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Clinical Notes: Critical Evidence in Misconduct Proceedings Against Medical Health Practitioners

By *Christine Galea*, DWF Toronto, Email: cgalea@dolden.com

In recent proceedings before the College of Registered Psychotherapists of Ontario (“CRPO”), Mario Delgado of DWF’s Toronto Office successfully defended a psychotherapist against allegations of professional misconduct made by a former patient.

In *Porretta v. Kaufman* (November 20, 2018) the complainant alleged that during one of four therapy sessions she attended with the psychotherapist, she disclosed a prior sexual assault that occurred in her home by a drug dealer she knew. After she told the psychotherapist of the assault, he allegedly responded by saying she should have known better than to let a drug dealer into her house. He also allegedly told her, “*what did you expect would happen?*” The complainant’s position was that these statements constituted victim-blaming.

The psychotherapist denied the allegations. Based on his version of events, he simply told the complainant that allowing people whom she knew were drug dealers into her home, could affect her ability to regain custody of her children in the event it became known to the Catholic Children’s Aid.

The CRPO determined that the psychotherapist’s commentary to the complainant did not appear to have been made in an

empathetic manner. Nevertheless, it was ultimately determined that there was insufficient evidence to support a finding of professional misconduct against him. As such, no action was taken against the psychotherapist.

Of significance in this case is the CRPO's commentary regarding the obligation of a psychotherapist to maintain thorough clinical notes, which are always helpful when complaints are made by former patients.

Take Away

The practice of a psychotherapist, or any other medical health practitioner, could be adversely affected by allegations of professional misconduct in circumstances where the practitioner is unable to rebut the allegations through documentary evidence. This is especially the case where a patient misunderstands statements or other information provided by the practitioner.

Where clinical notes of the practitioner sufficiently detail the questionable events, it will minimize the risk of a finding of professional misconduct in regulatory proceedings or liability in the context of a civil lawsuit.

When given the opportunity, insurers should remind their insured medical practitioners to maintain comprehensive and accurate clinical records.

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