Ethical Dilemma:

Death Threat and Duty to Warn Dilemma in Group Counseling

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Death Threat Ethical Interventions in Group Counseling

The Ethical Dilemma

This case concerns an incident in an anger management group for men in a family agency setting. Members eligible for this group have a desire to develop better skills for coping with situations that make them angry, and/or managing their angry outbursts, in some cases rage, in a way that is not relationally destructive. Members are selected on a voluntary basis and must undergo a brief screening process. It is a 13 week program and the current case has eight male members aged 25-33. Two licensed therapists act as group co-leaders, a male LCPC and a female LCSW.

During the prescreening interviews, members were evaluated for their involvement with the court or legal system, as well as for formal history of substance abuse issues, assessed for suicidal and/or homicidal lethality, and were admitted based on their commitment to complete the program. Prior to the first session, every group member completed an Informed Consent agreement which included details on the group’s standard privacy policy, the confidentiality agreement and the group’s consequences for breach of confidentiality, and the therapists’ credentials.

For the first four weeks the group had joined well, followed the weekly curriculum agenda, and resistance was exposed. Week 5 was the beginning of the dilemma for the co-leaders. One of the members, Bill, a 25-year old auto mechanic seemed very withdrawn and would not engage with the members or therapists. After the session ended one of the members, Jim, called the male therapist and informed him that during a phone conversation with Bill after the session, Bill revealed alarming information. Bill’s girlfriend had moved out the day before the session, taken their two children with her, and moved in with another man. In addition, she
identified this man to be the father of the baby she is expecting. Bill told the group member, Jim, he could not deal with this and would kill the kids before he would ever let them be raised by that “tramp” and the father of her baby.

**Ethical issues to address and questions to answer.**

1. What are the responsibilities of the group leaders? Who must they inform?
2. ACA and AACC codes state what?
3. Was informed consent done properly? Was disclosure complete? What are the limits of confidentiality?
4. Was group prescreening process adequate?
5. What cases support the decisions/actions of the group leaders?
6. What are some ethical and legal options to consider? (Protective Order)
7. How can professionals take appropriate steps to demonstrate that a reasonable attempt is being made to protect the well-being of the would-be victims?
8. What criteria must therapists use to determine whether the situation is dangerous enough to warn a potential victim? What is the fine line between overreacting and failing to respond appropriately in this kind of case?
9. What does it mean to exercise reasonable professional judgment?
10. Given this case scenario, don’t therapists have a duty to protect Bill as well, since he is also likely to injure or kill himself? Should we also address his possible suicidality?
The Offered Solution

Introduction.

Handling the legal and ethical issues in leading a group of men in an anger management therapy group can pose many challenges. The dilemma for mental health care professionals surrounding the requirements to preserve confidentiality in a therapy group when there is a potential for danger or harm is a difficult one. If information indeed is required to be kept confidential and harm results from not breaching privacy, the real possibility exists that the therapist will face legal action for negligence and for failure to protect from harm. On the other hand, if privacy is breached and no harm comes to the intended victim, there remains the possibility that the therapist will face legal action for violating the privacy of the client and possibly risking loss of licensure to practice as well. This paper examines the ethical issues surrounding a duty to warn and confidentiality in group counseling.

The American Counseling Association (ACA) Code of Ethics is the code that professional counselors must follow (C.1). In developing ethical interventions for our anger management case, while we had to consider the ACA Code in its entirety, we chose areas that clearly had to be addressed by the dilemma posed. Further, we considered the legal ramifications of adhering to the ACA Ethics Code when it was in conflict with legal considerations (H.1.b). This clearly outlines ACA’s position that counselors are committed to upholding the Code of Ethics and in the event of a dispute with “law, regulations, or other governing authority,” only after unsuccessfully resolving the conflict will the counselor yield to the law in question.

Ethical issues.

Regarding the death threat in our anger management case scenario, the following areas of ACA Code specifically concerned the case constructed: Section A, The counseling relationship (A.2.a.
Informed Consent, A.2.b. Types of information needed, A.4.a. Avoiding harm, A.8.a Group Screening; A.8.b Protecting clients in groups); Section B, Confidentiality, Privileged Communication, and Privacy (B.1.b. Respect for Privacy, B1.c. Respect for confidentiality, B.1.d Explanation of Limitations, B.2.a. Danger and Legal Requirements); and Section E, Evaluation, Assessment, and Interpretation (E.3.1.a Explanation to Clients; E.5.a. Proper Diagnosis; E.6.a. Appropriateness of Instruments; E.8). Further, it is acknowledged that there is an overarching need to be culturally sensitive and this is considered in every part of the process. Because the anger management group was in a public agency setting, it was believed that it was imperative to follow the strictest interpretation of the ethics’ code. Legal issues

In addition to ethical constraints, therapists have the legal obligation to prevent their clients from physically harming themselves or others. Landmark court cases have shed new light on the therapist’s duty to violate confidentiality in some cases in order to warn and protect both clients and others who might be injured by a dangerous client.

After analyzing the legal literature, Bednar and his colleagues (1991) concluded that practitioners need to integrate legal and professional issues into their clinical practices in such a manner that care of clients is not compromised. They maintained that counselors must exercise the ordinary skill and care of a reasonable professional in (1) identifying those clients who are likely to do physical harm to third parties; (2) protecting third parties from those clients judged potentially dangerous; and (3) treating those clients who are dangerous. The authors recommended that practitioners “take reasonable precautions in record keeping and collegial consultations that will most dramatically reduce the chances of successful malpractice suits” (Bednar, et al., 1991, p. 59).
As created by the courts, the responsibility to protect the public from dangerous acts of violent clients entails liability for civil damages when practitioners neglect this duty by (1) failing to diagnose or predict dangerousness; (2) failing to warn potential victims of violent behavior; (3) failing to commit dangerous individuals; and (4) prematurely discharging dangerous clients from the hospital (APA, 1995). Several of these legally prescribed duties are illustrated in the case of Tarasoff v. Board of Regents of the University of California -- which has been a subject of extensive analysis in the psychological literature -- and Hedlung v. Superior Court.

Under the Tarasoff decision, the court’s ruling required therapists to breach confidentiality in cases where the general welfare and safety of others are involved. In the first ruling, in 1974, the lower court indicated a “duty to warn.” This duty was expanded by the California Supreme Court into a “duty to protect,” in Tarasoff II, which effectually mandated practitioners a duty to protect third parties from dangerous clients. The Tarasoff decision made it clear that client confidentiality can be readily compromised; indeed, “the right of clients to privacy ends where there the public peril begins” (Fulero, 1988).

The decision in Hedlung v. Superior Court extends the duty to warn to anyone who might be near the intended victim and who might also be in danger. In keeping with the Tarasoff decision, the California Supreme Court held (1) that a therapist has a duty first to exercise a “reasonable degree of skill, knowledge, and care ordinarily possessed and exercised by members of that professional specialty under similar circumstances” in making a prediction about the chances of a client’s acting dangerously to others and (2) that therapist must “exercise reasonable care to protect the foreseeable victim of that danger. One way to protect the victim is by giving a
warning of peril. The court held that breach of such a duty with respect to third persons constitutes “professional negligence” (Laughran & Bakken, 1984).

Many factors are involved in what attorneys refer to as “discharging your Tarasoff duties.” While therapists are mandated to take reasonable and necessary steps to protect the potential victim(s), each situation is unique and course of action will be guided to a great degree by the specific circumstances. Because of the legal and ethical obligations of duty to warn and protect the public, mental health practitioners need to keep an eye on update rulings of the Tarasoff decisions.

The 1976 Tarasoff case set the standard for duty to warn and protect which has guided counselors’ judgment about whether or not to report at the expense of confidentiality. However, a recent Texas Supreme Court ruling has created uncertainty. The Court’s opinion (Thapar v. Zezulka) stated that, “… mental health providers in Texas do not have a duty to warn and protect their clients’ known and intended victims” (Barbee, W., Combs, D., Ekleberry, F., & Villalobos, S. (2007).

Solution to Ethical Dilemma

The question of whether or not -- or how -- to break confidentiality and the need to determine whether or not there was a duty to warn hinged on the specific points of our scenario. The anger management group was of a voluntary nature and not designed to accommodate either court remanded members or member with a violent history; rather, the group was designed and advertised for men with “a desire to develop better skills for coping with situations that make them angry, and/or managing their angry outbursts, in some cases rage, in a way that is not relationally destructive” (Buckingham, et al., 2009). Because it was understood by the leaders
that this would be a volatile group with the potential for hostility and aggression all candidates were prescreened prior to admittance into the group.

The screening included the completion of a cognitive-behavioral interview by the agency psychologist and a Novaco Anger Scale (NAS) test (Novaco, 1979). The NAS has an A and B part; part A tests how people think, feel and react to anger and part B tests reactions to anger-provoking situations. The agency also gives the NAS as a retest to participants at the end of the 13 therapy sessions for co-leaders to compare scores and the effectiveness of the therapy. The NAS was carefully selected as a screening instrument and tolerable pre-admittance scores were identified (E.6.a.). In addition, candidates were assessed for diagnoses that contraindicated their inclusion as group members (E.5.a.)

The interview was the same for all candidates and addressed such issues as how often a candidate would lose his temper; what happens before, during, and after temper loss; and what might be an alternative ways of dealing with the situation. The interview concluded with an assessment of motivation to complete the course. During the prescreening interview for candidates, the limits of privacy and confidentiality were fully discussed with each potential member (A.2.a., A.2.b.). It was thoroughly explained that privacy was limited and would be waived in the event of concern that a member would harm himself or another and further, that in group therapy the therapist cannot guarantee privacy since all group members may not abide by the group norm. After clarifying this, the candidates were not admitted to the group unless they agreed to and signed the Informed Consent agreement (See Appendix A).

During his prescreening interview, the client Bill, denied any involvement with the court or legal system, and denied any prior history of violence or aggression, suicidality or homicidity. The NAS test was administered and Bill’s score was within the acceptable range.
for admittance. Bill was deemed an acceptable member for the group and was invited to participate.

The incident being discussed occurred after the 5th session of 13 sessions. After the session, one group member, Jim, was called by another group member Bill. Bill revealed that his pregnant girlfriend had moved out, taken their two children, and moved in with another man she identified as the father of the baby she was expecting. Bill was distraught and told Jim that he would kill her rather than let her and her new boyfriend raise the children. Jim then called one of the leaders.

At that time, Bill had not completed the program, had not graduated with the skills needed, and had not benefitted from learning how to manage his anger and had not completed the NAS retest to determine whether or not he had gained his skill at managing anger. Even if therapists have become familiar with local, state and federal laws that govern their profession, legal knowledge alone is not enough to enable them to make sound decisions. Each case is unique. There are various and sometimes conflicting ways to interpret a law, and professional judgment always plays a significant role in resolving cases. Further, therapists use a standard best practice ethics for decision making; that is, would the action taken agree with what another therapist would have reasonably done. After considering the law and ACA code and before intervening, our group leaders consulted with four licensed professionals. The decision to seek consultation is required based upon ACA code H.2.d, which states: “When uncertain as to whether a particular situation or course of action may be in violation of the Code of Ethics, counselors consult with other counselors who are knowledgeable about ethics, with colleagues, or with appropriate authorities.”

The options discussed went from the least to the most intrusive. They were:
1. To do nothing at the present and see what developed at the next group session. This was the most problematic solution. There was no guarantee that the member would return and the possibility existed that harm could occur with full ethical and legal responsibility accruing to the leader for failing to take any action. This action would violate Section A of the ACA Code, a duty to warn, which limits confidentiality.

2. To call Bill and inform him that the leaders had been made aware of the threat. The leaders would try to discern the seriousness of the threat and then to decide what further action to take. This was also problematic in that it opened the door to retribution to Jim from Bill for violating Bill’s confidentiality. According to ACA Code Section A.9.b, in a group setting, counselors take reasonable precautions to protect clients from physical or psychological harm. Therefore, disclosing to Bill that the group leaders were made aware of the threats against his ex-wife and boyfriend would possibly cause harm to other group members. Furthermore, the leader would not be able to determine the validity of any statement Bill might make when confronted with the concern and harm could still occur.

3. To contact the girlfriend and her new boyfriend and warn them of the threat, recommending the girlfriend and children go to a shelter and obtain a protective order for her and her boyfriend. The problem with this option was that the names and whereabouts of the girlfriend and her boyfriend were unknown.

4. To contact the police and inform them of the threat that Bill had made that was brought to the attention of the group leader. At that time, the leader would be able to give his opinion on the dangerousness of Bill based on the intake evaluation and Bill’s performance in group.
The group leaders concluded that Bill posed a credible danger to his girlfriend and her new boyfriend based upon his history and difficulty with controlling anger. His decision to inform the police in order to warn the intended victim and to protect his client from putting himself in harm’s way was reinforced by the other therapists. The police were notified immediately. Protecting a client’s right to privacy while adhering to the duty to warn intended victims is a nuanced decision and can be even more difficult when working with groups. When responding to a death threat within a group setting, the following guidelines depict counselor’s responsibility to provide reasonable and prudent care: consult with other professionals when in doubt about the ethical or legal responsibility; warn the intended victim but as discreetly as possible in an effort to protect the client’s confidentiality; notify the local law enforcement agency; call the police in the precinct nearest to the client; contact relatives or others who can apprise the potential victim of the danger; initiate voluntary or involuntary commitment (which shifts the burden of decision-making to the courts); finally, document all observations and efforts.

In summary, group work requires that clients be screened for potential harmful behavior and informed of all the limitations to confidentiality inherent in therapy groups. ACA Code, legal precedent, and good clinical judgment suggest that therapists implement as many of these options that are reasonable, appropriate, and which observe state laws.
References


