



# Las Vegas Police Protective Association Metro, Inc.



To: Chris Collins, Executive Director  
LVPPA Executive Board Members

From: DAVID ROGER, General Counsel *DR*

Date: April 3, 2013

Re: PEAP Critical Incident Debriefings

## INTRODUCTION

Recently, you received a memo advising that our members should not discuss factual matters, concerning Critical Incidents, with PEAP officers. Based upon current law, PEAP officers do not qualify under any of the statutory privileges. Therefore, our officers are not able to have confidential communications with the PEAP representatives.

This memo will address whether our officers, who participate in PEAP sponsored Critical Incident Debriefing meetings, are protected by any of the statutory testimonial privileges. After an officer involved shooting or in-custody death, PEAP representatives invite subject and witness officers to meet to discuss the facts and circumstances of the event. While mental health professionals do not attend the meeting, some people believe that the discussion provides therapeutic value for the officers.

## DISCUSSION

NRS 49.209, Nevada's Psychologist and Patient Privilege provides, "A patient has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications between the patient and the patient's psychologist or any other person who is participating in the diagnosis or treatment under the direction of the psychologist, including a member of the patient's family."

Confidential communication<sup>1</sup> is defined as:

A communication is "confidential" if it is not intended to be disclosed to third persons other than:

(a) Those present to further the interest of the patient in the consultation, examination or interview;

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<sup>1</sup> NRS 49.207 (1) 9330 W. Lake Mead Blvd., #200 - Las Vegas - Nevada - 89134  
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(b) Persons reasonably necessary for the transmission of the communication; or

(c) Persons who are participating in the diagnosis and treatment under the direction of the psychologist, including members of the patient's family.

Subsection (c) which includes, "*Persons who are participating in the diagnosis and treatment...*" seems to encompass people who participate in group therapy sessions.<sup>2</sup> This interpretation is supported by the inclusion of family members in the definition.

While neither the Nevada Supreme Court nor the Ninth Circuit Court of Appeals provide guidance in the interpretation of this statute, several other jurisdictions have expanded similar statutes to include group therapy sessions.<sup>3</sup> In *State v. Andring*, 342 N.W.2d 128,133-134 (Minn. 1984), the Minnesota Supreme Court conducted an extensive analysis of the issue.<sup>4</sup>

The participants in group psychotherapy sessions are not casual third persons who are strangers to the psychiatrist/psychologist/nurse-patient relationship. Rather, every participant has such a relationship with the attending professional, and, in the group therapy setting, the participants actually become part of the diagnostic and therapeutic process for co-participants.

This point is more fully developed in Cross, *Privileged Communications Between Participants in Group Psychotherapy*, (Citation omitted):

*[T]he chief characteristic of group therapy that distinguishes it from individual analysis is that each patient becomes the therapeutic agent of the others \* \* \*. Effective social interaction*

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<sup>2</sup> The definition of "confidential communications" is identical in NRS 49.215 Doctor and Patient, NRS 49.246 Marriage and Family Therapist and client, NRS 49.2502 Clinical Professional Counselor and Client and NRS 49.251 Social Worker and Client privileges.

<sup>3</sup> However, the Ninth Circuit has taken a very liberal approach to the social worker privilege by extending the protection to Employee Assistance Programs. *Oleszko v. State Compensation Ins. Fund*, 243 F.3d 1154 (9<sup>th</sup> Cir. 2001).

<sup>4</sup> *Accord, Daymude v. State*, 540 N.E.2d 1263 (Ind. Ct. App 1989).

*within the group is therefore a crucial prerequisite to group therapy. The type of interaction required can only be achieved, however, when group members respond to each other spontaneously, both in their speech and their actions \* \* \*. No group participant would make himself vulnerable to community scorn and loss of spouse, job, or freedom by placing his most secret thoughts before the group, unless he could be assured of confidentiality. \* \* \* [S]ociety should certainly foster a relationship that has an important prophylactic effect and thus shields both society and the patient from the consequences of antisocial behavior. \* \* \* [A]lthough there may be occasional losses [of relevant important information] such sporadic occurrences are overshadowed by the potential destruction of the therapeutic relationship.*

An interpretation which excluded group therapy from the scope of the psychotherapist-patient privilege would seriously limit the effectiveness of group psychotherapy as a therapeutic device. This would be particularly unfortunate because group therapy is a cost-effective method of psychotherapy in that it allows the therapist to treat a number of patients at the same time. It is also more effective with some patients, who, upon hearing other people reveal their innermost thoughts, are less reluctant to reveal their own. Many commentators agree that the psychotherapist-patient privilege should be extended to include group therapy. (Citations omitted.) Because the confidentiality of communications made during group therapy is essential in maintaining its effectiveness as a therapeutic tool, we answer the certified question in the affirmative. We hold that the scope of the physician-patient/medical privilege extends

such sessions are an integral and necessary part of a patient's diagnosis and treatment.

Id.

Similarly, other courts have concluded that third parties who are present during therapy sessions are essential to aid with communications; thus, there is no waiver of confidentiality. *In re Grand Jury Investigation*, 908 F.2d 374 (3<sup>rd</sup> Cir. 1990); *Cabrera v. Cabrera*, 580 A.2d 1227 (Conn. App.Ct. 1990); *Farrell v. Superior Ct.*, 250 Cal.Rptr. 25 (Cal. Ct. App. 1988).

Likewise, one court has held that patients are entitled to presume their conversations, during group therapy sessions, are confidential absent an affirmative waiver of the confidentiality of the meetings. *Segarra v. Segarra*, 932 So.2d (Fla. Dist. Ct. App. 2006).

Based upon the foregoing, a reasonable interpretation of our statute includes that participants in group therapy sessions are necessary for effective communication. Additionally, group members are integral participants in the diagnosis and treatment under the direction of a psychologist.

### CONCLUSION

Nevada's Psychotherapist privilege seems to protect the confidentiality of group therapy sessions and other courts have extended the privilege to include such meetings.

Provided a licensed Psychologist, while diagnosing or treating our members for post-incident psychological issues, conducts the PEAP debriefing sessions, their communications should be deemed to be confidential. Prior to commencing the session, participants should execute a confidentiality agreement to formalize their promise to maintain the secrecy of the discussions.

Finally, until the courts provide more guidance, PEAP representatives should be precluded from attending the sessions.