

1. PROFESSIONAL RISK MANAGEMENT: AN OVERVIEW

1. Unless otherwise noted, all references to the NASW *Code of Ethics* are to the 2008 edition, which is the most recent.
2. See “Patient Falls to Death” (1995:2), “Psychiatric Nurse Hangs Self” (1995:4), and “Woman Claims Improper Sexual Conduct” (1996:3) for additional discussion of comparative negligence.
3. Readers should be aware that lower-court decisions do not constitute legal precedents that are necessarily applicable in other court cases. Only appellate cases are controlling in this way. Nevertheless I have included a number of lower-court decisions that provide valuable illustrations of conceptual points addressed throughout the book.

2. CONFIDENTIALITY AND PRIVILEGED COMMUNICATION

1. Many practitioners refer to *Tarasoff* as the “duty to warn” case. In fact this phrase is misleading. The court noted practitioners’ duty to protect, not their duty to warn. Warning a potential victim is one way, but not the only way, to protect potential victims. Notifying law enforcement officials of a threat and seeking psychiatric hospitalization of a dangerous client are other ways practitioners can attempt to protect potential victims. *Tarasoff* is better described as the “duty to protect” case that led to current confidentiality standards.
2. The original *Tarasoff* case was decided by the California Supreme Court in 1974. The court then withdrew its first published opinion and in 1976 issued its second opinion, commonly known as *Tarasoff II*, which recognized a duty to protect third parties under certain circumstances.
3. Also see “Patient’s Threats Disclosed” (1993); “Psychiatrist and Psychologist Revealed Patient’s Threat” (1995); “Psychologists Owed Duty to Protect

- Child" (1996); "Counselor Had No Duty to Warn" (1997); "Counseling Center Did Not Violate" (1997); "Lack of Physician-Patient Relationship" (1998); "Defendant's Admission to Therapist Not Protected" (1999); "Psychiatrist's Testimony About Patient's Threats" (1999); "Psychologist Immune from Liability" (2001); "Hospital Had Duty to Protect" (2001).
4. See also *Perreira v. State* (1989); *Schuster v. Altenberg* (1988); and *Naidu v. Laird* (1988)).
 5. Also see "Hospital Has No Duty to Protect" (1993); "Chemical Dependency Counselor" (1993); "Claim for Injuries" (1994); "Therapists Have No Duty" (1996); "No Duty to Warn" (1999).
 6. ATLA refers to the Association of Trial Lawyers of America. The citation is to the organization's law reporter.
 7. Also see "Psychiatrist Did Not Owe Duty to Protect" (1995).
 8. The Missouri Court of Appeals overruled a lower court's order compelling a wife to disclose medical records of her treatment for substance abuse and psychological and psychiatric test results for use in divorce proceedings. The appellate court found that under federal law the identity, diagnosis, or treatment of any patient that is maintained in connection with substance abuse treatment is confidential. See *Missouri ex rel. C.J.V. v. Jamison* (1998) and "Wife Not Compelled" (1999). Also see *In re W.H.*, in which a lower court ruled that the records of the parent's treatment were not subject to disclosure in a child neglect proceeding ("Substance Abuse Program Records Confidential" 1994).
 9. In 1998 the U.S. Supreme Court ruled that lawyers cannot be forced to reveal their clients' confidences even after the client dies, rebuffing the independent counsel Kenneth W. Starr's effort to obtain notes made by the lawyer for Vincent W. Foster Jr. shortly before the deputy White House counsel committed suicide (Marcus and Schmidt 1998).
 10. See *Sanfil v. Department of Health* (1999) for discussion of issues related to a practitioner's disclosure of confidential information to the media. The Florida District Court of Appeal held that a psychiatric nurse's intentional disclosure of confidential psychiatric treatment records to the media constituted unprofessional conduct ("Psychiatric Nurse's Disclosure" 2000).
 11. In rare instances social workers may obtain authorization from a judge, or may be ordered by a judge, to disclose confidential information related to the investigation of an extremely serious crime. See, for example, the federal regulation Confidentiality of Alcohol and Drug Abuse Patient Records.

12. In an unusual case involving testimony by a social worker concerning child abuse, the Wisconsin Court of Appeals ordered a case retried because the testimony of a social worker, which was protected by physician-patient privilege, should not have been admitted into evidence. The social worker, a community mental health employee, disclosed that the client had told her that he had problems with an uncontrollable sex drive and pedophilia. The client argued that he had believed that his discussion of the issue was confidential. See *Wisconsin v. Locke* (1993).
13. Also see "Hospital Releases Woman's Psychiatric Records" (2000); "Woman Sues Hospital" (2001); and "Psychologist Violates Confidentiality" (2001).
14. A federal district court in Wisconsin held that the psychotherapist-patient privilege did not protect a man's statements to two Alcoholics Anonymous volunteers who advised him to go to a detoxification center. The man claimed that he thought the volunteers were counselors; the volunteers ended up contacting the police and sharing information with them about a gun in the man's possession. The court ruled that the man's disclosure did not fall under the state's law that permits patients to refuse to disclose confidential information shared with licensed clinicians or people believed to be such ("Statements . . . [to] Volunteers Not Protected" 1997).

3. THE DELIVERY OF SERVICES

1. I recently consulted on a case involving a social worker whose position was split between clinical and research responsibilities (the case is discussed in Mannix 2012). The social worker was named in a licensing board complaint involving the suicide of a research project participant who was being treated for schizophrenia. Differences in standards of care pertaining to the social worker's clinical and research roles were critically important.
2. See "Alcoholic Physician's Medical Records" (2001:6) for discussion of issues involving a clinician who completed a release-of-information form *after* the client had signed it.
3. Also see "Man Discharged from Psychiatric Facility" (1994); "Man on One-to-One Watch" (1996); "Teenager Commits Suicide after Evaluation" (1996); "Man Hangs Self" (1997); "Psychiatrist Takes Patient Off Suicide Watch" (1998); "Negligent Supervision of Patient" (1998); and "Claimant Wins Decision" (1999).

4. Also see "Court Denies Summary Judgment" (1996); "Misdiagnosis of Multiple Personality Disorders" (1997); and "Woman Sues Psychologist" (1998).
5. Also see Madden (1998).
6. Also see "Theory of Repressed Memories Valid" (1996); "Woman Claims Nurse Therapist Implanted" (1996); "Plaintiff Claims Repressed Memories" (1997); "Plaintiffs Claim Therapist Planted" (1997); "Recovered Memories . . . Not Admissible" (1998); and "Court Refuses to Dismiss" (1998).
7. In a Ohio case the state licensing board disciplined a social worker for giving a client two significant sums of money (State of Ohio 2009).
8. See *Aronoff v. Board of Registration in Medicine* (1995) and "Psychiatrist Censured" (1996:6) for discussion of issues involving a therapist's "commercial transactions" with a client.
9. Also see "Man Commits Suicide after Evaluation" (1994); "Woman Claims Husband Improperly Allowed" (1994); "Plaintiffs Claim Failure to Continue Hospitalization" (1994); "Man Claims Hospital Fails to Restrict" (1994).
10. Also see "Psychiatric Ward Fails" (1999) for another illustration of the need to remove dangerous objects from suicidal clients.
11. Also see *Welk v. Florida* (1989).
12. Also see *Rouse v. Cameron* (1966) and *Eckerhart v. Hensley* (1979).
13. Also see "Psychologist Who Failed to Follow Procedures" (1993).
14. Also see "Counselor Properly Reports" (1995) and "Statements Made to Therapist" (1996).
15. See *Rosenberg v. Helinski* (1992), a lawsuit that alleged that a psychologist who repeated his in-court testimony to a television reporter had defamed the father in a sex abuse case. The Maryland appellate court ruled that the psychologist "enjoyed a legal privilege to defame" and therefore could not be sued for defamation ("Psychologist in Sex Abuse Case" 1993:1).

4. IMPAIRED SOCIAL WORKERS

1. Also see *Palmer v. Board of Registration in Medicine* (1993); "Woman Claims Psychologist Began Sexual Relationship" (1994); "Woman Receives \$7.1 Million Verdict" (1994); "Psychologist Has Romantic Relationship" (1994); "Psychiatrist Has Sexual Relations with Patient" (1995); "Therapist Sleeps with Patient" (1996); "Therapist's Sexual Misconduct" (1996); "Woman Blames Psychological Problems" (1997); "Improper Sexual Contact" (1997); "Court Upholds Revocation" (1997); "Court Upholds Law" (1998); "Mental,

Emotional Anguish Blamed” (2000); “Psychiatrist Engages in Sex with Patient” (2001).

2. Also see “Psychiatrist Dates Patient” (1997) and “Psychiatric Patient Claims Improper Sexual Contact” (2000).

5. SUPERVISION: CLIENTS AND STAFF

1. Also see *Siklas v. Ecker Center* (1993) and “Mental Health Center Could Be Held Liable” (1994:2) for discussion of issues related to supervision of clients.
2. Also see “Psychiatric Patient Leaps” (1992:2); “Court Dismisses Patient’s Personal Injury Claim” (1994:6); “Man Commits Suicide in Hospital” (1996:3); and *Johnson v. New York* (1993).
3. Also see “No Liability for Injury” (1993:3).
4. Also see *Tabor v. Doctors Memorial Hospital* (1990).
5. Also see *Stropes v. Heritage House* (1989).
6. See “Psychologist Who Had Sex with Patient” (1997) and “Clinic Not Liable for Negligence of Therapist” (2001) for additional discussion of claims that sexual misconduct by the practitioner was negligent and violated employers’ administrative policy.
7. See “Therapist Begins Personal Relationship” (1994) for discussion of negligence attributed to a practitioner who referred a married couple to a colleague and allegedly failed to supervise properly. The referring psychologist supervised his colleague’s treatment of the couple for a period of time during which the primary therapist began a personal relationship with the wife.

6. CONSULTATION, REFERRAL, DOCUMENTATION, AND RECORDS

1. Also see “Patient Can Not Bring Malpractice Action” (2000:1).
2. Also see “Woman Comes Under Care of Psychotherapist” (1996:2).
3. The act, 740 Ill. Comp. Stat. 110, may be found at the website of the Illinois Legislative Reference Bureau, <http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=2043&ChapterID=57> (accessed July 8, 2013).
4. The grammarian Theodore Bernstein offers several humorous examples that should underline how serious punctuation errors in a case file could prove to be. “It makes a difference,” Bernstein notes, “whether you write, ‘She went to the little boy’s room’ or ‘She went to the little boys’ room.’” He also quotes a gem from a news story: “Mrs. Anna Roosevelt Boettiger, only daughter of

the late President Roosevelt, disclosed today plans for her third marriage to Dr. James Addison Halstead.” He drily adds: “Surely she was not marrying the same man for the third time. A comma is necessary after ‘marriage’” (Bernstein 1965:357, 361).

8. TERMINATION OF SERVICE

1. Also see *Goryeb v. Pennsylvania* (1990).
2. See “Patient Commits Suicide After Release” (1995:1) and *Muse v. Charter Hospital* (1995) for additional discussion of negligence issues involving termination of services and hospital discharge when a client is unable to pay. In this case a North Carolina court ruled in favor of the estate of a patient who committed suicide two weeks after being released from a hospital against his treating physician’s medical judgment. The court said that the estate could pursue a wrongful death action against the hospital for willful and wanton misconduct because the decision to release the man was based on the expiration of his insurance coverage. The court held that the hospital had a duty not to interfere with the medical judgment of its treating physician.

9. RESPONDING TO LAWSUITS AND ETHICS COMPLAINTS: THE ROLE OF PREVENTION

1. Consider the story told about F. E. Smith, the first earl of Birkenhead (1872–1930), who was a British barrister. Smith once cross-examined a young man who was claiming damages for an arm injury caused by the negligence of a bus driver. “Will you show us how high you can lift your arm now?” Smith asked. The young man gingerly raised his arm to shoulder level, his face distorted with pain. “Thank you,” Smith said. “And now, please will you show us how high you could lift it before the accident?” The young man eagerly shot his arm up above his head. He lost his case (Fadiman 1985:513).
2. The lawyer for Russell Sage, the famous U.S. financier, was delighted by the case that Sage had presented to him. “It’s an ironclad case,” he exclaimed with confidence. “We can’t possibly lose.” “Then we won’t sue,” Sage said. “That was my opponent’s side of the case I gave you” (Fadiman 1985:485).
3. The *Daubert* standard was established in *Daubert v. Merrell Dow Pharmaceuticals* (509 U.S. 579 (1993)), in which two minor children and their parents alleged that the children’s serious birth defects had been caused by the mothers’

prenatal ingestion of Bendectin, a prescription drug marketed by a pharmaceutical company. The district court granted the company summary judgment based on a well-credentialed expert's affidavit concluding, upon reviewing the extensive published scientific literature on the subject, that maternal use of Bendectin has not been shown to be a risk factor for human birth defects. Although the plaintiffs had responded with the testimony of eight other well-credentialed experts, who based their conclusion that Bendectin can cause birth defects on animal studies, chemical structure analyses, and the unpublished reanalysis of previously published human statistical studies, the court determined that these experts were basing their testimony on evidence that did not meet the applicable "general acceptance" standard and so could not be considered by the court. The district court's decision later was upheld by the U.S. Supreme Court.

