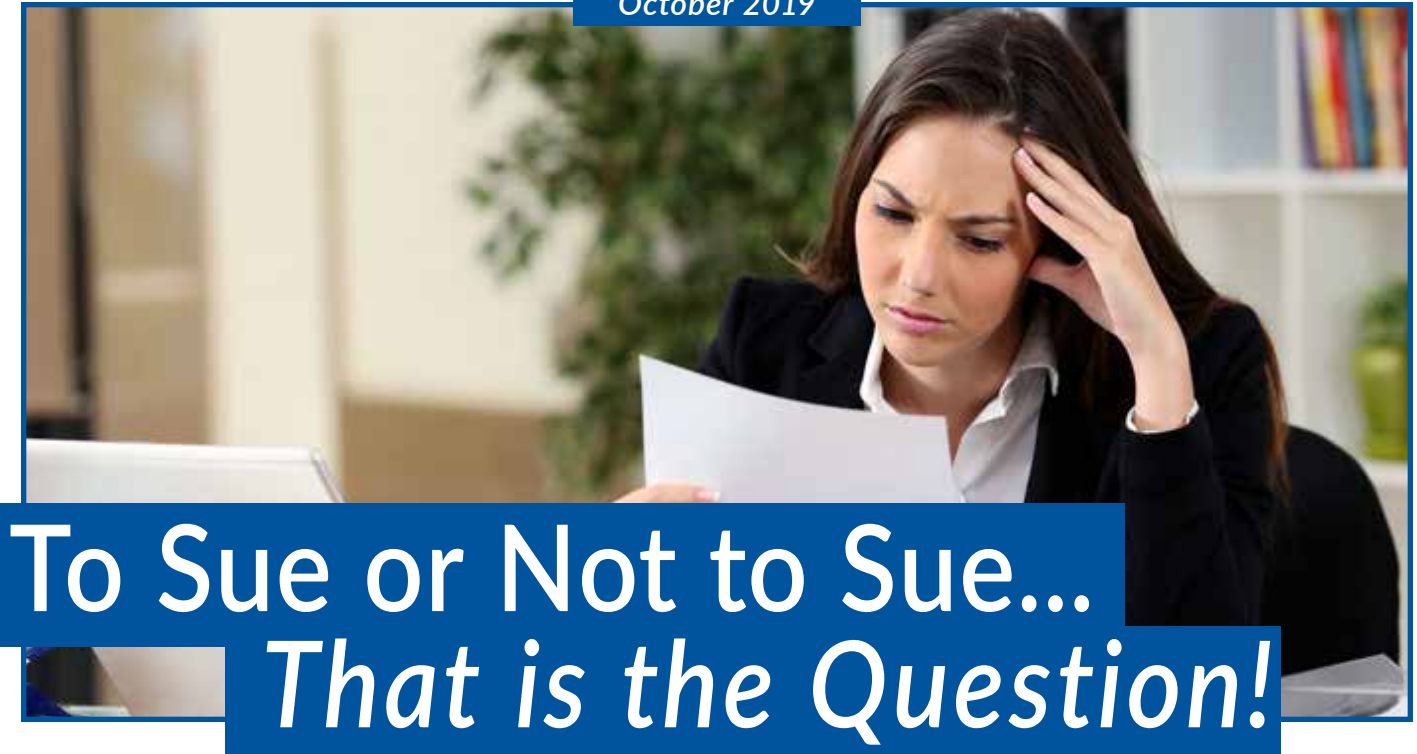


Avoiding Malpractice

Tips for Social Workers to Manage Risks

October 2019



To Sue or Not to Sue... *That is the Question!*

In the property & casualty insurance world, which includes liability covers such as Errors & Omissions, Medical Malpractice, General Liability, Cyber Liability, Professional Liability, and Employers Professional Liability, the chain of claim is virtually the same.

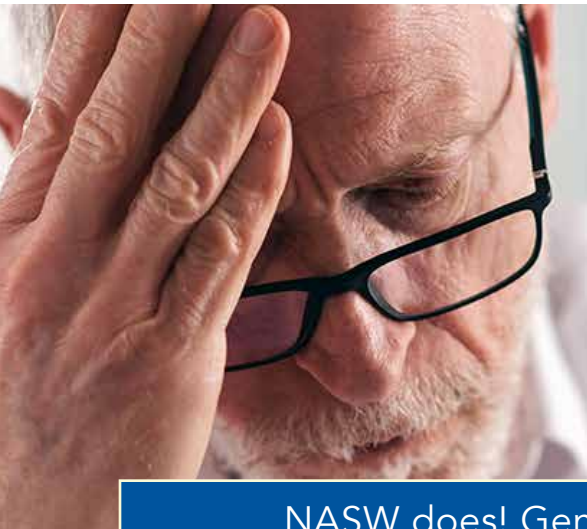
The claim chain looks like this:

action or inaction by the insured > incident occurs > incident rises to a reported claim that may or may not be eligible for coverage > claim accepted for adjudication > claim resolution.

The claim resolution is most often settled through claims adjudication processes, and on extremely rare occasions escalates to a lawsuit. Some relatively simple claims such as a Deposition or Records Request may be resolved in a matter of week(s).

State Licensing Board inquiry claims may cost \$2,000 in legal fees to adjudicate requiring over nine months to resolve as the case grinds through the local bureaucracy.

On the other hand, lawsuits may require years to resolve depending on the matter, plaintiff(s), defendant(s), and venue(s). It has been the NASW Risk Retention Group's experience that extremely few lawsuits are filed against its insured social workers. We believe that this is a combination of strong ethics and NASW affiliation, as well as robust risk management training. The vast majority of the few lawsuits that are filed against its insureds are dismissed or won by the NASW Risk Retention Group.



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!*

For More Information call 888-278-0038 or email asi@naswasi.org

Setting aside emotions and temper tantrums that frequently drive an angry plaintiff to file a lawsuit, our experience indicates that a material lawsuit must be practically built upon substantial provable liability and culpability by the defendant, the law, and a deep pocket insured defendant.

The ability, power, or legal right to take civil legal action against a person or organization most often is to claim compensation arising from harm, injury, or a wrongful act that the defendant caused the plaintiff either through action or inaction. This is called a lawsuit. Conducting a lawsuit is called litigation, with attorneys representing their respective plaintiff(s) and defendant(s).

Embedded in the word “litigation” is a civil procedure, discovery, and other pre-trial activity that “runs the legal meter” at \$275 to \$800 per hour in typical legal fees. The insurance claims costs fall within two broad

categories: ALAE (Allocated Loss Adjustment Expenses) and Indemnity.

According to MoneyCrashers.com, the Associations of Trial Lawyers of America reports that over \$233 billion annually are spent in legal system litigation. Civil procedure governs the conduct and operation of a lawsuit. Often it is like a tactical chess match in which venues are considered, interrogatories are devised, and the use of state statutory and case law to drive the arguments on both sides of the case.

Pleading starts with the complaint filed with the court to seek relief. However, the defendant could file a motion to dismiss, and if unsuccessful, later remove the case to another venue. Additional action includes the pretrial discovery of evidence, depositions, subpoenas, and then a trial with the option for appeal(s), or perhaps arbitration.

Literature searches and first-hand claims adjudication experience indicates that only 2% of all lawsuits go through the trial process. In the NASW Risk Retention Group's experience, only one lawsuit was decided at trial, and the NASW RRG won that lawsuit but incurred over \$270,000 in legal defense fees for an insured's \$230 annual premium Professional Liability Insurance policy.

Over two-thirds of the lawsuits filed against NASW Risk Retention Group's policyholders were dismissed. However, legal fees for the NASW RRG insureds were paid by the NASW Risk Retention Group.

MoneyCrashers.com reports that overall in the nation, tort lawsuits settle out of court over 90% of the time.

At the root of the lawsuit, a potential plaintiff will have the foresight to evaluate estimated outcomes with legal counsel before commencing legal action. Our claims adjudication and legal defense experience indicate that two key forward-thinking elements are critical:

- 1) A wrong that is legitimate, provable, and at minimum, can be settled out with a payment from the defendant. (However, if the insurance carrier has a reputation of not settling, then the plaintiff may have second thoughts.); and
- 2) the ability of the defendant to pay. Poor defendants are "judgment proof" versus insured defendants with strong insurance policy limits are ripe targets because the risk is shifted to these insurance carriers.

Here are a few very brief examples of easily preventable lawsuits that the NASW Risk Retention Group has defended that never should have occurred. A basic understanding and observance of practice ethics and common sense would have precluded these cases from becoming claims and lawsuits. Note that all three lawsuits involved obvious direct or indirect boundary violations, that are a result of extremely poor judgment.

The house sitter and the driver

A social worker employed a female client as a house sitter and a male client as a personal driver. The male client drove the social worker in the social worker's car to the airport for the social worker to begin a



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

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vacation. The male client drove the social worker's car back to the social worker's house where the female client was house-sitting. The male client raped the female client. The female client sued the social worker and the male client went to prison.

Unhealthy multitasking

A social worker treated a recovering substance abuse hairdresser. Within a few months, the social worker allowed the hairdresser to move into and live in the social worker's house and perform house cleaning and hair treatments in exchange for no rent and free therapy. The hairdresser sued the social workers for malpractice.

Family affair

A male social worker treated family clients consisting of a husband, wife, and their three minor children. During treatment, the social worker had admitted an ongoing sexual affair with the wife, and possible sexual abuse of the children, subjecting each member of

the family to pain and suffering. A lawsuit resulted in separate settlement agreements with special counsel assigned for the resolution of the 3 children's cases through probate court and payment for probate court guardian ad litem fees to supervise children until majority age 21 within that state.

The key to your peace of mind and financial protection is three-fold:

First, buy comprehensive Professional Liability, General Liability, and Cyber liability insurance policies. If you have employees, consider buying an EPLI policy as well.

Second, read and compare the policy form language. Do not rely on opinions from other peers and associates, because we have found that frequently they are unaware of the policy complexities.

Many contain strict definitions and loopholes that can leave you unprotected. Third, study the NASW content on ethics, practice management, and risk management.

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.

