

# Commentary: Female Forensic Worker Sexual Misconduct—Who Is the Captive?

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The risk of sexual misconduct by forensic professionals appears at first glance to be far less than the risk of sexual misconduct by other clinical professionals. Yet, Faulkner and Regehr's article draws our attention to the unique and intriguing situation of females working in forensic settings and the very real risk of their engaging in sexual misconduct with male prisoners. The female workers described are professionals: nurses, prison staff, and security officers. Analogies are made between Gabbard's proposed categories of professionals who commit sexual boundary violations and groups of female forensic workers' sexual misconduct with male prisoners. Faulkner and Regehr detail the characteristics of prisoners and the prison setting and how they relate to detrimental interpersonal behavior by female forensic workers. The role of security officers is discussed along with the need for policy-makers to minimize the risks inherent in working with incarcerated populations. The potential for gender-biased explanations of misconduct among female forensic workers is also considered.

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When the problem of sexual misconduct by forensic professionals is considered, high-security hospitals or prisons are most likely not the clinical settings that come to mind. The increased security and the known history of violence of prisoners and patients within these settings necessitate caution by forensic professionals and staff. Yet, the description by Faulkner and Regehr<sup>1</sup> of boundary crossings and violations, in particular those of female forensic workers with male prisoners, is important for policy-makers to consider in making decisions regarding the day-to-day operation of a prison. The size of the prison staff, their duties, the length of their workday, and any factors that affect the safety and well-being of staff and prisoners must be considered in light of the characteristics of the setting, the manipulative nature of the prisoners, and the staff's intellectual, physical, and emotional resources and limitations.

This commentary examines the descriptions by Faulkner and Regehr<sup>1</sup> of patterns observed in female

forensic worker sexual misconduct and their analogies to the categories of psychotherapist sexual misconduct described by Gabbard.<sup>2</sup> The specific category of predatory sexual behavior is examined in the final discussion regarding the potential for gender bias when describing female forensic workers who engage in sexual misconduct with male prisoners.

## The Prison Setting

Although Faulkner and Regehr's term "forensic settings" includes high-security hospitals, this commentary focuses on prisons, since most of the authors' discussion of female forensic workers involves interaction with prisoners. The staff are female security officers and other professionals, including nurses and social workers, who engage in sexual misconduct with male prisoners. These particular prison staff spend more time in this setting than do psychiatrists. In my experience as a former statewide director and provider of psychiatric services in prisons, I found that psychiatrists are usually in the prison for limited hours and treat prisoners in busy, crowded settings. In my opinion, the physical parameters of these meetings reduce to near negligible the risk of sexual misconduct. However, these conditions do not preclude the risk of other boundary crossings by psychi-

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atrists who interact with prisoner patients, as described by Faulkner and Regehr.

Faulkner and Regehr are quite accurate in their description of the prison setting with its characteristic social isolation, which increases the risk of dysfunctional interpersonal behavior by both security and nonsecurity staff. Examples of these interactions include requests that prisoners make of physicians and the discussion that can ensue. It is common for prisoners to make requests of the medical professional that may not even be necessary in other clinical settings. For example, the prisoner may want extra food or a bedtime snack and request this of the physician. It is easy for a physician to honor such benign requests and make the orders, whether or not the physician thinks they are necessary from a strictly medical standpoint. The same can be said for such requests as extra pillows, extra blankets, certain bunk or cell restrictions, and even specific job restrictions within the prison. These simple requests that may require veering from the strict prison rules can set in motion an us-versus-them interaction between prisoner and physician. On a more serious side, a physician or other professional can be drawn easily into a discussion with a prisoner about policies that affect the medical and other services provided to the prisoner. Policies such as formulary restrictions, restrictions on available medical or dental services, and limitations on medical tests and ancillary services can frustrate both the professional and the prisoner. In these routine situations, the medical professional is at risk of making comments to the prisoner that exceed the physician's role and put the physician at risk of slandering the system's administrators and the system as a whole. Thus, the prisoner knows what the physician thinks and is aware of statements that the physician has made about the prison administration. There then exists the potential for the prisoner to use this information in some future unpredictable circumstance.

### **Corrections Officers and Other Professional Staff**

Institutional policies affect corrections officers and other professionals working within the institution, as well as the prisoners. Thus, there is always the potential for empathy or commiseration among prisoners, corrections officers, and other professionals. While the security staff are there to provide security, which is theoretically a role with more limited emo-

tional scope than that of professionals who provide mental health or medical care, the corrections officers' role requires their presence in all aspects of the inmates' daily lives. While a professional interacts with a prisoner during specified times for specific reasons, a corrections officer is required to oversee inmates during all of their personal daily activities and at all hours of the day. This constant exposure, combined with rules that may be difficult for security personnel to enforce given limited resources and training, has the potential to push corrections officers outside their security role with prisoners. Policies that are impractical or harsh may persuade the corrections officer to expand her role and conspire or make deals with the inmates. Faulkner and Regehr insightfully and succinctly summarize this situation: "[A]cts of negotiation can serve to create more intimate relationships between staff and prisoners. . ." (Ref. 1, p 158). Professional staff and corrections officers are all at risk of making deals and negotiating with inmates, and these actions may set them on the slippery slope of boundary-crossing and potential sexual misconduct.

Mental health and medical professionals have ethics guidelines and licensure requirements that define their relationship with their client or patient who is also a prisoner.<sup>3,4</sup> These professionals have a fiduciary relationship, defined as "founded in trust or confidence."<sup>5</sup> As Simon<sup>6</sup> emphasized, holding the trust of the patient implies a power advantage by the physician-professional over the client-patient. The fiduciary relationship was the basis for the landmark ruling in the case of *Roy v. Hartogs*<sup>7</sup> that opined that consent for a sexual relationship is not possible between a psychotherapist and patient. Faulkner and Regehr include social workers and nurses with security personnel in the category of female forensic workers. All of these female forensic workers deal with incarcerated persons, and their proximity to these highly manipulative individuals places them at risk of going outside their customary professional roles. However, security and other professionals have different roles and occupational characteristics and thus different risks of becoming sexually involved with the prisoners. Among the differences between these groups is the matter of trust. Although security officers are in a position of power over inmates and are charged with ensuring their housing and safety, there is no necessity for a prisoner to trust an officer. Trust between a prisoner and an officer is constantly

tested, and neither party is likely to find the other completely reliable. The prisoner does not have to trust the officer in order to be her ward, and trust on either the officer's or the prisoner's part is probably not to be encouraged or strived for, because an officer is not supposed to keep a prisoner's secrets.

A statement made to me by a maximum-security inmate succinctly summarized this aspect of the prisoner-officer relationship: "I don't make chit-chat or try to be friendly with the guards like they are my buddies, and I think they prefer that. They have their job to do. I think they respect a convict who keeps his distance." Although for security and other reasons, a corrections officer most likely wants a prisoner to believe that she is the prisoner's confidant, the corrections officer is not encouraged to develop a trusting relationship with prisoners while in her role as security personnel. Keeping a distance between officer and prisoner decreases any pull toward co-conspiring or making deals with the prisoner and reduces the risk of the officer's becoming personally involved with the prisoner. This situation differs markedly from the professional who frequently needs to develop a certain amount of trust with a prisoner in order to provide mental health or medical services. Although there is no true fiduciary relationship between the prison official and the prisoner that requires a trusting relationship, the prisoner is a ward of the prison and the officer is in a position of power over the prisoner. Thus, in states such as Minnesota, corrections employees and contractors are listed in the criminal sexual conduct statute, along with psychotherapists, as criminally liable for sexual misconduct in their professional roles.<sup>8</sup>

Another difference in the roles of mental health professionals and corrections officers in their interactions with prisoners is the duty owed to a prisoner outside the prison setting. The officer may perceive of her role as finished once the prisoner is no longer under the jurisdiction of corrections. Corrections officials may frown on a corrections officer who interacts with a former inmate, but the officer is not licensed by a professional board and does not have a professional code that defines ethical behavior toward a former inmate. In the absence of prohibitions, the corrections officer may envision a relationship with an inmate when he is released and returns to the community. While the officer's personal involvement with a prisoner is defined by her role when the inmate is a ward of corrections, the relationship

changes when the prisoner's civil rights are restored upon completion of his sentence. This shift in the relationship contrasts with the role boundaries of mental health professionals who are governed by licensing boards and professional codes of ethics that prohibit personal involvement with former patients, either for a specified period or, as is true of psychiatrists, forever.<sup>3,4</sup> While the prison officer is not obligated to develop a trusting or even a friendly relationship with the prisoner while in her security role, the level of risk for becoming involved personally with a prisoner also differs from that of the mental health professional because of the different ethics and professional guidelines for interacting with former prisoners.

### **Categories of Female Forensic Worker Sexual Boundary Violations: Gender Bias?**

Faulkner and Regehr draw analogies between the categories proposed by Gabbard<sup>2</sup> of mental health professionals who commit sexual boundary violations and the patterns of sexual misconduct of female forensic workers with male prisoners.<sup>1</sup> These analogies do not exactly fit the patterns set forth by Gabbard, who grouped offending therapists into three categories describing them and their motivations for sexual misconduct: the psychotic, the antisocial, and the lovesick. Faulkner and Regehr apply the category lovesick to both female forensic workers and male prisoners, and the term certainly applies to the dynamic of many situations involving sexual misconduct. However, they then use the Gabbard category of antisocial to describe the male prisoner as predatory toward the female worker. This classification is a switch from the one used by Gabbard because it describes the male recipient of the professional's misconduct and thus does not quite fit the intention of Gabbard's groupings for the offending therapist. Nonetheless, Faulkner and Regehr vividly and accurately describe cases where the female forensic worker is taken advantage of and blackmailed by the male prisoner, even though she holds the position of authority as the security worker or professional. These cases raise the specter of the power and control used by the prisoner to manipulate the corrections professional whose role in the prison clearly gives her the official power advantage.

While manipulation and antisocial behavior by the prisoner clearly affects the interaction with the female forensic worker, another factor may also be

part of Faulkner and Regehr's case descriptions. It may be easier from a politically correct standpoint to assign a more active role to the male prisoner, as in the more classic description of the antisocial male therapist and the passive female patient. Gutheil and Gabbard<sup>9</sup> wrote about the obstacles to engaging in a frank discussion of the complex factors involved in sexual misconduct. One factor that they describe is the hesitation to acknowledge or discuss the female patient's role in the sexual misconduct of a male therapist. They propose that political correctness interferes with this discussion and that such political correctness is influenced by gender bias. In their opinion, a complete examination of professional sexual misconduct is not possible, because the subject of the female patient's role is avoided, making our understanding of the phenomenon incomplete. While Faulkner and Regehr do discuss the male recipient of the sexual misconduct of the female forensic worker, their description of the male prisoner as the predator toward female personnel, while certainly consistent with the manipulative nature of a prisoner, appears to be influenced at least to a certain degree by gender bias. The male prisoner is the ward of the prison staff and is not in the position of official power. Yet he is portrayed as the predator in their discussion of this form of sexual misconduct. Faulkner and Regehr clearly lay out how manipulation and blackmail, along with lovesickness, can lead to female sexual misconduct in a prison, but they may be more comfortable discussing the male prisoner's manipulation of the female forensic worker than might be the case if the prisoner were female and the staff were male.

The authors also list clear and helpful recommendations for practices by individuals working within the forensic setting to reduce the risk and help to avoid sexual and nonsexual boundary violations. A prison is unique in the dramatic levels of manipulation by prisoners both male and female, occurring

daily on almost every level of interaction. Although this is certainly a factor in the female forensic workers' conduct, it is not a complete description of their behavior. It highlights the fact that a simple all-or-none viewpoint, as has been described by Gutheil and Gabbard,<sup>10</sup> usually does not adequately explain sexual misconduct by mental health professionals. Other explanations of sexual misconduct within the forensic and specifically the prison setting likely include the less talked about and thus less recognized female sexual behavior and possibly even female predatory sexual behavior and the use of sex as an act of aggression by females. Faulkner and Regehr present a very clear description of sexual boundary violations between the lovesick female forensic worker and the predatory male prisoner. Future studies focused on other unexplored motivations on the part of the female forensic worker may move our field closer to understanding professional sexual misconduct in general.

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