

Abuse of the Professional Relationship

How Professionals Abuse Power - Therapists, Doctors, Lawyers, Clergy, Teachers and others

The Problem With No Name

There he sits in his private office behind his very impressive desk with all of his certificates and diplomas adorning the walls. He wears a beautifully tailored suit and highly polished wingtips, or a white doctor's coat, or a priest's collar. She needs his help. She's reaching out for something - anything - that will ease her pain. She is vulnerable. He is respectable. He is in a position of power - she is not.

The scenario repeats itself daily, in doctors' offices, law offices and in the quite confines of the psychotherapist's domain.

Ultimately the relationship evolves into an exploitative situation in which the man in power manages to have sex with the vulnerable female.

As stated in an article in U. S. News and World Report:

"When Sex Enters the Equation, Psychotherapy is Over

This is how it begins: An attractive young woman goes to see a psychotherapist for the first time. Perhaps she is having trouble with men. Perhaps she is overly impulsive or drinks too much or has nightmares. She relaxes inside the quiet consulting room, with its Persian rugs and tall bookshelves. She tells her deepest secrets, opening up to the middle-aged man who sits across from her, his brown oxfords polished, his eyes intent, listening. Yet there is something not quite right. Is it that he is a little too personal? That he is so willing to talk about himself? She can't quite put her finger on it. She begins to dream about him. If he mentions a book, she runs out to buy it. At night, she calls his answering machine just to hear his voice. He has become her protector, her father.

This is what she does not know: The therapist has problems of his own. He is lonely. His children have left home, and in his eyes his wife is old and unappealing. To make matters worse, he is bored with his work, with the hourly grind of having to listen to unhappy people who never seem to change. There are medical problems - nothing life threatening, but enough to remind him of the possibility that life will end. He is losing his sense of professional boundaries, but he doesn't know it yet. At night, he pours himself a glass of brandy. Then another. Still, he cannot fall asleep.

This is what happens: One day the young woman who has come to him for help is upset at the end of the hour. She is crying, and as he ushers her to the door, he leans forward and gives her a lingering hug. Or one day she brings him an expensive gift, a pen-and-ink drawing for his wall, and he accepts it and then, suddenly, begins to talk about his own depression. What could be the harm? She is such a good listener. A few weeks later, he changes her appointment to late in the day. At the end of the hour they walk to the waiting room, then to the corner Italian restaurant for dinner and then, when he mentions that his wife is away, to his house. He makes her promise that she will not tell anyone what has happened between them. Afterward, fighting waves of panic, she suddenly feels that she will never recover from this."

How does this happen? Don't these people know better?

A Relationship Gone Awry

There is a dangerous mixture of sexuality and power that develops when women sit behind closed doors in a quiet room with their male doctors, psychotherapists,

clergymen, lawyers, teachers and mentors.

Although these relationships are meant to serve a protective, nonsexual purpose, they often become intensely erotic.

Despite the fact that the professional has a moral, legal and ethical responsibility to act in the best interest of the client or patient, often the professional puts this aside for personal gratification and allows himself to become sexually involved.

This "uneven playing field" applies to most professional relationships wherein one person has the power and the other is in a more subservient role.

Much of the problem is addressed in the medical literature analyzing situations concerning sexual contact between psychotherapists and their patients. The problem is not limited to psychotherapists, psychiatrists and social workers who engage in counseling and psychotherapy. It pertains to any discipline wherein there is a counseling relationship and a relationship of trust.

Is this a New Phenomenon?

Hippocrates of Cos (late 5th Century B.C.)

"I swear by Apollo the physician, by Aesculapius, Hygeia, and Panacea, and I take to witness all the gods, all the goddesses, to keep according to my ability and my judgment the following Oath:

...In every house where I come I will enter only for the good of my patients, keeping myself far from all intentional ill-doing and all seduction, and especially from the pleasures of love with women or with men, be they free or slaves."

Hippocrates addressed the problem of sexual exploitation as long as three thousand years ago, in his warning to physicians to avoid sexual intimacies with patients.

How Prevalent is the Problem?

Dr. Robert Simon, Clinical Professor of Psychiatry at Georgetown University School of Medicine, in an article entitled *Sexual Exploitation of Patients: How It Begins Before It Happens*, states as follows:

"An accurate measure of the incidence of therapist sexual involvement with patients is unknown. Most studies report an estimated incidents of 7% to 10% of mental health professionals who sexually exploit their patients. However, the empirical methods used to determine the incidence of therapist-patient sexual involvement are notoriously unreliable. Underreporting is a consistent flaw of such research methods. The actual incidence could be as high as 15% to 25%."

Naming the Unnameable

Dr. Peter Rutter, author of the "bible" in this area, *Sex in the Forbidden Zone: When Men In Power - Therapists, Doctors, Clergy, Teachers, and Others - Betray Women's Trust*, states as follows:

"SEX IN THE FORBIDDEN ZONE: Sexual behavior between a man and a woman who have a professional relationship based on trust, specifically when the man is the woman's doctor, psychotherapist, pastor, lawyer, teacher, or workplace mentor.

* * * * *

The forbidden zone is a condition of relationship in which sexual behavior is

prohibited because a man holds in trust the intimate, wounded, vulnerable, or undeveloped parts of a woman. The trust derives from the professional role of the man as doctor, therapist, lawyer, clergy, teacher, or mentor, and it creates an expectation that whatever parts of herself the woman entrusts to him (her property, body, mind, or spirit) must be used solely to advance her interests and will not be used to his advantage, sexual or otherwise.

Under these conditions, sexual behavior is always wrong, no matter who initiates it, no matter how willing the participants say they are. In the forbidden zone, the factors of power, trust, and dependency remove the possibility of a woman freely giving consent to sexual contact. Put another way, the dynamics of the forbidden zone can render a woman unable to *withhold* consent. And because the man has the greater power, the responsibility is his to guard the forbidden boundary against sexual contact, no matter how provocative the woman.

The forbidden zone always exists in the relationship between doctor and patient, therapist and client, clergyman and congregant, lawyer and client, teacher and student. All of these professions carry a special trust not to abuse the seen or unseen dependent elements that inevitably develop. While therapists and pastors deal more overtly with psychological or spiritual injuries, lawyers, teachers, and mentors often deal with the same injuries expressed as outer rather than inner dilemmas. Because its definition rests as much on inner qualities of relationship as on what is visible, the forbidden zone also can arise in other contexts, such as in the workplace, whenever there is inequality of power and the enforced dependency this inequality creates.

In its broadest sense, the sexual forbidden zone can exist in any human relationship in which one person holds power over another, and the purpose of their relating can only be undermined by sexual behavior between them. Many relationships between men and women, even when there is no recognizable ethical barrier against sex, contain hidden power dynamics through which men psychologically coerce women into having sex."

What is Transference?

Through a phenomenon known as "transference", the patient or client in a counseling situation views the counselor as someone standing in a different role from that in which he normally stands, i.e. if the person is having trouble dealing with her mother, the therapist encourages the patient to view the therapist as the patient's mother and thereby encourages the patient to tell her mother all of the things that she has been unable to tell her mother throughout her life. This transference phenomenon is encouraged and is a very therapeutic tool when the counselor is trained to use it correctly. The patient

transfers the identity of a family member or other person with whom the patient is having difficulty upon the therapist. The therapist and the patient then work out the problems of the patient in a role- playing format.

It is when the therapist abuses this transference and coerces the patient to view the therapist as the patient's lover and abuses that position, that the therapist is able to have sex with his patient.

Naturally, psychiatrists and psychologists are trained to recognize this phenomenon. Lawyers, teachers and many other professionals, on the other hand, are usually not trained in the nuances of this type of relationship, even though it is a part of their everyday professional life.

As stated by Dr. Simon:

"Treatment boundaries, however, can occasionally become blurred. The field of psychiatry is extremely diverse. Psychiatry has accommodated, even welcomed, innovative approaches to the treatment of mental disorders. For example, some treatment methods may utilize touching the patient in a manifestly nonsexual manner. Moreover, most therapists have at one time or another touched a patient in a nonerotic, appropriately supportive manner. In a crisis, an arm around a patient's shoulder or a hug may be the only human response to make. It is only when the touching of a patient becomes part of a progressive pattern of intimacy serving primarily the therapist's needs that exploitation and misconduct occur."

What are Boundaries?

As stated by Peter Rutter:

"*Boundaries* define who we are - where we leave off and the rest of the world begins, what is ours and not ours, what is intimate and what is separate. Sometimes boundaries are physically recognizable. Certainly our bodies and clothing belong to us, and anyone who touches them or gets closer to us than about two feet is entering the intimate space inside our own boundaries. But we have psychological boundaries as well. Unless we have been taught how to recognize and control these less tangible boundaries, other people can psychologically invade us. Such invasions can be damaging in themselves, and they can make us vulnerable to subsequent sexual invasion. Messages we receive from the family and from the culture when we are children determine the degree to which we feel the power to defend our physical and psychological boundaries. In general, men are taught to challenge sexual boundaries in our culture, and women are taught to accept masculine boundary-challenging as a matter of course."

The professional is always in charge of the boundaries.

How Does the Relationship Usually End?

Oftentimes the patient is so totally enthralled with the therapist that they actually feel that the therapist is in love with them and will at some future time leave his wife and marry them. It is normally only terminated after the relationship has been found out by some third party or terminated by legal or professional society action or when the patient finds out that the therapist is having sex with other patients that the relationship terminates.

What are the remedies?

One remedy is for the victim to file a civil suit against the perpetrator and his malpractice carrier as in any other professional malpractice case. Further, there are theories of breach of fiduciary responsibility, breach of contract and actions for return of professional fees paid.

What are the legal issues?

Perhaps the foremost legal issue in the area is the applicability of certain insurance clauses in malpractice policies which cover professionals. Apparently in response to the increasing number of lawsuits concerning sexual abuse by therapists, many of the professional liability insurance policies insuring psychotherapists include a clause which states as follows:

"The total limit of the Company's liability hereunder shall not exceed \$25,000 in the aggregate for all damages with respect to the total of all claims against any Insured(s) involving any actual or alleged erotic physical contact, or attempt thereat or proposal thereof..."

This clause purports to limit the liability of the carrier to \$25,000.00 for "any lawsuit alleging sexual contact".

This policy is prevalent across the country but various courts are studying the issue and certain courts have decided that although this clause applies to the sexual contact itself, that the standard professional liability policy continues to cover the allegations of the complaint which relate to actual malpractice, i.e. failure to diagnose the patient's problem, failure to refer, gross and outrageous misconduct, negligence and negligent infliction of emotional distress, breach of professional duty, rendering professional services below the standard of care, allowing the transference and countertransference to get out of control, failure to appropriately manage the transference or counter-transference, recommending and engaging in treatment that was deleterious to her condition in violation of the appropriate standard of care, and failure to properly treat the patient for the problem for which she sought professional help.

What are the defenses?

Aside from the policy defenses referenced above, the most common defense of the therapist is that this was a consensual liaison between two consenting adults. This belies the fact

that in the professional relationship the parties are not on an equal footing. The professional is in a much greater position of power than the victim and should be aware that sex with a client is unethical conduct. Many plaintiffs in these cases have taken the position that the transference phenomenon and actions of the therapist have removed the ability of the patient to consent and move the court to strike consent as a defense.

Are Women the Only Victims?

As stated by Dr. Simon:

"Not all sexual misconduct occurs between male therapists and female patients. A recent national survey of the incidence of psychiatrist-patient sex indicated that 88% of those responding reported incidents between male psychiatrists and female patients; 7.6%, between male psychiatrists and male patients; and 3.5%, between female psychiatrists and female patients. Unfortunately, therapist sexual conduct with child patients also occurs, but estimates of the incidence have not been reported."

THE LAW

1. Legal Liability for Sexual Contact with a Patient & Selected Insurance Issues

Aetna v. McCabe, 556 F.Supp 1342, USDC, ED PA, 1983

Court held that malpractice may be negligence but it is also on occasion intentional and held that the doctor's policy covered injuries arising out of the rendering, as well as failure to render, professional services. "In a sense all rendering of service is intentional and failure to render may be intentional or unintentional." Court held that the doctor's malpractice, even if it was intentional, was covered by the insurance policy.

Anclote Manor Foundation v. Wilkinson, Fla., 263 So.2d 256

This is an action for the patient of a psychiatrist who had a sexual relationship with his patient. He told her that he was going to divorce his wife and that he wanted to marry her.. The court held "each and every one of the expert witnesses testified that the 'acting out' of the psychiatrist's feelings toward appellee's wife (known as countertransference) was conduct below acceptable psychiatric and medical standards." The court held that the evidence sustained the jury's findings that the hospital who employed the psychiatrist was liable.

Cranford v. Allwest Ins. Co., 645 F.Supp 1440, USDC ND California, 1986

The court held that a psychiatrist who entered into a sexual relationship with a patient committed professional "malpractice, error, negligence or mistake" within the meaning of the professional liability policy. An expert testified that the psychiatrist violated the standard of care by mishandling the transference process and by discontinuing treatment at a time when the patient was still in need of therapy. The court then looked to whether or not the policy's exclusion of claims "involving sexual intimacy" applied to his malpractice, transference and abandonment. The court held that the term "involving" though lacking precision, has a common meaning and presented no difficulty in interpretation. The court

held that his mishandling of transference did "involve" sexual intimacy with the plaintiff and therefore that claim was excluded. The court further held, however, that his abandonment of the patient did not "involve" sexual intimacy and that the doctor failed to take necessary steps to insure that his patient consult with another psychiatrist. This abandonment was totally independent of the sexual intimacy and was not excluded from coverage

Govar v. Chicago Ins Co., 879 F.2d 1581, 8th Cir 1989

The court held that although the plaintiff alleged malpractice outside of the sexual activity, the sexual relationship between the plaintiff and the doctor was "so intertwined" with the malpractice as to be inseparable and found that the policy did not provide coverage. In fact however, the plaintiff's case was devoid of evidence of non-sexual malpractice. The court stated: "With respect to Govar's claims that the sexual acts were only one factor in Hiatt's malpractice and that the jury could have found Hiatt negligent without depending on the sexual acts, we disagree. Perhaps Govar *could* have presented her case without reference to sex, but she chose not to do so. After our own review of the record, we agree with the district court that Govar's entire case centered on sex. As the district court stated, the sexual relationship between Govar and Hiatt was 'so intertwined with Hiatt's malpractice as to be inseparable.'"

Hirst v. St. Paul, 683 P.2d 440, Idaho App. 1984

The court held that there was no coverage for a general practitioner who drugged the patient and performed sexual acts on her against her will. The court held that there was no specific showing in the record that the plaintiff was damaged in any way simply from the administration of the drugs nor was there any showing that he negligently treated the boy's injuries or illness. The court held that the scope of "professional services" does not include all forms of a doctor's conduct simply because he is a doctor. The court found that there was no insurance coverage.

Horak v. Biris, 474 NE.2d 13, Ill.App. 2 Dist. 1985

The court held that malpractice as defined in Black's Law Dictionary is "any professional misconduct, unreasonable, lack of skill or fidelity in professional or

fiduciary duties, evil practice, or illegal or immoral conduct." The court held that the facts sufficiently established a duty owed by the defendant to the plaintiff and a subsequent breach of that duty by defendant. "His license placed him in a position of trust, the violation of which would constitute a breach of the fiduciary relationship. Such a breach has been held on several occasions to be an actionable and independent tort . . . further we think that the very nature of the therapist-patient relationship, . . . gives rise to a clear duty on the therapist's part to engage only in activity or conduct which is calculated to improve the patient's mental or emotional well-being, and to refrain from any activity or conduct which carries with it a foreseeable and unreasonable risk of mental or emotional harm to the patient."

Jure v. Raviotta, 612 So.2d 225 (La. App. 4 Cir. 1992)

A patient sued her OB/GYN for engaging in a sexual relationship with her. The court held that the allegations of sexual misconduct fell outside of the definition of malpractice. The court held that the Malpractice Act and jurisprudence interpreting it indicates that the intent of the legislature is to exclude from its scope conduct unrelated to the promotion of the patient's health or to the provider's exercise of professional expertise or skill. and finds that the allegations of sexual misconduct were not malpractice as defined by the Act. The court held that the medical malpractice act would not cover an ob/gyn for having a sexual relationship with his patient.

LL v. Medical Protective, 362 NW.2d 174 Court Appeals Wisconsin, 1984

Court held that medical authorities are nearly unanimous in considering sexual contact between therapist and patient to be malpractice quoting *Davidson, Psychiatry's Problem With No Name: Therapist Patient Sex, 37 American Journal of Psychoanalysis 43*: "It is generally agreed that therapist patient sex is psychologically deleterious for the involved woman patient and is unethical practice for the male practitioner . . . all such instances constitute misuse of the transference."

Roy v. Hartogs, 381 NYS 2d 587

Patient brought an action for damages against her psychiatrist claiming that he had had sexual intercourse with her over a period of 13 months as a part of her prescribed therapy. The court held that the injury to the plaintiff was not merely

caused by the consumation of acts of sexual intercourse with the defendant, harm was also caused by the defendant's failure to treat the plaintiff with professionally acceptable procedures. The case also cites a letter from Sigmund Freud to another colleague:

"You have not made a secret of the fact that you kiss your patients and let them kiss you. Now I am assuredly not one of those who from prudishness or from consideration of bourgeois convention would condemn little erotic gratifications of this kind. But that does not alter the facts that with us a kiss signifies a certain erotic intimacy. We have hitherto in our technique held to the conclusion that patients are to be refused erotic gratifications. You know too that where more extensive gratifications are not to be had. Milder caresses very easily take over their role, in love affairs, on the stage, etc. Now picture what will be the result of publishing your technique. There is no revolutionary who is not driven out of the field by a still more radical one. A number of independent thinkers in matters of technique will say to themselves: Why stop at a kiss? Certainly one gets further when one adopts 'pawing' as well, which after all doesn't make a baby. And then bolder ones will come along who will go further to peeping and showing - and soon we shall have accepted in the technique of analysis the whole repertoire of demiviergerie and petting parties, resulting in an enormous increase of interest in psychoanalysis among both analysts and patients. The new adherent, however, will easily claim too much of this interest for himself, the younger of our colleagues will find it hard to stop at the point they originally intended, and God the Father Ferenczi gazing at the lively scene he has created will perhaps say to himself: May be after all I should have halted in my technique of motherly affection before the kiss. Sentences like 'about the dangers of neocatharsis don't get very far. One should obviously not let oneself get into the danger. I have purposely not mentioned the increase of calumniouis resistances against analysis the kissing technique would bring, although it seems to me a wanton act to pr provoke them."

Simmons v. United States, 805 F.2d 1363 9th Cir. 1986

The court held that when the therapist mishandles transference and becomes sexually involved with a patient, medical authorities are nearly unanimous in considering such conduct to be malpractice. The patient brought suit under the Federal Tort Claims Act against an Indian health service counselor who wrongfully engaged her in a sexual relationship. The court enters into an excellent discussion of transference and states that "courts have uniformly regarded mishandling of transference as malpractice or gross negligence.

The court further included a description of transference as follows: "What the notion of transference assumes is that as therapy develops, and if therapy is working, the client comes to either consciously or unconsciously, or both, regard the therapist as a child might regard the parent. This is important because in order for a therapist to have positive powerful impact in helping the client to change and heal, the therapist has to have the same kind of authority power in a positive way with the client that the parents once had, or the parental figures once had in a negative way with the client while the client was growing up, and, so what happens when therapy is working . . . is that this transference relationship grows so that the client comes to experience the therapist as a powerful, benevolent, parent figure. And, what that means is that you've got a symbolic, sometimes conscious, sometimes not, parent-child relationship existing in the therapy setting, even though you have two adults there." The court further stated, "The impacts of sexual involvement with one's counselor are more severe than the impacts of merely 'having an affair' for two major reasons: first, because the client's attraction is based on transference, the sexual contact is ordinarily akin to engaging in sexual activity with a parent, and carries with it the feelings of shame, guilt and anxiety experienced by incest victims. Second, the client is usually suffering from all or some of the psychological problems that brought him or her into therapy to begin with. As a result, the client is especially vulnerable to the added stress created by the feelings of shame, guilt and anxiety produced by the incestuous nature of the relationship, and by the sense of betrayal that is felt when the client eventually learns that she is not 'special' as she had been led to believe, and that her trust has been violated."

Sisson v. Seneca Mental Health/Mental Retardation Council, Inc., 404 S.E.2d 425 (W.Va. 1991)

In this case the plaintiff was a patient at a mental health facility who brought a medical malpractice claim for her counselor having sexual relations with her. Court held that in a case called *Weaver v. Union Carbide*, 378 S.E.2d 105 an employee went to a marriage counselor and during the therapy the counselor engaged in a sexual relationship. The court held that since the wife was not a patient of the therapist, the action was barred. "We acknowledged the potential validity of a malpractice action where a counselor engages in sexual intimacy with a patient during therapy." The court held there must be evidence presented of a trust relationship. "The basis of the malpractice is the trust relationship that arises from such counseling services which are designed to improve the mental and

emotional well-being of the patient. In such a situation it is recognized that the patient may become emotionally dependent on the counselor and be easily manipulated by an unscrupulous counselor." The court then goes on to cite numerous cases which reach the same conclusion in the professional counseling area. The court held "whether a trust relationship exists and therapist counseling depends on two primary facts, together with any other relevant circumstances. First the therapy must have been conducted over a sufficient period of time to establish a trust relationship. Second, there must be some reasonable semblance of actual therapy sessions. Otherwise any casual encounter with a therapist that leads to a consensual sexual relationship would give rise to a malpractice claim."

Society of Roman Catholic Church v. Interstate Fire & Casualty Company 26 F.3d 1359 (5th Cir. 1994)

There was repeated sexual molestation of 31 children by 2 priests over a 7 year period. The court held that there was an "occurrence" in each policy period in which each child was molested. Subsequently molestations within that policy period were not separate occurrences. The court held "what constitutes an 'occurrence' is central to this appeal because each policy's limits of liability are on a per occurrence basis; the larger the number of 'occurrences', the greater the loss born by the primary insurers and the diocese. The Lloyd's policy is representative of the other policies involved in both its scope of coverage and its definition of 'occurrence': Underwriters hereby agree...to indemnify the insured for all sums which the insured shall be obligated to pay by reason of the liability imposed upon the insured by law . . . for damages...on account of personal injuries . . . arising out of any occurrence happening during the period of the insurance. The term occurrence wherever used herein shall mean an accident or a happening or event or *a continuous or repeated exposure to conditions* which unexpectedly and unintentionally result in personal injury, or damage to property during the policy period. All such exposure to *substantially the same general conditions* existing at or emanating from one location shall be deemed one occurrence." The definition of 'occurrence' affords little assistance because 'a continuous or repeated exposure to conditions' and 'substantially the same general conditions' are malleable. An 'occurrence' could be the church's continuous negligent supervision of a priest, the negligent supervision of a priest with respect to each child, the negligent supervision of a priest with respect to each molestation, or each time the diocese became aware of a fact which should have led it to intervene, just to name a few possibilities. The meaning of 'occurrence' as used in the insurance policies can be perplexing in application." The court quoted *Lombard v. Sewerage and Water*

Board of New Orleans, 284 So.2d 905 (La. 1973) where the ongoing construction of a drainage canal damaged many adjacent property owners. The Louisiana Supreme Court discussed the proper method for determining an "occurrence" when the cause of harm continues to injure different persons. The word "occurrence" as used in the policy must be construed from the point of view of the many persons whose property was damaged. As to each of these plaintiffs, the cumulated activities causing damage should be considered as one occurrence although the circumstances causing damage consist of a continuous or repeated exposure to conditions resulting in damage arising out of such exposure, thus when the separate property of each plaintiff was damaged by a series of events, one occurrence was involved insofar as each property owner was concerned. The court held "Following *Lombard*, 'the damage to each child is a separate occurrence'. When a priest molested a child during a policy year, there was both bodily injury and an occurrence, triggering policy coverage. All further molestations of that child during the policy period arose out of the same occurrence. When the priest molested the same child during the succeeding policy year, again there was both bodily injury and an occurrence. Thus each child suffered an 'occurrence' in each policy period he was molested.

St. Paul v. Mitchell, 296 SE.2d 126, *Court Appeal of Georgia*, 1982

A doctor engaged in a sexual relationship with his patient. His insurer alleged that the doctor's actions were outside the category of professional services for the purpose of coverage. The court held that the actions of the doctor may be considered to be malpractice by a psychiatrist. The Court, citing *Zipkin v. Freeman* stated "what is perhaps regarded as the most significant concept in psychoanalytical therapy, and one of the most important discoveries of Freud is the emotional reaction of the patient toward the analyst known as transference."

St. Paul v. Love, 459 NW.2d 698 (*Minn.* 1990)

The court held that sexual conduct between licensed psychologist and his patient, under circumstances in which transference and counter-transference occurred, gave rise to a claim by the patient for damages resulting from professional services provided or which should have been provided which were covered under the therapist's professional liability policy. The court held "when the transference phenomenon pervades the therapeutic alliance, we believe the sexual conduct between therapist and patient arising from the phenomenon may be viewed as the

consequence of a failure to provide proper treatment of the transference."

Standlee v. St. Paul, 639 P.2d 1101, Idaho App. 1984

The court held that an office liability policy issued to the doctor which provided coverage for "bodily injury, personal injury or damage to other people's property caused by an accidental event" that happens in connection with the doctor's "ownership, maintenance or use of a professional office" did not cover sexual misconduct of the doctor. The court held that sexual molestation is not an "accidental event." It did hold, however, that the insurer had a duty to defend the doctor until those issues were resolved

Washington Insurance Guarantee Association v. Hicks, 744 P.2d 625 1987

A chiropractor's insurer alleged that the patient's claim of sexual misconduct was not covered by the chiropractor's malpractice policy. The doctor told the patient that she needed a spinal adjustment and a good massage for her tight muscles. He had her come in on a Saturday and, during his treatment of her, he gave her a massage and then made sexual advances toward her. After telling her that "if you want to quit we'll quit right now" he had sexual intercourse with her. The court held that "courts generally hold that medical malpractice insurance policies do not cover the insured physician's sexual conduct with patients. Malpractice insurance coverage has been allowed in certain cases where sexual contact takes place between a patient and a physician; however, in those cases, the physician has been a mental health therapist or psychiatrist who mishandles the "transference phenomenon".

The court held that although the insurer of a psychiatrist should reasonably know that the transference phenomenon is an important aspect of psychiatric treatment, the same assumption cannot be made with respect to the insurer of a chiropractor.

Worsham v. U.S., 828 F.2d 1525 (C.A.11-Ga. 1987)

The court held that the United States was not liable for damages resulting from a sexual relationship between a client and a drug abuse counselor employed by an Army Medical Center. The court stated that the relationship did not constitute part of any treatment plan but instead resulted from private, mutual consent and attraction. The suit alleged both that the counselor committed malpractice and that

government personnel of the hospital failed to supervise the counselor properly.

Zipkin v. Freeman, 436 SW.2d 753, Supreme Court of Missouri

Court held that the gravamen of the patient's complaint was improper treatment not sex and therefore the doctor's actions were covered

(Need to beef this one up)

2. Defenses

Cotton v. Kambly, 300 NW.2d 627, Court of Appeals of Michigan 1986

The doctor's insurer attempted to deny coverage because the insurance policy stated that it would not cover the doctor for any activity which constituted a crime. The court held that the fact that the doctor engaged in sexual relations with his patient as part of her prescribed therapy might also be subject to criminal and professional sanctions for his conduct was no reason to deny the patient her right to bring a civil action for malpractice against him. The court stated "we see no reason for distinguishing between this type of malpractice and others, such as improper administration of a drug or a defective operation. In each situation, the essence of the claim is the doctor's departure from proper standards of medical practice . . . In this proceeding the injury to the plaintiff was not merely caused by the consummation of acts of sexual intercourse with the defendant. Harm was also caused by the defendant's failure to treat the plaintiff with professionally acceptable procedures."

Loveridge v. Chartier, 468 NW.2d 146 (Wis. 1991)

A court cannot infer intent to injure as a matter of law simply because the insured's intentional act violated the criminal law. The court held that an insured's conviction of a crime did not establish that the insured intended to injure or harm as a matter of law, because intent to injure is not an element of that crime. The court held that in Wisconsin the fact that a law is intended to prevent harm is insufficient to support an inference that as a matter of law an insured intended to harm to someone when the insured violated that law. The court held that consensual sexual intercourse between an adult and an 16 year old does not create

a "substantial risk of injury or death" and therefore intent will not be inferred. The court further held that sexual contact between an adult and a 16 year old is not substantially certain to harm the psychological and emotional well being of the 16 year old.

Vigilant v. Kambly, 319 NW.2d 382, Michigan 1982

The court held that while it may be true that Dr. Kambly's conduct could be held to constitute a violation of a criminal statute, many types of civil actions contained elements of criminal offenses and allegations may often fall within criminal statutes. However, the expenses incurred by Dr. Kambly were not incurred "due to alleged criminal act" but due to alleged malpractice in a civil action. The court held "furthermore coverage does not allow the wrongdoer unjustly to benefit from his wrong. It is not the insured who will benefit but the innocent victim who will be provided compensation for the injuries, therefore the public policy considerations which allegedly prohibit insurability of criminal or intentional tortious conduct are not present."

3. Amounts of Recovery

Bernick v. Diehm, 91-70666-NO, Ingham County Circuit Court, Michigan, 1993

\$5.52 million; Grandfather sexually molested plaintiff for a period of 8 years.

Chapman v. McCabe, 21 ATLA Law Reporter 277, (E.D. Pa., 1977)

\$665,000; Jury verdict (including \$300,000 punitive damages) to woman for permanent psychiatric damages which she sustained as a result of her therapist engaging in sexual relations with her in the course of therapy over a six-year period.

Combes v. Silverman, 25 ATLA Law Reporter 98, Richmond Circuit Court, #LE596 2/5/92

\$650,000; Verdict for 19-year-old woman who suffered continuing schizophrenia after her psychiatrist engaged in sexual relations with her during the course of therapy.

Daire v. Newman, Docket No. CV810059560 (Conn. Super. Ct., 1986);

\$1 million; Settlement awarded to woman for permanent impairment of her psychological condition, mental anguish, and pain and suffering, after her therapist engaged in sexual relations with her over a two-year period during therapy.

Edwards v. Medoff, Superior Court of NJ, Law Division, Bergen County, No. 1-012115-83, 1983

\$800,000; Defendant sexually assaulted plaintiff nine times over 4-5 month period. Plaintiff was a female medical technician who was also a patient of the defendant and worked in the same building.

Ertel v. Kirschenbroch, San Diego, 1986

\$3.388 million; Wife settles for \$375,000 during trial; settlement of \$850,000 for husband after trial

Hall v. Stitch, NO. CV 87-07895, (Ariz, Maricopa Cty. Super. Ct., Mar. 21, 1989)

\$2 million compensatory, \$1 million punitive; Psychotherapist having sexual relation with patient

Pass v. Dorsey, No. 821207541, (Ore. Cir. Ct., 1984)

\$783,234; Verdict for both husband and wife (including \$500,000 punitive damages and 30 percent reduction for wife's responsibility) after doctor had sexual relations with plaintiff during therapy.

Rotenberry v. Wilhoit, 23 ATLA Law Reporter 476, (Fla. Cir. Ct., 1980)

\$474,000; Verdict (including \$250,000 punitive damages against psychiatrist and \$125,000 punitive damages against clinic) for a former prostitute whose psychiatrist sexually assaulted her during a therapy session.

Walker v. Parzen, 24 ATLA Law Reporter 295, (Cal. Super. Ct. 1981)

\$4,600,000 jury award, settled for \$2,500,000; 41-year-old woman recovered for pain and suffering, prolonged emotional collapse, repeated suicide attempts when defendant finally abandoned her, and past, and future medical expenses as a result of psychotherapist's sexual relations with her in the course of therapy.