Mandatory Reporting of Sexually Exploitative Psychotherapists

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Although there is unanimity among mental health professionals as to the unethical aspect of psychotherapist-patient sexual contact, there is disagreement as to whether subsequent treating psychotherapists should be required to report the abuse of a former therapist to a licensing agency. Such reporting may have negative effects upon the patient and upon the patient's relationship with the therapist. It may also, however, prevent further exploitation by the original abusing therapist. Three states have adopted reporting statutes designed to protect patients from this type of abuse. The current statutory enactments of California, Wisconsin, and Minnesota are compared in terms of their differing approaches to the problem.

Mental health professionals have experienced a crescendo of concern about sexual exploitation of patients since the 1975 landmark case of *Roy v. Hartogs.*[1] The ethical issue is clear, and the major mental health professional organizations have all adopted ethical canons denouncing psychotherapist-patient sexual contact. The next step is less clear. Should a subsequent treating psychotherapist be required to report to a professional licensing authority the sexual abuse of a patient by a former therapist? Patients usually do not report; therapists, however, seem to favor reporting.[2,3]

After the publication of an increasing number of studies concerning the prevalence of sexual contact between psychotherapists and their patients, state legislatures have been grappling with the difficult problem of protecting the public from this type of abuse.[4] Three states have adopted remedies in the form of reporting statutes. These measures require a therapist who subsequently treats a victim of therapist sexual exploitation to report the accused former therapist to the appropriate licensing authority, or to inform and enable the victim to report.

This article will briefly review the clinical effects of sexual contact and the considerations that must be weighed in any debate concerning mandatory reporting. The current statutory enactments of California, Wisconsin, and Minnesota will be compared. The authors will then provide their observations.

The Victim's Condition: Harm and Inhibition

The results of therapist sexual contact with patients may be manifested in a variety of psychological symptoms, and functional impairment resulting from

these conditions can be severe.[2] Common findings include anxiety, guilt and shame, depression, confusion, emotional lability, rage, impaired ability to trust, and cognitive dysfunction.[5] These symptoms may cluster into the diagnostic syndromes of major depression, generalized anxiety disorder, dissociative disorder, posttraumatic stress disorder, somatoform disorder, and a variety of psychosexual disorders. Sexual contact may also cause the exacerbation of preexisting personality disorders. The clinical picture may be similar to that of an adult survivor of incest.[9]

Despite its harm, sexual contact is often unreported.[2] One study shows only four to eight percent of the victims report the abuse.[2] Like victims of incest, who blame themselves for the sexual activity, many victims of sexual exploitation feel responsible for it and are unable to fault their therapists.[6,7] Instead, self-doubt and self-depreciation lead victims to isolate themselves and avoid communicating their victimization to anyone. It is frequently difficult for a victim to sufficiently trust a subsequent therapist to disclose the sexual contact.[8] Either due to dissociation, repression, denial, or the anticipated painful feelings aroused by such encounters, a victim may be unwilling or unable to directly or indirectly confront an exploitative therapist. Victims often fear "punishment" from the offending therapist, who has become a parental figure. Victims may also fear publicity, with such attendant hazards as losing a spouse or children. Thus a variety of factors may contribute to silencing the victim.

The Therapist's Dilemma

Subsequent psychotherapists are often accused of maintaining a "conspiracy of silence" when they do not report a former therapist's sexual contact.[5,6,10] Colleagues of the offending psychotherapist who may learn of the sexual contact, either through their patients or through other psychotherapists, rarely report their knowledge and are subjected to the same accusation.[11] A closer analysis will reveal that these charges are not wholly accurate. Important yet competing interests often collide when a therapist attempts to decide whether to report an instance of sexual abuse.

The basic ingredient for successful psychotherapy is a collaborative effort based on mutual trust. A safe setting is required for the patient to be able to share matters of significant personal concern. Clearly defined procedural boundaries protect this setting. Primary among these procedural boundaries is the ethical obligation of the therapist to maintain the confidentiality of the patient's communications and not to act upon them. Reporting sexual exploitation by a prior therapist requires taking action, and, when done without the permission of the patient, is a breach of the confidentiality required to maintain a psychotherapy relationship.

Victims of sexual exploitation entering a subsequent psychotherapy relationship are uniquely vulnerable to a repetition of past boundary violations. If confidentiality were breached, such patients, already wary, and for good reason, distrustful, would experience it as a reenactment of their prior traumatic ex-

perience. Many of these individuals would be compromised in their ability to continue with further treatment.[6]

Balanced against the victim's need for protection from further injury is a public health consideration.[11-13] Society needs to be protected from therapists who may sexually exploit one victim after another. The ethical canon for psychiatry is directed toward this protection, stating, "A physician shall . . . strive to expose those physicians deficient in character or competence, or who engage in fraud or deception." Further, "special consideration should be given to those psychiatrists who, because of mental illness, jeopardize the welfare of their patients and their own reputations and practices. It is ethical, even encouraged, for another psychiatrist to intercede in such situations."[14]

Intervention in sexual contact cases is especially important because a substantial proportion of exploitative therapists abuse multiple victims.[3,15] If unreported, these perpetrators can be expected to victimize future patients for whom no warning is available. Potential victims can obtain only limited information about the therapists they choose. Regulatory and licensing authorities have the responsibility of protecting the public from unscrupulous practitioners, but they are dependent on patient reports to carry out their protective function. These issues of ethical responsibility, individual protection, and public safety must be carefully balanced by any statute or regulation governing mandatory reporting.

Statutory Approaches to Mandatory Reporting

Although these competing interests are difficult to resolve, some states have attempted to address the issue. The states of California, Wisconsin, and Minnesota have adopted legislation which specifically delineates the duties of psychotherapists in regard to reporting colleagues accused of sexually exploiting patients. The approach followed in each of these states is quite different. California and Wisconsin reporting laws leave the decision of whether to report a therapist with the abused patient. Minnesota requires that the exploitative therapist be reported, even over the patient's objection.

California merely encourages patient's reporting by requiring subsequent therapists to provide the patient with information that sets forth the patient's rights and remedies against the former therapist. The California statute states:

> Any psychotherapist or employer of a psychotherapist who becomes aware through a patient that the patient had alleged sexual intercourse or alleged sexual contact with a previous psychotherapist during the course of a prior treatment, shall provide to the patient a brochure promulgated by the department which delineates the rights of, and remedies for, patients who have been involved sexually with their psychotherapist. Further, the psychotherapist or employer shall discuss with the patient the brochure prepared by the department.[16]

Thus, in California, if a therapist provides the patient with a brochure and discusses it, the duty is fulfilled. There is no actual reporting requirement placed on the subsequent therapist.

Wisconsin is more stringent about the response of the subsequent therapist. Its

statute requires the therapist to ask the patient whether a report may be made.[17] If the patient gives written consent for a report to be filed, the subsequent psychotherapist must file a report with the licensing authority or district attorney within 30 days. The report may not contain information that might identify the patient without written consent. If the agency receives a second report regarding an abusive therapist, it may inform the reporting therapist, who in turn, may, but is not required to, pass this information on to the patient.[17] There is a presumption of good faith on the part of the reporting therapist; and any therapist who, in good faith, reports the sexual misconduct of another is immune from liability, even if the accusation turns out to be false.

Leaving control with the victim, the Wisconsin statute makes it the responsibility of a subsequent psychotherapist to report if given written permission by the victim. This provision enables the therapist to maintain the ethical obligation to report, and provides a measure of public protection while protecting confidentiality and insulating patients from the further trauma of what may be perceived as a coerced confession. The immunity clause allows the therapist to make a report without fear of a libel or slander lawsuit.

In Wisconsin neither the licensing board nor the prosecutor will carry forward an investigation based upon one anonymous report. Allowing victims to anonymously report their prior therapists may encourage these victims to come forward as prosecution witnesses at a later time.[17] If a victim learns that the former therapist has abused other patients, the victim may be more likely to come forward. Not only do complainants feel safety in numbers, but the illusion of "specialness" created by loyalty to and idealization of the former therapist is usually shattered by learning of other victims.[18] It is hoped that anonymous complaints will permit earlier detection of repeat offenders.

Critics of the Wisconsin statute note that anonymous complaints deprive falsely accused psychotherapists of the right to confront their accusers. Some therapists, doubting the ability of licensing boards to maintain strict confidentiality over their files, fear that these complaints might be leaked or used in unethical ways to damage reputations. The fear of secret dossiers, trial by rumor, and the stigma of unsubstantiated charges provides powerful opposition to a requirement for anonymous reporting.

California and Wisconsin favor patient confidentiality over societal protection, although Wisconsin does offer at least minimal protection to society through permissive, anonymous reporting. Minnesota, on the other hand, makes a presumption in favor of societal protection over individual therapy. Of those states with laws concerning psychotherapist sexual exploitation of patients, only Minnesota has mandated reporting of the offending psychotherapist's name over the objections of the victim.[19,20] Minnesota has a patchwork of mandatory reporting requirements. The Medical Practices Act, the Board of Psychology, and the Boards of Social

Work and Marriage and Family Therapy all require subsequent therapists to report therapists accused of sexual contact with their patients and grant immunity from civil liability to the reporters.

According to statistics gathered by the various boards, these reporting statutes seem to have a powerful effect. Complaints to the Board of Medicine in Minnesota have doubled since a reporting statute was passed in 1985.[21] The Board estimates that the complaints will triple by 1991, although the number of physicians in the state has remained constant. The Board processed 505 complaints between July of 1986 and June of 1987. It estimates that 1,853 complaints will be processed between July 1990 and June 1991.

The effect of these reports on the original victims of abuse has not been ascertained. Because these mandatory reports necessarily involve a breach of confidentiality, the statutes may make many victims uncertain whom they can trust, and it is likely that many clients feel revictimized. Some undoubtedly fear further loss of control. Practitioners have attempted to restore patient control through an initial warning about the reporting requirement combined with a suggestion that the patient not identify an abusive therapist by name until the consequences of reporting have been thoroughly explored. It would appear, however, that an opening instruction *not* to talk about something in therapy could only be counterproductive. Thus, Minnesota's statutes, although offering the most protection to society at large, may aggravate injury to the individuals harmed by sexual contact.

Observations

There is no easy solution to balancing the interests of present victims and future patients of sexually exploitative psychotherapists. Given the fragility of many victims when they reenter therapy, mandatory reporting may further erode their trust in their therapists and thereby decrease the likelihood of successful therapy. On the other hand, a "do nothing" reporting policy allows the abusive therapist to continue to act with impunity, perhaps injuring many other patients.

Although educating survivors of sexual exploitation, as California does, is a first step toward eliminating this problem, such a step may not be as effective as placing a duty on subsequent therapists to report offenders. Wisconsin has taken the most sensitive approach to both society and the victim by requiring the patient's consent to reporting. Such an approach is empowering, giving the victim control over the complaint process, protecting the right to clinical confidentiality, and extending some protection to potential future victims of the exploitative psychotherapist.

A statute that requires reporting if a client consents will help psychotherapists in balancing their now conflicting ethical duties. A reporting statute will also increase public awareness of the patient-psychotherapist sexual contact taboo, and heighten professional self-scrutiny and policing. So long as good faith reporters are shielded from liability

and there is adequate protection of confidentiality of reports, such a statute should not be objectionable.

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