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AVOIDING ISSUES OF TAINT WITH THE CHILD CLIENT



Overview

Providing services to children poses unique challenges, especially when the case against the perpetrator is proceeding through the criminal justice system. This system, by its very nature, is not child-friendly. The stakes are high because the court often must determine guilt or innocence on testimony alone. In this environment, the neutrality of the counselor/advocate's communication with the child may be challenged. Some may argue that, in the course of providing services to a child, the counselor may inadvertently "taint" the child's testimony.

Taint is the term Jablonski (as cited in Commonwealth v. Delbridge, 2003) uses to describe the implantation of false memories or the distortion of real memories through suggestive interview techniques. While there is no way to fully guard against the challenges of taint, there are steps that sexual assault centers can take to decrease the likelihood that communication between a child and a sexual assault counselor will be called into question.

Recommendations

First, it is important for the counselor/advocate to be knowledgeable about the difference between a forensic or investigative interview and a counseling interview.

When conducting a forensic interview, specially trained interviewers elicit detailed information from the child about his/her abuse. This includes the location, frequency, and duration of the abuse as well as the identity of the perpetrator. The interview focuses on the details of the abuse and the child's ability to recall those details.

The focus of the counseling interview is very different from that of the forensic interview. The counseling interview is designed to evaluate a child's emotional state, to identify supportive resources, and to assist the child in healing from his/her abuse. The counselor/advocate should not elicit detailed information from the child about the specific events surrounding the abuse, but rather should concentrate on the child's feelings. Within the context of providing support to counselor/advocates, centers should provide written guidelines and recommendations for conducting a counseling interview.

Second, it is important for the counselor/advocate to be familiar with the seminal research and case law on memory and suggestibility of children.

Ceci & Bruck's *Jeopardy in the Courtroom* is an excellent resource because it examines several pivotal cases of alleged child abuse including The Kelly Michaels Case (State v. Michaels, 1988) and The Little Rascals case (State v. Robert Fulton Kelly, Jr. 1991-1992) (Ceci & Bruck, 1995). This book discusses the flawed interview techniques used by investigators in these and other cases. While counselors/advocates are not involved in the

investigation phase, this literature still can prove helpful in illustrating how to avoid suggestive interviewing. If a counselor/advocate is called to testify, he/she clearly can explain the differences between his/her interview techniques and the techniques considered suggestive by experts. *Jeopardy in the Courtroom* is available to advocates via the PCAR library (pcar.org).

Third, advocates who are responsible for counseling children should receive specialized training.

While adult counseling skills can provide a foundation for working with children, counselors need specialized training and skills to respond to the unique needs of their child clients. Children may lack the language to describe their feelings and experiences and they may have inner conflict if the perpetrator is a friend or relative. Counselors/advocates need specialized training to address feelings the child may not understand or cannot put into words.

Fourth, counselors/advocates should be active members of multidisciplinary teams (MDT) in their communities.

The MDT should include the county prosecutor, law enforcement, Child Protective Services, victim services, the medical community, mental health services and, if available, a Child Advocacy Center. Members of the MDT discuss the progress of current cases and how to coordinate services to best meet the needs of children. The MDT should identify the responsibilities and legal requirements of each team member as well as discuss conflicts that may arise between members who have different priorities. One of the greatest challenges of an MDT is to balance the investigator's need for information with the counselor's confidentiality requirements.

Centers also need to consider how to address issues surrounding confidentiality. Some centers prefer to have a blanket policy that prohibits counselors/advocates from ever asking clients to waive confidentiality. Other centers consider, on a case-by-case basis, when sharing information would be in the best interest of the child. When requesting a signed release from the client, it is important to have the child or the child's legal guardian sign the release and specify what information is to be shared and what information should not be shared. Centers should have clear policies on confidentiality and waivers.

Fifth, counselors/advocates who are subpoenaed should prepare for their testimony.

Advocates are typically successful in quashing subpoenas due to counselor-client privilege in Pennsylvania. However, the following might be helpful to advocates who have to testify. Specifically, they should compile a list of their education, training specific to their job, and counseling experience including how many children they have counseled. While the substantive part of the testimony should never be rehearsed or reviewed, counselors/advocates may want to practice repeating their credentials and experience so they appear confident and credible when testifying. The first time a counselor/advocate appears in court can be unnerving at best. While there is no way to avoid the experience, adequate training and preparation can provide the foundation necessary to provide clear and concise testimony.



References

Barsky, A.E. & Gould, J.W. (2002). *Clinicians in Court: A Guide to Subpoenas, Depositions, Testifying, and Everything Else You Need to Know*. New York, NY: Guilford Press, Inc.

Ceci, S.J. & Bruck, M. (1995). *Jeopardy in the Courtroom: A Scientific Analysis of Children's Testimony*. Baltimore, MD: Port City Press. (Available in PCAR library, www.pcar.org.)

Commonwealth v. Delbridge, 578 Pa. 641, 855 A. 2d 27(2003)