

The background of the cover features a stylized mountain range. The peaks are represented by white and light blue geometric shapes against a dark blue sky. The word 'Risk' is written in a large, white, sans-serif font, with the 'k' being particularly tall and thin, extending into the sky area.

Risk

MANAGEMENT ^{IN} SOCIAL WORK

PREVENTING PROFESSIONAL MALPRACTICE,
LIABILITY, AND DISCIPLINARY ACTION

A logo consisting of a blue square with a white border, and a white square with a blue border, partially overlapping.

FREDERIC G. REAMER

Risk Management in Social Work

*PREVENTING PROFESSIONAL
MALPRACTICE, LIABILITY, AND
DISCIPLINARY ACTION*

Frederic G. Reamer

*Legal review by Michael J.
Racette, Esq.*



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RISK MANAGEMENT IN SOCIAL WORK

FOR DEBORAH, EMMA, AND LEAH

LET'S START WITH THE GOOD NEWS: Relatively few social workers are named as defendants in lawsuits or respondents in licensing board complaints. The vast majority of social workers practice ethically and competently, adhering to widely embraced standards of ethics and social work practice designed to protect clients.

And then there's the bad news: Some social workers—a distinct minority, to be sure—practice social work outside established standards, thus posing significant risk to clients and to their own careers. These social workers are much more likely to have lawsuits and licensing board complaints filed against them. And even the most conscientious, principled, earnest, and ethical social workers run the risk, however small, that disgruntled clients will file complaints against them, even when no evidence of wrongdoing exists.

That there is a need for this book is unfortunate. After all, what social worker wants to spend time reading and thinking about being sued or being named in a licensing board complaint? Sadly such formal complaints are a fact of modern life, and the costs are significant. I am not referring only to the financial cost, mind you. I am also referring to the emotional cost. Even when a social worker has done nothing wrong, being named in a lawsuit or licensing board complaint is psychologically taxing. Moreover the social worker will need to consult (and pay) a lawyer, answer interrogatories, produce documents, attend depositions and hearings, and repair or preserve her reputation. Under the best of circumstances this arduous process is a miserable experience. Under the worst of circumstances it can be devastating.

Unfortunately social workers get little training to help them avoid malpractice claims and licensing board complaints. Professional education typically includes little on the subject of what has come to be known in the trade as "risk management." Although more and more social workers are learning about professional ethics, professional and continuing education rarely includes a systematic introduction to risk management and ways to prevent formal complaints. My hope is that this book will help remedy the situation.

Since the early 1980s I have had the privilege of speaking to thousands of social workers throughout the United States, Canada, Europe, and Asia about professional ethics. When I started to receive invitations to deliver lectures and workshops on the topic, my focus was primarily on ethical issues in social work and the nature of ethical decision making when confronted with difficult dilemmas.

Over time, however, I noticed a distinct trend. During conference breaks and after my presentations I began to get more and more questions that started along the lines of "I was wondering if I can get sued for _____?" or "Can I get in trouble with my licensing board if I _____?" (Fill in the blanks.) It did not take me long to figure out that while I was preoccupied with perplexing and conceptually complex philosophical issues related to social work ethics, many in my audiences were understandably consumed with more pragmatic concerns about potential lawsuits and other complaints. This should not have been much of a surprise because many ethical issues that I was presenting broached complicated legal questions as well.

What this meant, of course, was that I found myself learning more and more about the malpractice and licensing board risks associated with social work practice. Over the years I have collected scores of case examples from conference participants, colleagues, and more than one hundred court and licensing board cases in which I have served as an expert witness and consultant.

It is sad, in a way, that the profession has generated so much concern about risk management. It distracts from the principal mission of social work, and the concern often is out of proportion to the statistical risk of being named in a lawsuit or licensing board complaint. From my point of view, however, this also represents an important opportunity to educate social workers about good practice and good ethics, which ultimately prevent lawsuits and licensing board complaints. My hope is

that this book will provide social workers with an in-depth and practical guide to help them recognize, prevent, and cope with risks they encounter in their work.

The book is designed to assist social workers involved in direct practice (especially clinical work with individuals, couples, families, and small groups) and in social work supervision, management, and administration. After I introduce the concepts of negligence, malpractice, liability, and risk management (chapter 1), I turn to a series of discrete topics. These include problems related to privacy and confidentiality (chapter 2), improper treatment and delivery of services (chapter 3), impaired practitioners (chapter 4), supervision (chapter 5), consultation and referral (chapter 6), fraud and deception (chapter 7), and termination of service (chapter 8). I conclude the book with a series of practical suggestions for social workers who are named as defendants in lawsuits and licensing board complaints, and some observations about the role of good practice and good ethics in managing and reducing risk (chapter 9).

This book contains considerable case material. I drew the cases from several sources, including legal texts, law reporters (published summaries of legal cases), court documents, newspaper accounts, and my own involvement in a wide variety of court and licensing board cases. Some case illustrations come from publications that provide periodic updates of litigated cases. I found other case examples in textbooks and original court opinions published in various state, federal, and regional reporters. Most cases that I cite are a matter of public record; in some instances I could not provide dates for the decisions because I found descriptions of these cases only in secondary sources and the cases themselves were not published. In several instances I report case-related details in disguised form to protect the privacy of the parties involved.

It is important to note that I am not an attorney, and I am not offering legal advice in this book. Although this book includes information and commentary about legal concepts and cases, readers who believe they need or want legal advice should consult an attorney with expertise in professional malpractice and risk management.

I have noticed that when I speak to social workers about this subject, their anxiety tends to increase. Contemplating being named in a lawsuit or licensing board complaint is not exactly fun. What I have found, however, is that whatever anxiety this topic produces can stimulate determined

efforts to enhance the quality of social work practice. Perhaps the most effective way for social workers to protect themselves from formal complaints is to offer competent and ethical service to clients. Sometimes anxiety can serve a useful purpose by inspiring constructive action. As the nineteenth-century Scottish writer Thomas Carlyle said, "Talk that does not end in any kind of action is better suppressed altogether."

RISK MANAGEMENT IN SOCIAL WORK

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Professional Risk Management

AN OVERVIEW

IMAGINE THAT YOU ARE A social worker employed at a community mental health center. For three months you have been counseling a twenty-six-year-old man who was referred to you by the staff of a local psychiatric hospital, following the young man's inpatient treatment for depression.

Your client has made considerable progress. He is holding down a job for the first time in five years, is living independently in his own apartment, and is romantically involved with a young woman who is also a client at the mental health center; the couple met while participating in group therapy. Your client reports that he is happier than ever.

Your telephone rings one afternoon, and your client says, in a fearful voice, that he needs to see you as quickly as possible. He explains that he does not want to discuss the matter over the telephone, and you agree to meet him early the following morning.

Your client arrives on time. His affect is flat, and he seems unusually distressed. After you usher him into your office, your client explains that his physician has just informed him that he has tested positive for HIV, the virus that causes AIDS. He explains that he is shocked by the diagnosis and needs help dealing with the terrible news.

Your client is convinced that his lover infected him with HIV. Your client is furious and makes a number of disparaging comments about her. After several minutes of this ranting, your client erupts and says, "She's going to pay for this. She's *really* going to pay for this." Your client then storms out of your office, leaving you to wonder whether he intends to harm his lover imminently.

You pause to collect your thoughts: To what extent do you have an obligation to protect the client's lover, who is also a client at your agency, from harm? Did your client forfeit his right to confidentiality by threatening his lover? Are you permitted to disclose confidential information about the client without his consent to protect the lover, and, if so, how much information can you disclose and to whom should you disclose this information? What specific ethical standards and laws govern the disclosure of this confidential information? What steps do you need to take to make a sound decision and minimize risk to everyone involved?

All contemporary social workers need to be acquainted with the nature of risk management, specifically the ways in which their decisions and actions can expose them to lawsuits and licensing board complaints, in addition to exposing clients and others to harm. What kinds of claims are clients filing against social workers? With what frequency? What constitutes negligence and malpractice? How can social workers avoid liability and licensing board complaints? These are the principal questions that will concern us.

PROFESSIONAL MALPRACTICE AND LIABILITY

Risk management is a broad term that refers to efforts to protect clients, practitioners, and employers (Carroll 2011). Risk management includes the prevention of lawsuits and licensing board complaints. Lawsuits allege professional malpractice; licensing board complaints allege violation of standards of practice set forth in licensing laws and regulations. Lawsuits can result in monetary judgments against social workers; licensing board complaints can result in fines, revocation or suspension of a professional license, probation, mandated supervision and continuing education, reprimand, or censure.

Professional malpractice is generally considered a form of negligence. The concept applies to professionals who are required to perform in a manner consistent with the legal concept of the standard of care in the profession, that is, the way an ordinary, reasonable, and prudent professional would act under the same or similar circumstances (Austin, Moline, and Williams 1990; Barker and Branson 2000; Bernstein and Hartsell 2004; Cohen and Mariano 1982; Meyer, Landis, and Hays 1988; Schutz 1982). Malpractice in social work usually is the result of a practitioner's active violation of a client's rights (in legal terms, acts of commission, misfeasance, or malfeasance) or a practitioner's failure to perform certain duties (acts of omission or nonfeasance).

Some malpractice and liability claims result from genuine mistakes or inadvertent breaches of confidentiality on the part of social workers (a social worker sends an e-mail message containing confidential information to the wrong recipient, or a passenger in an elevator overhears a social worker talking with a colleague about confidential aspects of a case); other claims arise from a deliberate decision to risk a claim (a social worker decides to divulge confidential information about a client in order to protect a third party from harm). A social worker's unethical behavior or misconduct (sexual contact with a client or embezzling a client's money) also triggers claims.

In general malpractice occurs when evidence exists that

1. At the time of the alleged malpractice, the practitioner had a legal duty to the client (as in the opening example concerning the obligation to keep confidential information shared by a client).
2. The practitioner was derelict in that duty, either through an omission or through an action taken by the practitioner (divulging confidential information to the client's lover without the client's consent).
3. The client suffered some harm or injury (the client alleges that he suffered emotional distress and required additional psychiatric care after the unauthorized disclosure, that he lost time and wages at work, and that he was deprived of his lover's affection and companionship).
4. The professional's dereliction of duty was the direct and proximate cause of the harm or injury (the client's injuries were the result of the social worker's unauthorized disclosure of confidential information).

In contrast in making their decisions licensing boards need not require evidence that social workers' actions (commission) or inactions (omission) caused harm. Rather social workers can be sanctioned based simply on evidence that their conduct violated standards contained in licensing statutes and regulations.

KEY CONCEPTS IN RISK MANAGEMENT

Complaints filed against social workers fall into two broad groups (Reamer 2001a, 2002, 2013a). The first includes claims that allege that social workers carried out their duties improperly or in a fashion inconsistent with

the profession's standard of care (so-called acts of commission or misfeasance/malfesance). Examples include flawed treatment of a client (incorrect treatment), sexual impropriety or other boundary violation, breach of confidentiality or privacy, improper referral to another service provider, defamation of a client's character (as a result of slander or libel), breach of contract for services, improper civil commitment of a client (false imprisonment/arrest), wrongful removal of a child from a home (loss of child custody), assault and battery, improper termination of service (abandonment), improper licensing of staff, and improper peer review.

The distinction between misfeasance and malfesance is an important one. *Misfeasance* is ordinarily defined as the commission of a proper act in a wrongful or injurious manner or the improper performance of an act that might have been performed lawfully. Examples include flawed informed consent procedures or inadvertent disclosure of confidential information. *Malfesance* is ordinarily defined as the commission of a wrongful or unlawful act. Examples include embezzlement of a client's money, sexual contact with a minor client, and violation of a client's civil rights (Bernstein and Hartsell 2004; Bullis 1995; Gifis 2010).

The second broad category includes claims that allege that social workers failed to carry out a duty that they are ordinarily expected to carry out in accordance with the profession's standard of care (so-called acts of omission or nonfeasance). Examples include failure to conduct a proper biopsychosocial assessment, failure to prevent a client's suicide, failure to supervise a client properly, failure to protect third parties from harm, failure to treat a client successfully or at all (sometimes known as failure to cure—poor results), and failure to refer a client for consultation for specialized treatment. In subsequent chapters I shall explain more fully the specific allegations contained under these broad headings.

Of course, not all claims have merit. Some are frivolous or lack evidence of professional malpractice or misconduct. However, many claims do have merit or are settled out of court (or, in the case of licensing board complaints, settled with consent agreements) in order to minimize loss and legal expenses. In either case the result may be costly.

As I noted earlier, malpractice is a form of negligence that occurs when a practitioner acts in a manner inconsistent with the profession's standard of care—the way an ordinary, reasonable, and prudent professional would act under the same or similar circumstances. Suits that allege malpractice