

### Some Ethical Issues for Psychotherapists

By Joseph Nicolosi, Ph.D.

In a previous *Bulletin*, we published an interview with O. Brendt Caudill, Jr., a Tustin, California-based lawyer who represents psychotherapists in malpractice cases.

Mr. Caudill offered some good advice for therapists which I'd like to reiterate here.

As sexual-reorientation therapists, we must be especially careful to clarify our position about homosexuality in the first session. The client should sign a specific "consent to treat" form, kept with our case notes, which says that we will provide assistance in overcoming unwanted homosexual attractions. The client must understand that there is no guarantee of success, and that therapy may produce life changes that could be difficult to deal with.

A very specific "consent to treat" form is especially important when the therapist is providing any unusual form of therapy. This form should also clarify that there is serious controversy in the profession about change of sexual orientation.

#### Malpractice Case Scenarios

Mr. Caudill has seen two different problematic scenarios which seem to repeat themselves in legal cases. About a half-dozen times, he has represented heterosexual woman therapists who had never had a lesbian relationship, but became sexually involved with a lesbian client, who later sued them. Also perhaps a half-dozen times, he says, an openly gay patient made claims of sexual impropriety against the therapist (who was either gay or straight).

"I have seen quite a few cases where the therapist was straight and the client was gay, and the client developed an obsessive interest in the therapist that got very ugly and involved false claims against the therapist," he said. "I saw one case where a lesbian client actually sued a straight female therapist for *refusing* to have sex with her. Although the psychologist had acted ethically, the insurance company settled the case out of court—without the psychologist's consent—and gave the plaintiff money, just to avoid the expense of a court case. The psychologist in turn sued her insurance company for settling the case without her consent, because this left her with a malpractice settlement on her record."

As for therapists who do sexual reorientation therapy, Mr. Caudill said, "the malpractice cases that come to mind usually involve Christian therapists whose clients claim they coerced them through religious guilt about their homosexuality, or some other morally proscribed behavior. When the treatment has religious overtones, the therapist must be especially cautious."

#### Persuading a Client to "Try" Homosexuality

"I've also seen cases," he said, "where the client was confused about his sexual orientation and the ther-

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*"Victory on the Bow of a Ship"*

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apist was sued for "lobbying" the client to be gay—that is, over-persuading him at a time when he was struggling with sexual identity issues. In some cases, the female therapists actually gave the female clients an assignment to 'try' homosexuality."

"Far and away the most likely-to-sue client is the one with borderline personality disorder," he says. "Probably 70% of all malpractice cases involve borderline clients."

#### **Encouragement vs. Over-Persuasion**

This brings us to the important subject of "over-persuasion." The therapist who is willing to do reparative or conversion therapy is, as we know, "under the gun" in today's political climate. Knowing this, he must be particularly careful about the issue of "over-persuasion." Just as gay-affirmative therapists have faced ethical charges for urging conflicted clients to "try" homosexuality, likewise is the reparative therapist open to question if he does not respect the client's self-determination.

Although we as therapists believe that sexual reorientation is *possible* for some people and *desirable*, we have to be sure that the decision to pursue change *comes from the client*. We must not *over-persuade* him, although we can ethically *encourage* a client who expresses an openness to our position.

And yet, there is a problem with this distinction. The nature of the (male) homosexual condition is often a certain passivity, a certain avoidance, an indecisiveness—a helplessness about making life decisions. The client is inclined to use this passivity unconsciously to provoke the therapist into taking charge of his life and making decisions for him. The therapist has to be very careful of his own counter-transference, so that he doesn't assume the responsibility for the client's life. Always, the power should remain in the client's hands.

The decision to pursue change has to be examined within the larger context of the client's personality and his life as a whole. There must be an investigation of the client's motivations and whether or not the desire to change is authentic, and is indeed his own. The client must always feel the freedom to leave therapy, or to openly disagree with the therapist.

#### **The Problem of Balance**

It's a tricky balance for the therapist to avoid providing too much encouragement, because these men invariably *want* encouragement. They want a salient man in their lives who can convey the confidence and the belief that—in spite of what the culture tells them—*they can overcome*. But

at the same time, the therapist must never leave the client with the suspicion that he is being "sold" a particular viewpoint which he, the client, doesn't really share.

This becomes problematic when the client presents us with resistance to moving forward in the therapy. Almost every client (who is in therapy for whatever reason) will offer certain *predictable, unconscious defenses* against progressing. The therapist must determine if that resistance is truly an authentic expression—however half-hearted and unformed—of the *very real desire to leave and give up the attempt to change*, or if it is part of the normal and predictable resistance process. This is a delicate distinction.

The guiding principal here is for the therapist to watch his counter-transference and stay honest with himself, stay honest with the client, and really try to hear what the client is saying. Would he really like to stop struggling, but he's afraid to tell you? Has he changed his mind about what he believes homosexual feelings represent in his life? We must always be ready to accept that *the client must make the decision* as to which direction he will take in his life at any point in time.