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D.2 Ethical and Legal Issues in Group Psychotherapy

EDWARD L. PINNEY, JR., M.D.

Introduction

With group psychotherapy now an established practice, issues of ethics and legal aspects have become increasingly important. While the American Group Psychotherapy Association is in the process of formulating a code of ethics, group psychotherapists must rely on the ethical codes promulgated by their specific professional organizations. Psychiatrists and psychologists already have explicit ethical codes. Other professionals in the field of group psychotherapy follow codes of ethics of their particular oganizations; however, codes for psychiatrists and psychologists provide principles significant for all. In this chapter, the principles of ethics for psychiatrists will be followed, since they are applicable to the many categories of behavioral scientists who work in the group psychotherapy mode.

Issues

At the beginning of the series of new group psychotherapy sessions, the therapist and the group members work out a contract. This agreement specifies the time and place of the group meetings, the duration and frequency of the sessions, arrangements as to fees and missed appointments, how tardiness is to be handled, the confidential content of the discussions, and prohibition of physical assault or sexual contact between group members. Principles of ethics demand that the therapist keep his part of the contract as perfectly as possible; he is supposed to be in control.

AGGRESSION

Rarely should a therapist have to physically restrain a group member. It seems faintly possible that a severely ill group member with almost nonexistent self-control may become assaultive. Physical restraint or assault in self-defense could conceivably be required by the therapist. Assaults between group members are known to have happened.

Technically, the group psychotherapist must scrutinize his behavior in relation to assaults between patients. Assaults cannot always be averted or predicted. If they happened repeatedly in a group, the therapist would be ethically bound to examine himself and his therapeutic techniques.

SEX

Sexual activity is a more complex issue than aggression. A group psychotherapist should not have sexual relations with a member of his group. Group patients can be vulnerable to suggestions both overt and unwitting from the therapist, and sexual activity can often be provoked by the therapist. Again, training can help a therapist know how to avoid provocative behavior.

Certain clients and patients by their nature can be seductive, sexually and otherwise. They not only can excite the therapist to join their protest against whatever perceived wrongdoer they find, but can suggest a closer personal relationship. These approaches are antitherapeutic and can lead to unethical and illegal behavior.

Of course, group psychotherapists have the potential to be provocative and seductive themselves. Training and a sense of ethical behavior serve to attenuate these trends.

As to sexual relations between group members, this cannot always be avoided. The therapist is responsible for this behavior, due to his position as the leader of the group. He is like the captain of a ship, ethically—and sometimes legally—responsible for all that goes on.

The therapist must try to avoid this kind of activity. Patients come to group psychotherapy for help with the cognitive and emotional disturbances they have in interacting with other people in their everyday lives. Group psychotherapy cannot provide an adequate substitute for worthwhile social relationships; to make the relationships in the therapy group a substitute for the real thing is to jeopardize the goals of a healthy therapy.

CONDUCT

Ethics refers to the moral relationship of each individual to his social group. Acceptable conduct is determined by ethical and moral standards. Legally, behavior is regulated by common law (judicial precedent) and statutes. Unethical conduct has no specific penalty, nor is it enforced by government agencies, such as the police. What is unethical is frequently not illegal, and at times what is legal appears grossly unfair, immoral, and unethical.

In group psychotherapy, the ethical and legal issues generally concern the group psychotherapist. Patients in group psychotherapy are assumed to be ethical suffering people who can be relieved by group treatment. The contract between the group members and the group leader is similar to legal issues involving the group therapist in that the contract is specified and made definite, usually at the beginning of the therapy group. Confidentiality is legally required of the therapist, and ethically required of the patients in a group.

LICENSURE

Legal requirements for a group psychotherapist vary according to the location of the practice of group psychotherapy. For example, in Texas, psychotherapists are licensed as a special occupation. In New York, anyone can call himself a psychotherapist without restriction. Group psychotherapists are included in both areas, either regulated or unregulated. Group psychotherapists must be aware of the local requirements or run the risk of legal action.

Ethical qualifications to practice group psychotherapy are in effect everywhere. They have to do do with the ideals for group therapists; the ethical requirement that the group psychotherapist should be adequately qualified is an example of this.

Obviously, the ethical requirements concern preparation to do group psychotherapy. Specific training in psychotherapy and group psychotherapy is required. To put one's self forward as a group psychotherapist when one is not trained and has but his own very private approach not only deprives the patients of adequate treatment, but prevents their getting adequate treatment elsewhere and can leave the patients disillusioned with group psychotherapy.

Syllabi are generally related to the standard textbooks of group psychotherapy. The training usually emphasizes supervision, observation of groups in progress, sometimes co-therapy experience, a personal group experience, and didactic material imparted by lectures, reading, discussions, and workshop seminars.

Qualifying organizations for group psychotherapists exist. They are sufficiently flexible to permit individual variation in style, and are accessible to new developments yet emphasize the known and reliable techniques. In the United States, the American Group Psychotherapy Association standards for membership emphasize the training requirements for membership, while leaving the content to the training institutions.

Basic training is not sufficient to meet ethical standards for continuing practice. "A lifetime of learning" is the expression of the principles of ethics of the American Psychiatric Association.

Technical expertise and ethics are inseparable. In psychotherapy, integrative insight-oriented psychotherapy requires that patients and clients be helped to understand the outer reality of the external world better, as well as to understand better the inner reality of the psyche. Supportive psychotherapy in groups requires that clients and patients be assisted in better using their perceptions of reality in a practical way.

In both great areas of group psychotherapy—integrative or insight-oriented therapy and didactic, inspirational, or supportive therapy—the reality orientation is ethically required. Therefore, ethical treatment is reality oriented. Truth demands statements that correspond to objective reality. Philosophically, the truths of psychotherapy and mental activity are so overdetermined as to allow much flexibility in the supportive therapy of unrealistic patients.

Generally, honesty and fair dealing are required of the group psychotherapist. The group psychotherapist must be an ethical person for his patients to benefit from the example he shows.

The group psychotherapist is also ethically obligated to observe proper behavior as to fees, time obligations, and the formal requirements of all therapists. If appointments cannot be kept, or time commitments for the duration of sessions have to be curtailed, arrangements should be made for remission of all or part of a fee.

EXPLOITATION

The therapist is also required to avoid exploiting his group to further his political or other special interests. Unusual forms of dress or behavior on the part of a group psychotherapist also serve to inject into the lives of patients an unnecessary complication.

Personal problems of the psychotherapist that interfere with his ability to give his full attention to his patients should be dealt with elsewhere. At times, the group psychotherapist should avoid seeing patients when a personal problem distracts him from using his full capabilities. He should not see patients when he is only half-alert or half-competent.

Patients frequently are troubled by their fears of others and by their difficulty in being able to trust. Ideally, they succeed in group psychotherapy when they are basically honest and able to trust the group psychotherapist. The group psychotherapist must be above reproach to meet his part of the therapeutic contract. Mutual trust and respect can lead to meaningful handling of intimate personal data by the patients in the group. This effort at trusting the several strangers within the group is a basic tenet to group psychotherapy. (This differs from individual psychotherapy, in which the therapist alone has to be trusted.)

A tentative kind of trust between group members occurs at the beginning if a group is to develop. Group members try out one another and the therapist. Ideally, trust develops as the group proceeds. Untrustworthy members of a group reveal themselves as

unreliable. They may work with whatever makes them untrustworthy, drop out, or be asked to leave.

CONFIDENTIALITY

Confidentiality, based on trust, is considered essential to successful treatment. In two cases of individual treatment, Lifshutz and Caesar illustrate some of the problems.

In early December 1969, Lifschutz had been sent to jail for contempt of court for refusing to disclose the content of his therapeutic communications with a person alleged to be a former patient. The patient had entered his emotional condition into a lawsuit for damages. Lifschutz was ordered to produce his records. He refused on the basis that to release the information would seriously damage other current and future patients by causing them to fear that what is told to the therapist may be revealed on the witness stand. He argued also that the patient cannot possibly know the full content of the information he is releasing and, therefore, cannot give informed consent.

By May 1970, Lifschutz's situation had been clarified by several court appeals, so that extraneous or potentially embarrassing information would be excluded. Lifschutz testified that he had treated the patient and gave the dates of treatment but no further details. This satisfied Judge Melvin Cohn, and contempt of court charges were dismissed.

George Caesar's experience was described as a one-man test of the law on privileged communications. In December 1969, Caesar saw a patient for psychiatric examination and treatment following an automobile accident. He saw her 20 times for psychotherapy. The following July and August 1970, she filed personal injury actions to recover damages in the Supreme Court of California. In April 1972, her attorneys questioned Caesar. He refused to answer information which would be harmful and detrimental to the patient, since no consent had been obtained from the patient, and answers might not be relevant.

He was ordered by the court to answer the questions. In the meantime, the patient saw another psychiatrist and based her claims on his findings.

Later, Caesar answered some questions for the defendant's attorneys but refused to answer others he thought would be unethical to answer, and he was held in contempt of court. He appealed the decision through the courts to the United States Supreme Court, where in April 1977 his petition was denied.

Caesar then spent 3 days in jail, after which he still refused to testify in the case. His legal fees were reported to total $28,000.

The therapist is ethically and legally bound to keep confidential the material of what transpires in group sessions. If he reveals confidential information about his treatment, he likewise exposes his unreliability.

TRAINING

Group experiences for training purposes illustrate the importance of confidentiality. Members of experiential groups for training become very much aware of their concern about exposure of weaknesses they fear might impair their potential capability as therapists. These vulnerabilities can be exposed in the training group, though they are not carried out to such an extent as in a therapeutic group. It is undesirable and potentially unethical for the therapist in a training group to allow development of an intensity of emotional reactions that will interfere with the functioning or interpersonal relations of those in the group. In training institutions, serious damage to the careers of beginning therapists has resulted from improvident occurrences in experiential groups for training.

Legal Aspects

Confidentiality as an issue leads from the ethical to the legal aspects of group psychotherapy. Confidentiality is both an ideal and a technical requirement; and the legal aspects of group psychotherapy stem from this aspect.

There are two sources for our laws: (1) laws enacted by various law-making bodies or governmental administrative regulations based on delegated legal mandates and (2) law based on judicial decision and precedent.

It is instructive to remember that our system of courts and trials is an adversary system, stemming from the ancient trial by combat. Intrinsically, there is no relation between what is legal and what is ethical. It is the ideal in a representative government that the lawmaker will be just and fair. The combat in the courts and of the elective process continues to be our safeguard in this area.

The group psychotherapist who does not keep the content of group sessions confidential is legally and ethically liable. He can be sued for his breach of confidence if he betrays his patients, though this kind of suit is not common.

Legal cases, based on the involvement of a member of a psychotherapy group in a case in which other members of the group are to be called as witnesses, raise issues of privilege and confidentiality. Privileged communications legally occur in English and American common law only between an attorney and his client. This means that a court cannot force an attorney to tell anyone what his client has told him about what has already happened. This privilege has been extended to include information given by a patient to his doctor, but this is not absolute. A third person present when a communication occurs that would ordinarily be privileged can take away the privilege and make the communication available to a court. Various aspects of this dilemma in group psychotherapy are apparent.

Confidentiality was voided in a case of joint therapy of husband and wife. In early 1979, a Virginia circuit court judge ruled: "When a husband and wife are in counseling session with a psychiatrist which is between the husband and wife, there is no confidentiality because the statements were not made in private to a doctor but in the presence of the spouse."

Although this decision does not directly involve group psychotherapy, it has a potentially inhibiting

influence on clients and patients who need to speak freely to gain the benefit of their group psychotherapy.

An attorney who is told by his client that the client intends to commit a crime is ethically obligated to take action to prevent the commission of such crime. From this legal practice came the recent decision that psychiatrists were similarly obligated.

In a pre-1970 decision (Tarasoff), the California Supreme Court held that "when a therapist knows that his patient is likely to injure another and the therapist can ascertain the identity of the intended victim, he must use reasonable care from causing the intended injury."

In 1978, Daniel Greenson was said to have the duty, based on the Tarasoff decision, to warn the parents of a patient that she was potentially suicidal. The California Apellate Court dismissed the case against Greenson, commenting that "the court did not hold that such disclosure was required where the danger presented was that of self-inflicted harm or suicide or where the danger consisted of a likelihood of property damage." Instead, the court recognized the importance of the confidential relationship which ordinarily obtains between a therapist and his patient, holding that "the therapist's obligations to his patient require that he not disclose a confidence unless such disclosure is necessary to avert danger to others . . .." It continued that "Tarasoff requires that a therapist not disclose information unless the strong interest in confidentiality is counterbalanced by an even stronger public interest, namely safety from violent assault."

Conclusion

In group psychotherapy, there are practical consequences of legal and ethical realities that can interfere with treatment. Though these issues seldom arise, the group psychotherapist must be taught and know these ethical and legal mandates for both himself and his patients. Since good treatment is ethical, then ethical behavior is a requirement for competent group psychotherapists.

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