

## THERAPISTS' BOUNDARIES

I was chatting with a colleague not long ago and we got into one of those “what if” conversations. The discussion had started with the new WAC section enacted last year prohibiting sexual contact between therapist and former client for two years after cessation of treatment. The question we mulled over was, what if:

A female therapist was contacted a few months after therapy by a male client wanting to have a social relationship. Let's say the treatment was relatively brief and confined to adjustment disorder issues and life skills work. There had been nothing said or done by the therapist that in any way would suggest or invite post treatment contact. What if this therapist were experienced, skilled, had never had any complaint lodged against her license - in short the kind of person anyone would be proud to call a colleague.

What if the morning coffee at Starbucks led to a lunch which led to a solid, committed long term relationship. Five years pass. They are married and have a child. If for some reason the State learned about this post treatment relationship and instituted proceedings against the therapist, what would be the outcome?

We both agreed that sexual exploitation of a client is the most outrageous violation of trust we could imagine. However, was this exploitation? A conversation with an attorney with Department of Health was quite revealing. “You wouldn't believe how many cases we deal with which are just like that,” she said. The argument that “Nobody seems to have been hurt,” falls upon deaf ears. The policy of the state is to insist upon suspension in almost all such cases. This, led me and my colleague into an exploration of hard and fast prohibitions and their purpose.

Clearly, the State these days is very serious about the 2-year prohibition against sexual relations between therapist and client. That prohibition, of course, has been reflected in Principle 1.3 of the AAMFT Code of Ethics for many years. Washington State has recently added a similar 2-year prohibition that can be found in WAC 246-809-049. Like the AAMFT standard, sexual intimacy between a therapist and client within 2 years of the cessation of treatment is considered per se unprofessional conduct. Also, like the AAMFT standard sexual contact after the 2 year period is also strictly scrutinized by the state to determine if it is an abuse of the therapist client relationship. Factors the state will take into consideration include: The amount of time which has passed since termination of treatment; the nature and duration of the therapy; circumstances of cessation of treatment; the client's personal history; the client's current mental status, emotional dependence and vulnerability; the likelihood of an adverse impact on the client and others and any actions by the therapist suggesting or inviting a post termination sexual or romantic relationship with the client.

Now, the scenario we had cooked up was intended to raise the question: What happens when absolute rules come up against exceptions? What's so special about 2 years? Why shouldn't the rules show some slight give in order to reflect the reality of a particular situation? The answer probably lies in the intensity of the proscription against a particular kind of conduct.

There are standards in law called “presumptions.” If one fact or circumstances is established, then another, following, fact or circumstances is presumed to exist. It is a neat way for societal policymakers to express a preference for certain outcomes. If the policy is strong enough, lawmakers create an “irrebuttable presumption.” These are extremely rare. An example is a California law which used to establish an irrebuttable presumption that if a child is born to a married couple, then it was that man’s child. Societal interests at the time this law was passed in limiting “illigitmacy” to the extent possible has shifted over the years and been supplanted by a less condemnatory treatment of such children, coupled with advances in genetic testing. Irrebuttable presumptions are disfavored in law because they deny a person the right to be heard on a subject. The WAC section cited above creates an irrebuttable presumption that sexual contact within 2 years of the termination of treatment is unprofessional conduct. When we pass the second year post-termination we seem to shift into a “rebuttable presumption” and the WAC section tells us what factors need to be examined to determine if that presumption has, in fact, been rebutted.

Consider how any irrebuttable presumption really goes against the current of fundamental therapeutic thought. Counselors are trained - and usually quite gifted - in exercising deep empathy with their clients, who are often suffering from their own “irrebuttable presumptions” about themselves. Clients are often certain of various truths about themselves, while therapists understand the mis-perceptions that spawn these feelings. Therapists are in the business of examining all presumptions to see if they are based on reality. That’s just one of our many fundamental professional services to our clients.

Yet these presumption-busting examinations are for naught when considering sanctions for certain kinds of behavior. We find in the law of transgression and punishment the frequent reference to “moral turpitude” or its absence, in exploring whether certain behavior merits sanction. As it’s tone suggests, this is an old term, embedded in Anglo-American law. It is described in Black’s Law Dictionary as, “ The act of baseness, vileness, or the depravity in private and social duties which man owes to his fellow man, or to society in general, contrary to accepted and customary rule of right and duty between man and man.” Put another way, it is conduct that isn’t just bad, it’s b-a-a-a-a-a-a-d! (That’s a 21<sup>st</sup> as opposed to a 18<sup>th</sup> century definition.)

Absolute proscriptions of certain classes of conduct reflects a value so firmly held that even the slightest, most reasonable seeming exception will raise fears of a “slippery slope,” resulting in the erosion of that interests’ position. Those whose conduct or motives are not “base or vile” will suffer the same punishment as those whose are for the protection of society. It is a choice that we as a society or organization make, even though the individual outcome may be grossly unfair in some circumstances. Then again, maybe there is no excuse and the global sanction is justified in every instance.