

Virtual Mentor

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ETHICS CASE

The Treating Psychiatrist and Worker's Compensation Reporting

Commentary by Charles C. Dike, MD, MPH

Stanley Crumb was a train conductor. Starting long before sunrise, he took passengers from distant suburbs into a bustling downtown. One morning, on his first run of the day, he saw a figure flash before the train. He pulled on the brakes, but it was too late. The train had killed a young woman. Mr. Crumb later learned that the woman had been severely depressed and had left a suicide note, but he could not help blaming himself.

Mr. Crumb was shattered by the event. Several weeks after the incident, he still could not sleep because of horrible nightmares. He kept having flashbacks, and in a disturbing variation he imagined jumping in front of a train himself. At the urging of his wife and his supervisor, he went to the employee assistance program and was referred for evaluation for psychiatric hospitalization. It was determined that Mr. Crumb needed to be hospitalized.

Dr. Young was his psychiatrist at the hospital. She diagnosed Mr. Crumb with posttraumatic stress disorder (PTSD). She started him on medication for depression and nightmares and on cognitive behavioral trauma therapy. After discharge, Mr. Crumb continued to see Dr. Young on a weekly basis.

Mr. Crumb was benefitting from psychiatric care, but it became clear to Dr. Young that PTSD was not his only problem. Mr. Crumb had a strong family history of mental illness, and several episodes in his past suggested to her that Mr. Crumb might have bipolar disorder. Dr. Young encouraged Mr. Crumb to continue treatment to better understand the nature of his illness.

One afternoon, Mr. Crumb arrived at her office in great distress. His insurance company was challenging the necessity of his continuing with therapy through his worker's compensation. Worse still, they were disputing payment of Mr. Crumb's hospitalization. Mr. Crumb hired an attorney and asked Dr. Young to provide a written statement about his current mental state and need for hospitalization.

A few days after submitting her statement, Dr. Young received a call from Mr. Crumb's lawyer. He asked her to remove certain sections of the written statement. Specifically, he wanted her to redact the section about her suspicions of preexisting bipolar disorder. It would destroy Mr. Crumb's chances of getting compensation, the lawyer warned.

Dr. Young believed her primary duty was to be an advocate for her patients. But if this went to a hearing, she would be sworn to tell the “whole truth” and that truth was complicated. She believed that Mr. Crumb may well have had a psychiatric illness before the accident, though the woman’s suicide was the defining trauma prior to hospitalization.

Commentary

This case highlights several difficult challenges facing treating clinicians when they are suddenly thrust into the murky waters of the criminal justice system. Specifically, it accents the immense responsibility a psychiatrist has when her patient depends entirely on her formal report to obtain a desired outcome. The involvement of an attorney complicates matters even more. The critical ethics question is whether or not Dr. Young should redact sections of her psychiatric report at the request of her patient’s attorney.

Attorneys and physicians are professionally bound by different sets of ethical obligations. Attorneys are ethically mandated to zealously advocate for the stated desires of their clients. The “win or lose” mentality fostered by our legal system often encourages attorneys to engage whatever mechanism they can without breaking the law in order to “win” for their clients. It is, therefore, understandable that Mr. Crumb’s attorney would ask Dr. Young to redact portions of her report, if he believes it would aid Mr. Crumb in receiving worker’s compensation.

Physicians, on the other hand, are trained to vigorously advocate for what is in the best interest of their patients even if it runs contrary to their patients’ stated desires, an ethical principle often referred to as beneficence. Additionally, physicians are enjoined to comply with the ethical principle of nonmaleficence—avoiding causing harm to their patients. The American Academy of Psychiatry and the Law (AAPL) Ethics Guidelines note that psychiatrists should be bound by ethical principles of respect for persons, honesty, justice, and social responsibility [1]. Hence, it is only natural that the ethical obligations of attorneys will clash in some cases with the ethical obligations of psychiatrists for honesty in their evaluations and reports.

Dr. Young believes that continued therapy is important for Mr. Crumb’s recovery, but she cannot compromise her professional integrity to achieve that end. The AAPL Ethics Guidelines emphasize the observation that “being retained by one side in a civil or criminal matter exposes psychiatrists to the potential of unintended bias and the danger of distortion of their opinions” [1]. Psychiatrists are admonished not to “distort their opinion in the service of the retaining party” [1]. To be honest and objective, psychiatrists must aspire to tell “the whole truth and nothing but the truth” in all areas of their work. Psychiatrists preparing a report for a third party enhance the honesty and objectivity of their work by basing their opinions on all available data. Therefore, drawing a conclusion from limited data or purposely ignoring or deleting data is not only problematic but also unethical.

While nonmaleficence and beneficence are at the core of clinical interactions, they operate less well in a legal or quasilegal setting where psychiatrists must maintain a delicate balance between competing duties to the patient, to a third party, and to their profession. As a result, treating psychiatrists should generally avoid performing evaluations of their own patients for legal purposes. It is recognized, however, that in certain situations such as disability evaluations, worker's compensation proceedings, civil commitment hearings, and the like, treating psychiatrists may be required to generate a psychiatric report for a third party. Psychiatrists completing a report for their patients' eligibility for compensation of any kind should be particularly vigilant and sensitive to the implications of these competing roles—they must be careful not to act as agents of the state and essentially “deny” all requests for compensation by their patients and, by the same token, be careful not to endorse every request for compensation by their patients.

The case presented for discussion demonstrates the complexity of working with an attorney in a clinical context; wearing the hat of a treating psychiatrist while at the same time preparing a psychiatric report for a patient's attorney. It is not uncommon for attorneys to ask for sections of a psychiatric report to be altered in some way to suit the attorney's particular purpose. The question of whether or not the draft of a psychiatric report should be submitted to attorneys for their review and comments has been the subject of a great many debates among forensic psychiatrists [2-4]. Some believe it is helpful because reviews by attorneys may help identify incorrect factual information, which, if not corrected, could be embarrassing and could lead to questions about the validity of the report and credibility of the author [2-4]. Other psychiatrists believe, however, that providing an opportunity for attorneys to comment on a draft report could lead to a conflict, as in the case presented; they opine that only the finished product should be submitted and all requests for alteration of the report should be ignored. To the latter group, maintaining a rigid stance guards against any improper influence. All groups agree that redacting information relevant to a psychiatric report in order to appease an attorney (or a patient for that matter) is unethical [2-4].

Dr. Young should seek clarification from the attorney about the attorney's rationale for requesting a redaction of sections of the report that suggested a preexisting bipolar disorder; even if there were a preexisting mental illness upon which Mr. Crumb now developed a valid PTSD diagnosis, would the concept of the “eggshell or thin skull rule” not apply? This is a legal concept used to explain a defendant's culpability. In sum, it states that a plaintiff's preexisting condition should not mitigate either the punishment or compensation for harm. Applied to this case, the presence of a preexisting bipolar disorder would be irrelevant to Mr. Crumb's claim, given that an identifiable traumatic event led to his subsequent development of symptoms of PTSD (and perhaps, to the worsening of the preexisting condition as well).

While it would be unethical for Dr. Young to alter her psychiatric assessment, it would be permissible for her to better explain her reasoning. Were Dr. Young to

need more clarity regarding diagnosis, she could consider requesting additional investigation through psychological testing in order to paint a more complete picture of her patient. Dr. Young would have to present support for her professional opinion that, despite the presence of an underlying mental illness, the trauma from the accident led the patient to develop PTSD; that, but for the accident, her patient would not have suffered from PTSD; and that the symptoms of PTSD worsened an underlying but hitherto undiagnosed psychiatric condition. Dr. Young would strengthen her case by comparing her patient's level of functioning before and after the accident to indicate the impact of the trauma on him. Furthermore, a preexisting mood disorder, if that were the case, should not preclude Mr. Crumb from being covered for treatment by his insurance company given the "thin skull" theory described above.

In conclusion, with regard to redacting of information, Dr. Young should consider redacting or editing only incorrect factual information provided by the patient or collateral sources, but insist on leaving information relevant to her professional opinion.

References

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