

# Confidentiality

## Avoiding Liability Bulletin - April 2014

NOTE: In the [February 2014 issue of the AVOIDING LIABILITY BULLETIN](#), I raised many questions for the reader's thought, research, and discussion with colleagues. The questions were on a variety of topics, arranged alphabetically. Some of those questions, with my answers, follow. The answers are brief and are not intended to be a thorough exploration of the topic. (In the [March 2014 issue of the AVOIDING LIABILITY BULLETIN](#), I answered questions raised on the topics of barter, neglect, violence toward patient, and taking a zoo trip with patient.)

What is the right of an individual participant in group therapy to confidentiality? Should (or must) practitioners ask group participants to sign a form where they each promise to keep as confidential the content of group member communications?

**DISCUSSION:** An individual participant in group therapy is entitled to confidentiality. The mental health practitioner is under the usual duty of confidentiality, and practitioners should inform patients of the fact that their confidentiality will be respected and protected. Of course, any such disclosures about confidentiality would include the exceptions to confidentiality, or at least the major or common exceptions, whether required or permissive. These disclosures are best made in writing, and they may be required by applicable laws, regulations, or ethical standards.

The ability to differentiate between confidentiality and privilege (dealing with the practitioner's testimony or the production of business/treatment records in a court proceeding) is important. Practitioners should be prepared to discuss with group participants whether the psychotherapist-patient privilege may be properly asserted by a participant, or whether the privilege has been compromised by the presence of others during the course of therapy. In California, the statutes provide, in essence, that there may be joint holders of the privilege and that if the persons present in the session are there to further the interest of the patient in the consultation (the treatment), then the privilege is not lost.

Just as with family therapy or couple therapy, a participant in group therapy may intentionally or negligently reveal confidential information to one or more persons who are not participants in the therapy – whether a friend, family member, or a stranger. The duty of confidentiality is not held by patients – that is, patients (including those in individual therapy) may reveal to others the content and purpose of the therapy, the diagnosis, and/or the communications that are made during the course of therapy. Thus, any member of the group may, at some time, talk about other individuals in the group, including their identity and the content of their communications.

Everyone in the group is likely interested in protecting the privacy of their own actions and communications. A mutual promise or assurance of confidentiality may help participants feel free to share their feelings, thoughts, and actions, and it should not be difficult to get members of the

group to agree to keep participant (patient) identifiable information and communications confidential. This agreement can be reduced to written form and signed and dated by the participants. Essentially, each of the participants would be promising or agreeing to keep the information garnered during the course of the group therapy confidential – at least with respect to the identity of the individual participants. Depending upon the particulars of the written agreement, and depending upon state law, the enforceability of such an agreement, if and when a breach occurs, varies.

Thus, whether or not a member of the group can properly and successfully sue another member of the group on a breach of contract and/or breach of confidentiality or invasion of privacy theory will depend upon the particular facts and circumstances, the content of the written agreement, and state law. Even if not enforceable, such an agreement may help to protect confidentiality and privacy by inhibiting disclosures. Such agreements are typically not required by state law or regulation, but rather, their use is optional. Some practitioners may not want to require, as a condition precedent to group therapy, a signed agreement, and may address this aspect of confidentiality otherwise. For example, they may discuss the topic with the group and document the discussion in the group treatment records.

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