

Avoiding Malpractice

Tips for Social Workers to Manage Risks

May 2020



COVID-19 Pandemic Virus UPDATE

The COVID-19 pandemic has caused NASW Assurance Services and the NASW Risk Retention Group to receive an inordinate number of phone calls from social workers asking a variety of questions.

We have found that most of the calls relate to remote practice methods. The risks that are summarized below. We encourage you to check out the NASW Assurance Services' website to see the extraordinary measures and resources that the NASW Risk Retention Group is undertaking and providing for its insurance policyholders that remain

unmatched by any liability insurance carrier. We have also created a series of free podcasts on April 10, 2020, dealing directly with pertinent content that was posted the following week.

The Most Frequent Issue

With the immediate social distancing shift away from in-person therapy, social workers are thrust into the telehealth and online worlds to conduct therapy.

Many social workers are asking how to begin online and telehealth therapy and requisite guidelines. Regardless of



Did You Know...

if one of your clients is injured at your office

YOU can be SUED?

NASW does! General Liability Protection is a critical option protecting your practice if injury or property damage occurs to others as a result of your business operations. You can be sued for almost anything ... *even if you didn't do anything wrong!*

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technological progress and change, state laws take precedence over the delivery of professional services to clients within that state's venue.

Your state license is only valid in the state that issued the license to you. There is no system of reciprocity for social workers across states, so we must focus on intra-state therapy only.

Reciprocity is the practice of exchanging things or services with others for mutual benefit, especially privileges granted by one state or organization to another. Most states allow license applicants to transfer the ASWB (Association of Social Work Boards), examination scores from one state to another.

You also must comply with the requisite practice hours and educational requirements of the specific state in question. The license for a social worker is not portable like a driver's license in one state being recognized by another state.

Before using online and teletherapy, read and understand your state's laws before contacting your clients. All state regulatory boards have these regulations on their websites.

Once you have cleared your ability to connect remotely with your clients within the state(s) that you are licensed, establish expectations with your clients in the state that you are licensed using your intake form and service contract.



This should already be your normal practice before performing professional services. Typically, you would use an informed consent document relating to telehealth and online therapy. A sample is available on the NASW Assurance Services website. Your attorney can verify that you comply with your state's laws in this scope of service.

Therapy Across State Lines

Providing professional services across state lines through teletherapy or any other channel without being licensed in the state in which the professional services are delivered is a violation of the state's laws. Some state laws, such as California, are particularly strict with additional limitations set forth regardless

of the residency of the client and the social worker.

Here is another example. If you are licensed in Maryland and a client who is a resident of Pennsylvania drives to Maryland for therapy with you that is fine. However, you cannot continue with therapy over the telephone or online with that client when that client is in Pennsylvania unless you are also licensed in Pennsylvania.

This is a case where you need to verify exactly what the state licensing laws are all about including limitations. States have different regulations and laws regarding teletherapy and online therapy, so check with HIPAA and the states in question.

Therapy Over the Telephone

Since you cannot know exactly where your client is at the time of the therapy call to your client's cell phone, you are at risk to trust your client telling you the truth. Document the client's representation at that time in your notes with time and date, and the discussion. This certainly becomes evidence if a negligence or malpractice lawsuit or board complaint is filed against you, further damaging by illegal out-of-state services that were provided by you.

Your records will be subpoenaed as evidence by the plaintiff's attorney during discovery in lawsuit formulation and litigation.

Your defense attorney will also rely on this evidence to defend you in court. Set the rules of engagement therapy when you take on a new client or begin a new therapy channel.

Client Information Breach

When you provide teletherapy and online therapy you expose yourself to new risks and a new set of potential information breach damages. Although technology improves productivity and creates new positive opportunities and responsiveness, technology makes it too easy to make mistakes and breach client information.



Unintentional calls or texts, and third-party digital storage networks online can result in breaches and expose you to multiple HIPAA information breaches. Your phone, Notebook, or laptop can be stolen and hacked. Your therapy call could be overheard by a bystander in a public venue. The NASW Risk Retention Group defended an NASW RRG Cyber Liability policy insured for an innocent client list disclosure not related to an actual therapy case.

No professional liability policies cover this peril outside of client-related delivery of professional services, so a Cyber Liability policy is required for this risk protection. No damage occurred, there was no lawsuit, but the incident required \$12,000 in legal defense fees

and related expenses to comply with the HIPAA 45 CFR Part 160 HIPAA HITECH Law. The social worker had to mail a paper notification letter to each client, pay for a security audit by a certified firm, pay HIPAA fines, pay for a one-year subscription for identity theft coverage protection for the victims, and pay for legal fees and state board notifications.

Fortunately, the social worker bought an NASW Risk Retention Group Cyber Liability policy and there is no deductible. These policies start at a low cost of \$59 per year. They are available from the NASW Risk Retention Group across several plans up to a \$25,000 limit, and they cover all major Cyber Liability perils.

America overwhelmingly appreciates the most valued efforts of social workers doing good things for people as well as the Allied Health community in general. Thank you for all that you do! Good luck and stay healthy!



Mistakes Happen
Not Having Proper Coverage Doesn't Have to be One of Them

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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.



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**.

