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COMMENTARY / COMMENTAIRE

Recordkeeping in the Real World of Private Practice: Recommendations for Canadian Psychologists. Commentary on Bemister and Dobson (2011)

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In this commentary on Bemister and Dobson's (2011) article on recordkeeping, I attempt to show that many of the recommendations they propose are clinically contraindicated. Introducing the details of recordkeeping in the treatment process is particularly ill advised for it may engender distrust, taint the therapeutic alliance, and damage the professional relationship with the client, which could conceivably ruin the treatment. It is the intention of this critique to foster dialogue and debate about the best standards of practice for clinicians working in the private sector. I argue that Bemister's and Dobson's proposals are misguided and belie the real world of private practice. If we condone the teaching of these principles in graduate education and implement these recommendations in professional practice, then this could potentially tarnish the reputation of psychologists in Canada.

Keywords: record keeping by Canadian psychologists, best standards for professional practice, confidentiality in private practice, disclosure of case notes to clients, *Code of Ethics*

In Bemister and Dobson's (2011) recent article on recordkeeping for practicing psychologists, they propose many recommendations for clinical techniques that, I argue, are controversial and should not be implemented in independent practice. Although I cannot provide an exhaustive exegesis of every point they make in this commentary, I wish to focus on certain problematic areas in their positions and argue for why the profession should reject their recommendations. This critique is intended to foster dialogue and debate in the field over the best standards of clinical praxis. Although I agree with Bemister and Dobson that the duty to provide responsible interventions that value and uphold the welfare of the patient should be our first priority, I wish to emphasise that this should be done without the need to introduce unnecessary information in the session, let alone advocate for stringent and potentially unrealistic prescriptions for professional conduct. What I wish to propose is that Bemister and Dobson: (a) overlook the experiential complexities of patients' agendas; (b) fail to address the pragmatics of the clinical encounter and practical needs of patients who are paying a high fee out of pocket; and (c) are remiss to protect the primacy of strict privacy the patient expects when seeking out a psychologist. These dimensions of praxis the authors fail to consider contraindicate how clinicians should and actually do practice in the field. Bemister and Dobson (2011) state that their article "was written as a guide for psychologists in their current practice" (p. 307). Here are just a few things they advise us to do:

1. Psychologists are encouraged to record and make copious notes of all communications including informal phone calls, e-mail correspondences, and text messages; transfer handwritten notes to electronic typed documents; and destroy handwritten case notes because they are incomplete, sloppy, overly subjective, and contain "minimal differentiation among facts, opinions, and extrapolations." We should also avoid writing down statements that are "not justified" and "unclear" (p. 301).

2. Although we are asked to record most of what transpires between the patient and psychologist, we should be careful about diagnoses; omit "unnecessary personal information" from the record, such as anything where the client may be "embarrassed" if it were disclosed to a third party; limit "probing inquiries"; record only "relevant information"; and not put anything down that is "illegal" (p. 301).

3. Psychologists should encourage patients to access their clinical records and show them their process notes for their approval, which can be reviewed together "at the end of each session" (p. 302).

4. Not only do clients have a right to access their files, they also have a right to a hard copy and to challenge anything in the record. According to Bemister and Dobson, "psychologists *ought to inform* clients of their right to access their records" in the session (p. 302, emphasis added).

The first set of suggestions assumes a level of thoroughness that may be more appropriate for research purposes. But professional psychology is not a research study in a lab: These directives do not apply to the private sector. The suggestion that we should keep a detailed record of practically everything, from phone calls,

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e-mails, and text messages (such as appointment requests or cancelations) is unreasonable. If practitioners were to follow these guidelines, they would spend a good deal of their time doing administrative tasks, which are not billable.

We are also asked to omit a crucial element of clinical speculation in its natural (uncensored) form by destroying handwritten case notes for the purpose of providing a "complete" record devoid of "errors" and potentially subjective interpretations and formulations that are peculiar to the practitioner's reflections on a patient and the therapeutic process. If we really wanted to safeguard against statements that were "not justified" or "unclear," then we should not write down anything, for a rational argument can be made that nothing is transparent let alone complete. If we were to follow this first set of directives, my concern is that psychologists would become more like technicians rather than remain thoughtful clinicians (Mills, 2007).

Bemister and Dobson's second set of recommendations are apparently contradictory and reflect a tendency to be worried about what the psychologist should put in the record out of fear of how that information will be interpreted by the patient or others who may read the psychologist's case notes. Here the emphasis is on what *not* to put in the record. On the one hand we are advised to record every formal and informal exchange of information, and on the other we are cautioned about writing down diagnoses (e.g., in the event that a client with borderline personality disorder may act out), asked to exclude sensitive personal information (although therapy is a place to explore such matters), not to probe or ask penetrating questions (as if that is inappropriate or taboo), omit any mention of illicit activities (such as smoking pot), and put nothing down that is not necessary or relevant. Not only do these prohibitions beg the questions on necessity and relevance, but we are essentially asked to perform a lackadaisical job. The message appears to be: "Don't ask/Don't tell—Big Brother may be watching." Given that therapy is one of the most highly personal, vulnerable, honest, and emotionally difficult processes to undertake, I find these suggestions incongruous at best.

The suggestion that we should not record material in our notes that the client may find offensive or "embarrassing" is absurd. If we were to omit certain disclosures from case notes that the patient could potentially find embarrassing, then large segments of the session would not be permitted. Take for example patients seeking out treatment for incessant masturbation, fetishes or sexual perversions, or being masochistically attracted to shaming and humiliating relationships. If we followed this advice, then there would be no record of pertinent conversations about patients' histories, past and current behaviours, and especially their fantasy lives, despite the fact that this could be the identified reason why they entered into treatment to begin with. Here the assumption is that all files will be viewed by the client, and this "requires a lack of speculation in the file" and "the use of politically correct wording" (pp. 302–303). In other words, we cannot be honest in our own thoughts that we put to pen out of fear that they will offend the client, who in turn could become confrontational in the session, complain to one's licensing board, and issue legal threats if they read what we wrote. If anything, this is a sound argument for why psychologists *should not* release their case notes to anyone.

The recommendation that clients should be able to examine our clinical notes at anytime for accuracy and negotiate some agreement about what should be included and excluded in the notes is ridiculously impractical and potentially countertherapeutic. Why would the psychologist bring up, let alone introduce, the recordkeeping issue in the session, not to mention show the client his or her clinical notes? Introducing and focusing on the issue of recordkeeping *in the session* is an interjection that may induce mistrust and give the impression that the patient is under scientific scrutiny rather than a subject who suffers and wants help. The last thing patients want is a permanent tangible record of what they say. Introducing the notion that one is taking notes and keeping records on what is disclosed in therapy is ill-advised because all this does is conjure up the paranoid position and introduce suspicion based on the therapist's anxieties about "protection against allegations of unethical and harmful treatment" (Bemister & Dobson, 2011, p. 298). This awkward intrusion by the psychologist only serves to shut down the therapeutic process. In my estimation, people would get up and leave based upon perceived ineptitude.

In clinical practice, especially in psychotherapy, one addresses the sensitive issue of recordkeeping when the client broaches the topic. This emerges naturally and organically, if at all, and it is initiated by the patient, not the psychologist. An ancillary point, but one worth making, is that note-taking during sessions is questionable technique because the focus is on the recording process rather than on being attuned to the microdynamics of emotion, nonverbal comportment, body language, defensive manifestations, transference projections, and subtle affective expressions that naturally occur during interpersonal exchanges versus being preoccupied with the content and only concerned about getting something down on paper (Mills, 2005). We are not physicians concerned about hospital charts. This also introduces a contrived medium, barrier, or threat that unconsciously communicates to the patient that the psychologist needs to have distance rather than being attuned in the most optimal way free from extraneous distractions.

A point that Bemister and Dobson do not consider is that case notes are not designed for the client or anyone else. They are private professional reflections and reminders to help clinicians in their work. They are privileged forms of information gathered from direct observation, patient disclosures, and speculative hypotheses recorded for the benefit of the psychologist. Above all else, they are the psychologist's *intellectual property*. They are not, I argue, to be shown to anyone or given away, and no one is entitled to view them. Our personal notes on clients are the psychologist's private and confidential thoughts that no one has the right to examine short of a court order. If patients were to view what the psychologist writes about them, it could dilute the focus of treatment and lead to a rift in the intersubjective field, if not destroy the relationship. If a psychologist were to voluntarily give a copy of their process notes to a client, this could be considered a countertransference enactment. If a request for notes were made by the patient, then it would become a therapeutic issue to explore and process, which speaks more to the working relationship rather than the content of the request.

Although clients may technically have a legal right to their files, I argue that they do not have a right to the psychologist's case notes. Case notes do not belong in (and should never be a part of) the clinical file because they are the private musings of the psychologist, which is privileged information (like in a confessional or legal chambers) and independent of a professional file. Introducing legal rights to a client who is not focused on that information in the

session is unwarranted and potentially countertherapeutic. This is one reason why the American Psychoanalytic Association (2009) advises clinicians to "refrain from documenting psychoanalytic treatment session by session." In this way, the psychologist and patient are protected from unnecessary exploitation.

What is not discussed further by Bemister and Dobson is how the psychologist's imposition of recordkeeping is not therapeutic in nature, colours the working relationship, and hinders progress. The need to superimpose this structure on the patient–therapist dyad contaminates the treatment frame and the transference dynamic. Such artificial frameworks placed on patients during natural conversations in session become a symbolic oppression that can be unconsciously operative in the background. If one were to follow these directives, then the client would potentially not remain in treatment.

When psychologists become too overtly concerned with avoiding complaints, ethical ambiguities, legal finger-pointing, policing by other organisational bodies, or civil lawsuits, then they are not thinking about the client's welfare or best interests, and instead are structuring their practices as a way of avoiding negative repercussions with different parties who have different self-interests, political motivations, and agendas that oppose one another. Here conflicts of interest abound. If looking for loopholes is our primary purpose, then we fail the patient from the start.

Overall, Bemister and Dobson's suggestions for recordkeeping appear mechanical and counterintuitive; this collapses the professional relationship into a legal business arrangement based on inauthentic modes of relatedness. Their specific recommendations analysed here do not engender trust, comfort, security, or protection from intrusion the patient expects and requires, but rather they may negatively affect the therapeutic milieu, which is an anathema to treatment efficacy. These sets of recommendations are foreign to the reality of independent practice; if psychologists were to follow them, it would predictably lead to a therapy that is destined to be prematurely aborted, one that could easily be avoided if the psychologist were to simply never bring up the issue of recordkeeping in the first place.

Psychologists should continue to be allowed to use their own autonomous judgment around recordkeeping, where context and contingency in the decision process rests on the psychologist's critical reasoning, and not be mandated by the profession to follow heavy-handed micromanaged prescriptions. If practicing psychologists were to adopt Bemister and Dobson's recommendations or make them part of the Canadian Psychological Association's *Code of Ethics*, then it will sully the public image of psychologists in clinical practice and likely bring our profession into disrepute.

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