

Follow these tips to hold therapists accountable who cross boundaries and violate their clients' trust.



The Complex Terrain of Psychotherapist Malpractice

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The therapist-client relationship holds the potential for profound healing. A productive therapy relationship generally requires the client to express a level of openness and vulnerability unmatched in other professional relationships. The client's willingness to be vulnerable and honest about their darkest struggles leads to a deeply personal bond. As a result, a dynamic emerges in which the therapist has great power to impact the client. This power can be used to meaningfully help the client, but if misused, it can lead to exploitation and significant harm.

To advocate effectively for therapy malpractice victims, attorneys must understand the transference and countertransference phenomena, the governing standard of care written into state regulations and ethical codes, the available causes of action under state law, and strategies for articulating damages.

Understanding Transference and Countertransference

Transference occurs when a client unconsciously redirects feelings and behaviors toward the therapist that are tied to significant figures in the client's past.¹ There are multiple types of transference. For example, if a client feels a deep personal connection to a therapist, they can redirect "motherly" or "fatherly" feelings onto that therapist. Another example is sexual transference. This occurs when a client redirects sexual or romantic feelings toward their therapist.

A less discussed, but no less prevalent, phenomenon is countertransference.² This involves the therapist's own thoughts and feelings toward the client, which may affect the therapist's professional judgment and behavior. These dynamics are not always inherently harmful; in fact, when managed ethically and skillfully, they can be used for therapeutic breakthroughs.

Therapists are trained to identify transference and countertransference and determine whether the dynamic can be harnessed in a positive way or whether the client must be referred elsewhere.³ Professional malpractice can occur when therapists fail to identify and appropriately treat transference. If a therapist fails to treat the dynamic appropriately and otherwise fails to set boundaries, the client is vulnerable to exploitation.⁴ When a therapist exploits their power over a client, the client inevitably suffers serious physical, emotional, and psychological harm.

Violations of Ethical Guidelines and Standards

State regulations and national codes of ethics dictate the standard of care for therapists. In every state, there are multiple versions of a licensed "therapist," including clinical psychologists, professional counselors,

independent social workers, and clinical social workers, among others. For each licensure, there are national codes of ethics and conduct that therapists are required to follow. These include codes from the American Psychology Association (APA), the National Association of Social Workers, and the American Counseling Association.

The APA's Ethical Principles of Psychologists and Code of Conduct provide a framework for professional behavior, including standards related to therapist-client interactions, reasonable boundaries, multiple relationships, privacy, and confidentiality that are pertinent to managing the therapeutic relationship and essential to handling transference and countertransference.

Specifically, APA Code of Conduct Standard 3.05 (Multiple Relationships) cautions against relationships that could impair the psychologist's objectivity, competence, or effectiveness in performing their functions or otherwise risk exploitation or harm to the person with whom the professional relationship exists. Therapists are trained to know these standards, complete continuing education on them, and implement them to protect the client.

In psychotherapy malpractice cases, particularly those involving breaches of boundaries and professional ethics, a complaint to the relevant licensing board addresses the immediate harm caused by the offending therapist and also plays a crucial role in the broader context of upholding professional standards and preventing future misconduct.⁵

A board complaint and the subsequent investigation can strengthen your client's malpractice claim. Documentation of the board's findings, and especially consent orders signed by the negligent therapist acknowledging violations, can serve as compelling corroboration. A finding of impropriety both corroborates the client's allegations and demonstrates the

severity of the therapist's misconduct in settlement negotiations or in court.

Each state's licensing board operates differently. Typically, if a consent order is signed and approved by the licensing board, it is a matter of public record and is accessible presuit. In some states, you can make a FOIA request for all documents about the investigation process that the state is willing to make public. Obtaining all publicly available information about a board complaint is essential to evaluating the potential civil claim—and once suit is filed, you can subpoena any additional discoverable information from the licensing board.

For many victims of psychotherapy malpractice, the process of filing a board complaint can be an important step in their recovery journey. It provides a means to voice their experiences and seek justice, which can be empowering and therapeutic. And the formal acknowledgment of their grievances by a regulatory body offers a sense of validation and closure, which are essential components of healing from the betrayal of trust.

Psychotherapist Insurance Policies

At the start of a case, investigate whether the therapist maintained a professional liability insurance policy and any relevant exclusions or limitation provisions. You may encounter a formidable obstacle: the physical and sexual abuse exclusion or limitation provision. This provision typically excludes coverage for damages arising from allegations of physical abuse, sexual abuse, sexual harassment, and licentious behavior,⁶ whether or not it results in physical touching. Depending on the facts, this language may impact an insurance carrier's evaluation of its exposure, so you must understand the potential issues and strategically approach these provisions to subvert challenges to coverage.

Obtain a copy of any coverage opinions, including a reservation of rights letter, to understand how the carrier views its exposure.

In cases with facts that include physical or sexual abuse, or licentious behavior, identify and plead which negligent acts or omissions actually caused the client's damages. The crux of psychotherapy malpractice is not any kind of physical or sexual act. The damages arise from the violation of trust and eventual abandonment by the therapist, who made themselves the client's primary source of happiness and support.

The insidious nature of psychotherapy malpractice is that the client often disclosed more about their life to this therapist than anyone else, and that information was used to exploit the client and cause irreparable harm. The damages arise from the therapist misusing the information learned during therapy to exploit the client, rather than any physical or sexual act.

Promptly putting therapists—and consequently their insurance carriers—on notice of a potential claim is not merely a formality. It is a critical procedural step to safeguard the client's claims. When insured therapists are notified of a potential claim, they are obliged to inform their insurance carrier, ensuring that any claims made are within the period the therapist is covered under their professional liability insurance.

This is particularly important if the therapist maintains a "claims made" policy, which may provide coverage at the time the claim is made, rather than the time of the alleged misconduct. Thus, while placing the therapist and the insurance carrier on notice does not implicate the statute of limitations, it may dictate whether there is coverage for the claim.

Prompt notice of potential claims

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also sets the stage for early settlement discussions, which can be a huge benefit to clients seeking resolution without the need for protracted litigation. Early notice also directs the therapist and insurance company to preserve relevant records and evidence that may be critical to the case. The notice letter should include a directive that all emails, texts, therapy records, and other documented communications be preserved as potential evidence in anticipated future litigation.

Building Claims

Most commonly, psychotherapy malpractice begins with the therapist's failure to institute or maintain reasonable professional boundaries with a client. Clients do not have the expertise or training to know the purpose of professional boundaries or understand the potential for harm if no boundaries exist. Therapists are responsible for setting and holding reasonable boundaries so the therapeutic relationship remains productive, rather than harmful. Malpractice, and the mishandling of the transference

phenomena, almost always begins with a therapist's failure to have necessary boundaries in place.

Victims of psychotherapist malpractice due to mishandled transference and countertransference dynamics may pursue several causes of action, including negligence, failure to provide informed consent, breach of fiduciary duty, and vicarious liability. The unique nature of the therapist-client power dynamic imposes a high duty of care on the therapist for appropriate care and treatment of a vulnerable person who is seeking help.⁷

The legal challenge to pursuing these cases lies in articulating the particular breach of duty and its causal link to the damages suffered. Legal practitioners must navigate the delicate balance between the therapeutic process's inherent risks and the therapist's responsibility to manage these dynamics without causing harm. Highlight how the power dynamic between the therapist and client leaves the client vulnerable to exploitation and manipulation and the way the therapist mishandled that power dynamic to

benefit themselves, leading to the client's significant injury.

Focus on negligence and grooming.

The evolution of psychotherapy malpractice generally begins with the therapist's grooming behavior toward the client. Grooming, in this context, refers to the therapist's unethical and manipulative behaviors that gradually undermine the client's boundaries, preparing them for an unethical relationship and leading to exploitation—meaning that the therapist is benefiting from the relationship. Exploitation can take many forms, including financial, sexual, or psychological.

Frame the behavior as stemming from the therapist's negligence rather than a conscious intent to cause harm. This distinction is crucial because the plaintiff's negligence claim is more likely to be covered by insurance as policies typically exclude intentional torts.

Grooming, while inappropriate and damaging, often occurs because the therapist fails to maintain proper boundaries and uphold their professional responsibilities. By emphasizing that the therapist's actions, though exploitative, were negligent rather than deliberately harmful, plaintiff lawyers can show that the client's damages arise from this failure in duty, not from any intentional misconduct.

Demonstrate the therapist's abandonment. Another critical aspect of the malpractice involves the therapist's abandonment of the client at the end of the therapeutic relationship without providing for continuation of care. Inevitably, the therapist begins to withdraw from the relationship. This abandonment can be particularly damaging when the client is left in a vulnerable state, without support or guidance.

Abandonment violates the therapist's

Highlight the breach of the therapist's ethical duty and connect it to the client's ongoing struggles.

duty of care because it involves ending the therapeutic relationship prematurely without ensuring the patient has the necessary support to continue treatment. Therapists are ethically and professionally responsible for continuous care, and abruptly leaving a patient without proper arrangements can worsen their mental health.

It's not difficult to understand a therapist's reluctance to refer a patient to another professional. Therapists engaged in countertransference may fear that a subsequent therapist may uncover and report their boundary-violating behavior. By focusing on this abandonment, plaintiff lawyers can demonstrate that the therapist's negligence extends beyond the realm of intentional misconduct, encompassing a broader failure to adhere to professional responsibilities and standards of care.

Highlight the erosion of trust.

The foundational element of any therapeutic relationship is trust. When a therapist mismanages transference and countertransference dynamics for their own needs, it constitutes a profound betrayal. This betrayal can shatter the client's trust in mental health professionals and deter them from seeking the help they need.

Demonstrating this loss requires plaintiff lawyers to not only highlight the breach of the therapist's ethical duty but also to connect it to the client's ongoing struggles with seeking and accepting psychological support. The skepticism and fear engendered by such a betrayal may contribute to worsening mental health conditions, as clients become reluctant to engage in future therapeutic relationships.

The harm inflicted by therapist malpractice can severely impair a client's ability to form and maintain healthy personal and romantic relationships. The manipulation of emotional vulnerabilities can lead to difficulties in trusting others, excessive self-doubt, and a skewed perception of intimacy and boundaries. For clients who are married or in long-term partnerships, the repercussions can be particularly devastating. The erosion of trust can manifest in marital discord, emotional withdrawal, and even the dissolution of the relationship. Plaintiff lawyers must adeptly illustrate how the therapist's malpractice has not just harmed the individual client but has also inflicted collateral damage on their closest relationships.

Paint a comprehensive picture of these damages. This involves not only detailing the specific psychological injuries sustained by the client but also weaving a narrative that encapsulates the broad and deep impact of the therapist's actions.

Expert testimony can provide a clinical perspective on the client's suffering and validate the causal link between the therapist's malpractice and the extensive damages incurred. Often, the client's subsequent treating mental health care professionals can be valuable resources for expert testimony, in addition to independent forensic psychologists. And testimony from spouses, partners, and friends shows the impact of the trauma on the client.

Articulating the Unseen Injuries

One of the most challenging aspects of psychotherapist malpractice cases is explaining the mental, emotional, and psychological trauma the client suffers because of such significant boundary violations. Common damages include: depression, anxiety, paranoia, suicidal ideation, hopelessness, trauma

symptoms, flashbacks, intrusive thoughts, PTSD, difficulty trusting oneself and others, difficulty maintaining a support system, triggering episodes, difficulty engaging in professional relationships, lack of self-confidence, difficulty concentrating, difficulty coping, feelings of isolation and a loss of independence, fear of abandonment,

and intense shame.

One effective way to support these clients is by encouraging them to maintain a detailed journal that captures their emotional and psychological state over time. This not only helps clients process their experiences but also serves as critical evidence: By regularly recording their thoughts, feelings, and reactions, clients create a comprehensive record that vividly illustrates the impact of the boundary violations, making it easier to convey the depth of their suffering in a legal context.

Further, maintaining regular therapy sessions with a subsequent therapist is crucial for these clients. These sessions provide a safe space to process the emotional and psychological trauma inflicted by the original therapist's boundary violations. Ongoing therapy helps clients rebuild trust, regain a sense of stability, and begin the healing process. From a legal perspective, consistent therapy also establishes a documented trajectory of the client's recovery efforts and the ongoing impact of the malpractice, which can be instrumental in substantiating the case and demonstrating the long-term effects of the initial harm.

Highlighting the therapist's exploitation of transference and countertransference dynamics to satisfy their own needs can be a potent factor to show the breach of trust and duty. It showcases a profound ethical violation, as the therapist uses their position of authority and the client's vulnerable state to fulfill personal desires, rather than prioritize the client's therapeutic progress. This not only undermines the professional relationship but also inflicts deep psychological harm, potentially disrupting the client's emotional stability and capacity to trust in future therapeutic settings.

In these cases, the damages extend far beyond the therapy room. They

permeate the very fabric of the client's life, affecting their ability to trust, engage in healthy relationships, and maintain personal and professional stability. In addition to emotional and psychological harm, clients can suffer from physical injuries and illnesses as a result of a therapist's negligence. Make sure to plead these injuries and illnesses in the complaint—common ones include bruises, insomnia, high blood pressure, and weight loss or gain.

To effectively explain these damages to a jury, translate the psychological trauma into relatable terms. Humanize the client's experience, detailing how the therapist's misconduct has disrupted their ability to trust, maintain relationships, and function professionally. Use subsequent

treaters or other expert testimony to substantiate the severity of these impacts, along with visual aids with timelines that document increasing symptoms to help the jury visualize the client's distress.

Using this framework will help you effectively advocate for clients while navigating the complex nature of psychotherapist malpractice cases. ■



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NOTES

1. Melissa Madeson, *Transference vs Countertransference in Therapy: 6 Examples*, Positive Psychol., June 19, 2021, <https://tinyurl.com/py69my6a>.
2. *Id.*
3. Jeremy Sutton, *Termination in Therapy: The Art of Gently Letting Clients Go*, Positive Psychol., May 4, 2021, <https://tinyurl.com/58yfer65>.
4. Jeffrey Barnett & Kathleen Hynes, *Boundaries and Multiple Relationships in Psychotherapy*, Soc'y for the Advancement of Psychotherapy, <https://tinyurl.com/n9axbhh3>.
5. For procedures for filing a board complaint in each state, see <https://tinyurl.com/yc23nv6d>.
6. Insurance carriers typically define this as all behavior that could be considered immoral or sexual in nature and exclude the coverage of any damages resulting from this type of behavior.
7. See generally KK Boyd, *Power Imbalances and Therapy*, 11(9) Focus 1–4 (Aug. 1996).