



Springham, N. (2008) Through the eyes of the law: What is it about art that can harm people? *International Journal of Art Therapy: Inscape*. 13(2) December. UK: Routledge  
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This paper describes a case in the UK where a serious injury was sustained by a client as a result of an art activity in a clinical setting. This led to legal action and the establishment of negligence on the part of the practitioner and the organisation. The act of negligence centred on the vulnerability of the client to discern the imaginary from the real and the responsibility of the practitioner and the organisation to competently assess the client's vulnerability and respond accordingly. The article presents an important milestone in the issue of protection of the public when engaging in arts based therapeutic activity in a clinical environment.

As background to describing the case in detail Springham notes how the issue of safety and the arts has often been overlooked or minimised. He points out that art therapists have been attempting to raise the issue generally for many years yet only one point concerning safety is referenced in a recent government arts and health prospectus (Sandford 2007). Springham notes that while risk will vary greatly it is still as this case has shown important to take into account the extremes of responses. Springham aims to develop further thinking and language about this issue which has 3 key elements, the vulnerability of the participant/client, the type and aim of the art activity and the link between the art activity and the participant/clients' personal material.

Springham recognises that a range of art activities are offered in clinical and community settings across a wide spectrum and different professionals may be responsible for running them. In terms of managing risk BAAT's training and professional structures add value to minimise and protect against risk. The crucial question for Springham is "What is it about art that can harm people?"

The article is written with the client involved in the case, who remains anonymous but wishes the story to be told. Springham became involved as an expert witness for the case being made on behalf of the client. The setting of the incident was a service providing addictions rehabilitation treatment in England. Springham provided professional expertise on the matter of art based risk. He outlines in the article the processes of negligence cases and the law and how evidence and arguments are used to build cases and how negligence is defined: 'This is as a breach of duty, wrongful act or omission of action resulting in damage that was foreseeable.' From this Springham presents the evidence.

The practitioner of the art activity in question had several years experience as a counsellor and had completed 2 short courses which had the words 'art therapy' in their title. He had developed the

group program where the client was injured. The treatment setting was organised in 2 stages (assessment and treatment). The art activity was part of the treatment stage and was developed by the practitioner towards therapeutic aims including directed exercises. The activities were titled; 'art course', 'art education' and 'anger management using art'. However the client says he knew it as 'art therapy'. When the incident occurred the client had been struggling with his addiction and had recently experienced a significant bereavement. There were also some indications he had recently not complied with the 'no abuse of substances' policy on a couple of occasions however despite these warning signs he was moved into stage 2 of the process which involved 'treatment' and involvement in the art activity process. The incident occurred after a return from an overseas trip connected with the bereavement and was the first day of the treatment phase. In the group art activity the directive was to 'portray all of the bad things in our lives, the guilt we felt about what we had done and everything negative into the drawing of an animal.'

The client drew a 'hyena with blood coming from its mouth', representing a scavenger with no conscience or morals. This led to an upsurge of rage and distress. When the practitioner asked him 'what he would like to say to the animal' the client said he 'didn't want to say anything but swear and rip it up, punch and smash it.' The client says 'the leader encouraged him to express himself and go with the feeling.' This triggered a torrent of uncontrolled action where the client punched and head butted the image trying to destroy the picture. In this act the client injured himself resulting in partial tetraplegia.

Springham links the management of developing art activity on therapeutic programs with the clinical governance required of art therapists by the NHS. As an art therapy manager he notes the expectation is to appraise the risks in the development of treatment and match staff competence to the identified risk. In this case the practitioner did not have adequate skills for the way art was being used. There was a breach in the organisation allowing the practitioner to assume the role of an art therapist and not seeking advice from the Health Professions Council.

There is an expectation that therapists will be able to assess and offer treatment that would not take a client beyond their tolerance for heightened emotional states. The service was in possession of the history that indicated vulnerability but it failed to make sense of the data. Placing the client in the treatment phase was contraindicated and the use of such an art exercise was poorly chosen as it provoked splitting and a collapse between the real and the imaginary.

The legal case then had to establish the action of the client was not due to any other cause or medical variable such as a brief psychotic disorder, dis-associative trance or drug induced psychosis. This was ruled out by another expert witness (Psychiatrist) and the outcome was the art itself was part of the issue.

Springham goes on to show how arts have power to help as well as harm through the power of suspension of disbelief which makes us feel as if we are experiencing something beyond the concrete presence of the object. Evidence from the arts suggests objects/images become real and alive to a range of degrees, e.g. feeling emotionally moved by films or images.

“It would be unreasonable to argue that the general population’s reaction to art is always determined by temporary mental illness”.

From here Springham puts forward the implications for the debate on risk in the arts and health field. The injury was sustained by a practitioner working beyond their competence. The technique used was too strong. The recognition of the power of art to make inner states real was the basis of the proof.

Art therapy is concerned with exactly this process and the moderation between the real and the imaginary, what is felt to be real and known to be not. This ‘as if’ state is one the art therapist has expertise to understand, assess and work with.

Springham suggests these kinds of incidents are not uncommon but they are undocumented. He considers that safety is determined by the practitioner’s skill in assessing general psychological disposition and how art as a process is likely to interact with their mental state.

This article highlights the risks organisation bring on themselves when they work beyond their competence in offering programs which use art therapy, no matter how it is described, naivety in this case caused the injury.

“The art sessions at the centre drifted from being about art to becoming a psychological intervention. Lack of knowledge, skills and supervisory structures allowed unwitting role slippage. The arts practitioner is often not equipped to spot the slippage at the early point but an art therapist is.”

Springham concludes art therapists could be employed to scope out the risk factors in organisations and provide supervision. The legal view has now established art can carry risk and injury is foreseeable if vulnerable people are exposed to it. Art has power but it is not always innately helpful. This work builds the case for the need for protection of the public in the therapeutic use of the arts.

Reference:

Sandford. (2007) Patient and staff safety. In *A prospectus for arts and health* (p.87) London Arts Council/Department of Health.