Boundaries and Supervision: Avoiding Legal Risks And Doing Good Clinical Work. APA Issue Workshop #78

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The last two decades were marked by many licensure board actions and civil suits in which boundary violations by psychiatrists have been alleged. In many such cases "negligent supervision" was claimed as part of the cause of action. The first panelist, a clinical and forensic psychiatrist, will examine what is known about the more common boundary violations which may form a "slippery slope" in terms of violating the standard of care for psychiatric treatment. The realities of clinical practice bring about situations in which there are gray areas as regards the maintenance of boundaries. As colleagues, consultants, or supervisors we have the duty to try to help avoid boundary violations.

The second presenter, an attorney, will examine the role of consultation and supervision in examining proposed boundaries crossing as well as documentation which will provide for both a good clinical record and risk-management style protection. This will include a discussion of common supervisory failures and the types of things which emerge in legal cases as "negligent supervision". She will also differentiate vicarious from direct liability.

The third presenter, a clinical and forensic psychiatrist from Europe, will discuss the issues and challenges in the arena of professional boundaries which have emerged in Europe. He will also discuss the role of supervision and consultation in preventing problems, in providing for early intervention in troubled situations, and as part of remediation for practitioners who have been disciplined.

As important as supervision is, there is rarely any formal training provided to psychiatrists and other mental health professionals about how to do it effectively. The final presenter, a clinical psychologist, will examine some methods of training supervision skills to those who might be supervising clinicians. This will include approaches which can be used in a clinical setting, or even for psychiatrists seeking self-study of this vital skill.

It is hoped that audience discussion will focus on both the handling of challenges to professional boundaries and the role of consultation and supervision as an aid to the trainee and the practitioner. Methods of teaching supervisory skills will hopefully be discussed.

Educational Objectives:

(1) Analyze Boundaries from a Risk Management Perspective
(2) Properly Document Supervision
(3) Understand Vicarious vs. Direct Liability

The goal of this presentation is to provide the North-American audience with an overview of current problems and solutions related to supervision and boundary issues from a European perspective. The author is currently developing a Master Program <Prevention of Sexual Violence> at Zuerich University, Switzerland (see **http://www.weiterbildung.unizh.ch/mps**). As an expert on boundary issues for nearly 20 years he chaired several task forces in behalf of National and State Medical Associations. He is the author of a European text on PSM: *Missbrauchtes Vertrauen. Sexuelle Grenzverletzungen in professionellen Beziehungen*. Karger, Basel, 2005, 2nd ed. (No translation available: Abused trust – sexual boundary violations by professionals).

Introduction

I will begin with a case involving alleged sexual misconduct by a professional – obviously a serious boundary violation. Case Vignette:

- A GP has come to you for consultation or supervision. She presents one of her female patients, which has recently disclosed to her, that she had been sexually abused by a rheumatologist she was referred by the GP.

- She wants to know what she can do. She notes that the accused rheumatologist is someone she knows quite well.

- What information would you need from the GP? What kind of suggestions or advice might you offer? What options does she have?

I will use the initials "PSM" to refer to Professional Sexual Misconduct.

Knowledge about Attachment Theory, affective neuroscience, psycho-traumatology, and legal issues in medicine may be both helpful and even critical when dealing with PSM and other forms of sexual violence (Tschan 2005). The epidemiological findings from a survey on violence experienced by adult Swiss women suggest that health care professionals see many more patients – victims and offenders - affected by sexual violence one might expect. 25% of adult Swiss women reported having suffered from sexual violence, whereas 40% reported having experienced physical violence (Killias et al. 2005).

Knowledge about these findings is essential for colleagues who offer supervision or consultation. A recently published study showed, that half of the staff members of Basel University Hospital declared, that they don't have

enough knowledge to deal with patients suffering from domestic and sexual violence. Once again, having knowledge is crucial for doing a good clinical work.

Germany: A paradigm shift

In Europe Germany has become the first nation which in 1998 criminalized sexual contacts between psychiatrists with their patients. That law was subsequently revised to cover all health care professionals, so that Germany now has become the first nation to criminalizes sexual contact between *all health care professionals and their patients*..

> **German Criminal Law (rev. 27.12.2003)**
> **§ 174c Sexual abuse by an abuse of a relationship based on counseling, treatment or care.**
>
> (1) Whoever performs sexual acts with a person, who is in counseling, in treatment or under care due to a mental or psychic illness or a handicap including an addictive disorder or a somatic illness, thereby abusing the relationship based on counseling, treatment or care; or whoever leads a person to perform sexual acts on him or her, will be sentenced for 3 months up to 5 years of imprisonment.
>
> (2) Whoever engages in sexual intimacies with a person, who is in his or her psychotherapeutic treatment, or who leads that person to perform sexual acts on him or her, will also be punished.
>
> (3) The attempt will be punished.

The German criminal law is delivering a clear message for all health care professionals, whether they offer a somatic or a psychotherapeutic treatment: all sexual intimacies with patients violate the personal and sexual integrity of that person and are crimes. In terms of standards in medicine, the “zero tolerance” paradigm has guided this legal concept. It is also articulated in the existing ethical standards of the American Psychiatric Association. This legal framework provides some guidelines which impact on the consultative advice or supervision in cases involving sexual boundary violations.

Supervision from the risk-management perspective

PSM has become a considerable risk for all health care institutions. Legal, financial and moral consequences can be enormous, when an institution is accused of PSM. Supervision as part of a clinical risk management can contribute to reduction of potential risks. On the other hand, it must be clear, that clinical supervision is not a 100% guarantee that no PSM will occur.

There is a traditional assumption about supervision: (1) that a trained therapist is a good supervisor and (2) that having been supervised qualifies one to supervise others (Falvey 2002). Hoffman (1994) has referred to this lack of supervisory training as the mental health’s profession’s “dirty little secret”.

Competence is a basic requirement for professional practice – competent practice requires a synergistic melding of knowledge, skills and judgment that enables one to know what to do, how to do it, and when to do it (Falvey 2002, pp. 24-25).

Good clinical supervisory skills are best acquired through formal training in supervision. Studies have clearly demonstrated that there is little evidence for a relationship between level of professional degree and supervisor competence (e.g. Koocher et al. 1998). Increased experience did not ensure more competent supervision among licensed psychologists (Rodolfa et al. 1998).

The Physicians Charter (2002) emphasizes, that *professionalism is the basis of medicine's contract with society. It demands placing the interests of patients above those of the physician, setting and maintaining standards of competence and integrity, and providing expert advice to society on matters of health. Physicians have a duty to uphold scientific standards, to promote research, and to create new knowledge and ensure its appropriate use. The profession is responsible for the integrity of this knowledge, which is based on scientific evidence and physicians' experience*.

The supervisory process requires a proactive approach, because of the human nature: "*Specifically those aspects of their thoughts, feelings or actions that they would most like to keep secret from the supervisor are precisely the issues that should be openly discussed in supervision*" (Gabbard 1996). By addressing erotic and sexual feelings the supervisor opens a dialogue where such things can be discussed (Bridges 1998).

Formation and training of health care professionals

Knowledge is essential. Having a framework for teaching concepts of professional boundaries is a sine qua non condition for the proper training of all health care professionals. The fact that there are so many "gray areas" in the boundaries arena and that we are often dealing with a "slippery slope" indicate that there is a need for an integration of an examination of boundaries concepts into academic training. The recently published World Report on Violence and Health (WHO 2002) strongly supports the need to incorporate more information on sexual misconduct in the formation and training of health care professionals. It must be considered as a noteworthy bias or blind spot among academic teachers that this topic is often not integrated into traditional curricula.

Swiss Medical Association: HOPLine for physicians

The Swiss Medical Association is currently implementing a hot line for impaired physicians, called HOPLine (**H**elp **O**ur **P**hysicians). The goals are to provide support, help, and supervision for physicians at a point when they realize that they are getting into trouble. This kind of help is supposed to be used before intervention by regulating authorities or the justice system is required. The HOPLine is based on what we term a "front-back-office" service. A interdisciplinary pool of experts (legal medicine, psychiatry, internal medicine,

lawyer) constitutes the “back office,” which provides consultation and support so that the services provided in the “front office” are proper.

Most available data on professional impairment are based on studies of professionals after they have engaged in misconduct and been subjected to discipline. Nonetheless, our knowledge from this retrospective analysis can hopefully provide guidance for professionals who have not yet offended. This new Swiss program to intervene early in the development of the problem before functioning and practice are impairment.

The training of the experts in the consulting pool is based on utilization of the same concepts which form the basis for good supervision around a variety of boundaries issues.

The consultation of the HOPLine is based on a voluntary participation of physicians. It is possible to recommend it to a colleague who is struggling, but the hope is that physicians will recognize its value and seek it out on their own. However, in a case where the cooperation of an accused physician cannot be established or fails, a mandatory reporting to the state health care authorities must result.

The HOPLine is part of a program to improve safety and quality standards in health care. The concept of the HOPLine is being implemented in collaboration with state and national health care authorities. Hopefully at least some physicians will access it before they have totally enmeshed themselves in a harmful relationship with a patient.

Boundary Training: Remediation for physicians

In the remediation for physicians after PSM the use of a *boundary awareness training* is under evaluation. The author has developed a rehabilitation concept incorporating this concept. It currently consists of on 24 modules, which have been tested on voluntary subjects in recent years. The program is based on offence-focused cognitive behavioral intervention techniques including psycho-educative approaches and biblio-therapeutic elements (writing letters and papers including reading scientific articles). Videotapes such as Broken Boundaries from the Department of Mental Health in Maryland and others are utilized in the program.

Although initially the practitioner may minimize their problems or not fully understand them, it is not possible to undertake this program unless the practitioner agrees that they do have a problem.

The content of the program includes some basic materials utilized with all professionals but also includes information which is derived from an assessment of the professional. It is essential that there be a thorough assessment prior to embarking on such a program since it needs to accommodate the specific issues of the case (Schoener 1995). This has been utilized with a wide range of practitioners and a wide range of boundaries problems.

The 24 modules include:

0	**introduction**
1	**counseling an offender-professional**
2	**doctor-patient relationship**
3	**boundaries**
4	**epidemiology**
5	**psycho-traumatology**
6	**resulting problems of victims of PSM**
7	**counseling victims**
8	**how does it begin?**
9	**fantasies**
10	**masks**
11	**circle of abuse**
12	**own case presentation 1**
13	**Broken Boundaries (video)**
14	**20 steps**
15	**20 steps - interpretation**
16	**law and justice**
17	**offender-professional (video)**
18	**institution - consequences and reactions**
19	**burden of guilt - new beginning**
20	**relapse prevention**
21	**own circle of abuse**
22	**own case presentation 2**
23	**responsibility**
24	**evaluation, end of program**

Conclusions

- Keeping professional boundaries intact is the basic condition for performing good clinical work
- Maintaining clarity about boundaries in health care is only possible in close cooperation with the justice system and health care regulating authorities so that expectations are clear
- A clear legal framework helps maintaining professional boundaries, and the existence of legal consequences can both help define boundaries and lead to motivation to seek supervision
- Supervision helps maintaining quality standards of care and is therefore part of the clinical risk-management
- Boundary issues as well as knowledge about sexual violence must be integrated into the formation and training of health care professionals, and also needs to be part of the knowledge-base of those offering consultation or supervision to colleagues
- Offering help for impaired colleagues improves professional competence and quality standards in health care, and the Swiss are experimenting with doing this using a help line

- Boundary Training can be part of a remediation in disciplinary cases and may draw on what has been learned in supervision

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