

# Pastoral Counseling and the Concept of Malpractice

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The discipline of pastoral counseling has developed to the point at which malpractice claims against pastoral counselors are a reality. The need for forensic psychiatrists to participate in such suits is likely to increase. In this article, we review the recent California case of *Nally v. Grace Community Church*. Kenneth Nally committed suicide while under the care of clergy. His parents claimed that the pastoral counselors negligently counseled their son and that this counseling led to his death. This case will serve as a point of departure for reviewing the developments and evolution of pastoral counseling as a discipline. Then we shall highlight the difficult problem of whether pastoral counseling ought to be classified as a religious or a secular activity, while pointing out that this dichotomous view does not accurately portray the activities and beliefs of pastoral counselors. Nevertheless, we underline the connection made between the definition of pastoral counseling and the assertion that pastors should be shielded from malpractice claims.

As recently as 1980, Bernstein<sup>1</sup> noted that the pastoral counselor was largely immune from malpractice actions. However, he went on to warn us that clients eventually would be convinced that good reasons existed for bringing legal action against those who practiced pastoral counseling. The time has apparently come. A sign of this discipline's maturity is that its practitioners have now begun to have lawsuits filed against them for malpractice. Another indication is that insurance companies have been offering malpractice insurance to the clergy.<sup>2</sup> *Nally v. Grace Community Church of the Valley*,<sup>3</sup> a recent case that

has evoked considerable comment from observers,<sup>2, 4-6</sup> has highlighted developments in this area. The victim's parents in this case filed suit against the church alleging negligent counseling of their son and failure of the church's pastor to adhere to a standard of care for clergymen. The victim ultimately committed suicide.

The possibility of malpractice among pastoral counselors is an important issue because some authors have suggested that as many as 42 percent of people who seek help for emotional problems turn first to the clergy.<sup>7,8</sup> The importance of the clergy in the overall scheme of help seeking is also apparent in view of the regularity of referrals by clergy to secular psychotherapists.<sup>9</sup> Furthermore, several authors have clearly emphasized that ministers of different denomina-

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tions play an important role in the general task of providing psychological care to those in need.<sup>10,11</sup> Because counseling is obviously widely practiced by pastors, it should be apparent that clergy malpractice merits more systematic analysis than has been accorded it to date in the psychiatric literature.

In this article, we shall first summarize the *Nally* case, taken by some to be the first suit for malpractice against pastoral counselors.<sup>12</sup> We shall then review briefly the development and evolution of pastoral counseling as a discipline. Finally, we shall consider the crucial question of whether pastoral counseling should be classified as primarily a religious or a secular activity. The nature of this work is at the heart of the debate about the right of pastoral counselors to be protected from malpractice actions. Those who see pastoral counseling as a religious activity generally contend that the First Amendment to the Constitution protects pastors from malpractice claims. On the other hand, proponents of the notion that it is principally a secular activity insist that there should be a standard of care to which pastoral counselors could be held. We point out why this dichotomous view of pastoral counseling misses the mark, even though it may satisfy the needs of the judicial process.

### ***Nally V. Grace Community Church***

On April 1, 1979, Kenneth Nally, a 24-year-old Bible institute student who had previously graduated from the University of California, fatally shot himself in the head. Born and raised a Catholic,

Nally had converted in 1974 to Protestantism and he joined the Grace Community Church of the Valley in southern California. Since the breakup with his girlfriend in December 1978, his depressive symptoms had repeatedly been the target of the church's ministry. He had often discussed suicide with the church's counselors, and in March 1979 he attempted suicide with an overdose of Elavil. Nally had told the pastor that he was sorry his attempt had failed, and he had informed two other counselors of his intention to try again. In his possession at the time of his death were religious tape recordings, produced and distributed by the church, that labeled suicide as a means by which the Lord takes home the disobedient believer.

On March 31, 1980, Nally's parents sued the Grace Community Church, its pastor, and three other clergymen on its staff, seeking \$1 million in damages for their son's wrongful death. In their complaint, the parents claimed that a pastor, acting as the agent of the church, negligently discouraged Nally from seeking psychiatric or psychological care, and that this led to his suicide. They further alleged that several pastoral counselors acting as agents of the church intentionally inflicted emotional distress on Nally by exacerbating his preexisting feelings of guilt, anxiety, and depression, and that this also contributed to his suicide. The plaintiffs' third claim was that the church negligently failed to require adequate training for their counselors.

In October 1981, the trial court (Superior Court of Los Angeles County) had granted the defendants' motion for summary judgment.<sup>13</sup> However, in June

1984, the California Court of Appeal reversed, holding:

That a cause of action for wrongful death arising out of intentional infliction of emotional distress was adequately pled by the allegations that the individual defendants, as agents of the church, knowing that Kenneth Nally was depressive and had suicidal tendencies, exacerbated his feelings of guilt, anxiety, and depression with reckless disregard that their conduct would increase the likelihood that Kenneth Nally would commit suicide and that, as a result of this conduct, Kenneth Nally's depression increased, causing him to commit suicide.<sup>14</sup>

Noting that the First Amendment provides an absolute freedom to believe but a less than absolute freedom to act, the Court of Appeal defined the question before it as:

Whether a clergyman or church should be immune from liability for intentional infliction of emotional distress caused by the nature or content of counseling simply because the counseling may have a spiritual aspect.<sup>15</sup>

The Court of Appeal looked at other jurisdictions that had indeed concluded in cases of religiously motivated child neglect<sup>16</sup> and undue influence<sup>17</sup> that tort liability could be ascribed to a clergyman or religious institution for intentional infliction of emotional distress. The Court found it reasonable to hold that the First Amendment absolutely protects religious beliefs; however, the Court noted that the intentional infliction of emotional distress in the name of religion could in no way be protected by the First Amendment.<sup>18</sup> Although the Court did not resolve the question of whether the pastors had a duty either to refer Kenneth Nally to a psychiatrist or to train its pastors adequately, the Court clearly concluded that a clergyman's ac-

tions done in the name of religion were not automatically protected.

The case ultimately went back to the lower court. In May 1985, after the plaintiffs had rested their case, the trial court accepted the defendants' motion for a judgment of non-suit.<sup>19</sup>

### **Profession of Pastoral Counseling**

The *Nally* case breaks new ground in highlighting the possibility that pastoral counseling as a discipline can be subjected to malpractice litigation. However, it has not really been clear what constitutes the practice of pastoral counseling. It apparently took root as a discipline in apostolic times. The New Testament makes it clear that the earliest Christians were expected to follow the example of Christ who showed concern for the physical and spiritual welfare of all who came into contact with Him. Such caring was, in fact, an identifying mark of those who joined the early church. Naturally, the performance of various good works became specialized over time, leading to the development of the tradition of *cura animarum*, or the care of souls. A well-wrought history of this tradition is available.<sup>20</sup>

Freud's strong influence on the development of pastoral counseling practice is especially evident in the work of Oskar Pfister, the first pastor to practice psychoanalysis as part of his ministry.<sup>21,22</sup> He was already significantly engaged in a ministry of counseling to his congregants when he began to learn the new method from Freud, to whom he wrote<sup>23</sup>: "What caused my analytic labors to become the fulfillment of a long-standing dream was that while they dealt

with real life they were also connected with my tasks as a pastor” (p. 25).

Freud was more than comfortable with this use of his work, at least in 1927, when he wrote of the analytic patient<sup>24</sup>: “We do not seek to bring him relief by receiving him into the [C]atholic, [P]rotestant or socialist community. We seek rather to enrich him from his own internal resources, by putting at the disposal of his ego those energies which, owing to repression, are inaccessibly confined in his unconscious, as well as those which his ego is obliged to squander in the fruitless task of maintaining these repressions. Such activity as this is pastoral work in the best sense of the words” (p. 256).

Pastoral counseling as it is currently practiced in the United States took shape during the first half of this century in Protestant circles. The major figures were connected with the religion and health movement, which developed under significant Freudian influence.<sup>25</sup> A landmark event for contemporary American practice of pastoral counseling was the establishment in 1964 of the American Association of Pastoral Counselors (AAPC).<sup>26</sup> Recognizing that most clerics were engaged in counseling to some extent and aided by a new listing of 73 centers for pastoral counseling published under the sponsorship of the Joint Commission on Mental Illness and Health,<sup>27</sup> leadership of the American Foundation of Religion and Psychiatry organized the AAPC. Its purposes were to enhance professional and ecumenical interaction, promote pastoral counseling as a profession, identify and promote its

standards, and encourage research. The organization has grown to over 2500 members in three categories according to level of training and experience, in addition to several categories of affiliated individuals. Its major scholarly organ is a refereed quarterly, *The Journal of Pastoral Care*, which has a 40-year history. *Pastoral Psychology*, privately published, is another major quarterly journal in this field. More general journals relevant for the field include *The Journal of Religion and Health* and *The Journal for the Scientific Study of Religion*. *The Journal of Pastoral Psychotherapy* is scheduled to appear soon.

In spite of these organizational developments, the conceptualization of the pastoral counselor's role has varied as a function of the unique interests of each particular author. Some have held that the problems parishioners appropriately take to their pastors are due to the sinfulness of human nature and the individual's lack of faith. For them, the work of pastoral counseling consists of supportive interventions based on the power and goodness of God, rather than on techniques drawn from clinical psychology or psychiatry.<sup>24,25</sup> Healing takes place as the individual overcomes vice, grows in virtue, and becomes more fully connected to God and the church. The individual improves by changing the approach to problem solving. This comes about through a deeper religious understanding and insight. This religion-based model of pastoral counseling still leaves considerable room for variation that is a function of the denominational beliefs and style of the pastor.

Others have taken a broader view, allowing to the properly trained pastoral counselor the full use of psychoanalytically oriented techniques as well as newer approaches that include family and group psychotherapy.<sup>8,30</sup> Some who have held this position have pointed out the special advantage of psychological skill in dealing with religious problems<sup>31</sup> and the value of religious training for the understanding of psychological problems.<sup>32,33</sup> At least one current volume undertook to survey what current psychology has to offer the interested pastor, with the clear implication that the pastor can and should learn how to use this information.<sup>34</sup> In his classic pastoral counseling text, Clinebell<sup>35</sup> not only covered basic common elements such as initial contact, assessment, and referral; he described crisis and brief work, marriage and family counseling, supportive, educational, and confrontational work, and analytically based therapy. Another recent multiauthored text was of similar scope; it additionally covered specific areas such as adult development, grief work, and alcoholism.<sup>36</sup>

The settings in which pastoral counselors perform also show great variability. Some pastors do all of their work in their church offices and include counseling among their pastoral duties. Others work in pastoral counseling centers, which in turn may be freestanding, affiliated with a denominationally sponsored hospital, or supported jointly by several local churches. Still others follow a private practice model. It is also fairly common for an individual to be involved in more than one of these set-

tings. In fact, pastoral counselors functioning outside of parishes utilize as many as 10 distinct types of practice arrangements.<sup>36</sup>

The recent work published by Mollica and colleagues<sup>37</sup> on the epidemiology of mental health activities of the clergy has been most instructive. In their survey of 290 clergy in south central Connecticut, the authors obtained a 74 percent (214) response rate. Among the clergy was a specific subgroup of 64 individuals who defined themselves as pastoral counselors. Results of the survey showed that evangelical and black ministers gave greater weight to the importance of theological beliefs in counseling than did traditional clergy and pastoral counselors. In addition, pastoral counselors used theological approaches, such as quoting scripture and recommending church attendance, significantly less than all other clergy. The time spent in counseling activities varied from 10% of time for traditional clergy to over 50% of time for pastoral counselors. However, pastoral counselors made the most referrals to mental health professionals. In an earlier report, Mollica<sup>38</sup> had showed that the pastoral counselor subgroup valued and used all major psychiatric techniques short of prescribing medication. This recent epidemiological work has therefore shown the breadth and variability of pastoral counseling techniques in use; but it also pointed out that, as those who engage in pastoral counseling become a more professionalized and sharply delineated subgroup, they tend to move from a religious orientation to a psychiatric style of practice.

## Pastoral Counseling as a Religious or Secular Activity

Funston<sup>12</sup> has accomplished one of the most complete and detailed commentaries on the clergy malpractice issue. In it he argued forcefully that pastoral counseling is a religious activity. He arrived at his conclusion by relying heavily on the conceptual notions of Braceland and Farnsworth,<sup>28</sup> who had described the process of pastoral counseling as the clergyman's dealing with problems of day-to-day living through the application of religious insight. They pointed out that pastoral counseling's goal was the production of change in the individual, and this feature distinguished it from the giving of guidance and advice. On the other hand, pastoral counseling did not deal with unconscious conflicts, which were in the domain of the psychotherapist. Braceland and Farnsworth<sup>28</sup> saw the counselor and the client forming a special relationship in which God was the third party; furthermore, the goal of the process was to lead the client to more adequate values and to a better understanding of his or her relationship to others and to God. Obviously Funston's point here was to underline the inherent religious aspect of what pastors did, while seeking to distinguish between the work of secular therapists and the pastoral counselor. Although we grant the religious nature of the pastor's functions, Mollica's<sup>37,38</sup> work demonstrates that very clearly pastoral counselors do indeed contend with the unconscious during their work with clients.

Braceland and Farnsworth<sup>28</sup> made

several other points that remain of some import. They advanced the notion that the clergyman ought not to give religious solutions for problems that were not religious in origin. This was another basis for them to make a distinction between pastoral counseling and secular psychotherapy. They clearly did not see the pastoral counselor as ever becoming a therapist. The pastor's primary task was to develop human spirituality, and training in psychology was to be used to facilitate the process of evaluation of the client so as to distinguish clearly between a spiritual and psychological problem. Although Braceland and Farnsworth<sup>28</sup> did not demonstrate how one would distinguish between spiritual and psychological problems (they admitted that even a loss of faith might have unconscious psychological roots), they seemed confident that the pastor should not perform therapy where the promotion of human spirituality was not paramount. Thus, although they could well be taken to buttress Funston's view that pastoral counseling was a religious activity, it is also clear that they had a rather circumscribed conception of pastoral counseling as a therapeutic exercise. Furthermore, in order for pastors to keep their counseling activities pure and pastoral, they had to use training in other disciplines to help them carry out an effective triage system and refer the nonreligious problem elsewhere. In effect, pastors were required to engage in secular assessment of the individual before proceeding to pastoral counseling. In addition, it would appear that there was some implied standard of care that forced pastors to refer nonreligious prob-

lems to other mental health professionals.

The narrowness of this whole view was further highlighted by Braceland and Farnsworth,<sup>28</sup> who noted explicitly that the member of the clergy identifying the more serious emotional disturbances had the responsibility of seeing that the disturbed parishioner received appropriate help from psychiatric sources. Consequently, their view of pastoral counseling as a religious activity did not stop them from inputting some responsibility to the pastoral counselor. Although they stopped short of calling it a standard of care, that could be seen as an implicit part of their theoretical framework.

Funston's 1983 article<sup>12</sup> did not of course mention Schlauch's<sup>39</sup> definition of pastoral psychotherapy that was published in 1985. Whereas Schlauch created another type of problem because he never used the term "counseling," his observations are still useful. First of all, Schlauch rejected as inadequate any definition of pastoral psychotherapy that relied exclusively on the identity of the practitioner, on some of the supposed content of the process, on the so-called theologically informed understanding of the clinician, or on the religious setting in which the therapy was practiced. Schlauch saw pastoral psychotherapy as a craft that bridged the disciplines of theology, ethics, and psychology—as a psychotherapeutic activity in which a pastoral psychotherapist observes, understands, and interprets the psychological, religious, and moral dimensions of the ongoing process through psychological, theological, and ethical frames of reference. This most recent attempt at a

definition is important because, although it clearly establishes a distinction between the secular and pastoral psychotherapist, it also makes clear the idea that the pastoral psychotherapist is not ignorant of the principles and values that inform secular psychotherapy.

In all that we have said, we wish to be clear that we do not intend any denigration of the powerful and important notion that pastors bring a special spiritual dimension to their therapy work. We agree with this position. However, we think that Funston has attempted to construct an argument that on close examination falls somewhat short. Pastoral counseling is obviously a combination of both religious and secular activity. Although it may please the judiciary to have it classified as one or the other, we fail to see how reverting to a simplistic and indeed practically inaccurate definition of pastoral counseling can serve the interests of pastors or their clients.

### **Conclusion**

Having made clear that the pastoral counselor is both similar to and different from the secular psychotherapist, we must still confront the question of whether Kenneth Nally's counselors could be judged by any reasonable standard of care. We think so, although we think it evident that developing a standard of care for pastors can be no easier than doing so for secular therapists. Hampton<sup>40</sup> has lucidly outlined the complexity of developing a uniform standard of care that would be applicable to every psychotherapy technique. We envisage at least equal difficulty in undertaking the construction of stand-

ards that would be applied to a multiplicity of denominations and individual churches.

The *Nally* case had also raised a secondary issue of whether a psychiatrist could testify about a pastoral counselor's standard of practice. We agree with the position that psychiatrists should be barred from giving such testimony unless they are clearly involved in pastoral counseling themselves. This is linked to our affirmation of the concept that, although pastoral counseling is similar to secular therapy, pastoral counseling still remains a unique task of the clergy.

We contend that pastoral counseling is obviously not totally a religious activity. It follows therefore that the First Amendment cannot present a valid and complete defense to clergy malpractice complaints. Nevertheless, psychiatrists should not be allowed to impose on the clergy a medicopsychiatric concept of a standard of practice.

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## Pastoral Counseling and Malpractice

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