

A POLITICAL STATEMENT: WHY I THINK PROFESSIONAL INDEMNITY INSURANCE IS UNETHICAL



Trust.

Clients reveal a lot about themselves in therapy, and thus are in a relatively vulnerable position with a therapist. They trust the therapist to respect their boundaries, act in a professional manner, maintain confidentiality, and work towards supporting their personal growth.

What many people do not realise is that trust goes both ways. The therapist is also in a vulnerable position in certain respects. Which leads to the next issue:

Responsibility.

If a doctor operates on a patient and makes a misjudgment, the patient can rightly blame the doctor as they have complete responsibility for the procedure. After all, the patient is under anaesthetic.

However, therapy as it is practiced in the Gestalt style is not like an operation where you have two roles - active and passive, expert and novice. It is more like a relationship between a player and their coach. Both have knowledge and skill.

The coach is there to support the player, but what the player actually does on the field is not the total responsibility of the coach.

With therapy, it is the responsibility of the client to translate what the therapist has discussed with them into the actual life situations they find themselves in.

Some players might blame the coach if things go wrong with their game. And therapists are vulnerable to clients who want to blame them for things not working out in their life.

This is not fair if the therapist has followed their end of the bargain – that is if they have acted in a

professional manner, maintained confidentiality, respected the client's boundaries, and worked towards supporting their personal growth.



Many professional therapists pay large sums of money each year to insurance companies for professional indemnity insurance.

Why?

Because they are afraid of getting sued, being sent bankrupt, or having their professional standing tarnished.

Indemnity insurance does not *prevent* any of this happening. What it does do is provide a lawyer to defend the therapist, and a fund to payout from in case of a demand for monetary compensation.



It is very important that professionals such as therapists take responsibility for their actions. It is essential that they are held accountable for any breaches of the code of ethics they agree follow.

Professional indemnity insurance is counterproductive to this occurring. It does not directly or indirectly encourage therapists to act ethically. It only protects them from the costs of legal action, or of any subsequent punitive costs. In more extreme cases, it may defend their unethical actions in court.



There are many problems with the current system:

- Firstly, it is adversarial.

It sets up a fight with winners and losers, those in the right and those in the wrong. This is not generally the best way of settling differences, and is a particularly bad idea when it is used as the primary means of dealing with problems. Therapy is

about dialogue, and nothing about this legal process encourages dialogue.

- Secondly, the main beneficiaries are the legal profession and the insurance industry.

Legal processes draw all parties into the realm of lawyers, at an extremely high financial cost. Lawyers get paid at rates far exceeding normal incomes.

The insurance industry benefits from the way that professionals are basically forced to take out insurance due to the climate of fear, and the insistence on the part of almost all bureaucracies that they are 'covered'.

- Thirdly, it can encourage greed.

The kind of sums which are being awarded by courts for professional errors of judgment are increasingly large. This implies that pain and suffering can be compensated for by money – a gross reduction of human value to monetary value.

To seek monetary compensation, often in large amounts, for what is ostensibly a relational problem is inappropriate. If harm has been done, then the answer is human, not financial. It is a sign of our times that money can be seen as an appropriate response to emotional pain.

- Fourthly, it promotes a climate of fear.

If someone commits a crime there is a strong argument that justice should be done, and they should be punished by the law.

Whilst this can be criticised as a simplistic allocation of blame (which tends to ignore the responsibility of wider systems), it is arguably superior to the kind of personal gain that results from indemnity cases. These type of claims turn

justice into a chase for money, and the legal system into a lottery.

Although it is healthy for professionals to have a fear of breaking the law, the climate of fear resulting from the long and expensive court cases associated with indemnity claims is unhealthy.

The result is that professionals – from teachers to therapists - constrain normal human consideration and trust, in exchange for the uncertain security of minimum risk. This has led to an anti-human set of behaviours such as avoiding even a respectful and affectionate hug. This is of concern in psychotherapy where the relationship is so primary to the success of the work.

- Fifth, it sets up spiralling costs.

As indemnity insurance becomes considered the minimum basic necessity for running any kind of business, huge costs are added onto basic services.

These costs get passed on in one way or the other. People are more willing to sue, knowing that a business is covered by insurance, and with increasingly large settlements, insurance costs go up.

This creates a deadly cost spiral which benefits only a few, and works to the disadvantage of the majority.

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I believe someone, somewhere, needs to say 'STOP'.

Twenty years ago Patch Adams, a radical medical doctor in the US, suggested ideas such as:

1. healthcare should be for everyone
2. practitioners in the health profession support health by having real human relationships with clients, not through being clever technicians
3. professional indemnity insurance violates this relationship, and does not in any way promote either responsibility or real caring.

He took a courageous stand and refused to hold such insurance – this was unheard of in the US at

that time. There are few anywhere who are now willing or even able to take this kind of stand.

Given that neither the government nor the professional associations are effectively tackling this issue, I believe it is up to individual professionals to take such a stand.

Colleagues shake their head and say, 'well, that's all very well, but what if you get sued?'

In other words, this fear-based decision making has become a way of thinking amongst both the public and professionals.

The other side of the equation is clients. If clients want more cost accessible health care and want to be treated with respect, it is necessary for them to find ways to stand up for their rights in an assertive way, rather than resorting to suing.

The action of suing for perceived injustices can end up furthering injustice by straining the fabric of trust in the wider society, and by increasing the profits of the insurance companies.

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There are several alternative ways to pursue any problems with a therapist. The first port of call is clearly the therapist – any problem should initially be raised with the person directly, before engaging other bodies. If this is not successful there are other possible steps:

- dispute mediation
- contacting associations of which the therapist is a member

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Personally, I am committed to the code of ethics of the associations I am a member of. These include:

- *Australian Association of Career Counsellors*
- *European Association of Gestalt Therapy*

Each of these bodies has a code of ethics, but in summary they cover the following ten points:

1. The working relationship between a member and their client is governed ethically. It is a relationship which is respectful and valuing of each person who is part of it; the member has the primary responsibility for maintaining the ethical framework of that relationship.
2. Members work in the best interests and for the welfare of their clients.
3. Members work within the limits of their competence, monitoring their effectiveness and engaging in their ongoing professional development.
4. Members demonstrate integrity and openness to their clients, and are able to separate themselves from the relationship for self reflection.
5. Members do not exploit or harm their clients.
6. Members respect the dignity, worth and uniqueness of all individuals and affirm their autonomy.
7. Members recognise and respect diversity and differences between people.
8. Members respect privacy & preserve the confidentiality of information acquired in the course of their work.
9. Members work within the law.
10. The above ethical principles are manifest whenever applicable in all the professional activities and relationships engaged in by members.

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If you feel that I have breached any of these codes, or behaved in a manner which you do not think is in your best interests as a client, I invite you to let me know. I am committed to working at relationship, even when difficult, and ask my clients to use other mechanisms than adversarial law to deal with disputes.

I believe the legal profession has a place, but it's not in the relationship between client and therapist unless there is abuse which clearly violates legal codes.

I ask you to support me in this principle.

- Steve Vinay Gunther