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INTERNATIONAL LEGAL NOTE

Legal risk, accountability and transparency in social work

● Daniel Pollack

> We have become seriously risk averse – fearful as a nation, scared of terrorists, child molesters and violence on the street – and as a result we make it harder and harder to help those who need our aid, and we become more and more withdrawn into ourselves. (Julia Neuberger, Baroness and member of the House of Lords, 2008)

As the international community marks more than a solid century of social work as a profession, there is much to cheer regarding our global efforts and the world's response.

Historically, social workers and social work organizations have been held accountable for compliance with organizational and professional norms (Ginsberg, 2000; Lackey, 2006). Recently, and more frequently, a new venue of accountability has emerged – the courtroom (Brayne and Broadbent, 2002; Meyer and Weaver, 2006; Pollack, 2003; Stein, 2004). It should not be surprising. Many of our clients are living in inherently high-risk situations and many Western nations particularly are broadly concerned about risk-averse strategies in a range of fields. Consequently, as one colleague told me, she feels as though she is working in a legal minefield while jumping on a pogo stick. To navigate a minefield one may either avoid it completely, or, if that is not possible, learn what necessary professional precautions one needs to take.

Legal risk in social work is rarely a single obvious danger. More often it is a constellation of events and factors that commingle for a period

of time and then dissipate. The unique alignment of those events and factors creates circumstances where risk is likely to be enhanced. The concept of accountability is part of a broader effort to improve social work and lessen risk through evidence-based practice. Accountability is an aspect of responsibility, usually involving at least two parties and a mutually acknowledged relationship between them. The relationship involves one party delegating authority to the other to take some action. In the event that there is no delegation of authority, there should be no presumed accountability. Thus, a desire to hold social workers and agencies accountable, whether it be to our clients, customers, employees, investors or peers, is one aspect of a comprehensive set of interlocking and mutually reinforcing efforts.

The profession has expended much effort on changing our image from friendly visitor to respected professional. In 2004, the International Federation of Social Work (IFSW) General Meeting resolved that one of the three things the organization would focus on would be 'the image of social work' (IFSW, 2004). Either despite or because of this effort, and coincident with political and socioeconomic transitions, dissatisfaction and litigation against social workers and social work organizations have increased considerably, and not just in the USA. For example, Scotland's *Evening News* (Picken, 2007) reported that the 'number of complaints made against Edinburgh's child care social workers has soared to nearly one a week'. The increase has been particularly stressful in those countries where litigation is an accepted means of achieving a desired end.

For the most part, the public recognizes the enormous needs the profession is called upon to meet, and it is supportive in helping us meet those needs. Not surprisingly, as we have professionalized, the public has scrutinized our performance and raised its expectations. Have some social workers been trained and conditioned to be slow to act in this new environment? Have they got stuck in a mode of analysis paralysis? Does accountability suffer because no specific action has been taken? This article addresses how individual social workers and organizations can implement performance measures to help strengthen their accountability and foster continuous improvements in order to limit their exposure to litigation and liability.

Procedural compared with consequential accountability

Some of the difficulty with satisfactorily conceptualizing accountability is related to its fluid nature. A worker may be accountable for a procedure, process, or effort. The expectation is that a worker will act in

accordance with prescribed guidelines or the prevailing and customary manner. This is procedural accountability. Accountability may instead refer to being responsible for the consequences or results of actions taken, whether or not these results were intended. This is consequential accountability. Is your organization's accountability policy clear? Does it clearly express whether the social worker's accountability is based upon procedure or consequences?

Distinguishing between goals and expectations

Goals precede expectations, and expectations should be set before someone can be held accountable for meeting them. We freely use the terms 'goals' and 'expectations' interchangeably. For instance, if an organization has a goal to curtail errors by 10 percent, the implication and expectation are that it will make 10 percent fewer mistakes. A closer look reveals important differences between these two terms. A goal is aspirational; it is a target at which we shoot. An expectation is a reference point considered reasonable and attainable. It connotes a sense of obligation, not a best-effort gesture.

In law, an expectation may be a 'standard of care'. This is the degree of attentiveness, caution or prudence that a reasonable person in the circumstances would exercise. If the action of a social worker or social work organization falls short of meeting this standard of care, the resultant damage may be alleged in a lawsuit by the injured party. The problem is that a standard of care in social work is often a subjective issue upon which reasonable professional social workers may differ. In any event, when writing policy, it is advisable to distinguish between what is a goal and what is an expectation.

Internal and external accountability

Accountability has an internal and external dimension. Some accountability relationships take place within the same organization. These are internal. Others involve stakeholders located outside the organization. These are external. Usually, social workers are juggling numerous internal and external relationships. The prevalence of a multiplicity of accountability relationships may lead to accountability overload and an overall fragmented and fuzzy accountability in an environment ripe for litigation. Thus, we must continuously ask ourselves: to whom are we accountable for what? Are our social workers clear about the legal expectations we have of them? Are we making efforts to ensure that accountability is a collaborative process rather than an adversarial one?

Confidentiality and transparency

Confidentiality is one of our hallmarks and needs no lengthy description (Dickson, 1998; Pollack and Frisino, 2005). By definition, we design certain policies to hide rather than reveal information. As we have seen in child abuse cases, sometimes the profession has been criticized for hiding behind confidentiality in order to cover up a failure to meet reasonable expectations. Ironically, policies which are so inscrutable and complex may wind up being more of a legal risk.

In business, the word 'transparent' is used to describe clear, candid, easy-to-understand financial statements. Alternatively, it can indicate the disclosure of certain policies or an explanation of why a company is embarking upon a certain approach or strategy. These companies are attractive investments. The opposite is equally true. Muddled and blurry financial statements and intentions make the company unattractive. The reason is simple: less information means less certainty for investors. When a company's financial statements are not transparent, investors cannot ascertain the company's real fundamentals and risks. The same is true in social work. Evidence-based practice and clearly written policies with attendant built-in accountability suggest that the public will give a higher value to social workers and organizations that are upfront with clients and stakeholders. As social workers adapt their agencies to address transparency issues, synchronized words and actions will stand up to critical scrutiny by the public and the courts. In turn, legal risk will be minimized.

Accountability tools

No single process, practice or documentation can guarantee that legal expectations will be met. Nonetheless, here are some samples of typical accountability tools.

- Contracts: These are legal documents that describe the legal expectations regarding who is responsible for what. They provide a timeframe, a reporting mechanism, a review procedure, and a payment schedule.
- Program or financial audits: These are procedures to verify after-the-fact operational aspects of the workers and organization.
- Periodic reports: These are documents that summarize activities or accomplishments which elaborate on an entire program or specific aspect of a program.
- Periodic interviews: These are face-to-face contacts or site visits used as opportunities to view and review service in action.
- Client satisfaction surveys: Focusing on client satisfaction is vital to meeting legal expectations.

Client satisfaction measures the extent to which a client's expectations for a good or service are met. Therefore, it is essential to distinguish between two components of satisfaction: goals and the actual or perceived quality of the service offered. Satisfaction as a global entity is not as useful as including a separate assessment of each aspect. According to Zeithaml et al. (1990), the 10 most common dimensions cited by clients in assessing quality are the following.

- Tangibles: appearance of the physical facilities, equipment, personnel and communication materials.
- Reliability: ability to perform dependably and accurately.
- Responsiveness: willingness to help clients and provide prompt service.
- Competence: possession of the required skills and knowledge to perform the service.
- Courtesy: politeness, respect, consideration and friendliness of workers.
- Credibility: trustworthiness, believability, honesty of the provider.
- Security: freedom from danger, risk or doubt.
- Access: approachability and ease of contact.
- Communication: keeping clients or customers informed in language they can understand; a sense of being heard.
- Understanding the client: making the effort to know clients and their needs.

Preferably the client satisfaction survey should be done by outside neutral experts who are not going to be influenced by the views of any party, since any accountability mechanism is only as good as the data on which it is based, the methodology used, and how the data is analyzed.

Conclusion

Over time, as high-risk areas are addressed and others emerge, we quickly realize that policy transparency and accountability are more than the improved monitoring of organizational risks. They can also help to: Strengthen governance; Reduce insurance and legal costs; Enhance the public's understanding for necessary reforms; and Invigorate the organization's staff and attract new members by simplifying regulations.

A new reality is calling upon social work to take action into uncharted waters. Many organizations do not have the benefit of waiting for the

waters to calm. They are thinking about risk against the backdrop of multiple litigations. To succeed, they need the right mindset, strategies and commitment.

As a profession, we will have to build the trust that is required to support the mistakes we will inevitably make. When those mistakes are made, the verdicts and monetary damage awards handed down by judges and juries may be significantly less because of our history of good faith, accountability and transparency.

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Daniel Pollack is Professor, Wurzweiler School of Social Work, Yeshiva University, New York City, and Senior Fellow, Center for Adoption Research, University of Massachusetts Medical School. *Address:* Wurzweiler School of Social Work, Yeshiva University, 2495 Amsterdam Ave, Suite 818, New York, NY 10033–3201, USA. [email: dpollack@yu.edu]