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Nontraditional and Unorthodox Interventions in Social Work: Ethical and Legal Implications

Frederic G. Reamer

ABSTRACT

Social work interventions with individuals, families, couples, and small groups have evolved over time. Traditional casework methods associated with social work's pioneers during the early and midtwentieth century—such as Mary Richmond, Florence Hollis, Harriett Bartlett, Grace Coyle, and Helen Perlman—have been transformed. Today's social workers are more likely to discuss and debate the use of such approaches as dialectical behavior therapy, narrative therapy, hypnosis, eye movement desensitization and reprocessing, art and dance therapy, radical cognitive therapy, and Internet-based therapy, among others. Clinicians now have access to a staggering array of clinical options that would be unimaginable to social work's earliest practitioners and scholars.

Innovations are critically important to every profession. Advances in knowledge, based on creative conceptualization and the results of evaluative research, are essential elements in professionals' efforts to refine and enhance their ability to help people. Innovations, however, also carry risk. Although some innovations clearly improve professionals' ability to assist people in need, and are supported by research and evaluation data, others can be destructive and dangerous. This is as true in social work as it is in other professions and disciplines such as medicine, nursing, dentistry, pharmacy, engineering, and religion. One characteristic of responsible professionals is that they are vigilant in their efforts to distinguish between constructive advances and nontraditional and unorthodox innovations that are likely to harm clients.

Problems potentially associated with social work interventions take two forms. The first involves practitioners who have difficulty skillfully administering accepted or tra-

ditional innovations—issues of competence. For instance, social workers who have not obtained formal training, certification, or supervision in the use of widely accepted clinical innovations—such as dialectical behavior therapy, narrative therapy, hypnosis, art therapy, or wilderness therapy—may exacerbate clients' emotional condition because of their unskilled application of these approaches.

The second form of high-risk interventions in social work, which is the focus of this article, involves social workers' use of nontraditional or unorthodox clinical approaches that are not widely endorsed by the profession, are not based on solid empirically-based or other research evidence, and which may pose significant risks to clients. Nontraditional interventions in social work are those that do not conform to the "long-established or inherited way of thinking or acting"; unorthodox interventions are those that do not conform to the "approved form of any doctrine, philosophy, ideology, etc." in social work or to "generally

approved beliefs, attitudes, or modes of conduct” (*Random House Webster’s College Dictionary*, 1991). In the professional ethics and legal fields, approved practice is generally based on prevailing standards of conduct engaged in by ordinary, reasonable, and prudent practitioners with the same or similar training (Bernstein & Hartsell, 1998; Madden, 2003; Reamer, 2003). Examples include:

Donald S. was a clinical social worker in independent practice. In his private life Donald S. was especially involved in spiritual pursuits, specifically the use of what he described as “spiritual guides and masters” who provide people with guidance in their personal lives. In his clinical practice, Donald S. introduced the concept of spiritual guides and masters to one of his clients, Ted M., who was struggling with marital issues. During the course of therapy, Donald S. assigned Ted M. a new spiritual name and arranged for Ted M. to accompany him to several out-of-town spiritual retreats. Shortly after the pair terminated their professional–client relationship, Ted M. filed a lawsuit against Donald S. alleging that the clinical intervention harmed him emotionally.

Thus, a cross section of experienced, reasonable, and prudent colleagues can disagree about whether certain novel or controversial interventions are unethical, negligent, or effective.

Nancy L. was a clinical social work director of a center that provided services to women. She provided counseling services to Sally B., who struggled for many years with symptoms of major depression. Sally B. had no family, was very isolated, and had little social contact. She was sexually abused as a child and teenager by her stepfather. During the course of their counseling relationship, Nancy L. invited Sally B. to her home for several dinners, gave Sally B. a number of moderately expensive gifts (e.g., scarves, costume jewelry), shared a motel room with Sally B. while the two of them attended a conference on trauma issues, and invited Sally B. to join her on a camping trip. Several months after their professional–client relationship ended, Sally B. filed a complaint with the state licensing board alleging that Nancy L. engaged in unethical, harmful social work practice. Nancy L. defended her clinical approach as being a legitimate form of “re-parenting therapy.”

Leana T. was a clinical social worker who specialized in the treatment of individuals with histories of major trauma such as sexual assault and domestic violence. Leana T. also believed that physically cradling clients during therapeutic conversations could have “profound

healing powers.” During several counseling sessions, Leana T. cradled her client, Melinda B. as they talked about Melinda B.’s traumatic experiences in her family of origin. Melinda B. later reported that she became confused about her relationship with Leana T. and had begun having romantic fantasies about her. Melinda B. filed a lawsuit and an ethics complaint against Leana T. for negligent and unethical practice.

Victor R. and Marla K. had a joint private practice in which they specialized in the treatment of children with reactive attachment symptoms. Victor R. and Marla K. attended workshops to develop skills in the use of “rebirthing therapy,” which involves having the child and parent reenact and simulate the child’s birth in an effort to strengthen their bond. Techniques include videotaping the “rebirth” that involves covering the child in blankets and pillows, meant to simulate the womb, and encouraging the child to push his or her way out.

In recent years the social work profession has strengthened its ethics and risk-management guidelines concerning

practitioners’ use of nontraditional and unorthodox interventions. The purpose of this discussion is to provide a comprehensive overview of current standards and risk-management concepts to guide social workers’ judgments about the use of clinical innovations.

The Nature of Negligent and Unethical Practice

Social workers who engage in nontraditional and unorthodox interventions that are not based on sound theory and research-based evidence may harm clients. Nontraditional and unorthodox interventions have the potential to traumatize clients and exacerbate a wide range of mental health symptoms and underlying problems (Bullis, 1995; Epstein, 1994; Freud & Krug, 2002; Reid, 1999; Woody, 1997). In addition, social workers who use nontraditional and unorthodox interventions make themselves vulnerable to the possibility of (1) ethics complaints filed with state licensing boards and the National Association of Social Workers (NASW) and other professional organizations with which they affiliate, (2) lawsuits alleging negligence and malpractice, and (3) criminal charges (Houston-Vega, Nuehring, & Daguio, 1997; Reamer, 2003; Strom-Gottfried, 1999, 2000).

Disgruntled clients and third parties (e.g., clients’ family members) who file a formal complaint with NASW or a state licensing board typically allege that a social worker

engaged in an incompetent, unorthodox, or nontraditional intervention or behavior that was unethical and significantly harmed the complainant. NASW committees that review and adjudicate such complaints are obligated to determine whether the social worker's conduct indeed violated relevant standards in the *National Association of Social Workers Code of Ethics* (NASW 1999). Once complaints are accepted by NASW, chapter ethics committees conduct formal hearings, including witness testimony, and judge whether there is sufficient evidence to show that the NASW member violated one or more standards of the *NASW Code of Ethics*. When the facts warrant, committees on inquiry have a number of options available to discipline NASW members (sanctions such as suspension and expulsion from NASW) and to prompt corrective action (such as supervision, continuing education, and therapy). NASW procedures also allow for mediation in some instances, although cases involving allegations of improper sexual relationships, improper physical contact, and sexual harassment are excluded from that option (NASW, 2001).

Similarly, state licensing boards have the authority to conduct formal investigations and hearings in response to complaints filed against social work licensees. Like NASW, licensing boards have a number of options when they find sufficient evidence to indicate that a social worker who engaged in nontraditional and unorthodox interventions violated ethical standards contained in state licensing statutes or regulations. In some states, the attorney general's office assumes responsibility for formal prosecution of social workers who allegedly violated state licensing laws or regulations. In these states, social workers may be tried in a civil or administrative court or before the state's licensing board.

On occasion, social workers who engage in nontraditional and unorthodox interventions may be charged with violation of a state's criminal laws. For example, several states have criminal statutes that permit indictment of social workers who allegedly engaged in a sexual relationship with a client or former client as a form of "therapy" (Dickson, 1995; Reamer, 2003).

A significant number of clients who believe they have been harmed by social workers who allegedly engaged in nontraditional and unorthodox interventions file lawsuits in civil court (Bullis, 1995; Houston-Vega, et al. 1997; Reamer, 2003). These lawsuits usually claim that the social worker engaged in professional malpractice, a form of negligence, either by delivering services in harmful ways (an act of commission) or by failing to provide clients with the services they needed (an act of omission). The concept of negligence applies to professionals who are required to perform in a manner consistent with the legal concept of the *standard of care* in the profession, that is, the way an ordinary, reasonable, and prudent professional would act under the same or similar circumstances (Austin, Moline,

& Williams, 1990; Madden, 2003; Stein, 2004). In general, malpractice occurs when there is evidence that

At the time of the alleged malpractice, a legal duty existed between the social worker and the client (e.g., Nancy L. provided social work services to her client, Sally B., and therefore "owed" a duty to Sally B).

The social worker was derelict in that duty, either through an omission or through an action that occurred (the social worker, Nancy L., breached her professional duty by engaging in actions that are not consistent with prevailing standards in clinical social work, i.e., by using so-called re-parenting therapy techniques, which ostensibly included inviting Sally B. to her home for several dinners, giving Sally B. a number of moderately expensive gifts, sharing a motel room with Sally B. while the two of them attended a conference on trauma issues, and inviting Sally B. to join her on a camping trip).

The client suffered some harm or injury (e.g., Sally B. alleged that she suffered severe emotional distress and required additional mental health services, lost time and wages at work, and had difficulty sustaining intimate relationships).

The social worker's dereliction of duty was the direct and proximate cause of the harm or injury (Sally B.'s emotional injuries and monetary losses were the result of Nancy L.'s use of nontraditional and unorthodox interventions and incompetence).

Social workers who engage in nontraditional and unorthodox interventions may be charged with misfeasance or malfeasance. There is an important distinction to be made here. *Misfeasance* is customarily defined as the commission of a proper act in a wrongful or injurious manner, or the improper performance of an act that might have been performed lawfully (Gifis, 1991). Thus, a social worker who used hypnosis, art, or wilderness therapy techniques negligently—either because of inadequate training or lack of skill—might be accused of misfeasance; these clinical approaches, which are based on solid research and theoretical foundations, should only be used by practitioners who have sufficient training, knowledge, and competence. In contrast, *malfeasance* is ordinarily defined as the commission of a wrongful or unlawful act (Bernstein & Hartsell, 1998; Gifis, 1991). Thus, a social worker who engaged in a sexual relationship with a client after convincing her that this would be therapeutic, a social worker who used so-called rebirthing techniques without proper training or empirically based evidence of effectiveness, and a social worker who traveled with a client and misappropriated some of the client's personal

funds, in the name of re-parenting therapy, might be accused of malfeasance.

Ordinarily, civil suits filed against social workers are based on tort or contract law, with plaintiffs (the individuals bringing the suit) seeking some form of redress for injuries that they claim to have incurred. Such injuries may be economic (lost wages or the costs associated with mental health services), physical (resulting from a suicide attempt committed by a client who is despondent about the conse-

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quences of her social worker's use of controversial treatment techniques), or emotional (depression or anxiety brought about by a social worker's injurious use of nontraditional or unorthodox interventions).

As with criminal trials, social work defendants in civil suits are presumed blameless until proven otherwise. In ordinary civil suits, the standard of proof required to find social workers liable for their use of nontraditional and unorthodox interventions is based on the notion of *preponderance of the evidence* (in contrast to the stricter standard of *proof beyond a reasonable doubt* used in criminal proceedings).

Ethical and Risk Management Guidelines

Social workers can and should take a number of practical steps to protect clients from harm and to prevent ethics complaints, malpractice claims, and criminal charges. Some nontraditional and unorthodox interventions and behaviors are clearly unethical and should always be avoided. Without exception, clinical social workers should not become involved in sexual relationships with their clients as a form of 'therapy' (or for any other reason). Also, social workers should never use clinical techniques that, on their face, expose clients to serious risk; for example, offering medical advice to clients who are struggling with eating disorders, depression, or head pain.

These are the easy cases, in that a cross section of clinical social workers would readily agree that colleagues who use such clinical techniques and interventions violate the substantive standards of care in the profession. That is,

ordinary, reasonable, and prudent clinical social workers would not enter into sexual relationships with clients or practice medicine without a license.

However, in some instances, significant numbers of clinical social workers may endorse the use of nontraditional and experimental interventions, despite the fact that the interventions may expose clients and themselves to some degree of risk (Austin, Moline, & Williams, 1990; Epstein, 1994; Reamer, 2001a, 2003).

Thus, a cross section of experienced, reasonable, and prudent colleagues can disagree about whether certain novel or controversial interventions are unethical, negligent, or effective. For example, some clinicians argue vigorously that holding therapy is a helpful, constructive approach when working with some clients. Others, however, argue that this approach is filled with clinical and legal risk and that practitioners should avoid its use (Miller, 1997; Welch, 1989). In this and many other instances, thoughtful and principled clinicians may examine the known facts about the relative advantages and disadvantages of a nontraditional or unorthodox intervention

and disagree about the appropriateness of its use.

Based on this author's experience with a large number of ethics hearings and legal cases, clinical social workers can best protect clients and themselves by following the *procedural standard of care*—the steps that an ordinary, reasonable, and prudent social worker should and would take in deciding whether to use a nontraditional, experimental, unorthodox, or controversial clinical intervention or technique. The procedural standard of care includes eight key elements: (1) consulting colleagues; (2) obtaining proper informed consent; (3) obtaining proper supervision; (4) reviewing relevant ethical standards; (5) reviewing relevant regulations, laws, and policies; (6) reviewing relevant literature; (7) obtaining legal consultation when necessary; and (8) documenting and evaluating decision-making steps.

Consulting Colleagues

Social workers who are considering the use of nontraditional and unorthodox interventions should consult colleagues who have specialized knowledge or expertise related to the particular approach. Social workers in private or independent practice should broach these issues in peer consultation groups. Social workers employed in agencies that sponsor institutional ethics committees (committees that provide staff with a forum for consultation on difficult cases) should take advantage of this form of consultation when they face complicated ethical and treatment issues. Moreover, social workers who are named in ethics complaints and lawsuits can help demonstrate their competent decision making by showing that they sought consultation.

Social workers should be mindful of several *NASW Code of Ethics* standards that relate to consultation:

Social workers should seek the advice and counsel of colleagues whenever such consultation is in the best interests of clients. (Standard 2.05[a])

Social workers should keep themselves informed about colleagues' areas of expertise and competencies. Social workers should seek consultation only from colleagues who have demonstrated knowledge, expertise, and competence related to the subject of the consultation. (Standard 2.05[b])

When consulting with colleagues about clients, social workers should disclose the least amount of information necessary to achieve the purposes of the consultation. (Standard 2.05[c])

Obtaining Proper Informed Consent

Social workers have always recognized the critical importance of a client's consent to treatment and intervention. In general, for consent to be considered valid, six standards must be met: (1) coercion and undue influence must not have played a role in the client's decision; (2) clients must be capable of providing consent; (3) clients must consent to specific procedures and intervention approaches; (4) the forms of consent must be valid; (5) clients must have the right to refuse or withdraw consent; and (6) clients' decisions must be based on adequate information (Rozovsky, 2000). The *NASW Code of Ethics* reflects these concepts:

Social workers should provide services to clients only in the context of a professional relationship based, when appropriate, on valid informed consent. Social workers should use clear and understandable language to inform clients of the purpose of the services, risks related to the services, limits to services because of the requirements of a third-party payer, relevant costs, reasonable alternatives, clients' right to refuse or withdraw consent, and the time frame covered by the consent. Social workers should provide clients with an opportunity to ask questions. (Standard 1.03[a])

Obtaining Proper Supervision

Social workers who have access to a supervisor should take full advantage of this opportunity. Supervisors may be able to help social workers decide on the appropriateness of nontraditional and unorthodox interventions. Moreover, social workers who are sued or named in an ethics complaint can help demonstrate their competent decision-making skills by showing that they indeed sought supervision.

As with consultation, social workers should seek out supervisors who have specialized knowledge or expertise related to the intervention approach being considered. Practitioners should avoid relying on

supervisors simply because they are conveniently available, particularly when the supervisors lack substantive expertise related to the potential intervention. Social workers may have to, and should, make a special effort to find knowledgeable supervisors.

Reviewing Relevant Ethical Standards

It is critically important that social workers become familiar with and consult standards in the *NASW Code of Ethics* (and any other relevant codes) pertaining to the use of nontraditional and unorthodox interventions. Key standards in the *NASW* code pertain to practitioner competence. As these standards make clear, social workers should always base their decisions about the use of nontraditional and unorthodox interventions on prevailing ethical standards concerning practitioners' duty to provide services only in substantive areas where they, the social workers, have demonstrated competence:

Social workers should provide services and represent themselves as competent only within the boundaries of their education, training, license, certification, consultation received, supervised experience, or other relevant professional experience. (Standard 1.04[a])

Social workers should provide services in substantive areas or use intervention techniques or approaches that are new to them only after engaging in appropriate study, training, consultation, and supervision from people who are competent in those interventions or techniques. (Standard 1.04[b])

When generally recognized standards do not exist with respect to an emerging area of practice, social workers should exercise careful judgment and take responsible steps (including appropriate education, research, training, consultation, and supervision) to ensure the competence of their work and to protect clients from harm. (Standard 1.04[c])

Reviewing Regulations, Laws, and Policies

Social workers who are considering the use of nontraditional and unorthodox interventions should always review relevant regulations, laws, and policies (both public policies and agency policies). For example, several states have adopted laws explicitly prohibiting exploitative dual relationships, which can be a byproduct of some nontraditional and unorthodox interventions (Bullis, 1995; Reamer, 2001a). Also, federal and state laws and regulations may require social workers to submit their evaluation of nontraditional and unorthodox interventions for review by institutional review boards (IRBs) that are charged with scrutinizing research proposals and otherwise protecting human participants (Dickson, 1995).

Reviewing Appropriate Literature

As the *NASW Code of Ethics* makes clear, social workers should always stay current with relevant professional literature, especially literature pertaining to practitioners' use of nontraditional and unorthodox interventions.

Social workers should strive to become and remain proficient in professional practice and the performance of professional functions. Social workers should critically examine and keep current with emerging knowledge relevant to social work. Social workers should routinely review the professional literature and participate in continuing education relevant to social work practice and social work ethics.

(Standard 4.01[b])

Social workers should base practice on recognized knowledge, including empirically based knowledge, relevant to social work and social work ethics.

(Standard 4.01[c])

Social workers should critically examine and keep current with emerging knowledge relevant to social work and fully use evaluation and research evidence in their professional practice. (Standard 5.02[c])

When contemplating the use of nontraditional and unorthodox interventions, social workers should always take time to gather and study pertinent publications, especially those that are likely to be viewed as authoritative. Reviewing such literature which especially focuses on practitioners' and scholars' judgments about an intervention's appropriateness or inappropriateness and effectiveness can provide social workers with useful guidance and also provide compelling evidence that a social worker has made a conscientious attempt to comply with current standards in the field. In addition, social workers should assume that in malpractice suits plaintiffs' lawyers will conduct their own comprehensive review of relevant literature in an effort to locate prominent publications that support their client's claims. Lawyers often submit as evidence copies of publications that, in their judgment, buttress their legal arguments. Courts typically consider relevant literature as evidence of prevailing standards of care (along with expert testimony and national practice standards).

Obtaining Legal Consultation

Social workers who consider using nontraditional and unorthodox interventions should anticipate possible legal ramifications. Practitioners who use nontraditional and unorthodox interventions increase their risk for legal exposure. Thus, it behooves social workers who consider using such interventions to obtain a legal opinion about relevant risks from a lawyer who specializes in professional malpractice and negligence. Social workers

who seek legal advice may enhance their ability to argue that they made a good faith effort to practice ethically.

Documenting and Evaluating

Careful and thorough documentation and evaluation enhances the quality of the services that clinical social workers provide to clients. Comprehensive records are necessary to assess clients' clinical circumstances; plan and deliver services appropriately; facilitate supervision; provide proper accountability to clients, other service providers, funding agencies, insurers, utilization review staff, and the courts; to evaluate services provided; and to ensure continuity in the delivery of future services (Kagle, 1991; Reamer, 2001b). Thorough documentation also helps to ensure quality care in the event that a client's primary social worker becomes unavailable because of illness, incapacitation, vacation, or employment termination. In addition, thorough documentation can help protect social workers who are named in ethics complaints and lawsuits (e.g., documentation provides evidence that a social worker obtained timely consultation and supervision concerning the use of a nontraditional and unorthodox intervention; obtained a client's informed consent prior to the delivery of services; reviewed relevant practice and ethical standards, literature, statutes, and regulations; and, when necessary, sought legal consultation).

The extent to which social workers follow these steps when making a decision may become a key issue during the adjudication of an ethics complaint or a lawsuit. For example, licensing board members or attorneys might ask which supervisors the social worker consulted and when, which ethical standards and regulations she reviewed and when, and what training she received related to the use of a particular intervention. The quality of the social worker's adherence to the procedural standard of care may have a direct bearing on the outcome of the case. More important, adhering to these procedural steps is likely to enhance the quality and effectiveness of the social worker's practice. After all, social workers who routinely obtain consultation and supervision; review ethical standards, policies, regulations, laws, and literature; document and evaluate their interventions; and obtain legal consultation when necessary are thorough, conscientious practitioners who are more likely to serve their clients well.

Conclusion

Social workers should think creatively about interventions that may be helpful to the individuals, couples, families, and groups they serve. Clinical innovations are important to the profession and its clients.

Social workers who consider using nontraditional and innovative interventions should be vigilant in their efforts to ensure that their approaches are ethical and protect clients. It also behooves social workers to take

practical steps to prevent ethics complaints and malpractice claims alleging that they used interventions that were unethical and harmful.

Some innovative interventions are clearly unethical and should be avoided at all costs. A relatively small number of unscrupulous, unethical, and impaired social workers may implement nontraditional interventions, and exploit clients, for self-serving purposes (Kilburg, Nathan, & Thoreson, 1986; NASW, 1987; Reamer 2003). At times, however, there is a much finer, and more ambiguous, line between clinical innovations that are ethical and unethical. In some instances, social workers will find that a cross section of thoughtful, principled, and earnest colleagues disagree about the appropriateness of a particular intervention. In such circumstances, social workers can best protect clients, and themselves, by conscientiously implementing the procedural standard of care and taking assertive steps to obtain proper consultation and supervision; reviewing relevant ethical standards, regulations, laws, policies, and literature; obtaining legal consultation when necessary; and documenting and evaluating their decision-making steps and interventions. In the final analysis, this comprehensive strategy is the very best way to protect both clients and social workers.

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