

SEXUAL ABUSE SEMINAR

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.

What is therapist abuse?

Therapist abuse, sometimes referred to as "transference abuse" is a medical phenomenon in which the therapist (whether it be a psychiatrist, psychologist, social worker, physician or other person in a therapeutic relationship to a patient) uses the imbalance of power to coerce the victim or patient to engage in sexual relations with the therapist.

How does it occur?

Through a phenomenon known as transference, the patient in a therapeutic situation is encouraged to view the therapist as someone standing in a different role from that in which he normally stands, i.e. if the patient 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 used 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.

How prevalent is the problem?

Naturally, therapists are unlikely to volunteer that they are engaging in sexual relations with their clients in any sort of survey. However, one blind survey was done several years ago and the statistics were astounding. The survey revealed that up to ten (10%) percent of all mental health professionals engage in sexual relations with their patients.

How is the patient made aware of the abuse? 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 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?

In most jurisdictions, abuse of the transference phenomenon is malpractice. The remedies would therefore be to file a civil suit against the doctor and his malpractice carrier as in any other medical malpractice case. Further, there are theories of breach of fiduciary responsibility, breach of contract and actions for return of medical expenses 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 mental health professionals. Apparently in response to the increasing number of lawsuits concerning sexual abuse by therapists, many of the professional liability insurance policies 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".

It appears to be against public policy to issue an insurance policy to a doctor and then put a cap on coverage of \$25,000.00 for the major cause of liability within that profession, i.e. sexual abuse of patients.

This policy is prevalent across the country but various courts are studying the issue and certain courts have decided that although this clause may apply 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, failure to properly treat the patient for the problem for which she sought professional help and failure to timely refer the patient to another therapist.

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 therapist-patient relationship the parties are not on an equal playing field. The therapist is in a much greater position of power than the patient and is aware of the concept of transference and is aware of how it may be used. Many plaintiffs in these cases have taken the We must understand that most individuals who consult a therapist are seeking help for some problem or else they would not be there. What occurs in most situations is not only does the therapist not attempt to solve the patient's problem, but in fact gives the patient a much larger problem than she came with.

When the relationship finally terminates, it is usually a very devastating termination for the patient and many of the patients attempt suicide numerous times after finding out what has been done to them. Many of these patients undergo hundreds of thousands of dollars of mental health assistance and inpatient psychological hospitalization.

What are the clients like?

One of the most rewarding aspects of personal injury practice is the ability to help a client who is really in need. Due to the fact that this area is new and emerging, it is very difficult to obtain legal assistance from someone who is familiar with this patient's problem. These clients are very fragile and vulnerable. They have lost their ability to trust. They have given their trust to a physician or mental health professional whose duty it was to try to alleviate their pain and they were given more pain. The clients need a lot of attention, need to be kept informed, and need to be reassured on an ongoing basis. Once the attorney convinces the client that he is on her side

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.

What are the injuries?

and that he will not be an abusive person, then the relationship between attorney and client is very fulfilling.