

Creating Clarity, Focus and Reasonable Expectations at the Outset of Treatment and Beyond

*Presented by Sara M. Jasper, Esq., and Bradley J. Muldrow, Esq.
CAMFT Staff Attorneys*

Part 1: Presented by Sara M. Jasper, Esq.

I. Guiding Principles of the Therapeutic Relationship

- a. **Communicate:** Informed consent is not a one-time event at the outset of treatment. Rather, it is an ongoing process wherein patients, with your guidance, make decisions based on information sharing, discussion, and collaboration. You have a legal and ethical responsibility to prioritize talking about the therapeutic relationship and the treatment plan throughout the patient's treatment. Set the tone. At the outset of treatment, encourage patients to address changes, challenges, questions, concerns and feelings about the therapeutic relationship and the treatment/treatment plan in an open and timely manner.
- b. **Collaborate:** You have a legal and ethical responsibility to work collaboratively with patients to build the therapeutic relationship and the treatment plan. Establish and practice shared ownership of, and responsibility for, not only the decision-making that determines the treatment plan, but also the therapeutic relationship. Discuss the importance of maintaining clarity about the purpose of treatment throughout the therapeutic process. Remind patient(s) that: (1) because his/hers/their needs or circumstances may change over time, you will have an ongoing dialogue about the therapeutic relationship and treatment plan; and (2) you will review any applicable disclosures, policies and procedures when issues arise. Patients should expect to regularly communicate and collaborate with you about the therapeutic relationship and the treatment plan.

i. Guiding Authority:

- 1. **CAMFT Code of Ethics Section 1.9 Client Autonomy:** Respect client/patient choices, the right of client/patient to make decisions and help them understand the consequences of their decisions.
- 2. **CAMFT Code of Ethics Section 1.10 Treatment Planning:** Work with clients/patients to develop and review treatment plans consistent with client/patient goals and that offer a reasonable likelihood of client/patient benefit.
- 3. **CAMFT Code of Ethics Section 3.1 Informed Decision-Making:** Respect the rights of clients/patients to choose whether to enter into, remain in, or to leave the therapeutic relationship. When significant decisions need to be made, provide adequate information to clients/patients in clear and

understandable language so clients/patients can make meaningful decisions about their therapy.

II. Key Issues to Address at the Outset of Treatment and Beyond

- a. *Presenting issues, reasons for seeking treatment*
- b. *Who will the patient(s) be (what is the unit of treatment)?*
- c. *Any potential collaterals?*
- d. *Who needs to consent?*
- e. *Payment for services/treatment*
- f. *Type(s) of services offered/type(s) of service preferred: Face-to-face psychotherapy only, telehealth only, or both?*
- g. *Informed Consent Process: Provide and review informed consent/intake paperwork and make necessary/appropriate disclosures*
 - i. **Information about therapist:** At the appropriate time, discuss professional background and provide information regarding experience, education, special interests, and professional orientation. Invite patients to ask questions about your background, experience, and professional orientation at any time. Indicate licensure status. If you are an associate, provide your title, registration number, the name of your employer, and your supervisor's information.
 1. **Guiding Authority for Pre-licensurees - Cal. Bus. & Prof. Code Section 4980.44(a) Associate Notice to Client or Patient:** Inform patient, prior to performing any mental health and related services, that you are an unlicensed registered associate marriage and family therapist, provide registration number and the name of your employer, and indicate whether you are under the supervision of a licensed marriage and family therapist, licensed clinical social worker, licensed professional clinical counselor, psychologist licensed pursuant to Chapter 6.6 (commencing with Section 2900), licensed educational psychologist, or a licensed physician and surgeon certified in psychiatry by the American Board of Psychiatry and Neurology.
 2. **Guiding Authority for LMFTs - Cal. Bus. & Prof. Code Section 4980.55 Disclosure of Counselor's Qualifications:** As a model for all therapeutic professions, and to acknowledge respect and regard for the consuming public, provide to each [patient] at an appropriate time and within the context of the psychotherapeutic relationship, an accurate and informative statement of your experience, education, specialties, professional orientation, and any other information deemed appropriate by the licensee.
 3. **Guiding Authority - CAMFT Code of Ethics Section 3.2 Therapist Disclosure:** When personal values, attitudes, and/or beliefs are a prejudicial factor in diagnosing or limiting

treatment provided to a client/patient, you must disclose such information to the client/patient or facilitate an appropriate referral in order to ensure continuity of care.

4. Guiding Authority - CAMFT Code of Ethics Section 3.7

Therapist Professional Background: You are encouraged to disclose to clients/patients, at an appropriate time and within the context of the psychotherapeutic relationship, your experience, education, specialties, and theoretical orientation.

5. Guiding Authority - CAMFT Code of Ethics Section 5.11

Scope of Competence: Take care to provide proper diagnoses and do not assess, test, diagnose, treat or advise on issues beyond the level of your competence as determined by education, training and experience.

- ii. **Information about the practice:** Include the name of the practice, name of the therapist(s) who operates the practice. If corporation, disclose the type of corporation.

1. Guiding Authority - Cal. Bus. & Prof Code Section

4980.46: If you conduct a private practice under a fictitious business name you must not use any name which is false, misleading, or deceptive, and shall inform the patient, prior to the commencement of treatment, of the name and license designation of the owner or owners of the practice.

- iii. **Fees and use of Insurance:** Include usual and customary fee, sliding fee scale, information regarding insurance and insurance billing, fees for cancelled and missed sessions, fees for report writing, fees for letter writing, attending hearings and depositions, acceptable forms of payment, interest charges on unpaid balances, etc. State that notice will be provided in the event of any changes to fees or when other charges are to be applied.

1. Guiding Authority – Cal. Bus. & Prof. Code Section

4982(n): Failing to disclose to the [patient] or prospective [patient] the fee to be charged for the professional services, or the basis upon which that fee will be computed is considered unprofessional conduct.

2. Guiding Authority - CAMFT Code of Ethics Section 12.3

Disclosure of Fees: Prior to the commencement of treatment, disclose your fees and the basis upon which they are computed, including, but not limited to, charges for canceled or missed appointments and any interest to be charged on unpaid balances, and give reasonable notice of any changes in fees or other charges.

- iv. **Right to confidentiality/privilege, authorizations and exceptions to confidentiality (mandated reporter responsibilities and dangerous patients):** Therapist-patient communication must be held in strict confidence unless the patient

provides written authorization to release such information. There are limited exceptions to confidentiality. You are required to report instances of suspected child abuse and neglect, elder abuse, and dependent adult abuse. You may also be required or permitted to break confidentiality when a patient presents a serious danger of physical violence to another or when a patient is dangerous to himself/herself.

1. Guiding Authority – Confidentiality/Privilege

- a. Psychotherapist-patient privilege (Cal. Evid. Code Section 1014):** The patient, whether or not a party, has a privilege to refuse to disclose, and to prevent another from disclosing, a confidential communication between patient and psychotherapist.
- b. CAMFT Code of Ethics Section 2 Confidentiality (2 through 2.7)** You must respect the confidences of client(s)/patient(s). You have unique confidentiality responsibilities because the client/patient in a therapeutic relationship may include more than one person.
- c. Confidentiality of Medical Information Act – Disclosure of Medical Information by Providers (Cal. 56.10 through 56.16):** 56.10 (a) You must not disclose medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan without first obtaining an authorization.
- d. Confidentiality of Minors –** Communications with minor patients (patients under the age of 18) are confidential. However, parents and other guardians who consent for their child's treatment are often involved in their treatment. In the exercise of professional judgment, you may discuss treatment progress of a minor with a parent or guardian who consented for treatment.
 - i. Guiding Authority – Disclosure of Information (Cal. Civ. Code Section 56.1007)**
- e. Confidentiality of Couples/Families –** Communications with a couples or family unit must remain confidential unless all persons who participated in the treatment provide a written authorization to release. When a "no-secrets" policy is employed, participants should understand that it is up to your discretion of the therapist to decide when it is necessary/appropriate to use/disclose information obtained in an individual session that was held for the

purpose of furthering the progress of the couple's/family's therapy.

- f. **Cal. Bus. & Prof. Code Section 4982(m):** Failure to maintain confidentiality, except as otherwise required or permitted by law, of all information that has been received from a patient in confidence during the course of treatment and all information about the patient that is obtained from tests or other means is considered unprofessional conduct.

2. Guiding Authority - Exceptions to Confidentiality

- a. **CAMFT Code of Ethics Section 3.6 Limits of Confidentiality:** Inform clients/patients of significant exceptions to confidentiality such as child abuse reporting, elder and dependent adult abuse reporting, and clients/patients dangerous to themselves or others.
- b. **Child Abuse and Neglect Reporting Act CANRA (Cal. Pen. Code Sections 11164 through 11174.3):** You are mandated reporters of child abuse and neglect.
- c. **The Elder Abuse and Dependent Adult Civil Protection Act (Cal. Welf. & Inst. Code Sections 15600 through 15659):** You are mandated reporters of elder and dependent adult abuse.
- d. **Tarasoff statute (Cal. Civ. Code Section 43.92), Tarasoff case (*Tarasoff v. Regents of University of California*, 17 Cal. 3d 425 [1976] and Ewing cases (*Ewing v. Goldstein, Ph.D.* (2004) 120 Cal. App. 4th 807 ("Ewing I"); *Ewing v. Northridge Hospital Medical Center* (2004) 120 Cal. App. 4th 1289 ("Ewing II")):** When a patient presents a serious danger of violence to another person, you are obligated to use reasonable care to attempt to protect such person from such danger.
- e. **Cal. Wel. & Inst. Code Sections 8100(b)(1) and 8105(c):** You have a duty to report serious threats of physical violence to law enforcement. The aim of the law is to get weapons out of the hands of patients who are dangerous to others.
- f. **Dangerous patients (Cal. Civ. Code Section 56.10 (c)(19) and Cal. Evid. Code Section 1024):** You are permitted to contact whomever is necessary to prevent the threatened danger.

v. Notice to Consumers (AB 630)

- 1. As of July 1, 2020, you must, whether licensed or unlicensed, provide a notice to patients (each patient) stating

where patients can file a complaint. For new patients, provide this notice prior to initiating psychotherapy services. For existing patients, provide the notice as soon as possible.

- a. If unlicensed or not yet registered with the Board, but providing services within the scope of practice of Board licensees in an exempt setting (i.e. a government entity, a school, college, or university, or an institution that is both nonprofit and charitable), you are required to provide patients with a notice about how to file a complaint with your agency.
 - i. The notice must be in at least 12-point font and must be in substantially the following form:
NOTICE TO CLIENTS The (Name of office or unit) of the (Name of agency) receives and responds to complaints regarding the practice of psychotherapy by any unlicensed or unregistered counselor providing services at (Name of agency). To file a complaint, contact (Telephone number, email address, internet website, or mailing address of agency).
- b. If licensed or registered with the Board, you must provide patients the following notice in at least 12-point font.
 - i. *NOTICE TO CLIENTS The Board of Behavioral Sciences receives and responds to complaints regarding services provided within the scope of practice of (marriage and family therapists, licensed educational psychologists, clinical social workers, or professional clinical counselors). You may contact the board online at www.bbs.ca.gov, or by calling (916) 574-7830.*

vi. Additional practice policies and procedures

1. **Therapist availability:** Policy re: phone calls, use of email and texts, timeframe within which patient can generally expect phone calls, emails, and texts to be returned, times available/unavailable, how to communicate an urgent need, how to handle emergencies and any pertinent resources.
 - a. **Guiding Authority – CAMFT Code of Ethics Section 3.4 Emergencies/Contact Between Sessions:** Inform clients/patients of the extent of their availability for emergency care between sessions.
2. **Communication preferences:** You may have a need to communicate with patient by telephone or other means. Indicate your preference (include a checklist of options) and inquire about client's preferences. Invite patient to tell you if

patient does not want to be contacted at a particular time or place, or by a particular means.

3. **Information about the therapy process/therapeutic approach:** Therapy is . . . Recommendations regarding treatment will be based upon the information shared by patient, a professional assessment and evaluation as well as your observations. You and your patients are partners in the therapeutic process and have a responsibility to collaborate throughout the course of treatment.

- a. **Guiding Authority - CAMFT Code of Ethics**

- Section 1.10 Treatment Planning:** Work with clients/patients to develop and review treatment plans that are consistent with client/patient goals and that offer a reasonable likelihood of client/patient benefit.

4. **Risks and benefits of therapy:** Participating in therapy may involve some discomfort, including remembering and discussing unpleasant events, feelings and experiences. The process may evoke strong feelings of sadness, anger, fear, etc. Patients may feel worse before they feel better. There are also, however, many potential benefits of therapy. The benefits of therapy are dependent upon the patient's presenting issues, diagnosis, level of commitment to therapy and the ability of the therapist and patient to work together. Some often-identified benefits include. . . Due to the varying nature and severity of issues you cannot predict length of therapy or guarantee a specific outcome.

- a. **Guiding Authority - CAMFT Code of Ethics**

- Section 3.3 Risks and Benefits:** Inform clients/patients of the potential risks and benefits of therapy when utilizing novel or experimental techniques or when there is a risk of harm that could result from the utilization of any technique.

5. **Responsibility to continually monitor effectiveness:** Periodically provide feedback regarding progress and invite participation in the discussion.

- a. **Guiding Authority - CAMFT Code of Ethics**

- Section 3.8 Client/Patient Benefit:** You must continually monitor effectiveness when working with clients/patients and continue therapeutic relationships only so long as it is reasonably clear that clients/patients are benefiting from treatment.

- b. **Guiding Authority- CAMFT Code of Ethics Section**

- 3.11 Treatment Alternatives:** Discuss appropriate treatment alternatives with clients/patients. When appropriate, advocate for the mental health care that believe will benefit clients/patients. You should not

limit discussions of treatment alternatives to what is covered by third-party payers.

6. **Creation and retention of clinical records:** You are legally and ethically required to create and retain a clinical record. Records must be maintained in either electronic or written form. There is no prescription for how a therapist working with private pay patients must formulate a record. Government programs and insurance companies may have additional recordkeeping requirements.

- a. **Guiding Authority – Cal. Bus. & Prof. Code Section 4982(v):** Keep records consistent with sound clinical judgments, the standards of the profession, and the nature of the services being rendered.
- b. **Guiding Authority – CAMFT Code of Ethics Client/Patient Records:** Create and maintain client/patient records consistent with sound clinical judgment, standards of the profession and the nature of the services rendered.
- c. **Guiding Authority – Cal. Bus. & Prof. Code Section 4980.49(a)(b):** You keep a patient's health care service record for a minimum of seven (7) years from the date therapy terminates. You are required to keep a minor patient's health care service record for a minimum of seven (7) years from the date the minor patient reaches eighteen (18) years of age. Maintain records in either electronic or written form.

7. **Access to Records:**

- a. **Guiding Authority – Inspection and Copying (Cal. Health & Safety Code Section 123110)**
- b. **Guiding Authority – Access to Minors' records (Cal. Health & Safety Code Sections 123110 and 123115; Cal. Civ. Code Section 56.11(c))**
- c. **Guiding Authority – Summary of Treatment (Cal. Health and Safety Code Section 123130)**
- d. **Guiding Authority – Access under HIPAA (45 C.F.R. 164.524)**

8. **Working with minors:**

- a. **Guiding Authority – Consent (Cal. Health & Safety Code Section 124260, Cal. Fam. Code Section 6924)**

9. **Working with couples and families:**

- a. **Guiding Authority - CAMFT Code of Ethics Section 3.9 Family Unit/Conflicts:** Carefully consider the potential conflict that may arise between the family unit and each individual member. At the

commencement of treatment and throughout treatment, clarify, which person or persons are clients/patients and the nature of the relationship(s) you will have with each person participating in the treatment.

10. Changes re: patient/treatment unit and addressing potential conflict/conflict:

- a. **Guiding Authority – CAMFT Code of Ethics Section 3.9 Family Unit/Conflicts:** (see above)
- b. **Guiding Authority - 3.10 Potential Conflicts:**
Carefully consider potential conflicts when providing concurrent or sequential individual, couple, family, and group treatment, and take reasonable care to avoid or minimize such conflicts
- c. **Guiding Authority - 3.12 Documenting Treatment Rationale/Changes:** Document treatment in client/patient records, such as major changes to a treatment plan, changes in the unit being treated and/or other significant decisions affecting treatment.

11. Dual relationships/potential dual relationships

- a. **Guiding Authority - CAMFT Code of Ethics Section 4 Dual/Multiple Relationships (4.1 through 4.8):** Establish and maintain professional relationship boundaries that prioritize therapeutic benefit and safeguard the best interest of their clients/patients against exploitation. Not all dual/multiple relationships are unethical, and some need not be avoided, including those that are due to geographic proximity, diverse communities, recognized marriage and family therapy treatment models, community activities, or that fall within the context of culturally congruent relationships. Be mindful of your influential position with respect to clients/patients, and avoid relationships that are reasonably likely to exploit the trust and/or dependence of clients/patients, or which may impair professional judgment.

12. Letter writing – There are no legal or ethical requirements that obligate you to write letters for patients. Consider letter writing requests on a case-by-case basis. Only write letters that are within your scope of practice and competence and which are consistent with your therapeutic role.

- a. **Guiding Authority - CAMFT Code of Ethics Section 10.7 Professional Opinions In Court-Involved Cases:** You may only express professional opinions about clients/patients you have treated or examined. When expressing professional opinions,

specify the limits of the information upon which your professional opinions are based. Such professional opinions include, but are not limited to, mental conditions, emotional conditions, or parenting abilities. (See also section 5.14 Limits of Professional Opinions.)

b. Guiding Authority – CAMFT Code of Ethics

Section 5.14 Limits of Professional Opinions: Do not express professional opinions about an individual's psychological condition unless you have treated or conducted an examination and assessment of the individual, or unless you reveal the limits of the information upon which your professional opinions are based, with appropriate cautions as to the effects of such limited information upon such opinions. (See also section 10.7 Professional Opinions in Court-Involved Cases.)

c. Guiding Authority – CAMFT Code of Ethics 10.12

Professional Communications: Be mindful of the potential impact of the adversarial nature of legal disputes on your actions, observations, and opinions. When communicating with clients/patients, parents, counsel, the court, or other parties, ensure that the communications are properly authorized, unbiased, and accurate. Decline to communicate when there is insufficient data to form a reliable opinion or where the opinion is inconsistent with your role.

13. Recording therapeutic sessions: You do not have to allow a client to record sessions. Therefore, it is solely within your discretion as to whether to allow recordings of sessions. If you wish to record sessions for a therapeutic or supervisory purpose, obtain written consent from patients beforehand and give the patient the opportunity to ask questions and raise any concerns.

a. Guiding Authority – The California Invasion of Privacy Act (Cal. Penal Code Section 630, et. seq) makes it illegal for an individual to monitor or record a “confidential communication” unless all parties to the conversation consent to the recording. This is frequently known as the “two-party consent” rule and with regards to psychotherapy services, requires that you and the patient consent to the recording.

b. Guiding Authority - CAMFT Code of Ethics

Section 3.5 Consent for Recording/Observation:

Obtain written informed consent from clients/patients

before recording, or permitting third party observation of treatment.

14. Telehealth: Trainees, associates, and licensees are all permitted to provide services via telehealth. The Board of Behavioral Sciences has developed regulations that establish the standard of care for delivery of psychotherapy services via telehealth. Prior to offering services via telehealth, inform the patient about the use of telehealth and obtain verbal or written consent for the use of telehealth. Inform the patient of the potential risks and limitations of receiving treatment via telehealth. Potential risks and limitations of telehealth may include: technical failures, interruption by unauthorized persons, unauthorized access to transmitted and/or stored confidential information, and decreased availability in the event of a crisis. Provide the client with your license number or registration and the type of license or registration. Identify relevant resources, including emergency services in the client's geographic area.

a. Guiding Authority – Cal. Bus. & Prof. Code Section 2290.5 Telehealth Consent Requirements; Effect of Noncompliance on Health Practitioner:

b. Guiding Authority – 16 C.C.R. 1815.5 Standards of Practice for Telehealth:

c. Guiding Authority – CAMFT Code of Ethics Section 6 Telehealth (6.1 through 6.4): Inform clients/patients of the potential risks, consequences, and benefits of the Telehealth modality, including, but not limited to, issues of confidentiality, clinical limitations, and transmission/technical difficulties.

15. Termination of the therapeutic relationship

a. Guiding Authority - CAMFT Code of Ethics Section 1.4 Termination: Use sound clinical judgment when terminating therapeutic relationships. Reasons for termination may include, but are not limited to, the client/patient is not benefiting from treatment, continuing treatment is not clinically appropriate, you are unable to provide treatment due to incapacity or extended absence, or due to an otherwise unresolvable ethical conflict or issue. (See also sections 3.8 Client/Patient Benefit and 5.11 Scope of Competence.)

b. Guiding Authority – CAMFT Code of Ethics Section 1.5 Non-Payment of Fees: When terminating client/patient relationships due to non-payment of fees, do so in a clinically appropriate manner.

c. **Guiding Authority- CAMFT Code of Ethics Section 3.8 Client/Patient Benefit:** Continually monitor your effectiveness when working with clients/patients and continue therapeutic relationships only so long as it is reasonably clear that clients/patients are benefiting from treatment.

d. **Guiding Authority – CAMFT Code of Ethics Section 5.11 Scope of Competence:** Take care to provide proper diagnoses of psychological disorders or conditions and do not assess, test, diagnose, treat, or advise on issues beyond the level of competence as determined by education, training, and experience. While developing new areas of practice, take steps to ensure the competence of your work through education, training, consultation, and/or supervision.

- **Note:** Sample templates for Informed Consent and for Informed Consent for Telehealth are available on CAMFT's website under the Resources tab and the Sample Practice Forms link.
- **Note:** These informed consent provisions may help to offer clarity and create reasonable expectations while giving you an opportunity/opportunities to discuss boundaries and to ask relevant questions.

III. Strategies for establishing and maintaining reasonable expectations for the therapeutic relationship:

- a. Don't be too quick to commit.
 - i. Provide paperwork related to intake process/informed consent process/disclosure statements ahead of first session.
 - ii. Explain that you will spend the first meeting (or two) discussing your therapeutic approach, gathering information, providing feedback and discussing a potential treatment plan in order to determine whether the relationship can best serve the patient.
- b. Periodically discuss the therapeutic relationship/treatment plan. Revisit goals and have any necessary discussions about interventions used to ensure and affirm mutual understanding and commitment.
 - i. Are patients encouraged to be open and honest about their needs, their questions or concerns about treatment, about the relationship?
 - ii. Do you regularly signal that you are open to discussing the therapeutic relationship, flexible and willing to adapt treatment plans to meet your patients' needs, address concerns?
 - iii. Are you actively soliciting patients' input about goals and methods of treatment? Are you collaborating with your patients?
- c. Promptly address any issues or circumstances that may impact the therapeutic relationship.
 - i. Reassert boundaries, review applicable informed consent provisions, practice/office policies and procedures whenever necessary.

- d. If significant changes occur, consider the impact of those changes from a clinical, legal and ethical perspective.
 - i. Will the unit of treatment change?
 1. **Guiding Authority - CAMFT Code of Ethics Section 3.12 Documenting Treatment Rationale/Changes:** Document treatment in their client/patient records, such as major changes to a treatment plan, changes in the unit being treated and/or other significant decisions affecting treatment.
 2. Is it necessary to start a new/separate record?
 - ii. What potential conflicts or consequences need to be vetted before moving forward?
 1. **Guiding Authority - CAMFT Code of Ethics Section 3.10 Potential Conflicts:** Carefully consider potential conflicts when providing concurrent or sequential individual, couple, family, and group treatment, and take reasonable care to avoid or minimize such conflicts.
 2. **Guiding Authority - CAMFT Code of Ethics Section 10.9 Consequences of Changes in Therapist Roles:** Inform the client/patient or the treatment unit of any potential consequences of therapist-client/patient role changes. Such role changes include, but are not limited to: child's therapist, family's therapist, couple's therapist, individual's therapist, mediator, and special master. Obtain consultation before changing roles to consider how the role change might create a conflict of interest or affect the therapeutic alliance, and to explore whether appropriate alternatives exist that would reduce such risks.
 3. Consider getting legal, ethical and clinical consultations
- IV. **Vignette:** You receive a call from the Mom of a 13-year-old girl, (Leah), who is "angry and acting out." Mom believes her daughter really needs to talk to someone. During the call, you learn Leah's problems are longstanding, but appear to have recently become more severe. There is a history of at least one prior treatment which involved Leah and family, but the purpose and outcome of the treatment is unknown. The phone call with Mom lasts more than 30 minutes. Mom is concerned about Leah's well-being and their relationship. In order to gather more information, you decide to meet with Mom first. During the meeting, Mom tells you she is also concerned about her 16-year-old son, Jason, who no longer visits Dad due to constant "harassment" by his Step-Mom. Jason and Leah's parents divorced two years ago and have joint legal custody. According to Mom, Leah's Dad also wants her to receive therapy. He believes Leah is bipolar and needs intensive treatment.
- a. What key issues need to be addressed? What additional information would you like to have?

- **Note:** Consider reviewing and answering this vignette during a supervisory session or during a consultation group meeting.

- V. **Resources available on the CAMFT website at camft.org once you are logged into your account:**
- Starting a Private Practice Part I* by Michael Griffin
 - Starting a Private Practice Part II* by Michael Griffin
 - Patient Intake Questionnaire
 - Sample Informed Consent
 - Sample Informed Consent for Telehealth
 - Regulatory and Legal Considerations for Telehealth* by Ann Tran-Lien
 - Checklist for Telehealth* by Ann Tran-Lien
 - CAMFT Code of Ethics
 - Our New Ethical Standards: A Closer Look at The Revised CAMFT Code of Ethics* by Michael Griffin

Part 2: Presented by Bradley J. Muldrow, Esq.

GOVERNING LAW

Privately Owned Therapy Practices

Privately owned therapy offices are "places of public accommodation" regulated by ***Title III of the ADA***

- Examples: Private Practices, Nonprofits, Corporations, etc.

Federal Entities and Entities Receiving Federal Financial Assistance

Regulated by ***the Rehabilitation Act of 1973***

- Examples: Federal Prisons, Federal Agencies, etc.

State and Local Government Entities

Regulated by ***Article II of the ADA***

- Examples: Public Schools, State Agencies, State Prisons, etc.

IT TAKES A VILLAGE

1) ADA Information Line (Department of Justice)

800-514-0301 (voice), 800-514-0383 (TTY)

ADA Specialists are available for free, confidential consultation:

Mondays, Tuesdays, Wednesdays, and Fridays from 9:30 a.m. until 5:30 p.m. (Eastern Time) and Thursdays from 12:30 p.m. until 5:30 p.m. (Eastern Time).

2) Private Attorneys Specializing in ADA Compliance

The California Bar Association offers lists of attorney referral services throughout California on its website: <https://www.calbar.ca.gov/Public/Need-Legal-Help/Lawyer-Referral-Service>

3) Health Plans, Medi-Cal, and Benefits Programs

These entities may be required to cover the cost of qualified interpreters and other auxiliary aids and services.

4) The National Registry of Interpreters for the Deaf (RID)

Search for qualified sign language interpreters in your area by logging on to www.rid.org or call 703.838.0030 (voice) or 703.838.0459 (TTY).

Note: Be sure to select an interpreter who is fluent in the specific form of sign language your patient uses (e.g. American Sign Language (ASL), British Sign Language (BSL), South African Sign Language (SASL), etc.)

5) The IRS

According to California's Employment Development Department (the "EDD"), the following tax incentives are available to business owners who incur expenses necessary to make their businesses accessible to people with disabilities:

Disabled Access Credit

Helps small businesses cover the cost of making their businesses accessible to persons with disabilities. The maximum amount of the credit is \$5,000.

Architectural and Transportation Tax Deduction

Businesses may take an annual deduction of up to \$15,000 for expenses incurred to remove architectural and transportation barriers to persons with disabilities and the elderly.¹

ADA TITLE III

General Rule

The Nondiscrimination Provision (Title III of the ADA)

"No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any **place of public accommodation** by any person who owns, leases (or leases to), or operates a place of public accommodation."²

CAMFT Code of Ethics

CAMFT Code of Ethics Rule 1.1

Marriage and family therapists do not condone or engage in discrimination, or refuse professional service to anyone on the basis of race, ethnicity, national origin, indigenous heritage, immigration status, gender, gender identity, gender expression, sexual orientation, religion, age, **disability**, socioeconomic status, or marital/relationship status.

Marriage and family therapists **make reasonable efforts to accommodate clients/patients** who have **physical disabilities**.

Specific Prohibitions (ADA, Title III)

1. Failure to Remove Architectural Barriers in Existing Facilities

Therapists are required to remove architectural barriers in *existing facilities* where such removal is *readily achievable*.³

¹ See the EDD's "Tax Credits/Incentives" webpage under "Resources to Save You Money": https://www.edd.ca.gov/Jobs_and_Training/Tax_Credits_Incentives.htm ; See also the U.S. Equal Employment Opportunities Commission's "Facts About the Americans with Disabilities Act" in the section entitled "Federal Tax Incentives to Encourage the Employment of People with Disabilities and to Promote the Accessibility of Public Accommodations": <https://www1.eeoc.gov/eeoc/publications/fs-ada.cfm?renderforprint=1>

² 42 U.S.C. § 12182(a)

³ (42 U.S.C. § 12182(b)(2)(A)(iv).)

Readily Achievable: Easily accomplishable and able to be carried out without much difficulty or expense. Courts look to multiple factors to determine whether barrier removal is readily achievable, including the cost of removing the barrier, the business' overall resources, etc.⁴

Existing Facilities: Facilities that: (1) were constructed prior to January 26, 1993 and (2) have not been modified after January 26, 1992.⁵ Facilities constructed or modified after these dates are generally required to be "readily accessible to and usable by individuals with disabilities" *whether or not necessary remodeling efforts would be readily achievable*.

- Note: If the therapist can demonstrate that barrier removal is not readily achievable, they must make their services available through alternative methods (if such methods are readily achievable).

Example: If the doorway to a therapist's office is too narrow to accommodate a patient's wheelchair, the therapist must widen the doorway *if doing such is readily achievable*. If widening the doorway is *not* readily achievable, the therapist must attempt to provide their services to the patient through other readily achievable means, such as:

- Offering to work with the patient via telehealth (if clinically appropriate)
- Providing therapy to the patient in a room with a wider door, etc.

2. Screening Out People with Disabilities

Therapists are not permitted to use eligibility criteria that screens out or tends to screen out people with disabilities from fully and equally enjoying the public accommodation's goods and services.⁶

Exception: Where the eligibility criteria is necessary for the provision of the goods and services being offered

3. Failure to Modify Policies, Practices, or Procedures

Therapists must reasonably modify their policies, practices, and procedures where necessary to make their goods and services available to people with disabilities.⁷

Exception 1: Where the proposed modification is *unreasonable* or *not necessary* to make goods or services available to people with disabilities

Exception 2: Where the proposed modification would *fundamentally alter the nature of the goods and services* being offered

⁴ 28 C.F.R. § 36.304(a)

⁵ 28 C.F.R. § 36.401(a)

⁶ 42 U.S.C. § 12182(b)(2)(A)(i)

⁷ 42 U.S.C. § 12182(b)(2)(A)(ii)

4. Failure to Accommodate People with Disabilities Who Lack Auxiliary Aids and Services

Auxiliary Aids and Services: A term that encompasses a wide variety of assistive technologies and services that provide support to people with *communication disabilities*.⁸

- Examples: hearing aids, magnifiers, text-to-speech readers, qualified interpreters, etc.

Communication Disabilities: Disabilities that impact a person's ability to "receive, send, process, [and/or] understand verbal and other [forms of] communication."⁹

Scenario 1: When People with Disabilities DO NOT Need Auxiliary Aids and Services for Effective Communication with Therapists

- Therapists must take necessary steps to ensure that people with disabilities are not denied services or otherwise discriminated against due to a lack of auxiliary aids and services.¹⁰
- Therapists are NOT required to provide auxiliary aids and services to patients in this scenario.
 - Example: If a patient forgets his glasses and has trouble reading small print, the therapist can print worksheets, releases of information, etc. in larger font sizes. *The therapist is not required to purchase a new pair of glasses for the patient since doing so is not a necessary step to make the therapist's services accessible to the patient.*
- *Exception 1:* Therapists are not required to take "necessary steps" that are *unduly burdensome*.
- *Exception 2:* Therapists are not required to take "necessary steps" that would *fundamentally alter the nature of the services they provide*.

Scenario 2: When People with Disabilities DO REQUIRE Auxiliary Aids and Services for Effective Communication with Therapists

- Therapists must provide appropriate auxiliary aids and services to people with disabilities in these scenarios.¹¹
 - Example: If a deaf patient requires a sign language interpreter for effective communication with her therapist, the therapist must arrange for the provision of qualified interpreter services.
 - Counterexample: If a deaf patient can effectively receive communication from her therapist via lip reading, the therapist would not be required to provide qualified interpreter services.
 - Here, auxiliary aids and services, such as qualified interpreters, are not necessary for effective communication between the patient and therapist, so the therapist is only required to take necessary steps

⁸ See 28 C.F.R. § 36.303(b)

⁹ See Promoting Justice's online "Communication Disabilities" resource:

<http://childabuseanddisabilities.safeaustin.org/about-disabilities/communication-disabilities/>

¹⁰ 42 U.S.C. § 12182(b)(2)(A)(iii)

¹¹ 28 C.F.R. § 36.303(c)(1)

to ensure that the patient receives the therapist's services (See Scenario 1 above).

RESPONDING TO YOUR PATIENT'S NEEDS

Helpful Tips

1. If You See a Patient Struggling: Ask if They Need Help!
2. If a Patient Requests an Accommodation: Don't Feel Pressured to Respond Immediately
3. Document, Document, Document!
4. Be Flexible: Your Patient's Needs May Change Over Time
5. Consider Adding an "Accommodation Statement" to Your Informed Consent
 - a. Example: "If you have a disability and require an accommodation presently or at any time during the course of treatment, please direct your inquiries to..."¹²
6. Obtain Appropriate Legal Consultation Before Denying Accommodation Requests

¹² This statement was adapted from the Job Accommodation Network's (JAN) accommodation statement. JAN's sample accommodation statement for job applications can be found in the organization's online "Workplace Accommodation Toolkit" in the section entitled "Accommodation Process for Applications and Interviews": <https://askjan.org/toolkit/The-JAN-Workplace-Accommodation-Toolkit.cfm>