

Sexual Activity Exclusion Inapplicable Where Therapist Had Relationship With Patient's Ex-Wife

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The Louisiana Court of Appeals has held that a sexual activity exclusion in a malpractice policy issued to a therapist did not apply to a suit by a patient alleging that the psychologist committed professional negligence by discouraging the patient from reconciling with his ex-wife so that the psychologist could pursue his romantic interest in the ex-wife. *Barringer v. Rausch*, 2005 WL 767127 (La. Ct. App. Apr. 6, 2005).

The psychologist was insured under a professional liability insurance policy, which provided professional liability insurance for work as a clinical psychologist. The policy contained an exclusion for "sexual contact or activity" that precluded coverage for "professional liability injury that results from any kind of sexual contact or activity by the individual protected person." The policy provided that the exclusion would apply whether or not "the sexual contact or activity was accidental, intentional or negligent; the protected person believed that a client, patient or other person consented to the sexual contact or activity; the protected person neglected the therapeutic needs of a client, patient or other person because of sexual contact or activity; or any mishandling of transference or any other psychotherapeutic dynamic resulted in the sexual contact or activity."

In the underlying case, the plaintiff brought an action against the psychologist for professional negligence after learning that the psychologist was involved in a romantic relationship with his ex-wife. The underlying plaintiff asserted that the psychologist breached his professional duties by providing improper counseling to the patient because the psychologist wanted to pursue a romantic interest in the patient's ex-wife. The insurer argued that, even though the underlying action did not involve a claim for improper sexual relations between the patient and his psychologist, the exclusion was nonetheless broad enough to encompass a claim for mistreatment of the patient as a result of a sexual relationship.

The court disagreed with the insurer. The court first stated that because the psychologist's actions "fell below any acceptable standard of care for a professional relationship built on the client's trust," such conduct would give rise to a professional malpractice claim that would be covered by the policy. The court next examined the sexual contact or activity exclusion, noting that the underlying plaintiff's injury was a result of "ill-motivated counseling sessions" that occurred before the psychologist had sexual contact or activity with the underlying plaintiff's ex-wife. The court thus held that the exclusion could not apply because the damaging action

occurred before any sexual activity occurred.

The court also concluded that the injury must result from direct sexual contact between the therapist and client in order to fall under the sexual acts exclusion. Although the psychologist had sexual relations with the ex-wife, she was not the patient and had made no professional negligence claim. According to the court, where the sexual activity is merely "proof of [the psychologist's] motive and not the direct cause of [the underlying plaintiff's] injury," such activity will not fall under this exclusion.

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