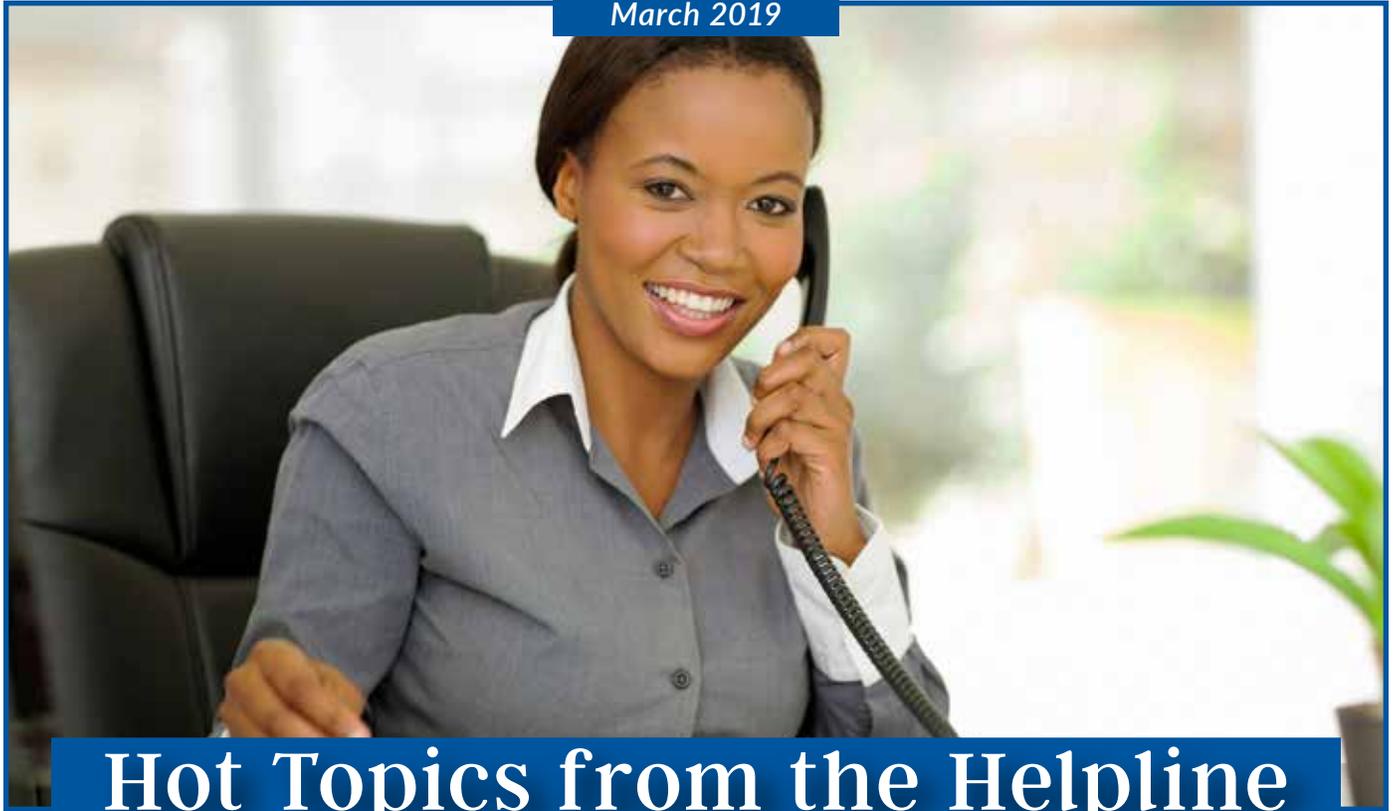


Avoiding Malpractice

Tips for Social Workers to Manage Risks

March 2019



Hot Topics from the Helpline

Social workers insured through the NASW Risk Retention Group receive unlimited free access to the Risk Management Helpline with their liability insurance policy.

Whether the insurance policy protects against General Liability, Cyber Liability, or Professional Liability, **policyholders can access the Helpline for free** when they believe they are subject to an insurance-related incident or claim, regardless of category.

The Risk Management Helpline is the first line of defense for protection. Here's why it's such a valuable resource.

Over the past seven years, the Helpline experience shows that 99% of the time, each issue is quickly resolved, relieving the policyholder of the associated and accumulating stress and potential expense. Issue resolution with the Helpline typically requires two 15-minute phone calls at no cost.

Our Helpline experience indicates that the following four topics are the most frequent issues that social workers face: **Board Complaints, Release of Information Requests, Deceased Clients, and Subpoenas.**

Let's review each example from an NASW policyholder standpoint.

Board Complaints

Social workers typically receive notice by a letter from the Board (of Social Workers). So what do you do next?

There are time constraints here so you must act fast. You should not answer the notice or inquiry yourself, you may worsen your situation by stating something unintentionally, or your statement may be interpreted incorrectly by any party.

We recommend that our policyholders simply call the risk management helpline, initiate the Incident Report Form, and send a copy of the notice with the form as advised, for immediate assignment to the attorney in your state.

There is no cost to the policyholder because the policy covers such incidents.

Do not agonize or dwell on the impact to your emotions from Board Complaints or inquiries, because frequently these filings are launched by disgruntled client spouses or disgruntled clients as a manifestation of their frustration.

Release of Information Requests

If the information request arises from the client, call the client to learn exactly what the client is requesting, and request that the client put it in writing to you.

You have the option to write a high level and general summary of your treatment and care, including treatment start date, frequency of sessions, and general topics of the sessions. Remember that clients do not own the records. The records are owned by the practitioner of the sole



proprietor practice. Otherwise, if an employee, the records are owned by the practitioner's employer. HIPAA and most states grant some broad rights to clients to access the records. However, these broad rights may be denied in certain circumstances. If the client or the client's attorney requests more client records detail, we suggest our policyholders call the Helpline so an attorney can be assigned at the RRG's expense.

Deceased Clients

Most often, we hear that the client passed away and a family member or other individual calls the social worker.

We recommend that our policyholders do not speak with anybody about the client because HIPAA privacy survives client death. This also applies to client suicide, accidental death, or other reasons. We require our policyholders to have a Release on file from their client. Otherwise, they should wait until a personal representative

of the deceased client's estate is legally able to speak with our policyholder by signing a Release.

It is important to receive a copy of the court order that appoints that person as the Personal Representative of the deceased client's estate. Attending the client's funeral has more risks than benefits for many reasons, as well as the previously stated reasons.

Subpoenas

Subpoenas do not have to be signed by a judge, even though they are court orders, so treat all subpoenas as valid. They have response time requirements so act immediately. Do not let these notices sit without attention.

The subpoena may seek information from you, or request that you appear in court to testify, or to simply record a deposition. When our valued policyholders receive a subpoena they are encouraged to call the Helpline immediately. Depending on the nature of the deposition and the subpoena, you may redact portions of the client records to be privately reviewed by the judge (called in camera), for a final ruling.

The reason here is to shield the client from possible retribution by a spouse who is at odds with the other spouse, or at odds with the child client for example. The RRG immediately assigns an attorney to help our policyholders with these matters.

Not all professional liability insurance policies cover patient records breaches, so read your policy carefully. The NASW RRG professional liability policy is the most comprehensive in the industry. The NASW RRG also offers a low-cost cyber liability policy that protects the practitioner against third-party information breach for which HIPAA holds the practitioner accountable.



Questions? Let's Discuss How We Can Help

Learn more about our Professional Liability Insurance for social workers by visiting www.naswassurance.org.

Our exclusive program is the only program endorsed by the National Association of Social Workers. To speak with a knowledgeable, licensed insurance representative, call 888-278-0038.

