

Supervisor Beware: Reducing Your Exposure to Vicarious Liability

Two years ago, Lavonne was appointed clinical director of a social services agency. Things went well, until sharp budget cuts and an unexpected surge in caseloads gripped the agency. As the funding crisis deepened, clinical vacancies went unfilled. Internal communication became irregular. Lavonne's overworked staff began making mistakes. Focused on putting out fires, Lavonne curtailed the supervision of her student interns, assuring them it was only "temporary." It wasn't. Last week, a recently terminated client sued the agency for negligence, naming an intern—and Lavonne herself—as co-defendants. Among her new worries? Vicarious liability.

The moment Lavonne became a social worker supervisor she entered the world of vicarious liability—and exposed herself to the commissions and omissions of her subordinates. Court rulings consistently underscore the importance of providing adequate supervision. While no supervisor can eliminate vicarious risk, s/he can manage it by maintaining high professional standards. In our case study above, Lavonne's *inadequate* supervision exposes her to vicarious liability through her staff's mistakes and misdeeds. Lavonne's lesson? A chain is only as strong as its weakest link. Skimp on supervision at your own peril. Supervisors are required to provide at least one hour of direct clinical supervision per 15 hours of supervisee contact with clients.

Supervisors can manage vicarious liability—while increasing the likelihood of a favorable ruling in the event of a malpractice action—in several ways: Clearly defined policies and expectations; awareness of high-risk areas; provision of appropriate training and supervision. Additional risk-reduction strategies include:

- ◆ Understanding supervisee strengths and weaknesses as practitioners.
- ◆ Developing an adequate feedback system
- ◆ Supervisors knowing their own responsibilities.

In our litigious society, a supervisor must conform with accepted professional practices, state regulations, and the principles outlined in the

NASW Guidelines for Clinical Social Work Supervision (see flipside).

So, how does vicarious liability arise? It's often associated with a supervisor's failure to:

- ◆ Provide supervisees with adequate information to permit proper practice.
- ◆ Review a supervisee's work for errors and correctly assess capacity/skill level.
- ◆ Determine when a specialist is needed.
- ◆ Detect/and discontinue a negligent service plan or service that is continued beyond its effectiveness.
- ◆ Review and approve a supervisee's decisions.
- ◆ Provide coverage for unavailable supervisees.
- ◆ Detect and act on a supervisee's impairment.
- ◆ Meet regularly with a supervisee.
- ◆ Identify that a supervisee is exerting "undue influence" on a client.
- ◆ Identify that a supervisee is sexually and/or romantically involved with a client, even if the supervisee *conceals* it.

Let's look at these last points. First, social workers are prohibited from exerting "undue influence" on a client such that the social worker's objectivity is lost and the client feels pressured to take certain action. Second, supervisors have a duty to ascertain from and ask supervisees about boundary violations, including the possibility of sexual or romantic involvement with clients. Awkward? Yes. But also necessary. At the very least, supervisors should require supervisees to review the NASW Code of Ethics on the particular standards related to dual relationships—and then have supervisees sign and date a form indicating they have read and understand these provisions. (Better yet, NASW recommends that a contract should be signed to include this as one of many other pledges that supervisees will abide by.)

The line between vicarious and direct liability is sometimes blurred, yet both allegations can arise from a single set of circumstances. Also, note that a supervisor's legal liability extends beyond direct supervisees to include partners, paraprofessionals, volunteers unlicensed assistants, other professional coworkers, and student interns. Managing risk is an ongoing endeavor.

Paraprofessionals. If a paraprofessional or unlicensed professional is found performing beyond his or her recognized limits, a supervisor may be found to have

violated ethical norms—even if no harm is determined.

Other Professional Co-Workers. Workers who perform agreed-upon work are considered an extension of their supervisor. Supervisors must therefore provide close, attentive, and communicative oversight.

Student Interns. Supervisors and field instructors have primary responsibility for knowing student caseloads and activities well enough to anticipate and prevent problems.

Safeguards Against Malpractice Suits:

- 1) Clarify in writing with supervisee:
 - ◆ Context/purpose of supervision
 - ◆ Intent to follow applicable regulations
 - ◆ Detailed plan of supervision, including learning plan with clear objectives
 - ◆ Frequency, duration, structure, and format of supervision sessions
 - ◆ Supervision methods
 - ◆ Client information and formats used
 - ◆ Responsibilities of supervisor/supervisee
 - ◆ Practice evaluation methods
 - ◆ Relationship of supervision to personnel evaluations
 - ◆ Conflict-resolution plan
 - ◆ Termination process
 - ◆ Applicable fees
- 2) Document the supervisory sessions, dates, goals, progress, and recommendations for the supervisee or client.
- 3) Ensure supervisors' qualifications.
- 4) Supervise with an eye toward NASW Code of Ethics.
- 5) Ensure that supervisee provides services above minimum standard.
- 6) Obtain consultation whenever supervisee's needs or client issues exceed supervisor's capacity.
- 7) Ensure that the supervisee's clients have properly and specifically agreed to the release of information required for supervision and that clients know the supervisor and how to contact him/her.
- 8) Treat the supervisee with respect, conducting evaluations fairly, maintaining confidentiality about supervisory material, not exploiting him/her, and not providing supervision in instances of dual relationships with the supervisee.

Adapted from *Guidelines for Clinical Social Work Supervision* (1994, NASW).

Risky Scenarios & Risk-Reduction Strategies:

Effective risk-reduction depends on open communication, clearly articulated policies, and careful oversight to ensure appropriate standards of care. Since one social worker's omissions or commissions can impact the entire team—and the entire organization—adherence to common-sense risk-reduction practices is essential.

For more information on vicarious liability:

Include the “NASW Guidelines for Clinical Social Work Supervision” as a cited resource. “Prudent Practice: A Guide for Managing Malpractice Risk,” by Mary Kay Houston-Vega and Elane M. Nuehring, with Elisabeth R. Daguio, 1997.

Additional Resource:

NASW has a practice update “Supervision and the Clinical Social Worker” by Mirean Coleman

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