsible for payment of all charges. Different co-payments are required by various group coverage plans. Your co-payment is based on the Mental Health Policy selected by your employer or purchased by you. In addition, the co-pay may be different for the first visit than for subsequent visits. You are responsible for and shall pay your co-pay portion of the undersigned therapist’s charges for services at the time the services are provided. It is recommended that you determine your co-payment before your first visit by calling your benefits office or insurance company.

Although it is the goal of the undersigned therapist to protect the confidentiality of your records, there may be times when disclosure of your records or testimony will be compelled by law. Confidentiality and exceptions to confidentiality are discussed below. In the event disclosure of your records or testimony is required by law, you will be responsible for and shall pay the costs involved in producing the records and the therapist’s normal hourly rate for the time involved in preparing for and giving testimony. Such payments are to be made at the time or prior to the time the services are rendered by the therapist.

Confidentiality

Discussions between a therapist and a client are confidential. No information will be released without the client’s written consent unless mandated by law. Possible exceptions to confidentiality include but are not limited to the following situations; child abuse; abuse of the elderly or disabled; abuse of patients in mental health facilities; sexual exploitation; AIDS/HIV infection and possible transmission; criminal prosecutions; child custody cases; suits in which the mental health of a party is in issue; situations where the therapist has a duty to disclose, or where, in the therapist’s judgment, it is necessary to warn or disclose; fee disputes between the therapist and the client; a negligence suit brought by the client against the therapist; or the filing of a complaint with the licensing board. If you have any questions regarding confidentiality, you should bring them to the attention of the therapist when you and the therapist discuss this matter further. By signing this information and consent form, you are giving your consent to the undersigned therapist to share confidential information with all persons mandated by law and with the agency that referred you and the managed care company and/or insurance carrier responsible for providing your mental health care services and payment for those services, and you are also releasing and holding harmless the undersigned therapist from any departure from your right of confidentiality that may result.

Duty to Warn

In the event that the undersigned therapist reasonably believes that I am a danger, physically or emotionally, to myself or another person, I specifically consent for the therapist to warn the person in danger and to contact the following persons, in addition to medical and law enforcement personnel:

<table>
<thead>
<tr>
<th>NAME</th>
<th>TELEPHONE NUMBER</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>
I consent for the undersigned therapist to communicate with me by mail and by phone at the following addresses and phone numbers, and I will IMMEDIATELY advise the therapist in the event of any change:

<table>
<thead>
<tr>
<th>ADDRESS</th>
<th>TELEPHONE NUMBER</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Risks of Therapy**

Therapy is the Greek word for change. You may learn things about yourself that you don’t like. Often, growth cannot occur until you experience and confront issues that induce you to feel sadness, sorrow, anxiety, or pain. The success of our work together depends on the quality of the efforts on both our parts, and the realization that you are responsible for lifestyle choices/changes that may result from therapy. Specifically, one risk of marital therapy is the possibility of exercising the divorce option.

**After-Hours Emergencies**

A mental health professional or your therapist is on call when your therapist’s office is closed, and can be reached for emergencies on a twenty-four-hour, seven-days-per-week basis, by calling (___) ___-_______. Emergencies are urgent issues requiring immediate action.

**Therapist’s Incapacity or Death**

I acknowledge that, in the event the undersigned therapist becomes incapacitated or dies, it will become necessary for another therapist to take possession of my file and records. By signing this information and consent form, I give my consent to allowing another licensed mental health professional selected by the undersigned therapist to take possession of my file and records and provide me with copies upon request, or to deliver them to a therapist of my choice.

**Consent to Treatment**

I, voluntarily, agree to receive Mental Health assessment, care, treatment, or services, and authorize the undersigned therapist to provide such care, treatment, or services as are considered necessary and advisable.

I understand and agree that I will participate in the planning of my care, treatment, or services, and that I may stop such care, treatment, or services that I receive through the undersigned therapist at any time.

By signing this Client Information and Consent form, I, the undersigned client, acknowledge that I have both read and understood all the terms and information contained herein. Ample opportunity has been offered to me to ask questions and seek clarification of anything unclear to me.

_____________________________   ______________________
Part 3: Ethics Codes, Laws, and Regulations

Athealth.com Editor’s Note:

Practitioners are governed by state laws and regulations and by codes of ethics. All major organizations in the mental health professions have adopted a code of ethics. Readers are encouraged to examine their state laws and regulations as well as provisions of the ethics codes related to the topics in this program. Below are links to the ethics codes and examples of some of the ethical issues and state laws and regulations in California and Florida that are related to the material discussed in this program.

Ethics Codes

APA: Ethical Principles of Psychologists and Code of Conduct

Code of Ethics of the National Association of Social Workers
http://www.socialworkers.org/pubs/code/code.asp

California Association of Marriage and Family Therapists (CAMFT)
http://www.camft.org/CamftBenefits/whatiscamft_ethnic1.html

American Association for Marriage and Family Therapy Code of Ethics
http://www.aamft.org/imis15/content/legal_ethics/code_of_ethics.aspx

American Counseling Association Code of Ethics and Standards of Practice

Code of Ethics of the American Mental Health Counselors Association
http://www.amhca.org/assets/content/CodeofEthics1.pdf

National Board for Certified Counselors Code of Ethics
http://www.nbcc.org/assets/ethics/nbcc-codeofethics.pdf

The Principles of Medical Ethics With Annotations Especially Applicable to Psychiatry
http://www.psychiatry.org/practice/ethics
Florida Clinical, Counseling, and Psychotherapy Services

Grounds for Disciplinary Action

Pursuant to Chapter 490, Florida Statutes: Psychology, s. 490.009, and Chapter 491, Florida Statutes: Clinical, Counseling, and Psychotherapy Services, s. 491.009, grounds for disciplinary action against a licensed psychologist, clinical social worker, marriage and family therapist, and/or mental health counselor related to fees include, but are not limited to, the following:

490.009 Discipline.--

(1) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s.456.072(2):

... 

(c) Being convicted or found guilty, regardless of adjudication, of a crime in any jurisdiction which directly relates to the practice of his or her profession or the ability to practice his or her profession. A plea of nolo contendere creates a rebuttable presumption of guilt of the underlying criminal charges. However, the board shall allow the person who is the subject of the disciplinary proceeding to present any evidence relevant to the underlying charges and circumstances surrounding the plea.

(d) False, deceptive, or misleading advertising or obtaining a fee or other thing of value on the representation that beneficial results from any treatment will be guaranteed.

... 

(h) Failing to perform any statutory or legal obligation placed upon a person licensed under this chapter.

(i) Willfully making or filing a false report or record; failing to file a report or record required by state or federal law; willfully impeding or obstructing the filing of a report or record; or inducing another person to make or file a false report or record or to impede or obstruct the filing of a report or record. Such report or record includes only a report or record which requires the signature of a person licensed under this chapter.

(j) Paying a kickback, rebate, bonus, or other remuneration for receiving a patient or client, or receiving a kickback, rebate, bonus, or other remuneration for referring a patient or client to another provider of mental health care services or to a provider of health care services or goods; referring a patient or client to oneself for services on a fee-paid basis when those services are already being paid for by some other public or private entity; or entering into a reciprocal referral agreement.

(k) Committing any act upon a patient or client which would constitute sexual battery or which would constitute sexual misconduct as defined in s. 490.0111.
(l) Making misleading, deceptive, untrue, or fraudulent representations in the practice of any profession licensed under this chapter.

. . .

(t) Violating a rule relating to the regulation of the profession or a lawful order of the department previously entered in a disciplinary hearing.

(w) Violating any provision of this chapter or chapter 456, or any rules adopted pursuant thereto.

(2) The department, or in the case of psychologists, the board, may enter an order denying licensure or imposing any of the penalties in s. 456.072(2) against any applicant for licensure or licensee who is found guilty of violating any provision of subsection (1) of this section or who is found guilty of violating any provision of s. 456.072(1).

California Law and Ethical Standards

The following ethical standards and laws relate to the issue of billings and fees.

Consumer Protection

Consumer Protection is one of the highest priorities for the California Board of Psychology as stated in Section 2920.1 of the California Business and Professions Code.

2920.1. Protection of the public shall be the highest priority for the Board of Psychology in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

Accepted Ethical Standard for Psychologists

Pursuant to Section 2936 of the California Business and Professions Code, the American Psychological Association's, Ethical Principles of Psychologists and Code of Conduct, is the accepted ethical standard applicable to the practice of psychology in California.

Section 2936 states as follows:

2936. The board shall adopt a program of consumer and professional education in matters relevant to the ethical practice of psychology. The board shall establish as its standards of ethical conduct relating to the practice of psychology, the "Ethical Principles and Code of Conduct" published by the American Psychological Association (APA). Those standards shall be applied by the board as the accepted standard of care in all licensing examination development and in all board enforcement policies and disciplinary case evaluations.

To facilitate consumers in receiving appropriate psychological services, all licensees and registrants shall be required to post, in a conspicuous location in their principal psychological business office, a notice which reads as follows:

NOTICE TO CONSUMERS:
The Department of Consumer Affair's Board of Psychology receives and responds to questions and complaints regarding the practice of psychology. If you have questions or
complaints, you may contact the board on the Internet at www.psychboard.ca.gov, by calling 1-866-503-3221, or by writing to the following address:

Board of Psychology
1422 Howe Avenue, Suite 22
Sacramento, California 95825-3236

Psychologists are encouraged to review the Ethical Principles and Code of Conduct (APA, 2002), which can be found at http://www.apa.org/ethics/code/index.aspx

**Beware of Fraudulent Billing**

In California, grounds for disciplinary action include the commission of any dishonest, corrupt, or fraudulent act.

**Section 2960 provides, in part, as follows:**

2960. The board may refuse to issue any registration or license, or may issue a registration or license with terms and conditions, or may suspend or revoke the registration or license of any registrant or licensee if the applicant, registrant, or licensee has been guilty of unprofessional conduct. Unprofessional conduct shall include, but not be limited to:

. . .

(n) The commission of any dishonest, corrupt, or fraudulent act.

Fees for services should accurately reflect the services provided. Practitioners should not provide an insurance company with incorrect information. For example, if insurance pays for individual therapy but not for couples’ therapy, couples’ therapy should not be billed as an individual session.

**The APA Ethics Code addresses the issue of fees and billing, in part, as follows:**

**6.04 Fees and Financial Arrangements**

(a) As early as is feasible in a professional or scientific relationship, psychologists and recipients of psychological services reach an agreement specifying compensation and billing arrangements.
(b) Psychologists’ fee practices are consistent with law.
(c) Psychologists do not misrepresent their fees.
(d) If limitations to services can be anticipated because of limitations in financing, this is discussed with the recipient of services as early as is feasible. (See also Standards 10.09, Interruption of Therapy, and 10.10, Terminating Therapy.)
(e) If the recipient of services does not pay for services as agreed, and if psychologists intend to use collection agencies or legal measures to collect the fees, psychologists first inform the person that such measures will be taken and provide that person an opportunity to make prompt payment. (See also Standards 4.05, Disclosures; 6.03, Withholding Records for Nonpayment; and 10.01, Informed Consent to Therapy.)
6.06 Accuracy in Reports to Payors and Funding Sources

In their reports to payors for services or sources of research funding, psychologists take reasonable steps to ensure the accurate reporting of the nature of the service provided or research conducted, the fees, charges, or payments, and where applicable, the identity of the provider, the findings, and the diagnosis. (See also Standards 4.01, Maintaining Confidentiality; 4.04, Minimizing Intrusions on Privacy; and 4.05, Disclosures.)