



HOT TOPICS IN MEDICAL-LEGAL PARTNERSHIPS

ETHICAL ISSUES AS OPPORTUNITIES

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Our basic premise is that ethical Issues do not necessarily have to be viewed as barriers



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but can be seen as opportunities to enhance the medical - legal collaboration

Our Assumptions for this Session

- The legal team is an independent entity (and not an employee of the healthcare facility)
 - Most common model
- There is a Memorandum of Understanding in place between the legal entity and the healthcare facility that address some of the ethical issues
- This discussion of ethics uses the New York Model Rules and the laws of New York State

Addressing the Ethical Issues Before the Collaboration Begins

Having an initial discussion with your healthcare partner about each profession's roles and values will set the framework for a conversation about the parameters of the relationship, including:

- views on confidentiality
- who is the patient/the client
- views on client capacity and ability to make informed choices

Then entering into a memorandum of understanding or contract and other documents that define the relationship (e.g. healthcare partner may want a Business Associate Agreement)

Developing protocols for referrals, information sharing etc.

In the conversations surrounding the development of these documents it is important to share the principles behind the ethical and professional role issues; a key piece of collaboration is to help the other professions to understand and appreciate each of the

Memorandum of Understanding

AGREEMENT FOR LEGAL SERVICES

AGREEMENT, dated the 14 day of May 2009 between MLP having an address at and (“Health Care Facility”).

WHEREAS, MLP provides free legal services to patients and training for hospital and health care facility staff in the legal issues affecting patients; and

WHEREAS, Health Care Facility desires that MLP provide services at its premises as more fully described in this Agreement, upon the terms and conditions set forth herein.

WHEREAS The relationship between LegalHealth and Health Care Facility under this Agreement is, and throughout the term shall be, that of independent contractors. This Agreement is not intended, and no provision hereof shall be deemed or construed to create any form of partnership or joint venture between the parties, to designate MLP, or any of its employees, agents, servants or contractors, as employees, agents, joint ventures or partners of Health Care Facility, and neither party shall have any authority to bind the other party in any manner”

Memorandum of Understanding

NOW, THEREFORE, MLP and Health Care Facility agree as follows:

1. Term of Agreement. The term of this Agreement (the “Term”) shall be two (2) years, beginning on and ending on

2. Services to be Provided by MLP. During the Term, MLP shall provide the following services (the “Services”):

- a). Education and Training
- b.) Individual Representation (types of cases, # of clients)
- c). Backup Consultation

3. Facilities to be Provided

4. Patient Confidentiality

- HIPAA

5. Compensation

6. Insurance and Indemnification

Memorandum of Understanding

7. Services and Support

- Language Assistance Services
- Publicity
- Liaisons
- Release of Patient Information for Cost Benefit Analysis

8. Cooperation and Further Assurances

9. Miscellaneous

- a). Entire Agreement
- b). No Oral Modification
- c). Notices
- d). Independent Contractors
- e). Governing Law
- f). Successors and Assigns
- g). Terms of Termination

Medical-Legal Partnership By:

Healthcare Facility By:

Business Associate Agreements

- HIPAA regulations allow healthcare providers and health plans to disclose protected health information (PHI) without a patient's authorization to a business associate (as defined in 8 C.F.R. § 160.103)
- Business associates perform functions or services for the covered entity (under HIPAA) that involve the use or disclosure of PHI
- The business associate agreement includes:
 - Description of the permitted and required uses of the PHI by the business associate
 - Provide that the business associate will not use or further disclose the PHI other than as permitted or required by the contract or required by law
 - Require business associate to use appropriate safeguards to prevent a use or disclosure of the PHI other than as provided for by the contract

Business associate is required to:

- Inform covered entity if any unauthorized use or disclosure
- If feasible, return protected PHI to covered entity on termination of contract



Development of Protocols

- Interaction with referral source
- Client Interactions
- Role in interdisciplinary case consultations
- Role in evaluations

Interaction with Referral Source

- How much information will the healthcare facility provide on the patient referred
 - HIPAA compliance
- What can be reported back to the medical provider
 - whether or not the client kept the appointment
 - whether case still open or closed
 - what medical provider already told you
 - i.e. client needs help since being sued in Housing Court

Client Interactions

- For example, protocols of what tell client when requesting permission to release information to healthcare provider
 - What want to reveal
 - To whom (or category of to whom)
 - Why want to reveal
 - If any risks to client (if any, probably shouldn't be revealing)

Interdisciplinary Case Consultations

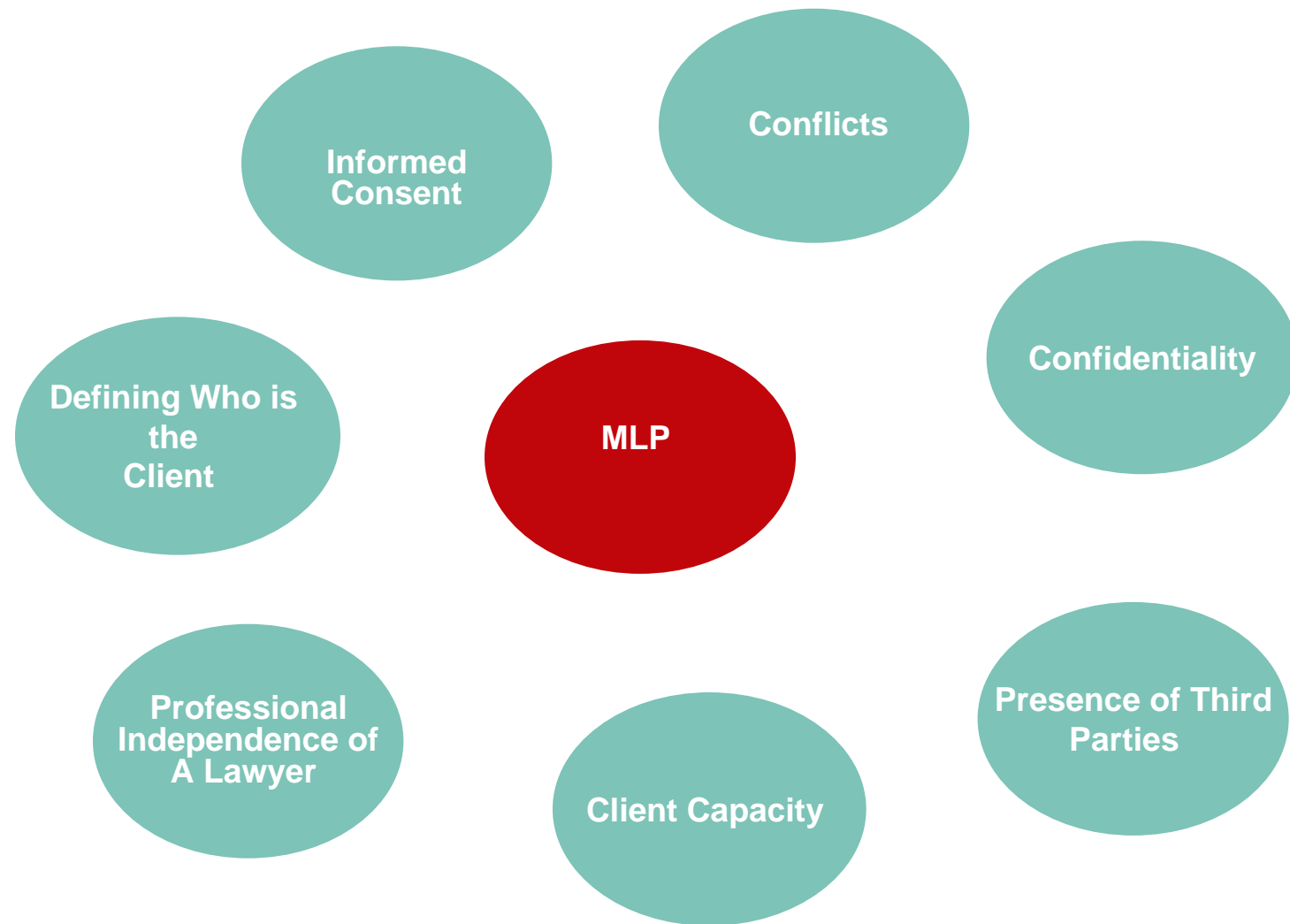
- Clarify your role
 - Not as counsel for the medical provider or healthcare facility
 - Provide general legal information
 - Not the lawyer for the patient being discussed in the consultation
 - Suggesting when a client should be referred to legal partner



Evaluations

- What information will legal entity need from healthcare provider
- Process for exchange of information
- IRB approval
- Whose work product is it

Common Ethical Issues Often Involved In Medical-Legal Partnerships





Other Potential Ethical Scenarios

- In discharge planning context
- Mandated reporting
- Conflicting wishes between parent and adolescent
- Where hospital's financial interest conflict with those of the patient
- Where healthcare professional want to use lawyers for other than legal matters



Conclusion

- Ethical issues are inherent in the work we do
- Some can be foreseen but not all
- As medical-legal partnerships become a more integral part of the healthcare setting, new ethical issues will arise
- Opportunities not barriers