

Social Workers as Volunteers

Introduction

The *NASW Code of Ethics* states that “social workers should provide appropriate professional services in public emergencies to the greatest extent possible.” (NASW, 1999). In the wake of significant national disasters, social workers have become increasingly aware of the need to be available to provide such services, often on a pro bono basis. Social workers care about their communities and the people around them. They are instinctively motivated to serve as volunteers in varied settings and in numerous roles.

Questions should be addressed before a disaster strikes, including:

- Do I need malpractice coverage for my volunteer activities?
- Do I need to follow formal record keeping procedures for my pro bono activities?
- Am I required to maintain an active social work license while I am volunteering?
- If I am a licensed social worker, and perform volunteer social work activities, am I subject to liability for my activities?

This Legal Issue of the Month article reviews information pertinent to these questions and provides suggestions for obtaining additional clarification of these points.

Issues in Emergency Volunteering

The primary legal issue for social workers who volunteer during emergency or disaster relief situations concerns interstate licensing requirements. These questions were partially addressed in the Legal Issue of the Month article, *Social Workers and Disaster Relief Services* (NASW LDF, 2005), but were limited to four states primarily affected by Hurricane Katrina recovery efforts.

Since then, the National Conference of Commissioners on Uniform State Laws in 2006 approved the Uniform Emergency Volunteer Healthcare Practitioners Act (UEVHPA). The purpose of such a Uniform Act is to encourage its adoption by the states in an area of law where uniformity is desirable. The UEVHPA provides for advance registration by healthcare providers with a designated entity that may provide notification to states of a volunteer healthcare practitioner’s identity and licensure status during a declared emergency or disaster. Final action on provisions regarding the limitation of civil liability for damages and the provision of workers’ compensation insurance coverage for volunteer healthcare practitioners was deferred by the Conference Commissioners until 2007. The final phase will be for individual states to take action to review and/or adopt the UEVHPA.

Licensure Exemption

A handful of states have a specific exemption from licensing requirements for those who are acting as volunteers (e.g. New Jersey, Texas, Wyoming). In Texas, the state statute specifies that the licensure requirements do not apply as long as the volunteer is not representing himself or herself as a social worker, or representing the services as social work, or using a title that implies that they have a social work license. The implication that remains is that a social worker volunteering in a social work capacity would be subject to licensure.

Many more states have an exemption from licensure for employees of non-profit organizations, where volunteers are likely to provide services. According to data from the Association of Social Work Boards

(ASWB), these states are Alaska, California, Florida, Minnesota (with limitations), New Hampshire, New Jersey (with limitations), North Dakota, Virginia, and Washington (ASWB, 2006). Arguably, volunteers for exempt non-profits should be exempt from licensure requirements to the same extent as employees.

The Supreme Court of Wyoming in *Allhusen v. State*, interpreted the mental health professionals' licensure law, including the volunteer exemption, **WY ST § 33-38-103**, and found that it violated the state constitution to prohibit unlicensed counselors from practicing under the supervision of a licensed counselor, when unlicensed volunteers would be permitted to practice in the same setting. The current law retains the exemption for volunteers, but permits unlicensed employees to provide non-clinical services and for students to work under supervision while they are gaining the licensure requirements.

Another example from the discipline of professional counseling is provided in an opinion of the Michigan Attorney General, examining the status of professional counselors, and providing a formal opinion as to licensure requirements (State of Michigan, 1991). The opinion reviewed the professional counselor statute and clarified that there is an exemption to state licensing requirements for volunteers for public or private nonprofit organizations and state-licensed substance abuse services programs. This suggests that one avenue for determining whether social worker volunteers are subject to state licensure is to take steps to initiate a request for an opinion of the state attorney general, most likely by the state social work board.

Liability Limitations

Every state has some form of volunteer protection law and the federal Volunteer Protection Act (42 U.S.C.A. § 14501) was passed in 1997. The 1997 Act provides for strict limitations on the personal tort liability of volunteers at nonprofit organizations and governmental agencies and it preempts less strict state laws.

“Good Samaritan” laws exist as a defense to claims that an individual who rendered care caused harm. Cases that have interpreted state “Good Samaritan” laws highlight their applicability to emergency medical care, primarily for physical injuries. For mental health situations, these laws are applicable in situations involving life threatening emergencies, such as suicidal behavior. Three criteria generally are applied:

- The care was rendered in an emergency
- The care was provided in good faith, without an expectation of compensation
- The caregiver did not have a prior relationship with the individual or cause the emergency.

Insurance Coverage and Indemnification

Court decisions and legal opinions concerning insurance coverage for sexual misconduct by volunteer counselors or health care practitioners illustrate the point that coverage determinations are very fact specific. The terms of the exact insurance policy in question and the legal relationships of the parties involved are key factors influencing how courts will interpret coverage provisions. Thus, it is important for social workers providing volunteer services to inquire as to the nature and scope of the insurance coverage.

Mention is made in *Jane D. v. Ordinary Mutual*, (1995), of a church insurance policy covering the acts of the clergy, as well as volunteers, social workers and others when they offer counseling and assistance to parishioners, with exclusion for sexual misconduct. The court's detailed examination of the terms of the policy, endorsements, exclusions, and whether the priest involved was a named insured, all highlight the point mentioned above: insurance coverage decisions are highly fact specific. In this case, there was a default judgment against the priest, but no insurance coverage available from which the plaintiff could collect the judgment.

The New York Attorney General reviewed a volunteer health care program in 1997 to determine whether certain volunteer health care professionals would be covered by the state's indemnification. The Attorney General's opinion concluded that the volunteer physicians and other health care personnel were entitled to indemnification by the state for their work-related acts or omissions because the volunteer program was a formal program sponsored by the state. The opinion referred to a specific statutory definition of "employee" that encompassed volunteers (State of New York, 1997).

Recognition of Psychotherapist-Patient Privilege

States differ as to whether volunteer counselors' patient records should be accorded the right to privilege. For example, Illinois and New York courts have both examined whether volunteer rape crisis counseling records should be privileged from disclosure in legal proceedings. In *People v. Bridges* (1989), the court held that the social worker – client privilege did not extend to a volunteer rape crisis counselor on a Motion to Quash a subpoena for the victim's records because the volunteer was not a certified social worker, nor supervised by one. Presumably, the courts might offer a different outcome if the volunteer was a certified social worker or was supervised by one.

By contrast, in *People v. Foggy*, 521 N.E.2d 86 (1998), the Supreme Court of Illinois found that a rape crisis counselor's records were absolutely privileged under the language of a rape crisis counselor privilege statute that included volunteer counselors as well as psychologists and social workers. That case did not distinguish whether the counselor was a volunteer or a paid professional.

In a federal case from Wisconsin, the 8th Circuit Court of Appeals found that statements to volunteers for Alcoholics Anonymous were not protected by any form of psychotherapist-patient privilege because the volunteers had no counseling credentials or purport to be an office for counseling services (*U.S. v. Schwensow*, 1998).

NASW Code of Ethics

Regardless of court recognition, social workers acting in a volunteer capacity as social workers should adhere to the *NASW Code of Ethics* and take available steps to protect clients' interests. The Code of Ethics does not distinguish between pro bono social worker activities and paid activities. The expectation is that social workers will conduct themselves in accordance with the principles and standards of the *NASW Code of Ethics* any time they are presenting themselves as social workers.

Analysis and Conclusions

Generally, an individual who is not identifying as a social worker and who is not performing social work tasks would not be subject to licensure board requirements. If a social worker is identifying as a social worker and is providing pro bono services, then they need to obtain information as to whether any exemptions apply to this type of work. If licensure laws apply, social workers should serve as social work volunteers with the understanding that they are subject to the same regulatory standards as paid social workers in the performance of their duties.

The applicable laws and rules for social workers who serve as volunteers vary from state to state. Interested social workers may contact their state social worker licensing board to clarify whether an exemption from licensing exists for volunteer work or for the type of organization where the social worker will be volunteering (e.g., a non-profit, public school, or public agency). Social work leaders should review the Uniform Emergency Volunteer Healthcare Practitioners Act and determine whether to support its passage on a state-by-state basis.

Social workers who are performing pro bono social work activities are not relieved of the obligation to perform in accordance with ethical standards of care, regardless of the status of licensure obligations or exemptions. Professional standards would apply according to the practice setting where the volunteer activities occur and considering the circumstances under which the services are provided.

References

Allhusen v. State, 898 P.2d 878 (1995).

Association of Social Work Boards (2006). Social work laws & regulations comparison database, TABLE 1: Board structure/statutory provisions. [Online]. Retrieved from <http://aswbdata.powerlynxhosting.net> on September 30, 2006.

Jane D. v. Ordinary Mutual, 32 Cal.App.4th 643, 38 Cal.Rptr.2d 131 (1995).

National Association of Social Workers (1999). *NASW Code of ethics*. Washington, DC: Author.

National Association of Social Workers (2005). Social workers and disaster relief services. Legal Defense Fund, Legal Issue of the Month. [Online]. Retrieved from https://www.socialworkers.org/ldf/legal_issue/200509.asp on September 30, 2006.

National Conference of Commissioners on Uniform States Laws (2006). Uniform emergency volunteer healthcare practitioners act. [Online]. Retrieved from http://www.law.upenn.edu/bll/ulc/uiehsa/2006annualmeeting_approvedtext.htm on September 30, 2006.

People v. Bridges, 538 N.Y.S.2d 701 (1989).

People v. Foggy, 521 N.E.2d 86 (1998).

State of Michigan (1991). 1991-1992 Mich. Op. Atty Gen. 18, 1991-1992 Mich. OAG No. 6677, 1991 WL 550644 (Mich.A.G.).

State of New York, Office of the Attorney General, Formal Opinion No. F 97-3, 1997 N.Y. Op. Atty. Gen. 11.

United States v. Schwensow, 151 F.3d 650, C.A.7 (Wis.,1998).

Vernon's Texas Statutes and Codes Ann., Occupations Code § 505.003 (eff. Sep. 1, 2005).