

# leadership ladders:

STEPS TO A GREAT CAREER IN SOCIAL WORK

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## risk management in clinical practice\*

As mental health professionals, clinical social workers work in high-risk situations and should be aware of practice outcomes of worst and best case scenarios.

Such information can be invaluable in helping clinical social workers avoid malpractice allegations and social work board complaints. Clinical social workers should identify, prioritize, and manage risks in their practice. There are several common risk areas that should be carefully managed by clinical social workers who perform psychotherapy services in solo or group practice, including documentation, electronic health records, fee collections, supervision, injurious behaviors, and malpractice insurance.

### » DOCUMENTATION

The *NASW Code of Ethics*, accreditation bodies, and third party-payers require clinical social workers to document services provided to patients. Documentation is an

important area of risk management that is easily controllable by clinical social workers who should record all services performed with each patient including a psychosocial assessment, treatment plan, and progress notes. Not doing so positions clinical social workers for high-risk situations which may precipitate malpractice actions.

Written documentation is considered as evidenced-based information verifying that clinical social work services were performed. In many circumstances, it may be the only evidence available as a first line of defense when malpractice allegations occur. Therefore, it is important for clinical social workers to maintain all written documentation on each patient as required by federal and



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\*For purposes of this document, the word patient is used to identify the clientele clinical social workers as mental health providers treat in the health care industry.



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state statutes and regulations, accreditation bodies, and third-party payers.

#### » **ELECTRONIC RECORDS**

The use of electronic records is increasing and has become common in workplaces for clinical social workers. Clinical social workers should be aware of the risks involved in maintaining electronic records and take safeguards to protect patients' information from the risk of unauthorized disclosures which could lead to malpractice claims and heavy fines.

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) privacy and security rules outline standards of practice to protect patient information. Clinical social workers should familiarize themselves with these standards and invest in high-quality data encryption software and firewalls to prevent access to private files. Electronic back-up files kept in a secure, locked fireproof file cabinet or location are essential in the event of an emergency, disaster, or lost files.

#### » **FEE COLLECTIONS**

Clinical social workers encounter situations in which patients may have a balance due on their accounts. Questions arise about the benefits of referring such patients to a collection agency for collection of fees. Such referrals can place clinical social workers in high-risk situations for malpractice action. For uncollected funds, clinical social workers should assess the reasons for nonpayment and develop a plan to collect the fees or write them off as losses to avoid malpractice actions by an angry or disgruntled patient.

To avoid such fee collection problems, patients should be made aware of all fees prior to the initial treatment session and sign a fee policy agreement. It is best practice to collect cash fees and

co-payments at the time services are rendered. When filing a claim with a third-party payer, verify patients' mental health benefits prior to service, and as appropriate, seek written pre-authorization to provide psychotherapy services.

#### » **SUPERVISION**

Clinical social workers who are supervisors affect the level of service that the supervisee provides to patients and share the responsibility for the quality of the service. They can be held liable for negligent or inadequate supervision related to negligent conduct of the supervisee.

When inappropriate services carried out by the supervisee bring harm to the patient, liability may be charged against the supervisor. A supervisor assigning a task to a supervisee who is not prepared to perform it may also be charged with liability.

Proper supervision is important to avoid malpractice actions. Services provided should meet the standards of the social work profession and the *NASW Code of Ethics*. It is the supervisor's responsibility to monitor the professional functioning of the supervisee. Any deviation from professional standards posing a threat or danger to the health and welfare of any patient should be identified and immediately rectified. In addition, the supervisor should document all contacts with the supervisee.

To prevent a conflict of interest, supervisors should not supervise anyone with whom they have a personal, domestic, or familial relationship.

#### » **INJURIOUS BEHAVIORS**

Several crises in clinical practice present special malpractice risks. Clinical social workers should be aware of the symptoms, risk factors, organizational

policies and legal parameters concerning injurious behaviors such as suicide, homicide, and maltreatment of adults and children.

Malpractice claims have been filed against clinical social workers for failure to:

- › prevent or predict risk to self or others;
- › warn third parties who may be harmed by a patient's threats; and/or
- › report physical harm to a patient.

Clinical social workers should have the knowledge and expertise to treat destructive behaviors and be familiar with federal and state statutes and regulations pertaining to them. They should prepare themselves for the challenges of performing services for these behaviors by enrolling in workshops and trainings to enhance their knowledge. In addition, clinical social workers should develop guidelines and policies to follow prior to the occurrence of a crisis.

#### » MALPRACTICE INSURANCE

Lack of malpractice insurance places a clinical social worker in a high-risk situation in the event of a malpractice claim which could financially ruin a clinical practice. Clinical social workers should obtain, maintain, and retain professional liability insurance coverage throughout the course of their professional career whether they are actively practicing or not. Doing so provides benefits for the cost of defense, settlements, and judgments for legal claims filed against clinical social workers in solo or group practice.

Clinical social workers should retain an attorney or legal consultant to help them reduce risks in their practice. Such an investment would be helpful in preventing

social work board complaints or malpractice allegations. Clinical social workers who take the opportunity to manage risks in their practice are better able to avert litigious circumstances and maintain a viable clinical practice. For clinical social workers who have malpractice insurance with NASW Assurance Services Inc., a legal representative is available for consultation to reduce risks in practice. Clinical social workers may call the following hotline number, 800.897.0033, for assistance. In addition, ethical concerns related to risk management may be referred to NASW Office of Ethics and Professional Review at 800.638.8799 ext. 231.

#### RESOURCES

Bernstein, Barton; Hartsell, Thomas. 2000. *The portable ethicist for mental health professionals*. Canada: John Wiley & Sons.

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National Association of Social Workers. 2003. *NASW legal defense fund HIPAA desk reference*. Washington, DC: Author.

Psychotherapy Finances. 2010. *A legal risk management briefing: 11 ways therapists get themselves in trouble*. Psychotherapy Finances. 36(4), 432.

Application for malpractice insurance is available online from NASW Assurance Services Inc. at [asi@naswasi.org](mailto:asi@naswasi.org).  
Postal service address is:  
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*Clinical social workers should obtain, maintain, and retain professional liability insurance coverage throughout their career...*