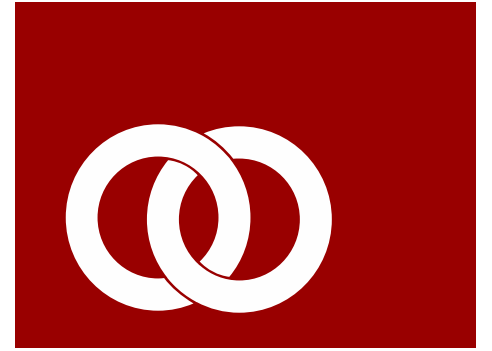


Guidelines for Writing Letters and Offering Professional Opinions

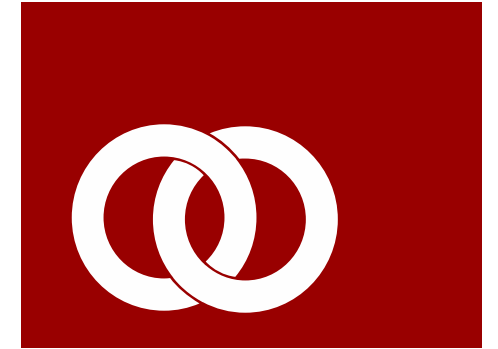
By Alain Montgomery, JD
CAMFT Staff Attorney

DISCLAIMER



- The information presented in this workshop is for educational purposes only and is not intended to serve as a substitute for independent legal advice.

GOALS & INTENTIONS FOR TODAY



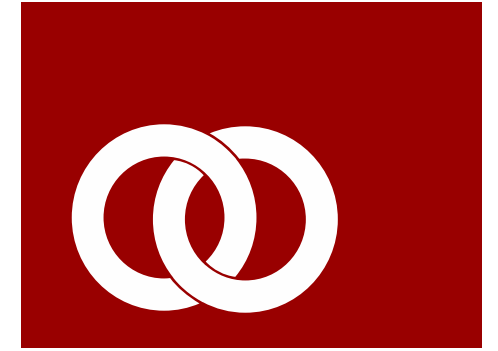
To give you the information you need to:

- Make well-informed and legally and ethically sound decisions, and
- Provide a framework that will help you formulate strategies so that you know what legal & ethical precepts to rely on when a client requests that you write a letter on their behalf. Ultimately, the goal is to give you information that will help you arrive at the decision to either write a letter or decline the client's request for a letter with as much equanimity as possible.
- To explain the boundaries around rendering professional opinions in legal proceedings.

We are going to:

- Review the legal, regulatory and ethical standards that apply to letter writing and rendering professional opinions.
- Identify relevant sections of the CAMFT Code of Ethics that address issues related to writing letters and offering professional opinions.
- Discuss the considerations that will help you identify whether or not it is within your scope of practice and competence to write various types of letters.
- Identify the types of letters that therapists are most commonly asked to write.
- Review best practices.

I. Introduction

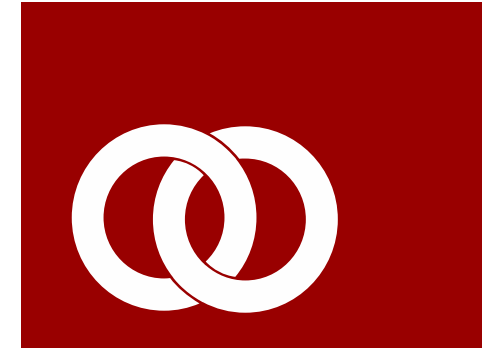


As a therapist you may be asked by a client to write a letter on the client's behalf that the client intends to use to support the client's request to obtain a benefit, to avail themselves of a specific opportunity or to achieve a goal in their life.

However, the client's request may be unrelated to the therapeutic work you do with the client. BUT, because you are a licensed mental health care provider who is qualified to make certain determinations, the client – and/or the individual or entity responsible for making a decision based on the client's request – may want your professional insight, opinion or recommendation.

Thus, it is important to understand the distinct legal, regulatory, ethical standards and rules that pertain to writing letters and offering opinions while acting in your professional capacity.

II. Applicable Legal, Regulatory, Ethical Standards and Rules for MFT's



The reason it is important to understand the applicable legal, regulatory and ethical standards that are relevant to your profession is so you remain in compliance with the standards when you write a letter or render a professional opinion. These standards include:

The Standard of Care

MFT Scope of Practice & Scope of Competence

CAMFT Ethical Standards

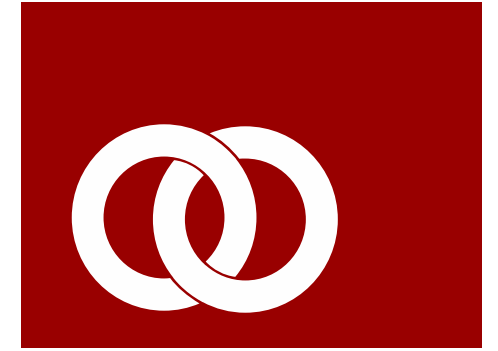
The Standard of Care

- The “Standard of Care“ (SOC) is a legal term not a health care term. The SOC refers to the level of attentiveness and care that one person owes to another person under certain circumstances.
- As a licensed professional you are subject to a *professional* (or higher) standard of care. A professional standard of care applies to a professional who offers services to a client or patient. As a MFT you *must* exercise the reasonable degree of skill, knowledge and care that is ordinarily exercised by other members in your same professional community when practicing under similar circumstances. [Black's Law Dictionary 2nd Ed. & Cal Jury Instruction 501]

- **Critical Reminder:** The standard of care applies to everything you do in your professional capacity not just letter writing



What Happens when a MFT's Conduct Falls Below the Standard of Care?



- **Under Cal. Bus. and Prof. Code, Section 4982(d):**
A Board registrant or licensee whose conduct falls below the standard of care is liable for “gross negligence or incompetence in the performance of marriage and family therapy.”

An allegation or finding of professional negligence could result in a host of legal, ethical or disciplinary consequences.

MFT Scope of Practice & Scope of Competence

The professional standard of care for a MFT registrant or licensee can be understood through how the “Scope of Practice” and “Scope of Competence” for MFTs are defined by BBS statutes and regulations.



MFT Scope of Practice



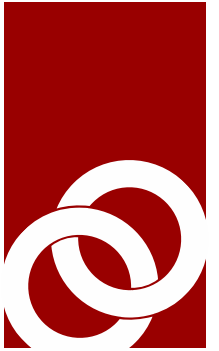
Scope of Practice

- **Cal. Bus. and Prof. Code, Section 4980.02** in part states: “. . . The **application of marriage and family therapy principles and methods includes, but is not limited to, the use of applied psychotherapeutic techniques. . . And the provision of explanations and interpretations of the psychosexual and psychosocial aspects of relationships. . .**”

Scope of Practice

- The scope of practice (SOP) defines the clinical functions a MFT may lawfully perform as prescribed by legislative and regulatory authority.
- The SOP identifies the clinical skill-set possessed by members of the MFT profession as a whole and describes how marriage and family therapy principles are applied.
- Every practitioner has a duty to act within the scope of practice of their profession.

MFT Scope of Competence



Scope of Competence

- **Cal. Bus. and Prof. Code, Section 4982(s):** in part states that unprofessional conduct is: “. . . Performing or holding oneself out as being able to perform mental health services beyond the scope of one’s competence, **as established by one’s education, training, or experience;** and,
- **CCR, Section 1845. UNPROFESSIONAL CONDUCT** in part states: “. . . unprofessional conduct includes, but is not limited to: (a) Performing or holding himself or herself out as able to perform professional services beyond his or her field or fields of competence **as established by his or her education, training and/or experience.**”

Scope of Competence

- The scope of competence (SOC) defines the different therapeutic techniques an individual within the MFT profession may perform as determined by one's education, training and experience.
- The SOC refers to the professional's individually honed knowledge, skills and abilities.
- Like the duty practice within your scope of practice, every professional is required to practice within their scope of competence.

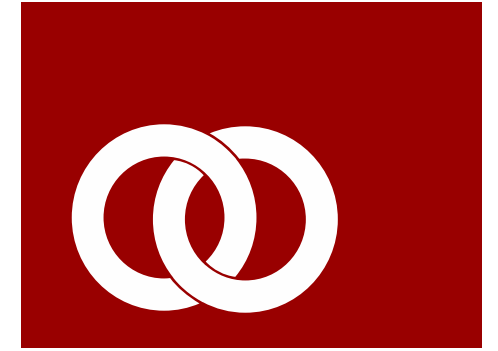
Relevant CAMFT Ethical Standard(s) that Provide Guidance on How to Stay Within the Scope of Competence



CAMFT Code of Ethics §5.11 Scope of Competence:

- Marriage and family therapists 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 ***their competence as determined by their education, training, and experience***. While developing new areas of practice, marriage and family therapists take steps to ensure the competence of their work through education, training, consultation, and/or supervision.

What Happens when a MFT acts outside their SOP or SOC?

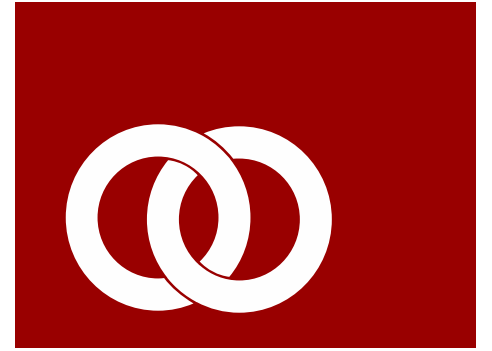


Acting outside one's SOP and SOC could subject a practitioner to allegations of professional negligence and a host of legal and or disciplinary consequences.

Recap and Questions:

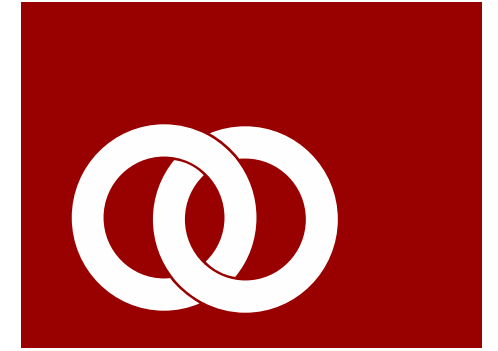
We have reviewed:

- 1) The legal, regulatory and ethical considerations around writing letters including the Std. of Care, SOP and SOC



QUESTIONS?

III. Rules that Pertain to Letter Writing



- So, as derived from the applicable legal, regulatory and ethical standards that we have reviewed, the basic rules when it comes to letter writing are simple:

Rule #1

- Therapists are not legally or ethically required to write letters on behalf of clients.

Rule #2

- Generally, therapists are not legally or ethically prohibited from writing letters for clients unless a statutory provision excludes the MFT provider/license type from being eligible to do so.



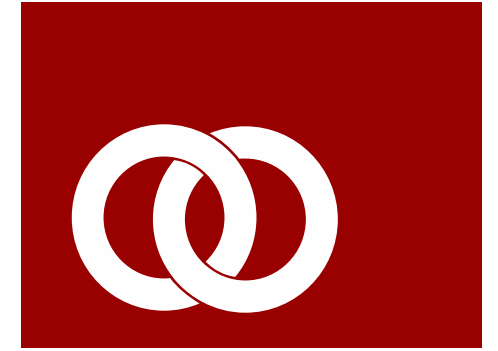
Because you are not legally or ethically required to write letters on behalf of clients who ask for one. . . .

This means you can have – and enforce – a policy that states you *do not* write letters on behalf of clients without fearing that you are violating a legal or ethical standard.

So, you can reserve for yourself the right not to involve yourself in matters that arise in your client's life that are unrelated to the therapeutic work you do with your client or take on the burden of that knowledge or responsibility through letter writing.

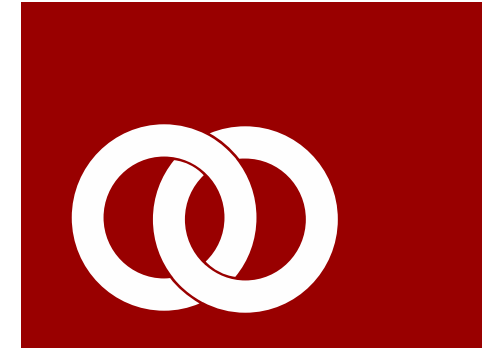


And, because you are not legally or ethically prohibited from writing letters on behalf of clients unless prohibited by law . . .

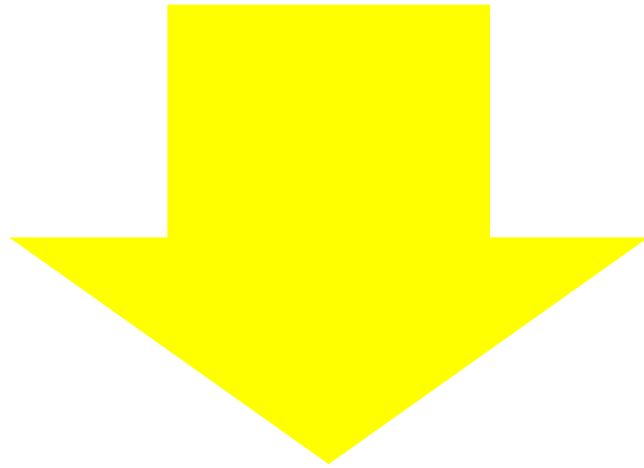


This means you can choose to write a letter on behalf of a client as long as you make statements, attestations or certifications that are 1) within your scope of practice and 2) scope of competence *AND* when it is clinically and ethically appropriate.

So, Letter Writing for a MFT is a Balancing Act That Requires Many Considerations



If you choose to write a letter, you have to balance your desire to advocate and support your client in whatever endeavor they are pursuing



with any and all applicable legal, regulatory and ethical standards that are related to letter writing so you don't speak or act outside your MFT SOP or SOC

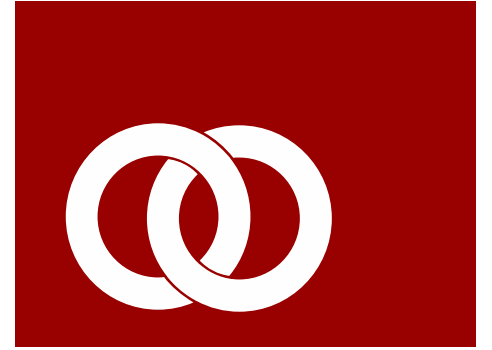


As a Marriage and Family Therapist you are mandated by law to write letters for clients and can be subject to disciplinary action if you refuse to do so, true or false?

- A. True
- B. False



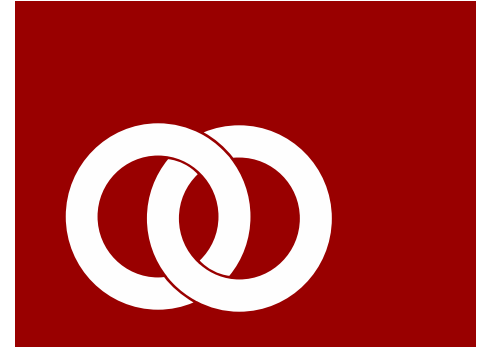
Answer:



B. FALSE!!!

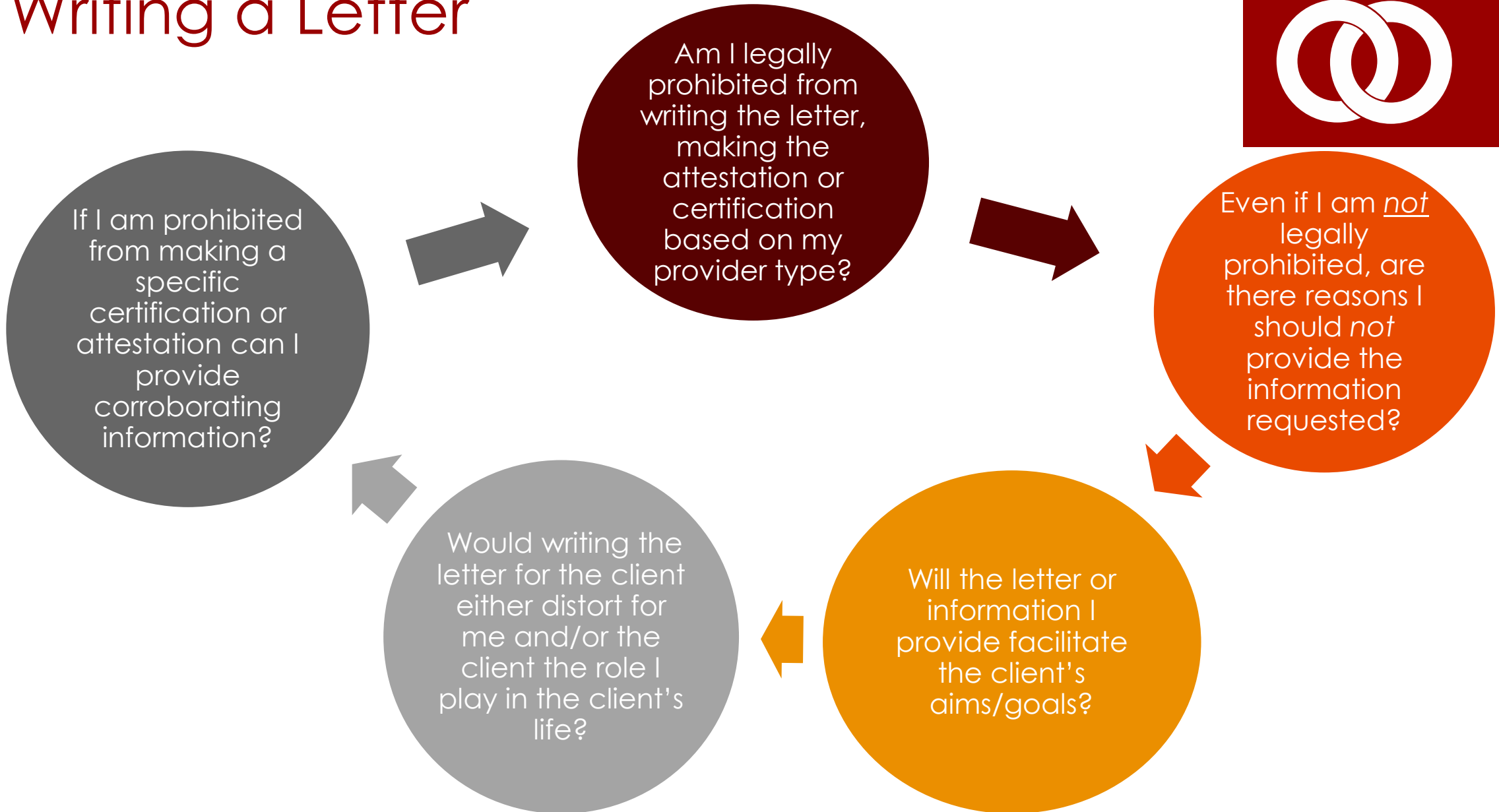
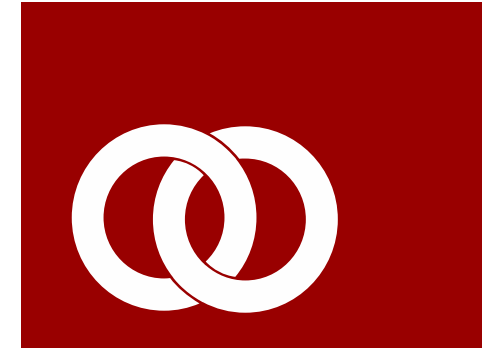
Therapists are **not** legally or ethically required to write letters on behalf of clients.

IV. Considerations to Evaluate Before Writing a Letter

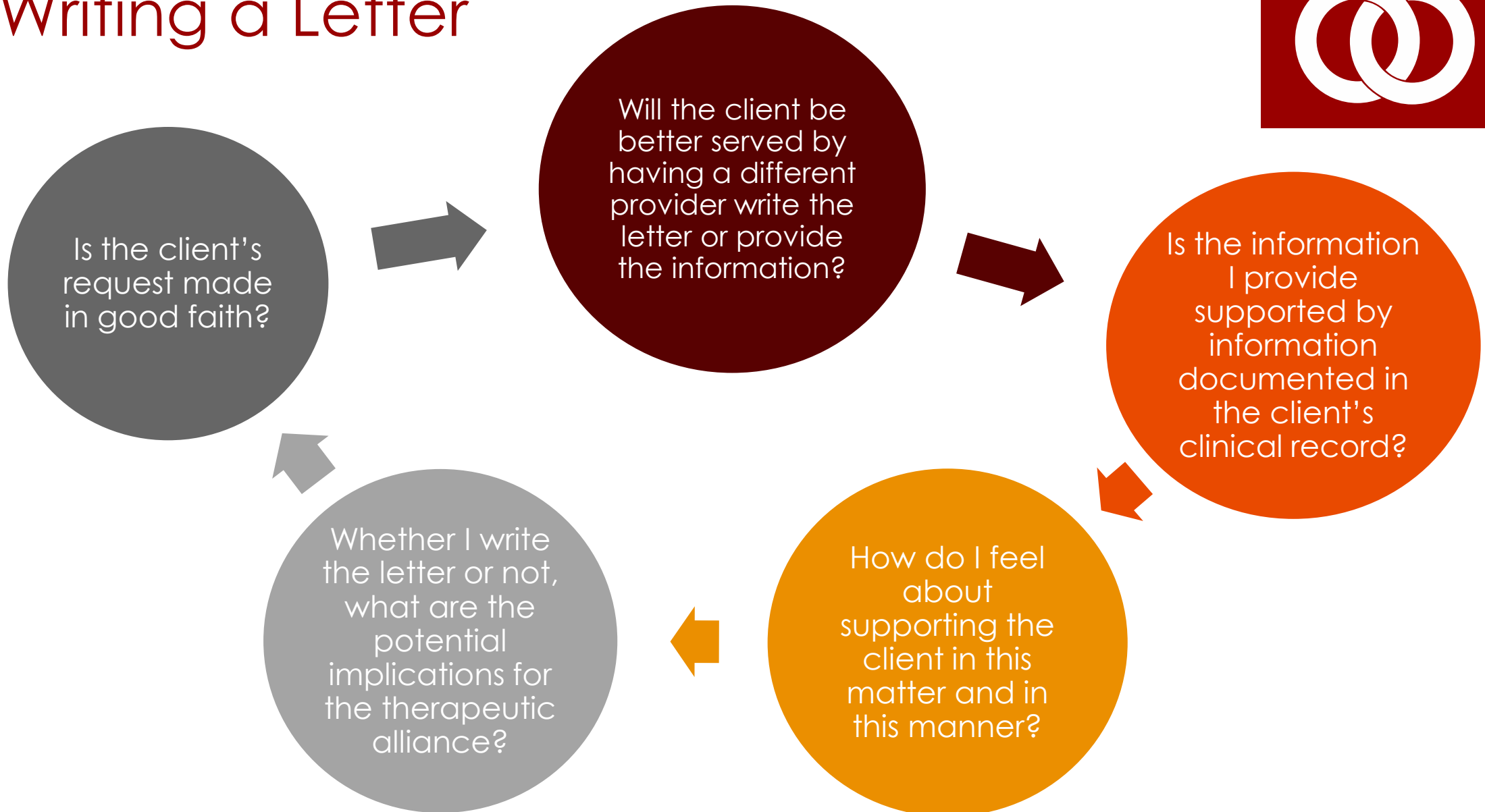
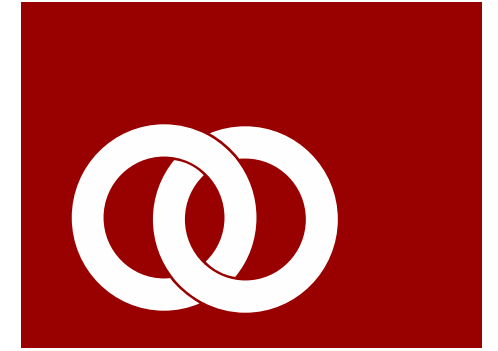


The list of questions that you can ask yourself to determine whether or not writing a letter serves the client's best therapeutic interest and aligns with the applicable legal, regulatory and ethical standards is not exhaustive.

Considerations to Evaluate Before Writing a Letter



Considerations to Evaluate Before Writing a Letter



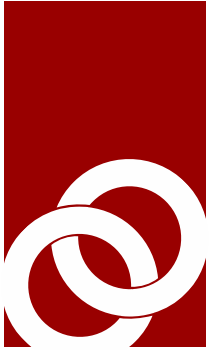


V. Practical Writing Guidelines for Crafting Language When Writing Letters:

The language, words and phrases in a letter could be impactful not only for the client but could also have implications for the provider who writes the letter.



Practical Writing Guidelines (cont.)



Language and phrases that – if not used appropriately – could increase the probability the information contained in the letter and the capacity of the writer to make such statements could be questioned or subject to scrutiny.

- “It is my opinion that _____.”
- “I recommend that _____.”
- “I suggest that _____.”
- “You should/should not _____.”

When is it appropriate to use such language?

It is appropriate to use such language if it is aligned with your SOP and SOC. For example, if you assessed a client and formed the opinion that the client needed a higher level of care made that recommendation in a letter, such language would be appropriate because it is within your SOP & SOC to assess your client, render such an opinion and make such a recommendation based on a client’s diagnosis or prognosis.

Also, if you were asked by a client to submit a letter to an insurance company for the purpose of recommending that additional treatment sessions be authorized based on the client’s current diagnosis & prognosis, such language would be appropriate because it is within your SOP & SOC to make such a recommendation.

Practical Writing Guidelines (cont.)

Language and phrases that are more neutral, objective, matter of fact and written in a more 'report like' style manner are more likely to be supported by information that is documented in the clinical record and less likely to be subject to unwanted scrutiny

- “[Client] stated that _____.”
- “[Client reported that _____.”
- “[Client] said that _____.”
- “I observed _____.”
- “I assert my support for [Client’s] request to/for _____.”

When is it appropriate to use such language?

It is appropriate to use such language to write varied types of letters on behalf of clients.



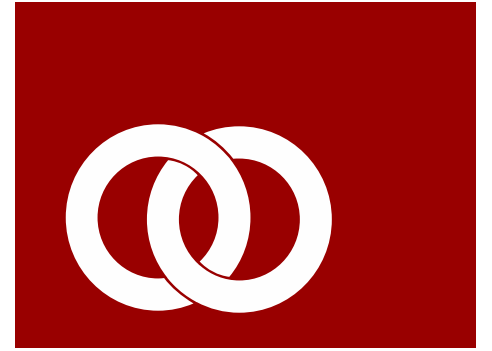
Final Thoughts on the Use of Language, Words and Phrases:

When you write a letter you are not prohibited from using certain words, language or phrases. But, consider what is necessary for you state in a letter. Because the purpose of a letter from you is to support the client's request for something from someone and to support the client's personal advocacy efforts *not* to make the request for, or on behalf of, the client.



VI. Types of Letters Therapists are Asked to Write

- Request to write a letter to support the client's request for an Emotional Support Animal
- Request to write a referral letter to an insurance company or surgical group to support the client's request for gender affirming surgery
- Request to fill out a client's claim for Social Security Disability, Family Medical Leave (FMLA) or to provide information to the client's employer to support the client's leave or time off of work request
- Request from a client's parent (if client is a minor) to write a letter to the Court to recommend that a parent's custody rights should be restored, removed or modified
- Request to write a letter to the Jury Commissioner to support the client's request to be excused from Jury duty
- Request to write a character reference or recommendation to support the client's request to enter an educational institution, fraternity or sorority or participate in an extracurricular scholastic program



The “Can You Write Me an Emotional Support Animal Letter?” Request

To ensure you remain within your SOP and SOC when you write an Emotional Support Animal (“ESA”) letter, it is important to understand the distinction between a service animal and an emotional support animal.



Service Animal



Service Animal

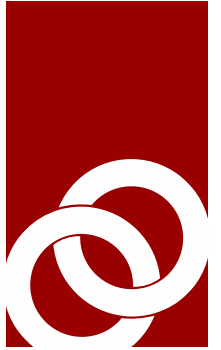
- **The Law:** Service animals are protected under the Americans with Disabilities Act (“ADA”) and apply to a **any dog or miniature horse** that is individually and specially trained to do work or perform tasks for the benefit of an individual with a disability.
- **The Individual:** Under the ADA, an individual who is limited in their ability to perform major life tasks due to a qualified physical, sensory, intellectual or psychiatric disability is eligible to have a service dog.
- **The Role:** Service dogs perform such tasks as guiding those who are blind (Guide Dog), alerting people who are deaf (Hearing or Signal Dog), alerting a person who is having a seizure (Seizure Response Dog), reminding a person with mental illness to take prescribed medications, (Psychiatric Service Dog) or, pulling a wheelchair.

Service Animal

- **The Access:** Service animals can accompany an individual with a disability in all areas where members of the public are allowed. Under Air Carrier Access Act, airlines are required to recognize dogs as service animals and accept them for transport on flights to, within and from the United States.
- **The Take Away:** A service dog is not required to be registered, certified, or identified as a service dog. However, a health care provider who provides documentation must be able to attest to the existence of the individual’s underlying physical, sensory, or intellectual disability and the individual’s need for a reasonable accommodation.

[28 C.F.R. § 36.104]

Emotional Support Animal (ESA)



Emotional Support Animal (ESA)

- **The Law**: Emotional Support Animals are protected under the Federal Fair Housing Act (FHA).
- **The Individual**: Under the FHA, an individual with a mental health condition or disorder qualifies to have an ESA.
- **The Role**: An ESA is **any animal** provides companionship and support to alleviate the symptoms or effects of an individual's mental or emotional distress (i.e., anxiety, depression, panic attacks, or other psychological and emotional conditions)

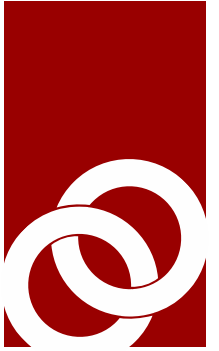
Emotional Support Animal

- **The Access**: Under the FHA, housing providers are required to allow individuals to have an ESA in their home & the U.S. Department of Housing and Urban Development (HUD) requires housing providers to make exceptions to "no pets" policies. However, the DOT announced in 2020 that ESA's will no longer be considered service animals and will treat ESA's as pets which gives the airline discretion.
- **The Take Away** There is no requirement that an ESA be individually certified, However, a health care provider who provides documentation must be able to attest to the individual's underlying condition and that the ESA alleviates the symptoms of the individual's condition.

New CA Emotional Support Dog Letter Law



- California Assembly Bill 468 – Emotional Support Animals was approved by the Governor on September 16, 2021 and will take effect on January 1, 2022 and be codified in the Health and Safety Code.
- The bill prohibits a health care practitioner from providing documentation relating to an individual's need for an **emotional support dog** unless the health care practitioner complies with specified requirements.
- Under the law, an emotional support dog is defined as a dog that provides emotional, cognitive, or other similar support to an individual with a disability, and that does not need to be trained or certified.
- The law requires health care practitioners to comply with all of the following:
 - (1) Possesses a valid active license
 - (2) Is licensed to provide professional services license in the jurisdiction in which the documentation is provided
 - (3) Establishes a client-provider relationship with the individual for at least 30 days prior to providing the documentation requested regarding the individual's need for an emotional support dog.
 - (4) Completes a clinical evaluation of the individual regarding the need for an emotional support dog.
 - (5) Provides verbal or written notice to the individual that knowingly and fraudulently representing oneself to be the owner or trainer of any canine licensed as or identified as, a guide, signal, or service dog is a misdemeanor.



Fact Pattern:

J. Smith, LMFT specializes in grief and has been treating their client Clint West to help Clint process the death of his spouse. Clint told J. Smith, LMFT that he experiences waves of sadness and depression which interferes with his ability to concentrate. J. Smith, LMFT diagnosed Clint with adjustment disorder with mixed disturbance of emotions and conduct. Clint told J. Smith, LMFT that the one thing in his life that alleviates his symptoms of depression is his faithful canine companion, Lily, a 3 year old yellow Labrador Retriever. Clint explained that having Lily in his life gives him a sense of purpose, a sense of companionship, makes him feel happy and helps him stay connected to the world and other people as Lily is quite the character and focus of conversation with other dog owners at the dog park each morning. Clint told J. Smith, LMFT that at this point he could not imagine going through life without Lily. Clint explained that he was going to move out of the family home and move into an apartment. However, the lease contains a no pets policy but allows tenants to have emotional support animals. Clint asked J. Smith, LMFT to write a letter attesting that Lily is Clint's emotional support animal. Can and should J. Smith, LMFT write the letter?

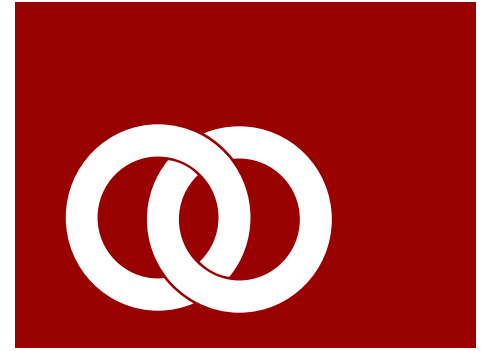
Explanatory Answer:

Can J. Smith, LMFT write the letter?

Yes. As a licensed mental health care provider it is within J. Smith's, LMFT scope of practice to diagnose their client with a mental health condition based on criteria in the Diagnostic and Statistical Manual of Mental Disorders (DSM-5). Also, since J. Smith's, LMFT specialty is bereavement, it is within their scope of competence to assess how their client's symptoms due to grief can be alleviated.

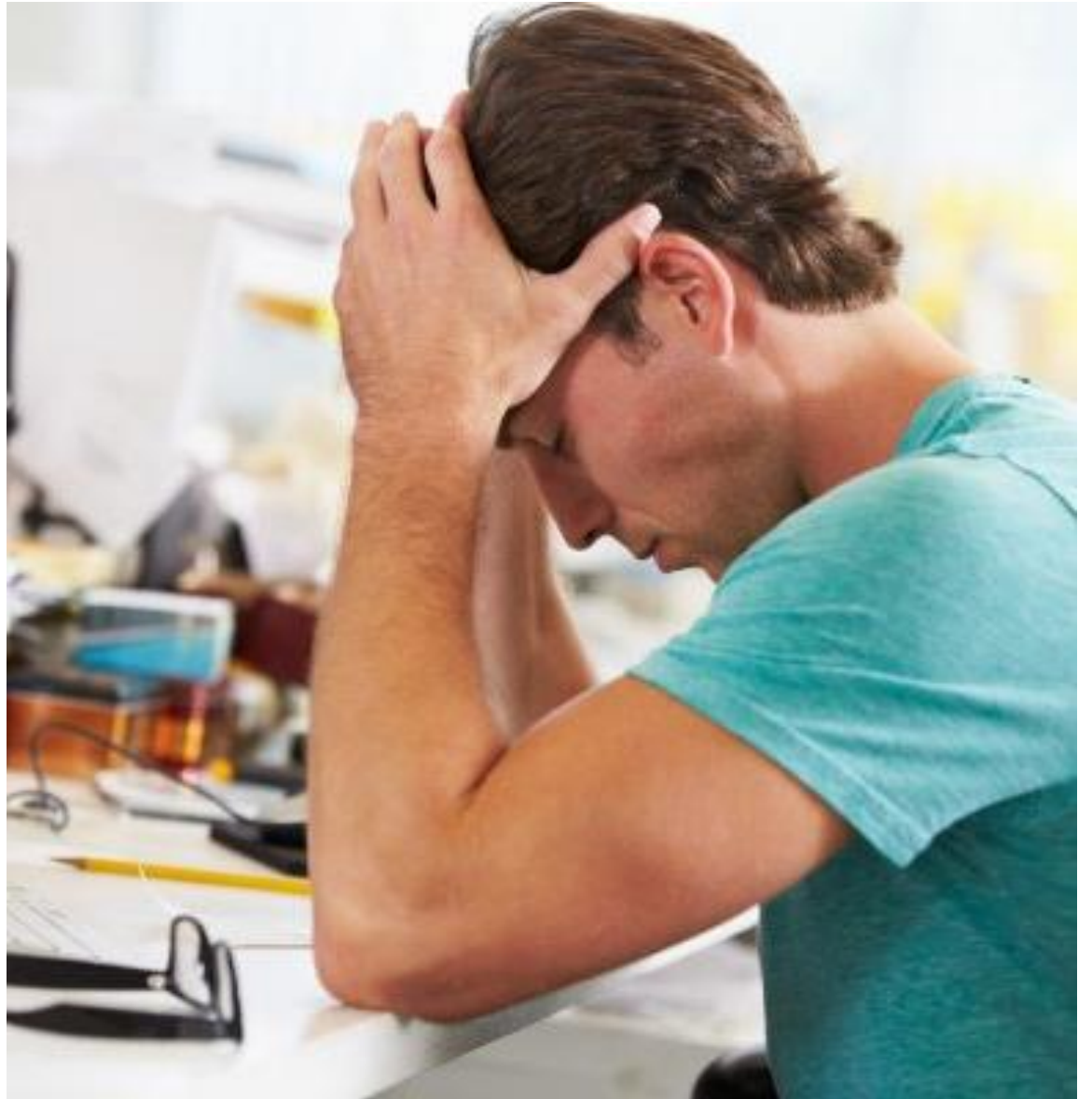
What should J. Smith Consider?

Here, J. Smith's, LMFT should consider how, the information they provide is supported and documented in the clinical record based on what Clint said, stated or reported in session.



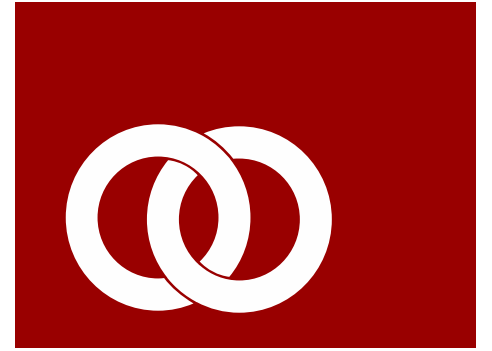
The “I Need Time off Work, Can You Fill Out this Form for Me?” Request

To know whether or not it is within your SOP and SOC to complete forms to support a client’s request for leave or time off work it is important to have a general understanding of the programs under which the client may be eligible as a basis to qualify for time off work.



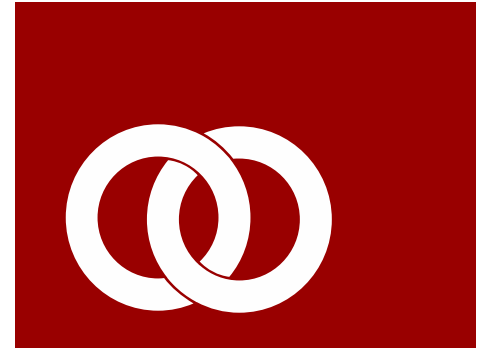
Social Security Disability SSDI

- Social Security Disability Insurance is a federal assistance program that provides benefits to eligible individuals whose disability or illness prevents them from working. Medical evidence of the claimant's medically determinable impairment is the cornerstone of the disability as determined by a physician, psychologist, optometrist, podiatrist, audiologist, speech pathologist or licensed advance nurse practitioner or physician assistant. [20 CFR § 416.902. (a)(1)-(8)]



Family Medical Leave (FMLA)

- The Family Medical Leave (FMLA) allows eligible employees to take 12 weeks of unpaid leave for a serious health condition that makes them unable to perform essential job functions as determined by a doctor of medicine or osteopathy, podiatrists, dentists, clinical psychologists, optometrists, and chiropractors, nurse practitioners, nurse-midwives, clinical social workers and physician assistants who are performing within the scope of their practice. [29 CFR § 825.125 (a)-(c)]



Fact Pattern:

J. Smith, LMFT has been treating Rhonda North for depression. Rhonda was in a car accident 1 year ago in which she sustained multiple broken bones in her feet, legs and a herniated disk in her back. Her injuries have caused her chronic pain. As a result of her injuries, Rhonda is not able to maintain her active lifestyle which includes participating in triathlons and coaching her kid's soccer team. This has left Rhonda burdened with an unshakable feeling of worthlessness. Rhonda told J. Smith, LMFT that she is currently seeing an osteopathic physician and a podiatrist for continued treatment of her injuries. Rhonda told J. Smith, LMFT that her physical pain has impacted her ability to perform her job as skilled forklift operator. Rhonda told J. Smith, LMFT that she feels like she needs time off work to focus on her physical health and participate in extensive rehab. Rhonda asked J. Smith, LMFT to fill out a form from her employer who intends to use the information to decide if Rhonda is eligible for leave from work. The form stated that any "health care provider" could complete the form and asked the health care provider to state the employee's diagnosis, to indicate the amount of time or leave that is needed and whether the employee is unable to perform their essential job functions and basic work related tasks due to their medical condition. J. Smith, LMFT wants to help Rhonda but has doubts about her ability to complete the form. What should J. Smith, LMFT do?

Explanatory Answer:



J. Smith, LMFT should consider whether or not it is within her SOP and SOC to determine whether or not Rhonda can perform her specific job functions and her specific work related duties based on Rhonda's physical impairments. The facts state that Rhonda is under the care of an osteopathic physician and a podiatrist, both of whom would be able to determine whether or not Rhonda's physical injuries impact her ability to perform her job. J. Smith, LMFT should consider deferring Rhonda to another provider to complete the form.

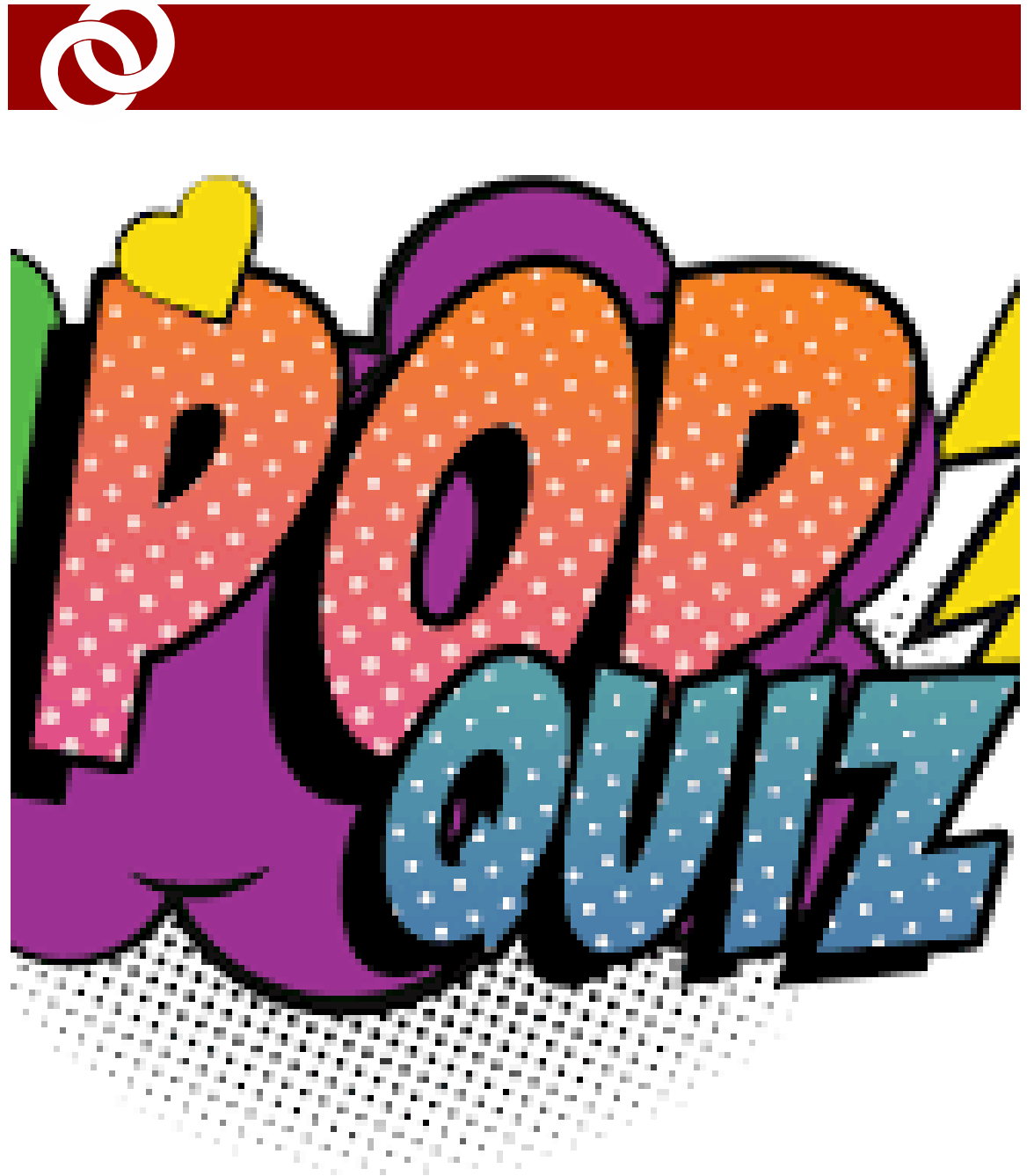
If J. Smith, LMFT makes the decision to refer Rhonda to her physician or podiatrist, is there any other way that J. Smith can support her client?

Yes, J. Smith, LMFT could write a letter that corroborates what Rhonda said, stated, or reported about wanting and/or needing time off of work due to her injuries and how – in Rhonda's own words – her injuries impact her ability to perform her essential job functions.

Remember, it is not within the SOP of a MFT to assess whether or not a client is or is not physically able to perform their specific and essential job functions – or the accommodations that may be needed – no matter what the client's job is whether the client is a waiter, engineer, student or truck driver.

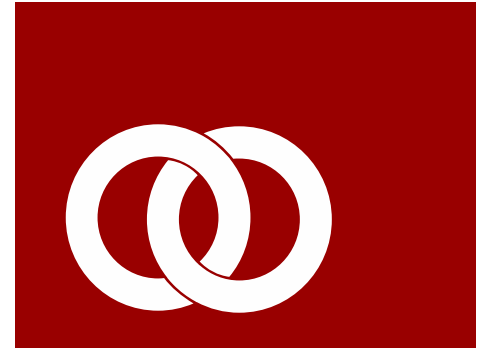
Writing a letter that contains clinical information is the same as providing the clinical record and the same rules apply, true or false?

- A. True
- B. False

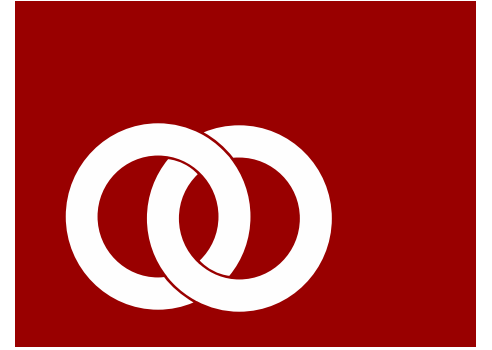


Explanatory Answer:

B. FALSE!! Writing a letter in which clinical information is contained IS NOT the same thing as providing the clinical record. The rules that pertain to letter writing are derived from various standards. How to respond to a client's or a third party's request for a client record is prescribed by state and federal laws. So, if a client wants you to provide them with information about their treatment make sure the request is clear as to how they want that information, whether it is in the form of a letter or the actual record.



Recap and Questions:



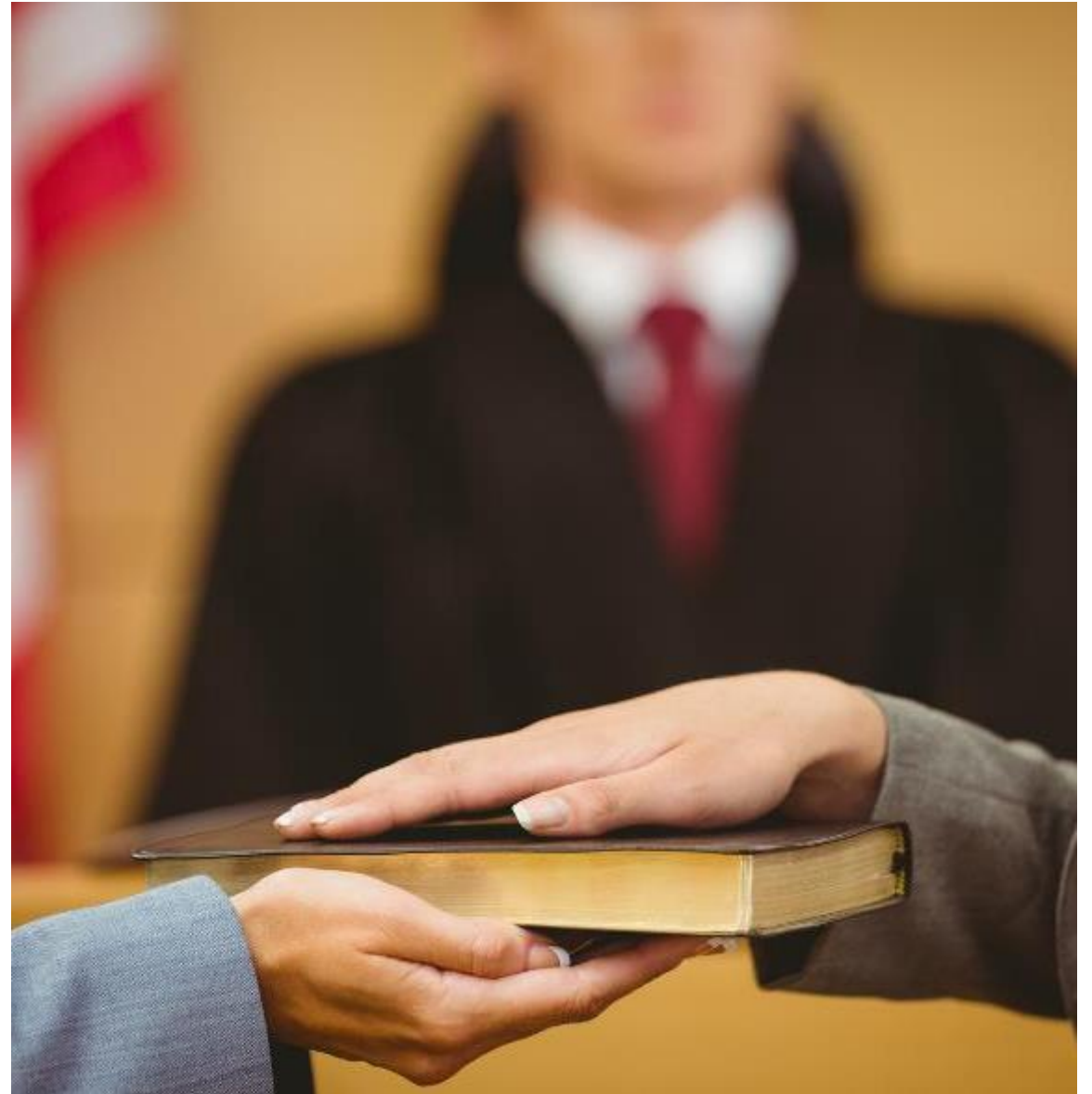
We have reviewed:

- 1) The two basic rules that apply to letter writing
- 2) The considerations to evaluate in contemplating to either write a letter or to refuse the client's request
- 3) Practical guidelines for writing letters
- 4) The different types of letters that therapists are commonly asked to write

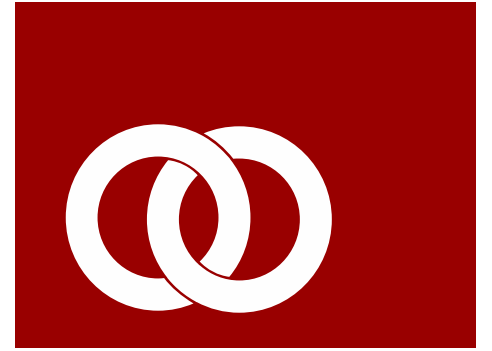
QUESTIONS?

VII. Professional Opinions in Legal Proceedings

It is important to understand the different capacities in which you may be asked or compelled to appear as a witness in a legal proceeding. The type of witness you agree to serve as, or are compelled to testify as, determines the scope of the opinion you can render.



Types of Witnesses

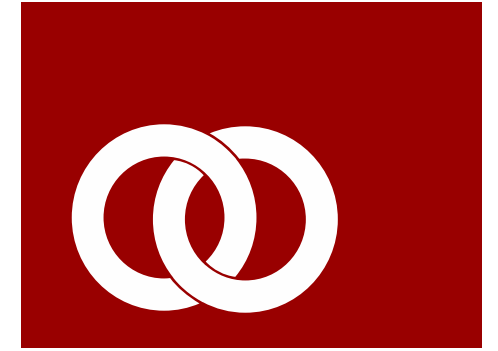


You will either testify as a:

1. Fact Witness
2. Retained Expert Witness
3. Treating Therapist Witness

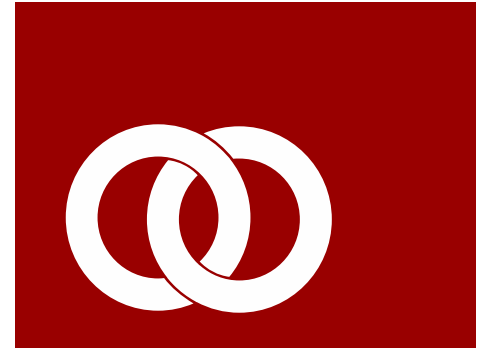
Let's take a look at the differences between the three types.

Fact Witness



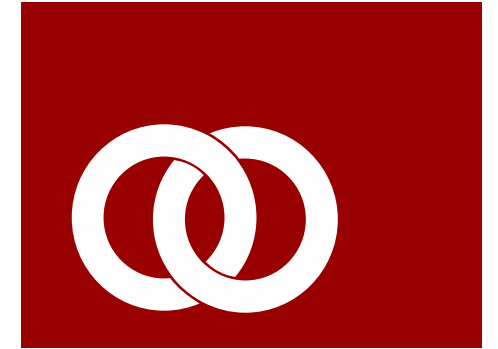
- A fact witness is one who "... personally sees or perceives a thing... who is called to testify **to what he has seen, heard, or otherwise observed.**" [Black's Law Dictionary, 6th Ed.]
- "...the witness' testimony in the form of **opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness and** based on what the witness directly observed" [FRE 701]
- Compensation for a fact witness is set by statute. Fees are thirty-five dollars (\$35) a day and mileage actually traveled, both ways, twenty cents (\$0.20) a mile. [Gov. Code, Section 68093]

Fact Witness (cont.)



In sum, a fact witness has personal and firsthand knowledge of an incident, event or person (i.e., a client) involved in the lawsuit. A fact witness only recites facts related to that incident, event or individual based on what they observed. A fact witness may only provide an opinion when the opinion is based on the witness's actual perception.

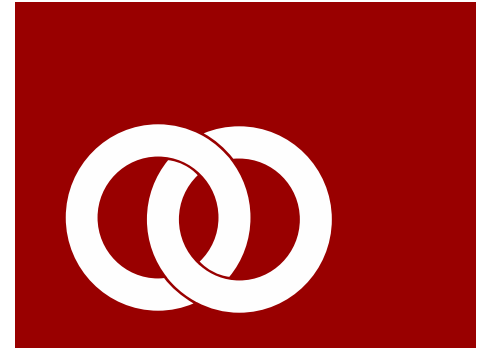
Expert Witness



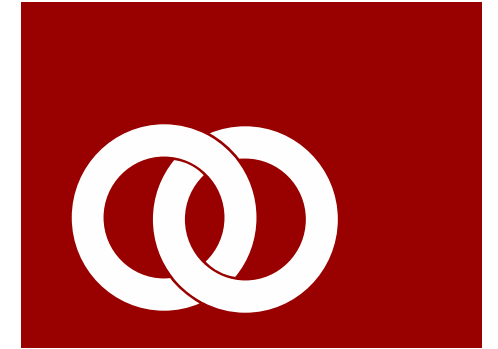
- An expert witness is “One who **by reason of education or specialized experience possesses superior knowledge respecting a subject about which persons having no particular training are incapable of forming an accurate opinion or deducing correct conclusions...**”
[Blacks Law Dictionary, 6th Ed.]
- “**A witness qualified as an expert by knowledge, skill, experience, training, or education, may testify in the form of an opinion . . .** based upon sufficient facts or data, reliable principles and methods” which the expert applies to the facts of the case.” [FRE 702]
- An expert witness testifies voluntarily by agreement with one of the parties or the Court.
- An expert’s fees are set by the expert based on the experts reasonable and customary hourly or daily fee. [Gov. Code, Section 68092.5 & Cal. Code of Civ. Pro., Section 2034.210]

Expert Witness (cont.):

In sum, the key distinction between a fact witness and an expert witness is that an expert witness may provide an opinion or draw conclusions based on their “scientific, technical, or other specialized knowledge” and expertise. Unlike a fact witness, an expert witness is not called to testify because of their prior involvement in activities that precipitated the litigation (i.e., having had a therapeutic relationship the party involved in the lawsuit). An expert witness does not have personal or firsthand knowledge of the incidents, events, or individuals involved in the litigation but uses their specialized knowledge and methodologies to form opinions, explain reasoning or draw conclusions.



Treating Therapists Witness



A treating therapist witness is a treating physician or other treating health care practitioner who is asked to express opinion testimony or factual testimony regarding the past or present diagnosis or prognosis of a client and the reasons for a particular treatment decision made by the practitioner.

A party who takes the deposition of a treating health care practitioner must pay expert witness fees. [Cal. Code of Civ. Pro. Section 2034.430].

Relevant CAMFT Ethical Standard(s) that Provide Guidance on Offering Professional Opinions



CAMFT Code of Ethics § 10.5 Impartiality

- Marriage and family therapists, ***regardless of their role in a legal proceeding***, remain impartial and do not compromise their professional judgment or integrity. **Marriage and family therapists understand that their testimony and opinions are impactful on legal outcomes. Marriage and family therapists use particular caution when drawing conclusions or forming or expressing opinions from limited observations or sources of information.**

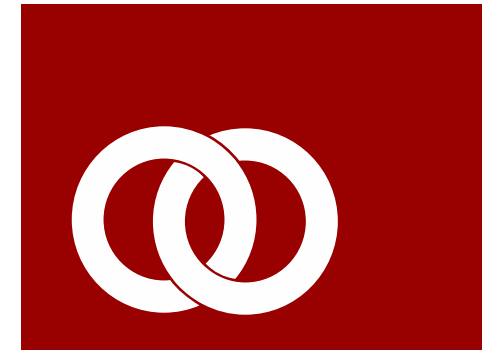
CAMFT Code of Ethics § 10.7 Professional Opinions in Court Involved Cases

- **Marriage and family therapists shall only express professional opinions about clients/patients they have treated or examined.** Marriage and family therapists, when expressing professional opinions, specify the limits of the information upon which their professional opinions are based. **Such professional opinions include, but are not limited to, mental conditions, emotional conditions, or parenting abilities.**

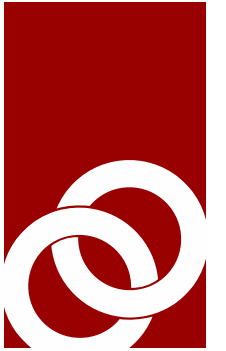
Relevant CAMFT Ethical Standard(s) that Provide Guidance on Offering Professional Opinions

CAMFT Code of Ethics § 10.2 Expert Witnesses

Marriage and family therapists who act as expert or who provide expert opinions in any context, orally or in writing, **clarify their expert role to their clients/patients, fellow professionals, attorneys, and the court as necessary**. Marriage and family therapists base their opinions and conclusions on appropriate data and are careful to acknowledge the limits of their training, data, recommendations or conclusions, in order to avoid providing unsubstantiated, misleading, distorted, or biased testimony or reports. **Marriage and family therapists carefully distinguish between the roles of “treating therapist” and “forensic expert.” Treating therapists primarily provide opinions on the assessment, diagnosis, treatment progress and recommendations, particular area of expertise and issues directly relevant to the treatment role.** They understand that their role is to facilitate successful psychological functioning, and not to promote a predetermined legal outcome. **Forensic experts are retained to offer opinions and make recommendations in a variety of legal contexts**, including specific parenting and custody plans or decision-making authority in legal proceedings.



Relevant CAMFT Ethical Standard(s) that Provide Guidance on Offering Professional Opinions



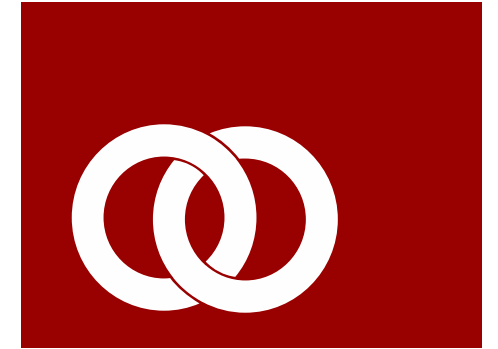
CAMFT Code of Ethics §5.14 Limits of Professional Opinions:

- Marriage and family therapists **do not express professional opinions about an individual's psychological condition unless they have treated or conducted an examination and assessment of the individual**, or unless they reveal the limits of the information upon which their professional opinions are based, with appropriate cautions as to the effects of such limited information upon their opinions.

CAMFT Code of Ethics §10.1 Testimony:

- Marriage and family therapists who give testimony in legal proceedings testify truthfully and avoid making misleading statements. Marriage and family therapists inform the court of any conflicts between the expectations of the court and their ethical obligations or role limitations. **Marriage and family therapists should anticipate that clients, attorneys, or the court, might ask them to offer opinions or information beyond the limits of their knowledge base or expert role. In such circumstances, marriage and family therapists** safeguard their professional objectivity by clarifying these issues with the court and respectfully **declining to offer such testimony**

A Few Questions . . .



- *Can I immunize myself from having to appear in Court as a witness if I state in my Informed Consent, that I do not appear in Court or get involved in a client's legal issues?*

ANS: No. Having such a statement in your Informed Consent may dissuade a client from trying to involve you in their legal issues or from asking you to appear in Court on their behalf. However, the reality is that if you are subpoenaed to produce records or to appear at a deposition or a trial you must be responsive and appropriately comply.

- *Can I dictate the capacity in which I appear as a witness in a legal proceeding if I state in my Informed Consent that the only capacity in which I will appear as a witness is as an “Expert Witness?”*

ANS: No. Unless you are asked by a party to voluntarily appear as a retained expert witness, you will most likely be subpoenaed to appear as a “treating therapist witness” and entitled to your reasonable and customary hourly or daily fee.

FACT PATTERN:



J. Smith, LMFT is treating James, a 7 year old boy to help him adjust to his parent's divorce and who are involved in a custody dispute. James' parents shared that they are working with a court mediator and an independent custody evaluator. J. Smith, LMFT is subpoenaed to testify as a witness at the custody hearing. During the hearing, J. Smith, LMFT is asked the following question:

Question: *“What is your opinion as to whom should have full legal and physical custody of James?”*

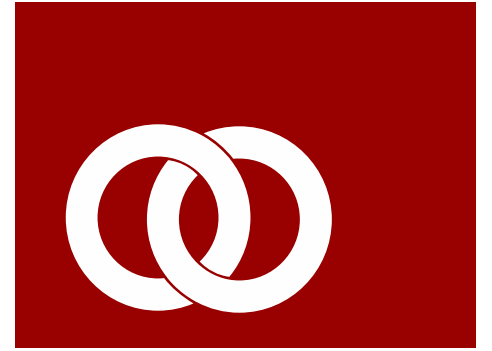
J. Smith's, LMFT Answer: *“I do not have an opinion about that and have not formed an opinion about that. I am not testifying in the capacity of a custody evaluator. I am James' therapist. As such, I can only tell you what James said about where and with whom he wants to live.”*

Did J. Smith answer the question in an appropriate manner?

Explanatory Answer:

J. Smith's answer was appropriate. Here is why:

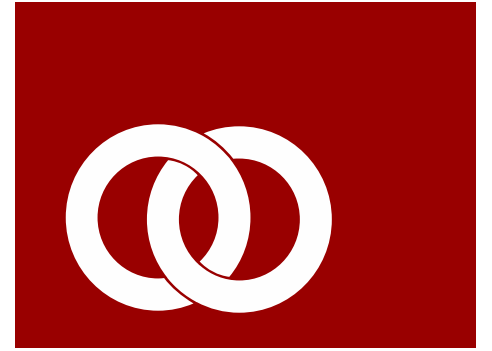
- When J Smith, LMFT was asked a question that addressed an ultimate issue J. Smith, LMFT properly stated that it was not within their scope of practice or scope of competence to make a determination or conclusive statement about custody as that was *not* the capacity in which they were working with James.



Recap and Questions:

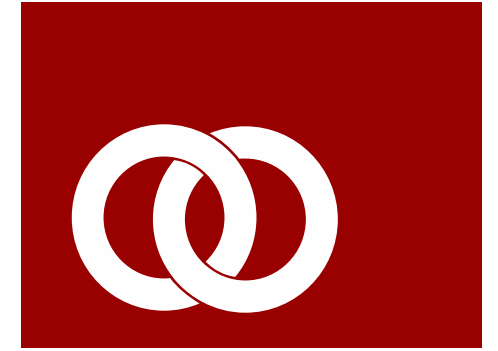
We have reviewed:

- 1) The distinctions between a fact witness, expert witness and treating therapist witness
- 2) The CAMFT Code of Ethics standards that pertain to offering professional opinions



QUESTIONS?

VIII. Best Practices



If you choose to write a letter on behalf of your client, It's a good idea to discuss in advance with the client what information you can provide would be shared, and why.

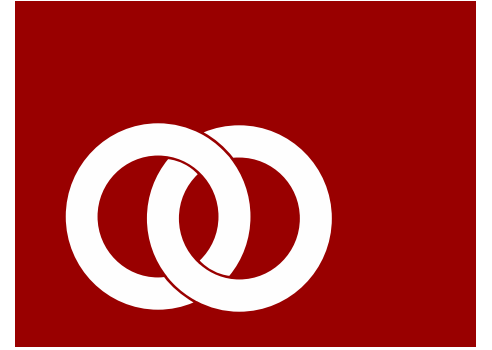
Although you might sympathize with your client, consider it it would be outside your SOP and SOC or unethical for you to render any kind of professional opinion

Don't give any more than necessary. For example, if the request is for a diagnosis and documentation of dates of treatment, there may not be a reason to offer any additional details.

If you refuse to write a letter, it is possible that your client may be disappointed. Consider whether you can apply your clinical skills to help the client manage their emotional reactions.

Remember, it is okay to enforce the boundaries you create around your letter writing practices.

IX. Resources:



CAMFT Articles

- “SOMETIMES, It’s What You DON’T SAY...” by Michael Griffin, JD, LCSW (CAMFT Staff Attorney)
- “Scope of Practice” by Mary Riemersma, MBA (Former Executive Director of CAMFT). Reviewed October, 2019 by Ann Tran-Lien, JD (Managing Director, Legal Affairs)
- “Responding To A Subpoena” by Alain Montgomery, JD, Staff Attorney
- Affirming Care: How Therapists Can Support Adult Patients Seeking Gender-affirming Surgeries by Bradley J. Muldrow, JD, Staff Attorney