

Professional liability and malpractice research paper

[Economics](#), [Insurance](#)



Professional negligence

Generally, professional negligence can be described as the adjudged failure of a professional individual to possess the average skill or knowledge of other professionals in like circumstances, or, the failure of the individual to use their skill and knowledge if they possess it. It is evidenced by the results of their activities (Slovenko, 2009). An obligation to compensate for the damaged caused should be done if negligence is proved. The terms ' medical malpractice' or simply ' malpractice' are embedded in both legal and medical literature and are also a habit of thought.

Professional malpractice in psychology occurs when, in the context of psychologist- client relationship, a client suffers harm and it is determined that the harm was caused by lack of following the acceptable professional standards of care. Professional malpractice suits are usually filed against individual practitioners under the state statutory and common law (Jacob, Decker & Hartshorne, 2011). Psychologist in private practice can be held liable for malpractice in every state. School psychologists who disclose privileged information without obtaining the consent, to others, may put themselves at risk for a malpractice suit under communication laws, whether they are employed by the school or work in non-school settings.

A psychologist acting as a professional is expected to provide due care in cases where professional- client relationship exists. The plaintiff must prove four facts to succeed in a malpractice claim;

- There was a professional relationship between the plaintiff and the psychologist so that the psychologist owed a legal duty of care to the plaintiff

- There was breach of the duty of care. This means that a standard of care exists and the practitioner breached that standard
- The client suffered injury or harm
- The practitioner's breach of care of duty to practice within the standard of care was the proximate cause of the harm or injury suffered by the client; this means that the injury was a foreseeable consequence of the breach.

The appropriate standards are defined by three key words; ordinary, reasonable and prudent (Jacob, Decker & Hartshorne, 2011). Ordinary refers to what is accepted or is the customary practice and reasonable refers to the appropriate and adequate use of professional knowledge and judgment. Prudent usually refers to the exercise of caution in maintaining adequate safeguards and not being traditional and conservative.

Professional liability insurance

Some school psychologists purchase professional liability insurance to protect themselves and maybe ease their fear of litigation. Before purchasing a policy, school psychologists should know what type of coverage, if any, their employer provides and whether any professional liability insurance is provided by their membership in a professional union. Internship students are also advised to purchase liability insurance as they may not be covered by their school district's policies. When choosing an insurance policy, one is advised to first study the policy carefully so as to be fully aware of what is covered and what is not covered. Second, one must ensure that the policy discloses whether it is based on claims made or occurrence based. Under claim made, the client is only covered only if

insured when the alleged malpractice happened and when the claim was filed. On the hand, an occurrence based policy covers the practitioner as long as he/she was insured when the alleged malpractice took place without taking into consideration when the suit was filed. Third, many policies reserve the right to select the legal counsel and to settle the case, which might be discouraging to practitioners who want their day in court. The psychologist can still hire his/her own attorney to work with the one provided by the insurance carrier, which of course is an additional expense.

Dealing with legal liability risk situations

When faced with an adverse incident, a mental health practitioner can first obtain a consultation from an experienced colleague with such issues and clients (Koocher, 2013). One should consider whether they should terminate the professional relationship. In case one decides to terminate the relation, they should first notify the client both orally and in writing and specify the effective date of the termination. They should also provide professional explanation as to why they have terminated the relationship and agree to keep providing the client with interim services for a reasonable period of time, and recommend other care providers or means of getting in touch with them. They should also offer to provide records to the new care providers upon receipt of signed authorization from the client and finally should document these steps in their case records.

One should avoid initiating a unilateral if for one, the client is in the midst of a metal health crisis or an emergency situation. One should also avoid termination if substitute care providers will be hard to obtain and if the

primary reason of wanting to terminate the relationship may be regarded as discriminatory. Thirdly, a psychologist has the right to unilaterally terminate services if they feel threatened or endangered by the client or any other person that the client has a relationship with. The threats include physical harm or law suits. One should also do a follow up by telephone and documenting, and recording each of these by step, if the client does not show up for a scheduled appointment. It should be done especially if the client seemed emotionally distressed or depressed during the previous session. One should listen carefully to the client especially if they complain about something. The complaint should also be treated with serious concern, and if necessary, one should launch an investigation into the matter and provide a response in a sympathetic and tactful manner as possible if it is necessary. All the steps taken should also be documented.

In case a client passes, one should express sincere compassion and sympathy to their surviving relatives but should not discuss any personal feeling of guilt that they may be experiencing. In the event that a lawsuit is filed against any practitioner or they are aware of a lawsuit that is possible, one, the practitioner should immediately contact their insurance carrier both orally and in writing. Copies of all correspondence should be kept together with copies of all the phone call conversations. The date and the representative that one speaks to should also be noted down. The insurance carrier should assign a legal counsel to represent the practitioner if a lawsuit has actually been filed. Second, once a lawsuit has been filed or is threatened, the practitioner should not interact orally or in writing with the client's lawyer. The practitioner should get their attorney involved in case

the client's lawyer wants to contact them. The practitioner should also terminate any contact that they have with the client until they have consulted their attorney and should not try to settle the matter themselves. Thirdly, the practitioner should not discuss the case with any other person apart from their attorney or the representative from the insurance carrier. Fourth, one should compile and organize all their records, cases, materials and chronicles of the event so as to help in their defense. Fifth one should send copies and safeguard the original documents when asked to provide information or documents to their insurer or attorney. Sixth, in any professional liability or malpractice where one is asked to agree to settlement, they should consult their attorney in addition to the one provided by their insurance carrier. This applies especially if they are sued for damages in excess of the limits of their policy. Finally, one should take steps to manage their anxiety and the stress level.

Ethical principles

One of the great responsibilities of a profession must be its willingness to demand high and public standards of practice and responsibility. Usually, the main goal of a union is the protection of the rights of its members, and this is what brings about the difference between a union and an association. The goal of an association of professionals in the human services field is usually the protection of the rights of the people they serve (Tryon,). In psychology, the definition of these rights is in the kinds of services that psychologists offer and the kind of understanding of their own yields.

Principle 1: Confidentiality, privacy and privilege

In psychology, confidentiality allows clients and patients to tell their psychologist's things, details or secrets that they might not anyone else (Barlow, 2011). With confidentiality, they are given a chance to open up on things they might term as embarrassing such as cheating so as to prosper, hatred of friends and relatives, sexual longings, humiliating failures, among many others. Clinical psychologists are therefore placed under the great ethical responsibility, not to breach their patients' trust, even unintentionally (Barlow, 2011). The nature and scope of confidentiality can be defined by legislation, the court in form of case law, by psychology licensing board regulations and other forms of administrative law, and ethical standards of professional organizations. Sometimes, psychologists can set aside confidentiality on some grounds, such as when patients provide informed consent for them to disclose confidential information to third parties such as health insurance Company covering some of the costs of therapy. Another exemption is when the patients place their psychological state at issue before the court through a filing a lawsuit or related claim. Another exemption is when the patients become a danger to selves, to others around them or they become psychologically disabled. When this happens, a jurisdiction allows the psychologists to take steps such as breaching their confidentiality so as to protect the patient or third parties.

The exemptions however differ from different states, federal systems or provinces. As much as the three terms, confidentiality, privacy and privilege look alike and are confused mostly by people they mean totally different things. Privacy deals with the individual's right to decide on how much of

their personal matters and private values. Beliefs, behavior or preference they are willing to tell anyone, especially the government agencies or officials. In the U. S some of the basic privacy rights have been addressed in the constitution such as freedom from unreasonable search and seizure. Privilege defines the information that is protected from disclosure in legal procedures or trials. Sometimes in trials when someone's life is on the line places an almost absolute value on considering all relevant facts. However, in some cases such as therapists and their clients, the importance and benefits are considered so valuable that they are protected from disclosure. Virtually, the privilege almost always belongs to the patient or the client, rather than the psychologist. If a psychologist is asked to reveal privileged information about a patient, he/ she are generally required to claim the privilege on behalf of the client or the patient. If the patient waives the privilege, the psychologist can, under most circumstances, be required to testify in regard to the previously protected information. The status of the psycho-therapists- client privilege differs from one state to the other and federal court systems.

Principle 2: competence

In this principle, psychologists must maintain high standards of responsibility. They should recognize the boundaries of their competence and the limitations of their techniques. Psychologists should only provide services and only use techniques that they are qualified in by training and experience (Tryon, 1986). The ethics code emphasizes competence as one of the fundamental ethical responsibility. Through graduate school, practicals

and internships, psychology students are able to acquire the basic competence of psychology. Emotional competence of therapy is also needed in psychology and is usually attained through training. It is usually in part of an active awareness of the emotional aspects of providing clinical services ways in which the work can be stressful and the need to recognize when one has reached the limits of their emotional competence, regardless of how brief it could be.

Principle 3: moral and legal standards

The moral and ethical standards of behavior of psychologists are a personal matter to the same degree as they are for other citizens. The difference is that the moral and ethical standards that are applicable to any other citizen may compromise the psychologist's ways of fulfilling their professional responsibilities or reduce the public trust in psychologists and psychology. Psychologists should be sensitive to their own behavior regarding the prevailing community standards as they are sensitive to them. They should also be sensitive to the possible impact that conformity to or deviation from these standards may have on the quality of their performance as psychologists.

Principle 4: public statement

The principle of public statement states that announcement of services, advertising, promotional activities and appearances in the media serve the purpose of helping the public make informed judgments and choices (Tryon, 1986). Most of the specific operational principle offer detailed guidelines and their limitations, which help in assuring that such statements and behaviors

provide relevant and accurate information. The principle also deals with the provision of information concerning the availability of psychological products, publications and services or statements providing psychological information or professional opinions.

Principle 5: welfare of the consumer

In case there are any conflicts between clients and psychologists' employing institutions, psychologists should clarify the nature and direction of their loyalty and responsibilities and keep all parties informed of their commitments. Psychologists should ensure that they have informed their clients or consumers of the purpose and nature of an evaluative, treatment, education or training procedure. They should also freely acknowledge that students. Clients or participants in research have freedom of choice with regard to participation. One of the operating clauses within this principle is the prohibition of fee splitting for referrals and also asserts the responsibility of the psychologist to devote some part of his/ her professional services for low or no fee. Another clause states that the responsibility to terminate a relationship from which the clients benefits from and should be helped to allocate alternative sources of help. Another clause prohibits myriad relationships with students and clients and the possible inherent in such responsibilities.

Principle 6: professional relationships

In this principle, psychologists are reminded of their obligation to help clients to obtain services of appropriate representatives of other professions when it is in the interest of the client. Psychologists should act with due regard for

the needs, special competencies and obligations of their colleagues in the profession of psychology and other professions. They should respect the prerogatives and obligations of the organization or institutions with which their colleagues are associated with. They are described as having the obligation to facilitate the professional growth of trainees under their supervision.

References

- Barlow, D. H. (2011). *The Oxford handbook of clinical psychology*. Oxford: Oxford University press.
- Jacob, S., Decker, D. M., & Hartshorne, T. S. (2011). *Ethics and law for school of psychologists* (6th ed.). Hoboken, N. J.: J. Wiley & Sons.
- Koocher, G. (2013). *Psychologists' desk reference* (3rd ed.). New York, N. Y.: Oxford
- Slovenko, R. (2009). *Psychiatry in law/ law in psychiatry* (2nd ed.). New York: Brunner-Routledge.
- Tryon, G. S. (1986). *The professional practice of psychology*. Norwood, N. J.: Ablex Pub. Corp..