

ECLI:NL:TGZRAMS:2019:223 Regional Disciplinary Court for Healthcare Amsterdam 2019/179

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Date of judgment:	07-11-2019
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Case number(s):	2019/179
Topic:	Unacceptable behavior
Decisions:	Well-founded, cancellation of registration register
Content indication:	The complainant has been treated by the defendant. She accuses the defendant, among other things, of incorrect treatment and transgressive behaviour. Well-founded measure

REGIONAL HEALTH CARE DISCIPLINARY COLLEGE

AMSTERDAM

Decision in response to the complaint received on 23 April 2019 from:

A,

living in B,

complainant ,

against

C,

psychotherapist,

at the time working in D,

defendant,

authorized representative: mr. MF van der Mersch, lawyer in B.

1. The procedure

The Board has taken note of the following documents:

- the complaint;
- the supplementary notice of complaint with the appendices;
- the statement of defense with the appendices;
- the correspondence relating to the preliminary investigation;

- the documents received from the complainant on 20 and 23 September 2019.

The complaint was dealt with at the public hearing on October 4, 2019.

Parties were present. The complainant was represented by Ms E and Ms F. The Respondent was represented by his aforementioned representative. Both parties provided an explanation on the basis of a pleading note that was submitted to the Commission and the other party and answered questions from the Commission.

2. The facts

The complainant was treated by the defendant from August 1995 to December 2015.

3. The complaint and the complainant's position

3.1 The complainant alleges that the defendant:

- a. mistreated her from August 1995 to December 2015,
- b. has been guilty of transgressive behaviour,
- c. has violated professional secrecy,
- d. has filed the file incorrectly and poorly,
- e. has issued an incorrect report and that he
- f. did not adequately refer her to another practitioner.

The complaint under a has been broken down by the complainant into the following sub-complaints:

1. Sub-complaint with regard to anamnesis,
2. Sub-complaint with regard to problem inventory,
3. Sub-complaint with regard to the diagnosis,
4. Sub-complaint regarding information about the treatment,
5. Sub-complaint with regard to the treatment agreement,
6. Sub-complaint regarding treatment plan,
7. Sub-complaint regarding failure to rectify improper action,
8. Sub-complaint regarding the "Legacy",
9. Sub-complaint regarding failure to use general principles of psychotherapy for recovery,
10. Sub-complaint with regard to incorrect or no treatment,
11. Sub-complaint regarding the therapist's handling of his absences,
12. Sub-complaint with regard to calling in colleagues;
13. Sub-complaint with regard to whether or not to continue/discontinue therapy and
14. Sub-complaint regarding discontinuation of therapy.

The complainant has subdivided a number of sub-complaints into sub-complaints in order to clarify and further substantiate the sub-complaints.

The complaint under b has the complainant divided into the following sub-complaints:

1. Sub-complaint with regard to the therapist's counter-transference,

3. Sub-complaint regarding identification of therapist with client,
4. Part-complaint regarding therapist's defensive behavior,
5. Sub-complaint regarding attraction and repulsion by therapist,
6. Sub-complaint regarding the therapist's making dependent,
7. Sub-complaint for physical contact,
8. Subcomplaint with regard to performing alternate acts,
9. Therapist partial complaint has client buy rugs for his therapy room and
10. Complaint regarding marriage therapist in therapy.

The complainant has clarified and substantiated her complaints, partial complaints and sub-complaints with, among other things, reports of therapy sessions and e-mail correspondence. In support of its views, the complainant also submitted an overview of cards and gifts she received from the defendant, a USB stick with audio fragments of messages left by the defendant on her answering machine, a fragment of a therapy conversation and a fragment of a so-called three-way conversation with, and a written statement from F, who was involved in the treatment as a consultant.

In addition, under the heading 'Others', the complainant provided a description of the consequences this had for her. The complainant has elaborated and documented each of these points in detail.

3.2. The complainant has further argued that the long duration of treatment, the seriousness of the situation and the circumstance that everything that has taken place in the treatment relationship of more than 20 years is interrelated and influences each other, should be grounds for the Board to deviate from Article 65, Paragraph 5 of the Individual Health Care Professions Act (hereinafter: the BIG Act) to assess the entire treatment period of more than 20 years.

4. **Defendant's position**

4.1 In the statement of defense and at the hearing, the respondent took responsibility for what did not go well in the treatment relationship. At the hearing, he broadly endorsed a significant part of the complainant's complaints. Respondent has submitted a different view on a number of points, which the Board will consider insofar as necessary. In the statement of defence, the defendant has come to the following reflection:

“Defendant acknowledges that he allowed the treatment relationship to escalate. He has not acted professionally. He should have ended the treatment relationship earlier. He should have limited the complainant. He failed to do that. He deeply regrets that.”

4.2 The defendant has pointed out that a number of complaints from the complainant relate to situations that took place – calculated from the date of submission of the notice of complaint – more than ten years ago, so that the complainant cannot be received in those complaints.

5. **The assessment**

5.1 For reasons of a procedural economic nature, the Commission will first consider what happened in the ten-year period prior to submitting the notice of complaint and assess what this should lead to.

5.2 At the start of this ten-year period, the complainant had been under treatment by the defendant for approximately 11 years. Until December 31, 2013, the defendant was employed by “G”, where he also treated the complainant. In the period from January 1, 2014 to December 31, 2015, the defendant worked in his own practice “H” and treated the complainant there.

5.2.1 With regard to the complaint referred to under 3.1., sub a, concerning incorrect treatment, as further elaborated in the associated partial complaints and sub-complaints, the Board considers that the defendant has expressly acknowledged that the treatment relationship was defective. In short, there has been a derailed treatment relationship. The

defendant has acknowledged that on many points referred to by the complainant under 3.1, sub a, - at least in broad terms - he did not act in accordance with the Professional Code for Psychotherapists. Viewed against this background, the lecture will suffice with a brief descriptive account of what happened in the treatment relationship. The complainant has been in treatment with the defendant for more than 20 years. Certainly in the last ten years - the years that are in any case at issue here - there has been an extraordinary and unusually intensive contact between the defendant and the complainant. For example, from 2012 to the end of 2015, there were two to three sessions a week. Sessions that were not limited in time and sometimes took five and a half hours at a time. In addition, there was almost daily telephone contact during the entire ten-year period; during a very long period there were two telephone contacts per day, lasting at least between 15 and 25 minutes. Home visits were also made. In addition, the defendant sent the complainant e-mails with very personal texts on the relationship between the two involved, he also sent over 200 cards with such texts, the defendant gave the complainant a considerable amount of gifts (including CDs, books and jewellery) and recorded texts as aforesaid on the complainant's answering machine. This - in short - to show the complainant that (even when he was abroad) he thought of her and did not leave her alone. Furthermore, the Defendant spoke extensively with the Complainant about problems that concerned him personally, including problems of the Defendant in the past and marital problems existing at the time as a result of the intensive contact between the Defendant and the Complainant. Furthermore, the defendant often ended the therapy sessions with an embrace. This behavior of the defendant is certainly not in accordance with what is customary and accepted within the profession.

5.2.2 It does not follow from the file submitted by the respondent that treatment plans have been drawn up and treatment goals formulated periodically and frequently, as is customary within the profession. It also does not follow from the file whether, and if so, what progress has been made in the treatment and which goals have been achieved. It is true that the complainant and the respondent do not fully agree with each other on how many treatment plans have been drawn up, discussed and evaluated, but even if the position taken by the respondent is taken as the basis, there is no question that this has taken place in the usual way within the profession.

5.2.3 What is stated under 5.2.1 and 5.2.2 is in itself incorrect, but all the more reprehensible now that the defendant was in any case already at the beginning of the disputed period (in the statement of defense and by the defendant at the hearing actually from the beginning of the treatment) there was a perception that the treatment offered was ineffective. Defendant describes this idea in his defense as follows: "He had the feeling that the treatment perpetuated and even aggravated the intense suffering of the complainant." However, the defendant did not terminate the treatment relationship until the end of 2015 when he had become completely exhausted, mainly as a result of the treatment of the complainant, and suffered from panic attacks. Although the defendant has repeatedly, also on the advice of colleagues, attempts were made to end the treatment relationship (the respondent even entered therapy himself), but failed to do so. This is because he always feared serious consequences for the complainant. A fear which, moreover, according to the defendant was expressly stated at the hearing, was based on his assessment and not on threats made by the complainant.

5.2.4 Although it appears from the file that the defendant regularly consulted colleagues with the question of how he could improve the treatment, it does not show that he made use of a structured form of intervision as is customary within the profession. In view of the very long and complex problem at issue and the problems that the defendant himself experienced, the defendant had

- especially now that he is regarded as an expert in the field of feedback - should know that simply asking for advice or help does not provide sufficient guarantees for a proper analysis of the problem and a good insight into one's own actions.

5.2.5 It follows from the foregoing that this part of the complaint is based, insofar as it relates to the aforementioned period of ten years. The fact that the complainant is of the opinion that too little attention has been paid to her in the sense that she has not been treated well or has not been treated at all and that the defendant has been of the opinion that he has treated too much, makes the judgment that the defendant has acted contrary to the standards applicable in the profession, not otherwise.

referred, the Commission considers as follows.

The Board does not follow the complainant's position that the respondent acted negligently and inadequately by suddenly discontinuing the therapy at the end of 2015 and that by his name recognition, appearances and refusal to disclose matters he made it impossible for the complainant to ever receive the correct treatment again. from another therapist. This is because it must not be forgotten that the sudden discontinuation of the therapy was the result of the defendant's illness. The respondent has attempted to obtain clarity for the complainant about what a good further treatment option could be through a second opinion with two colleagues who are specialized in examining how stalled treatment processes can best be continued. However, the complainant refused to cooperate. This cannot be blamed on the defendant. Furthermore, as can be seen from 5.6, the defendant has correctly transferred the complainant to the general practitioner. In the defendant's situation as a result of his health situation, this was a completely acceptable course of action. The Board has found no evidence of abuse of his name recognition or his professorship by the defendant.

This part of the complaint is therefore ineffective.

5.8 What the complainant has stated under "Others" does not require discussion, as this does not relate to the defendant's actions. The complainant describes what – in her opinion – the consequences of this treatment, or the lack of it, have been and still are for her. In disciplinary law it is – very briefly – concerned only with the question of whether the defendant acted in a way that fits within the standards applicable in the profession.

5.9 The conclusion of the foregoing is that the complaints are partly justified. By not adhering to what is customary and accepted within the profession, the respondent has acted contrary to the care it should have exercised towards the complainant pursuant to Article 47(1) of the BIG Act.

5.9.1 Without striving for completeness, the Board points out what is included in the Professional Code for Psychotherapists about formulating the request for help, monitoring developments, including drawing up treatment plans and evaluating what has been achieved (or not). , and on what is included in the code about the relationship between therapist and treated person, including what is mentioned about interventions such as touching, intervention and the file obligation.

5.9.2 With regard to the measure to be imposed, the Commission considers the following.

There has been a very long treatment relationship of almost 21 years in total. The last ten years of this relationship can certainly be considered extraordinarily complex. The complainant was fully convinced that the defendant was the only practitioner who could help her. Defendant has certainly been in a position in the last ten years in which he knew that he had to end the treatment relationship, because he failed to achieve proper treatment, but was unable to do so. Not even after he had asked colleagues for advice and had involved colleagues in the treatment. Defendant continued with the treatment, knowing – as he himself expressed it – that his treatment perpetuated and even aggravated the complainant's intense suffering.

In doing so, the defendant did not adhere to the rules and principles applicable to his profession during the hearing. In this regard, the Commission refers to what has been considered under 5.2.1, 5.3.2 and 5.3.3. There were no minor deviations from what is customary within the profession, but significant and completely unacceptable deviations. As a practitioner, the defendant could have been expected to have broken off the treatment relationship at the beginning of the ten-year period at issue in any case – it had already been clear to him for some time that he was not up to the situation. Instead, he continued the treatment relationship for ten years in a way that he knew was definitely inappropriate and even harmful to the complainant. The court takes this defendant seriously. The respondent's request to take into account the enormous complexity of the treatment relationship when imposing a measure and all attempts he has made to get it back on the right track, in the opinion of the Board, fails to show that the respondent as a therapist it is responsible – no matter how complicated the client's problems and the relationship between client and therapist are – that the treatment relationship remains pure and limited as referred to in the Professional Code. Defendant has been a trainer for many years and then his conduct is all the more constraining. In the opinion of the Board, the Commission overlooks the fact that the defendant as a therapist is responsible – no matter how complicated the client's problems and

the relationship between client and therapist are – that the treatment relationship remains pure and limited as referred to in the Professional Code. Defendant has been a trainer for many years and then his conduct is all the more constraining. In the opinion of the Board, the Commission overlooks the fact that the defendant as a therapist is responsible – no matter how complicated the client's problems and the relationship between client and therapist are – that the treatment relationship remains pure and limited as referred to in the Professional Code. Defendant has been a trainer for many years and then his conduct is all the more constraining.

Now that the defendant is no longer registered in the BIG register, the imposition of the measure prohibiting re-registration is appropriate. The defendant's illness at the end of the treatment does not give the Board any reason to reach a different conclusion. This is because the defendant's illness played no role in a very large part of the period to be assessed and the complaints relating in particular to the termination of the treatment relationship are unfounded. The Board sees no reason to determine that its decision will take effect immediately, because the Board is sufficiently convinced that the defendant will not be able to re-register in the BIG register in the short term.

5.10 In view of what has been considered above, it is not necessary to discuss what the complainant has argued about the passing of the prohibition contained in the BIG Act to assess conduct that took place more than ten years ago. After all, imposing a more far-reaching measure as is done is not an option. Apart from the long-term storage of files in the Defendant's garage alleged by the complainant, the complainant's complaints in question relate to behavior that shows strong similarities with the behavior that took place during the period assessed by the Commission.

6. The decision

The lecture:

- declares the complaint parts 3.1., a to d, to be well-founded;
- imposes on the defendant the measure of the prohibition of re-registration in the BIG register;
- rejects the remainder of the complaint.

The Board also determines that the decision pursuant to Section 71 of the BIG Act will be published in the Dutch Government Gazette and submitted to the journals *De Psycholoog* and *Tijdschrift voor Psychotherapie* for publication.

Thus decided on November 7, 2019 by:

J. Brand, chairman,

CHJAM van de Vijfeijken, Th.AM Deenen and SM Pol, member psychotherapist,

S. Colsen, member lawyer,

assisted by IWM Dirksen, secretary.

WG secretary WG chairman

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