
RELATIONSHIPS WITH FORMER CLIENTS/PATIENTS

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INTRODUCTION

One of the basic differences between a personal and a professional relationship is that **the professional relationship is typically time-limited**. However, the pattern of contacts in a professional relationship varies dramatically. For example, you may see your dentist only once or twice a year for a brief visit and yet he or she may remain **your** dentist even though you are not having regular professional contacts. There may be long breaks between appointments.

Depending on the type of professional relationship, there is wide variability in what is professionally appropriate in terms of having personal relationships with **former clients or patients**. As a general rule, the psychotherapy and counseling professions are very restrictive, whereas in general health care the restrictions are few. Both clients and professionals are often unclear what standards exist. There is surprisingly little literature on termination. **Termination in Therapy** (Joyce et. al, 2007) is one of the few books on the topic.

It is not uncommon for staff to approach supervisors or colleagues with questions about the propriety of “friendships” or other “contacts” or “involvements” with clients who have terminated their professional services. **Often, they underplay what is actually going on, understating the intensity of the feelings, the dependency, or the amount of involvement.**

Many a colleague or supervisor has unwisely supported, or at least not challenged, such involvement, believing it to be harmless. Sometimes a simple reminder is given about avoiding sexual contact. Typically, **the person requesting the consultation is not asked for any details and so there is not really a frank discussion of what is actually going on.**

The issue of continued professional service outside of the professional context is especially problematic in the psychotherapy and counseling professions. This is because supportive discussion and counseling by friends and family is quite similar to professional counseling. Thus, **if you are the person’s former therapist or counselor, if you lapse into discussion of their client’s personal life this may be experienced as “therapy.” An angry former client can also easily claim that this was a continuing professional relationship, carried on outside of regular office hours.**

As a practical reality, many a practitioner has sought a romantic and/or sexual relationship with a former client, claiming that the past professional relationship was “terminated.” A great many post-termination sexual relationships have occurred in situations where there was **no real** termination. Many times, there has been a “quickie” termination designed to legitimize the transition to a romantic or sexual relationship.

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www.walkin.org grschoener@walkin.com This is not meant as clinical or legal advice for a given situation.

An additional problem here is a *possible slippery slope*. Even when sex or romance is not intended, an eventual boundary violation is the culmination of a series of boundary crossings. It is *not the key event*, but simply a culmination of a series of events. A friendship or other social relationship can easily lead to any or all of the following:

- (1) a sexual or romantic relationship;
- (2) a financial or business relationship;
- (3) continued professional service outside of the professional context.

Although the literature, ethics codes, and licensure standards have focused on the danger to the former client, **professionals need to be aware of their own liability and vulnerability. If something goes wrong in the eventual relationship, the professional may be liable civilly and/or criminally, and stand to lose a great deal (license, job, family).** As much as there can be harm to the former client, the professional can suffer incredible losses as a result.¹

Many professionals overlook this since when the relationship begins, they are the more powerful party and feel quite confident in their knowledge of the client. This, of course, may be self-deception – many times professionals do not know the clients as well as they think they do. Furthermore, the power differential in the relationship can shift once the relationship becomes personal (Luepker & Schoener, 1989). Once lines are crossed, the professional is at risk if the former client becomes angry or frustrated, and especially if the relationship ends. **Our focus will be on the sexual relationship because this is where the most clear-cut standards are articulated. But the risks go beyond sex.**

FOLLOW-UP

When there is planned follow-up for professional reasons, from clinical to research, the end of the relationship or true termination follows that last contact. The same is true when, with or without an invitation to do so, the client re-contacts the practitioner. Doing more than simply answering a question or providing a referral can be experienced as a therapy or counseling session and can be seen that way by a regulatory body or employer.

The psychotherapy fields have no clear standards or very much written about follow-up. There are clinicians who build follow-up into their clinical work and there is reason to believe that in some domains of work planned follow-up may substantially improve outcome. Richard Stuart's behavioral couples' therapy, for example, has utilized this approach. Beyond possible impact on outcome, one can raise a question about the possible use of longer-term follow-up as a way of learning more about efficacy of therapy. If one's goal is long-term improvement in the client/patient's life and functioning, how can we do optimal work if we do not look at longer term (or even short term) outcome?

¹ The reality of an intimate relationship with a former client, no matter what the circumstances, is that a complaint may be filed with a licensure board by a former partner or spouse of either party. In situations where there is mandatory reporting of professional misconduct, a subsequent treating therapist may file a report. So even when a relationship somehow seems to be progressing positively, there can be serious consequences for the therapist. Loss or restriction of a license can have a dramatic impact on the therapist, and also the relationship.

THE PASSAGE OF TIME

As will become clear later, various professional standards and rules may use the passage of time as a way of judging the propriety of various types of contact with former clients. However, there is no scientific evidence or even coherent body of thought related to the passage of time following the termination of a professional relationship. While it is reasonable to assume that there a likely a number of other variables which might impact this, clear standards are lacking.

With the advent of social media and its growing impact on our lives, there are far more chances that a professional and former client might be aware of each other, happen upon personal information or connections, or interact. Clear standards are lacking in this arena.

If a counselor or psychotherapist sees information referencing a former client in a newspaper or magazine there is no prohibition, certainly, in satisfying one's curiosity by reading the story.

But what about information on the internet where with the striking of a few keys it is possible to research considerable information on at least some clients? One can find, in some instances, information, including photographs revealing many details of someone's life activities.

In addition, in the case of the internet there are some situations where the client can learn of this intrusion. Such searches are not necessarily "secret."

For the most part in counseling or psychotherapy situations a request for internet relationship such as being "friended" on *FACEBOOK* or other social media is frowned upon. However, what about a situation involving a former client/patient? Does time matter – e.g., a relationship terminated last week vs. last year vs. five years ago?

Unfortunately, there is yet to be serious discussion as regards relationships with former clients other than the issue of sexual involvement. This is unfortunate for many reasons, not the least of which is that contact with former clients may provide some follow-up to the professional work. If in psychotherapy/counseling one is attempting to help people change behavioral patterns or other elements of their lives, finding out how it all turned out may be invaluable.

One of the most important lessons I learned through contact with a former client was something I had not learned in graduate school or internship. When I last saw the client in question, he was in late adolescence, struggling with drug abuse and with very troubled family relationships. He committed a criminal act and was whisked away for residential treatment. I never learned the outcome, but when I last saw him the situation was grim.

A number of years later he turned up as a staff member of an organization for whom I was doing a workshop. We had a cup of coffee afterwards. He looked much better and reported that his life was going well. I had felt—and he confirmed – that we had a good therapeutic relationship but that I had not helped him. He made it clear that he had trusted me and found our sessions helpful, but that his destructive path had not been altered.

In response to my inquiry, he said that in retrospect there was nothing I could have done back then which "would have worked." I then asked what had helped him finally get on a better track, and he said "I grew up." I don't think "growing up" had been discussed in my graduate training.

WHEN THE CLIENT IS A MINOR

Debate in the counseling professions about standards for post-termination involvement with clients has typically presumed that the client is an adult. **When the client is a minor, the professional needs to remember that the parents and rest of the family are typically considered clients too.** In fact, since parents must authorize the care, it is presumed that they are clients. So, an involvement **with the parent** carries with it the same risks.

Another issue is **involvements with minors who reach the age of majority during or after treatment.** While this has been largely examined with regard to teacher – student relationships, largely due to highly publicized cases around the country, it can be an issue for any type of health care worker, psychotherapist, counselor, case worker, etc. In California a woman named Susan Polk began a sexual relationship with her psychiatrist when she was only 16. She later married him, and then years later killed him. (Crier, 2008; Pogash, 2008).

It is normally presumed that a young adult, who was seen for professional services as a minor, is quite vulnerable. This can become an issue when one employs a former client, or his or her parents, or engages in business dealings such as investment plans. To the degree that the former client or their family believe that the situation is trustworthy or desirable because of their trust in you as a professional, there is potential liability. In addition, a former client who is struggling and/or dependent may expect continued employment from the former therapist.

The issue here is not just legal liability. It is the potential for disappointment, frustration, anger, and even retroactively undoing the good work done during the professional relationship. A helpful professional relationship followed by an unsuccessful employment relationship can end up undermining retrospectively good professional work.

LICENSURE-RELATED STANDARDS

Licensure laws usually include codes or rules of conduct which help define post-termination relationships. For the most part the codes adopt the ethical standard of that field's major national professional association (ACA, APA, AMA, NASW, AAMFTA, etc.)

Some Boards have created more stringent rules than the ethics codes do as regards sexual contact with former clients.

- **For example, the Wisconsin Medical Board, as of Dec. 2002, adopted a rule that prohibits sex with a patient during the two years following the last professional contact. This applies to all physicians, not just psychiatrists.**
- **As of January 1st of 2006 social workers licensed in Minnesota were bound by a stricter standard – namely that two years must pass before sex with a former client is allowable, and other criteria must then be met.**
- **In Pennsylvania licensed social worker, marriage & family therapists, and professional counselors are held to a seven-year prohibition, and once that time has passed the professional must determine that the relationship is not exploitive based on examining a number of things for which no standards are provided.²**

² Amount of time since termination, nature & duration of the therapy, circumstances of the termination, client/patient's personal history (e.g., unique vulnerabilities), statements or actions by the licensee during the course of therapy suggesting or inviting post-termination sexual or romantic relationship, likelihood of adverse impact on client and/or immediate family members. An interesting list, but no guidance is provided as to how to assess such things and whether there is any hierarchy of factors.

- **The Florida Board of Psychology adopted a rule that for the purpose of judging therapist-client sex, the therapeutic relationship is “...deemed to exist in perpetuity.” (This was struck down by an appellate court in March 2000 as violating the Privacy Amendment in the Florida State Constitution.)**

Research on the actions of psychology licensure boards has found that when the defense was used that the therapy was terminated before sex began, the offending practitioner tended to receive the same penalty as for sex which occurs during therapy. It is possible that these defenses were deemed to be bogus and that a true termination had not occurred. A substantial number of cases of which I am aware did not involve true terminations. (Bisbing, Jorgenson & Sutherland, 1995, 1997, 1999; Schoener, 1989).

For those licensed in Wisconsin, generally the standards of the profession itself are reflected in licensure board actions. The one major exception is professional counseling where the licensure rules do **not** incorporate the Code of Ethics of the American Counseling Association. Following the standard of your profession is the safest plan of action.

Standards are vague about anything other than sex with former clients. Typically, they reference situations in which a client is or could be “exploited” but details and/or examples are lacking. The employment of former clients is not discussed but is a relevant arena for concern, especially in small town situations.

CRIMINAL STATUTES

Twenty-four states have criminal statutes which cover psychotherapist-client sex. Approximately half of them allow for prosecution of post - termination situations under some circumstances. Most common factors in making such a relationship criminal are (a) termination in order to have sex, (b) exploitation of emotional dependency, (c) therapeutic deception, or (d) contact within a certain time period.³ One major challenge for the professional seeking to prove when termination had occurred is the lack of clarity in most statutes as to what constitutes termination, so although it is the prosecution which has the burden of proof as to every element of a crime a defendant professional might find “termination” difficult to assert.⁴

Minnesota’s criminal statute allows for criminal prosecution for sex with a former psychotherapy client when the sex occurred as a result of emotional dependency or therapeutic deception (leading the client to believe that the sex is part of therapy or consistent with it). There is no time limit. In the case of the emotional dependency, it must be sufficiently strong to render the client unable to resist the therapist's advances. Note the definition of these standards in the footnote at the bottom of the page. Note that many professionals who may provide some counseling as part of their work with a client or patient could be considered “psychotherapists” under this sort of broad definition of “psychotherapy.”

Wisconsin’s criminal statute does not address the post-termination sexual relationship. However, as noted above, the psychotherapist needs to be mindful of the fact that if he/she is still providing counseling of some sort, the psychotherapeutic relationship may be deemed to not have been terminated. Formal office appointments are not required. There have been cases in

³ In Iowa the one year period following termination is treated as though it happened during therapy in that emotional dependency is assumed to last for that period.

⁴ If personal emotional contact continues including discussion of any of the client’s problems, the end to fees or office visits or records might not be sufficient rebuttal to the contention that the relationship was ongoing.

which a former client disputed that the therapy had truly ended and that a real termination had actually occurred.

Iowa includes the one-year period following termination, but requires that it be proven that emotional dependency brought about the sexual involvement.⁵ In other words, the Iowa criminal statute concerning therapist-client sex presumes that the year following termination is essentially the same as when sex occurs during therapy.

CIVIL LIABILITY

This is a matter of case law except in Minnesota and Illinois where there are statutes which govern the situation of sexual involvement with a former client, at least as far as psychotherapy is concerned. In Minnesota, **MS 148.A** limits a cause of action to **sex which occurs within two years of termination, and which occurs as a result of therapeutic deception or emotional dependency created in the therapy relationship.**⁶ Illinois uses the same standard, but the **post-termination period is only one year.** Wisconsin has a tighter definition of the term “psychotherapy.”⁷

In many jurisdictions the rules apply to all clients, not just psychotherapy or counseling clients. This can lead to confusion in that many professionals assume they only apply to certain clients.

If such behavior is forbidden by the code of ethics in a profession it is easily shown to be malpractice. As such, in the psychotherapy professions, post- termination sexual contact with a former client (at least if it occurs within two years of termination) is generally malpractice.

In the case of someone who provides services other than psychotherapy or counseling, it would depend on the circumstance. But all professionals should be reminded that the legal definitions of “psychotherapy” or “spiritual” counseling or guidance are quite broad in Minnesota and Wisconsin Statutes. Many people who do not think of themselves as psychotherapists may well be covered by these laws given how broad the definitions are for “psychotherapy.”

For any professional it is an issue as to whether they were still providing service. If one is still doing some form of "counseling" or giving advice about personal matters, this may be considered an ongoing professional relationship -- not a terminated one. The physician who

⁵ Iowa: **“emotional dependency”** means that the nature of the patient’s or client’s or former patient’s or client’s emotional condition or the nature of the treatment provided by the counselor or therapist is such that the counselor or therapist knows or has reason to know that the patient or client or former patient or client is significantly impaired in the ability to withhold consent to sexual conduct...

⁶ Minnesota: **“Psychotherapy”** means the **professional treatment, assessment, or counseling of a mental or emotional illness, symptom, or condition.** If the sexual contact occurs within two years of the last professional session and is accomplished by therapeutic deception or as a result of the client’s continuing emotional dependency the sexual contact can be criminal and/or grounds for a lawsuit.

- **“emotionally dependent”** means that the nature of the patient’s or former patient’s emotional condition and the nature of the treatment provided by the psychotherapist are such that the psychotherapist knows or has reason to know that the patient or former patient is unable to withhold consent to sexual contact or sexual penetration by the psychotherapist.
- **“Therapeutic deception”** means that a representation by a psychotherapist that sexual contact or sexual penetration by the psychotherapist is consistent with or a part of the patient’s treatment.

⁷ Wisconsin: **“Psychotherapy”** means the use of learning, conditioning methods and emotional reactions in a professional relationship to assist persons to modify feelings, attitudes, and behaviors which are intellectually, socially, or emotionally maladjustive [sic] or ineffectual.

continues to prescribe medications may still seem to be the person's "doctor" and may legally be still in a professional relationship even absent professional meetings or consultations.

Strictly speaking, in most jurisdictions if one can show that the eventual relationship grew out of the past professional one, it can be seen as a “continuous course of action” and be argued that the professional relationship never really ended, or that it set the stage for the later relationship. So simply stopping billing or recording “termination” in case notes, or stopping office visits does not make the relationship “post-termination.” Furthermore, any discussion of an eventual personal or romantic relationship can be seen as setting the stage for it and thus nullify the notion of “termination.”

ORGANIZATIONAL STANDARDS

Many clinics or treatment programs have internal standards for involvements with former clients or patients. These can be limited to sexual relationships, or can cover broader areas of interaction.

Some chemical dependency treatment programs, for example, prohibit staff from being AA or NA sponsors for former clients. Sometimes the rules surround the definition of who is a “client.” For example, one program considers anyone who has been a client within 12 months to be covered by the same policies as a current client. **Be sure to check for any organizational standards, either as part of an internal ethics code, or a special policy, or the employee handbook.**

DEFINITION OF SEXUAL CONDUCT

Licensing laws may include a wide range of behaviors as types of sexual conduct. Beyond a wide range of types of sexual touch, in Minnesota Administrative Rules include:

Any physical, verbal, written, interactive, or electronic communication, conduct, or act that may be reasonably interpreted to be sexually seductive, demeaning, or harassing to the client.

Professional liability insurance exclusions or coverage limitations related to sexual conduct with a client may be even broader and include not only the above behaviors, but any which are connected with sexual or erotic transference or counter-transference.

ETHICAL STANDARDS IN VARIOUS PROFESSIONS

[As described in the Code of Ethics for that profession.]

The relevant sections of a number of relevant sections of professional ethics codes can be found at: <http://www.zurinstitute.com/ethicsoftermination.html>

ALCOHOLISM & SUBSTANCE ABUSE COUNSELORS:

In this field there is no one generally accepted national code of ethics. The Code of the National Association of Alcoholism and Drug Abuse Counselors (NAADAC) states (Principle 9(d): "The NAADAC member shall not under any circumstances engage in sexual behavior with current **or former clients.**" So the NAADAC Code has a strict prohibition against sexual contact with former clients.

In Minnesota, the M.A.R.R.C.H. code of ethics is silent on this topic. There are no rules or standards which can be applied. Most treatment programs in the substance abuse field have program rules addressing relationships with former clients. The licensure law for LADC counselors has a strict prohibition of sexual contact within 2 years of the last professional service.

MARRIAGE & FAMILY THERAPISTS:

Since 1 Aug 1988 the American Assn. for Marriage & Family Therapy has **forbidden sex for 2 years after termination or the last session. This applies to either spouse or any family member who is seen in even a single session of marital or family therapy.** Needless to say, ending up romantically involved with the spouse or former spouse of a client who came to you for help with a troubled relationship is likely to generate serious distress and upset. If the spouse has attended a single session or spoken to the therapist on the phone there is a clear-cut duty to the spouse in most jurisdictions.

In the revised Code which went into effect on 1 July 2001, there is an additional standard for post-termination situations: *Should therapists engage in sexual intimacy with former clients following two years after termination or last professional contact, the burden shifts to the therapist to demonstrate that there has been no exploitation or injury to the former client or to the client's immediate family.*

The Administrative code relevant to the Minnesota licensure law forbids a relationship after the 2 year period if it was brought about through therapeutic deception, or if the client had continued emotional dependency on the therapist.

MEDICINE -- NON-PSYCHIATRIC PHYSICIANS:

The Oath of Hippocrates, dating from around 250 BCE, specifically forbade “the seduction of males or females, be they free men or slaves,” in the household of a patient. The issue of the former patient was not discussed, nor was it in the Code of Percival or other ethical standards. The Code of Ethics of the American Medical Association (AMA) did not mention it.

One of the rare discussions concerning this issue was done in conjunction with a large survey of both physician and public attitudes done by a special task force of the College of Physicians and Surgeons of British Columbia. Published in a very useful volume entitled *Crossing the Boundaries* the data showed that both the public and physicians saw the situation differently in rural and small town settings.

The AMA standard and the general standard of care in U.S. for a non-psychiatric physician-patient relationship require **a discussion with patient about implications (e.g. that they can't be a patient again -- they can't have both a doctor and a lover), and termination of the professional relationship with referral to another physician.**

Although not explicitly stated, **cancellation of all medication prescriptions and having them rewritten by the new physician is advisable** since physicians are generally prohibited from writing prescriptions for persons who are not their patients. There are a number of cases where charges have been brought of sex with a client due to the fact that a physician has written several prescriptions for the former client after care was terminated.

If non-psychiatric physicians are engaged in psychotherapy or counseling related to emotional issues, the psychiatric standards (below) are recommended by the American Medical Assn. So, the family practitioner, pediatrician, or even the surgeon who engages in counseling and diagnosis of depression, for example, would do well to keep this in mind.

In Wisconsin the Medical Practice Act under which physicians are licensed goes well beyond the AMA code of ethics and requires a two year wait prior to any sexual contact with a patient by any physician, regardless of specialty. In Minnesota the practice act is not clear on this issue.

MEDICINE -- PSYCHIATRISTS:

After having various standards for a number of years, the American Psychiatric Assn., in 1993, went from a "nearly never OK" standard to **an absolutely "never OK" standard**. This occurred following a rejection of less severe standards proposed by some (e.g. Applebaum & Jorgenson, 1991; Schoener, 1992). However, in December 2009 the 2009 edition of Opinions of the Ethics Committee on The Principles of Medical Ethics—With Annotations Especially Applicable to Psychiatry, the following question & answer suggests that this is not so clear:

Question: Might there be exceptions to the statement in the code of ethics that a sexual relationship with a former patient is unethical?

Answer: The Principles of Medical Ethics (AMA) and the Annotations Especially Applicable to Psychiatry (APA) are not laws but standards of conduct that define the essentials of honorable behavior for the physician. If a complaint that raises this issue is filed against a member psychiatrist, it becomes the responsibility of the district branch ethics committee to deal with that complaint by careful consideration of all the relevant facts, especially any evidence indicating exploitation of the former patient. The ethics committee will then determine whether the accused psychiatrist has behaved unethically. (APA, p. 8)

NURSING:

American Nursing Assn. (ANA) ethics code **does not deal with post-termination involvement with clients**. Where there is not a psychotherapeutic relationship, the situation is less clear and it would appear that it might not be unethical for a nurse to have a sexual relationship with a former client for whom they provided non-mental health services. As regards **psychiatric or mental health nursing, where there is a psychotherapeutic relationship, the nurse can expect to be held to a standard similar to that of other mental health professionals**.

Statement on Psychiatric-Mental Health Clinical Nursing Practice and Standards of Psychiatric-Mental Health Clinical Nursing Practice (pub. Jan. 1994 by ANA Council on Psychiatric & Mental Health Nursing, American Psychiatric Nurses Assn., Assn. of Child & Adolescent Psychiatric Nurses, Society for Education & Research in Psychiatric-Mental Health Nursing) **forbids intimate or sexual relationships with current clients, and indicates that the nurse "avoids sexual relationships" with former clients and "recognizes that to engage in such a relationship is unusual and an exception to accepted practice."**

In Minnesota the Nursing practice act forbids "sexual exploitation" of a patient but does not define that term and is silent on the post-termination situation.

OCCUPATIONAL THERAPISTS:

The 2015 Code of Ethics for the American Occupational Therapy Association (AOTA) includes under the section on Nonmaleficence the following:

F. Avoid dual relationships, conflicts of interest, and situations in which a practitioner, educator, student, researcher, or employer is unable to maintain clear professional boundaries or objectivity

G. Avoid engaging in sexual activity with a recipient of service, including the client's family or significant other, student, research participant, or employee, **while a professional relationship exists.**

It is thus silent on the post-termination relationship. The Minnesota licensure law 148.6448 Minnesota Statutes is also silent on this, listing as a cause for a disciplinary action only:

(21) engaged in conduct with a client that is sexual or may reasonably be interpreted by the client as sexual, or in any verbal behavior that is seductive or sexually demeaning to a patient.

However, in Wisconsin's Licensure law for Occupational Therapists, in Chapter OT 5.02 Unprofessional Conduct Defined:

(20) Engaging in inappropriate sexual contact, exposure, gratification, or other sexual behavior with or in the presence of a client. **For purposes of this subsection, an adult receiving treatment shall continue to be a client for 2 years after the termination of professional services. If the person receiving treatment is a minor, the person shall continue to be a client for the purposes of this subsection for 2 years after the termination of services, or for 2 years after the client reaches 18 years of age, whichever is longer.**

PHYSICAL THERAPISTS:

The Code of Ethics of the American Physical Therapy Association (APTA), under the Core Value of Integrity, deals with relationships with current clients:

4E. Physical therapists shall not engage in any sexual relationship with any of their patients/clients, supervisees, or students.

However, the Code of Ethical Practice (5601.3200) in the Minnesota licensing law for Physical therapists, in the section on prohibited activities, broadens and extends this standard and **gives indication that a former client can be out of bounds:**

G. Physical therapists shall not engage in any sexual relationship or activity with any patient, or engage in any conduct that may reasonably be interpreted by the patient to be sexual, whether consensual or nonconsensual, while a physical therapist-patient relationship exists. A physical therapist shall not exploit the physical therapist-patient relationship for sexual purposes, **and termination of the physical therapist-patient relationship is not a defense to exploitation involving sexual misconduct.**

In Wisconsin the licensing law addresses this in more detail in Chapter PT 7.025 – Unprofessional Conduct:

(16) Engaging in sexually explicit conduct, sexual contact, exposure, gratification, or other sexual behavior with or in the presence of a patient, a patient's immediate family member, or a person responsible for the patient's welfare. For the purposes of this subsection all of the following may apply:

(a) Sexual motivation may be determined from the totality of the circumstances and is presumed when the physical therapist or physical therapist assistant has contact with a patient's intimate parts without legitimate professional justification for doing so.

(b) An adult receiving treatment shall continue to be a patient for 6 months after the termination of professional services.

(c) If the person receiving treatment is a minor, the person shall continue to be a patient for the purposes of this paragraph for 2 years after the termination of services or for 2 years after the patient reaches the age of majority, whichever is longer.

(d) It is a violation of this paragraph for a physical therapist or physical therapist assistant to engage in any sexual conduct with or in the presence of a patient or former patient who lacks the ability to consent for any reason, including age, medication, or psychological or cognitive disability.

So, while the general national code of ethics is silent on the post-termination situation, ethics codes which are part of state laws are not, although standards vary. Certainly, termination of the professional relationship in order to have sex would appear to be a violation.

PASTORAL COUNSELORS:

The American Association for Pastoral Counseling **prohibits sex for two years following termination of the counseling relationship.** For clergy in counseling roles any extra-marital sex is generally forbidden, even after termination of the counseling relationship, by denominational rules, canons, or expectations. This may be under a denominational sexual misconduct policy or because it is considered adultery or behavior unbecoming a pastor.

PROFESSIONAL COUNSELORS:

For a number of years the American Counseling Association (ACA) had standards similar to psychology. However, with the 2005 Revision of the ACA Code of Ethics the rules for at least professional counselors who are members of the ACA have a stricter set of limitations.

The ACA Code of Ethics states:

A.5.b. Former Clients. Sexual or romantic counselor-client interactions or relationships with former clients, their romantic partners, or their family members are prohibited for a period of 5 years following the last professional contact. Counselors, before engaging in sexual or romantic interactions or relationships with clients, their romantic partners, or client family members after 5 years following the

last professional contact, demonstrate forethought and document (in written form) whether the interactions or relationship can be viewed as exploitive in some way and/or whether there is still potential to harm the former client; in cases of potential exploitation and/or harm, the counselor avoids entering such an interaction or relationship.

The Minnesota licensing law for professional counselors has a 2 year restriction.

PSYCHOLOGY:

The American Psychological Assn. said in June 1987 that terminating a professional relationship in order to have sex was unethical. In its revised Code of Ethics in 1992, the APA created **an absolute prohibition for two years following termination of therapy. Even in relationships which begin after 2 years the psychologist has the burden of showing there has been no exploitation, in light of "relevant factors, including the seven listed below:**

- (1) the amount of time that has passed since therapy terminated,**
- (2) the nature and duration and intensity of the therapy,**
- (3) the circumstances of the termination,**
- (4) the patient's or client's personal history,**
- (5) the patient's or client's current mental status,**
- (6) likelihood of adverse impact on the client and others, and**
- (7) any statements or actions made by the therapist during the course of therapy suggesting or inviting the possibility of a post-termination sexual or romantic relationship with the client.**

None of the seven points listed above page is elaborated upon or the subject of any explanatory notes in either the 1992 revision or the 2002 revision so no guidance is offered as to what expectations are. The seven points listed above do not constitute clear-cut "yardsticks" nor do they provide any specific guidance. To say that the amount of time is relevant does not explain how much longer than 2 years would be acceptable. The same is true for vague factors such as "the circumstances of the termination," or for that matter any of the items on the list.

The December 2002 revision of the code, which became effective 1 June 2003, made virtually no changes, except the addition of the term "intensity" under point (2) above. This does not appear to be a substantive change, and again it is not defined so its interpretation is unclear. In the APA code a few standards are provided for terminating. For example, the provision that unless precluded by the client's conduct or other factors the psychologist:

- discusses the patient's or client's views and needs,
- provides appropriate pre-termination counseling,
- suggests alternative service providers as appropriate, and
- takes other reasonable steps to facilitate transfer of responsibility to another provider if the patient or client needs one immediately.

The 2002 revision of the APA Code allows for compliance with requirements of health plans which may not provide coverage for a termination session because the benefits have been used up and no more sessions can be paid for. (The issue is normally payment -- not an outright prohibition on a termination session.)

The fact that the Code allows one to terminate without doing those professional duties, (e.g. if you are not going to be paid for the session) does not mean that the standard of care is to skip a termination session because you won't get paid. It is conceivable that if a psychologist failed to properly terminate and excused this by citing the Ethics Code, that would not be an effective defense in a malpractice action.

The discussion of termination in the 2002 revision of the code was expanded to include not only behavior of the client/patient which might justify termination, but the conduct of others associated with the client/patient. This is a reference to harassment might cause a psychologist to not want to have further contact with a threatening client, or a client who has a relative who is threatening.

Although not consistent with APA ethical standards, the Minnesota Board of Psychology interpreted one section of the licensure law to forbid sex for a two-year period (following the end of the professional relationship) between psychologists and former students, supervisees, or research subjects. However, this section of the law was rescinded in January 2013 and the new language would appear to apply this only to former clients. However, if a psychologist used the prior relationship with a supervisee or student or research subject to exploit them at a later date, this could be a violation.

SOCIAL WORK:

For years there was no clear & explicit ban on sex with former clients. **The NASW code now prohibits sex with former clients in section 1.09, but states that if a social worker claims an exception, the full burden is on them to demonstrate "...that the former client has not been exploited, coerced, or manipulated, intentionally or unintentionally."** The code also bans sexual contact with clients' relatives or close personal friends where there is a potential to harm the client. **It is not clear whether this extends to former clients' relatives/friends.**

The National Federation of Societies for Clinical Social Work have for some years banned initiation of relationships with former clients "...whose feelings toward them may still be derived from or influenced by the former professional relationship."

The Minnesota Social Work practice act permits a personal relationship with a former client, except a sexual one, or one in which:

A reasonable and prudent social worker would conclude after appropriate assessment that (i) the former client is emotionally dependent on the social worker or continues to relate to the social worker as a client, or (ii) the social worker is emotionally dependent on the client or continues to relate to the former client as a social worker.

In the case of sexual conduct with a former client, the practice act differentiates to some degree based on the professional role, and has a complex set of standards:

(a) A social worker who has engaged in diagnosing, counseling, or treating a client with mental, emotional, or behavioral disorders must not engage in or suggest sexual conduct with the former client under any circumstances for a period of two years following the termination of the professional relationship. After two years following the termination of the professional relationship, a social worker who had engaged in diagnosing, counseling, or treating a client with a mental, emotional, or behavioral

disorder must not engage in or suggest sexual conduct with the former client under any circumstance unless:

(1) the social worker did not intentionally or unintentionally coerce, exploit, deceive, or manipulate the former client at any time;

(2) the social worker did not represent to the former client that sexual conduct with the social worker is consistent with or part of the client's treatment;

(3) the social worker's sexual conduct was not detrimental to the former client at any time;

(4) the former client is not emotionally dependent on the social worker and does not continue to relate to the social worker as a client; and

(5) the social worker is not emotionally dependent on the client and does not continue to relate to the former client as a social worker.

(b) If there is an alleged violation of paragraph (a), the social worker assumes the full burden of demonstrating to the board that the social worker did not intentionally or unintentionally coerce, exploit, deceive, or manipulate the client, and the social worker's sexual conduct was not detrimental to the client at any time. Upon request, a social worker must provide information to the board addressing:

(1) the amount of time that has passed since termination of services;

(2) the duration, intensity, and nature of services;

(3) the circumstances of termination of services;

(4) the former client's emotional, mental, and behavioral history;

(5) the former client's current emotional, mental, and behavioral status;

(6) the likelihood of adverse impact on the former client; and

(7) the existence of actions, conduct, or statements made by the social worker during the course of services suggesting or inviting the possibility of a sexual relationship with the client following the termination of services.

(c) A social worker who has provided social work services other than those described in paragraph (a) to a client must not engage in or suggest sexual conduct with the former client if a reasonable and prudent social worker would conclude after appropriate assessment that engaging in such behavior with the former client would create an unacceptable risk of harm to the former client.

The practice act also forbids sexual conduct with a student, supervisee, or intern while he/she has authority over any part of the student's academic program, or during the internship, or during the period of supervision.

CONCLUSIONS REGARDING STANDARDS IN ETHICS CODES

No counseling profession believes that just stopping sessions in the office or billing, or writing a "termination note" is sufficient to declare a professional relationship ended.

Only one text (Gabbard & Lester, 1995) focused on post-termination involvements **other than** sexual relationships with former clients. There has been surprisingly little research or even theoretical discussion about contact with former clients – how and when it occurs, and what sorts of impact it has. Zur (2007) discusses the issue to some degree in a text challenging some traditional views on boundaries.

There are two texts that argue for the legitimacy of post-termination involvements with former clients, including intense friendships and even romantic relationships (Heyward, 1993; Ragsdale, 1996). The Ragsdale book raises questions about clarity around boundary issues but does not present a clear argument regarding the propriety of post-termination sexual relationships. Rev. Heyward's book commands more attention because she is an established critic of exploitation of women in a variety of settings and is a respected theologian.

In Heyward's book she argues that her psychotherapist "betrayed" her by **not** being willing to engage in such a relationship. In a debate with me in Toronto in 1994, Rev. Heyward herself volunteered that while she believed that the therapist was interested in her sexually, she realized that many rapists also argue that their victim "really wanted it." As such it could be argued that she was projecting these feelings onto her therapist. Ironically, her complaint was that her therapist had maintained boundaries and did not get intimately involved with her.

Overall, these views do not appear widely held and there is no reason to believe that a substantial number of professionals believe that romantic or sexual relationships with former clients are acceptable. When there are discussions the hypotheticals used to challenge the prohibition typically involve situations where the professional relationship was very brief or limited and/or where a good deal of time has passed since the professional relationship ended.

Although the focus on prohibitions is on client welfare and the prevention of exploitation of clients, the reality is that regardless of how things look or appear when a relationship starts, the legitimacy of the relationship can be later challenged by the client if a relationship does not work out. Where rules or laws give conditions for exceptions, they are complex and onerous.

In general, a sexual relationship with a former client which begins within two years of the end of the professional relationship is virtually universally questioned. Further, if discussions are occurring during the professional relationship as to the possibility of such a relationship this, in and of itself, is probably a good indicator that such a relationship should not be undertaken.

Marriage & Committed Relationship

To my knowledge no research exists on marriage or committed relationships between therapists and clients or former clients. In some cases, prominent figures in the field were among those whose relationships came to light. Carl Jung had a romantic affair with a patient who later herself became a psychotherapist (Kerr, 1994) as did Karen Horney (Quinn, 1988), and Freida Fromm-Reichman who married her patient the eminent psychoanalyst and author Erich Fromm.

Professional attitudes towards the propriety of marriage to former clients have varied over the years, but the subject has rarely been discussed. We obtained data from a major survey done in New York which after we re-analyzed it permitted a comparison of how clinicians rated the propriety of terminating treatment in order to have sex, versus having sex after brief therapy, long term therapy, and marriage with former patients.⁸

⁸ The data was collected in a study reported by Conte et. al. (1989). It is analyzed in Schoener (1989, pp 267-268). An illustration of some of the comparisons as to the percentage of respondents who felt a particular behavior was "acceptable": 20.4% considered it acceptable to marry after "proper termination" of brief therapy; 23.7% if it involved marriage to patient seen only once or twice for consultation, and 29.6% for marriage with a patient after "proper termination" of long-term therapy.

As to the outcome of such relationships I have no impressions. Some have been disasters and others seem to have worked out from the report of the individuals. In the case of Susan Polk, after many years of marriage to her former therapist and having raised three children, the marriage broke down and she murdered her psychologist husband. She was convicted and is in prison. (Pogash, 2007).

The stress and anxiety of such situations and the need to keep the origins of the relationship secret certainly present obstacles. In several cases people were married in secret and did not reveal this to co-workers for fear that mandatory reporting requirements might lead to a colleague making a report to a licensing board. For those who rush into a marriage there is the risk that they may suddenly realize that they do not know each other as well as they think they do. Because of the intensity of counseling or therapy it is easy to fall into a belief that the people know each other very well. Transference and countertransference may heavily influence the relationship and can intensify positive feelings.

Like so many things, my only conclusion is that it is risky and complicated.

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