

Lecture 4: Professional Risk Management(follow-up)

The second broad category includes claims that allege that social workers failed to carry out a duty that they are expected to carry out in accordance with the profession's standard of care (so-called acts of omission or nonfeasance). Examples include failure to conduct a proper biopsychosocial assessment (التقييم البيولوجي النفسي الاجتماعي), failure to prevent a client's suicide, failure to supervise a client properly, failure to protect third parties from harm, failure to treat a client successfully, and failure to refer a client for consultation for specialized treatment.

Of course, not all claims have merit. Some are frivolous(=silly or not suitable) or lack evidence of professional malpractice or misconduct. However, many claims do have merit or are settled out of court (or, in the case of licensing board complaints, settled with consent agreements) in order to minimize loss and legal expenses. In either case the result may be costly.

As it is noted above, malpractice is a form of negligence that occurs when a practitioner acts in a manner inconsistent with the profession's standard of care—the way an ordinary, reasonable /'ri:znəbl/, and prudent professional would act under the same or similar circumstances. Suits (القضايا) that allege malpractice are civil suits (in contrast to criminal proceedings (على عكس الإجراءات الجنائية)). Ordinarily civil suits are based on tort or contract law (قانون الضرر أو العقد), with plaintiffs (المدعون) (the individuals bringing the suit) seeking some form of redress (compensation=payment) for injuries that they claim to have incurred (التي كابدوها) (Bernstein and Hartsell 2004; Hogan 1979 as cited in Reamer & Frederic G, 2015). These injuries may be economic (lost wages or the cost involved in seeking psychiatric /,sa:ki'ætrik/ care), physical (resulting from a suicide /'su:isard/ attempt or a practitioner's attempt to restrain (منع باستعمال القوة) an impaired client (عميل عاجز), or emotional (depression (اكتئاب) or anxiety/æŋ'zarəti/قلق) brought about by the inappropriate disclosure (افشاء) of confidential information). Although this allegation (/,ælə'geɪʃn/=accusations) is much less common, a plaintiff (المدعي) may also allege denial /di'naɪəl/ of constitutional rights (eg. individuals hospitalized against their wishes may allege abridgement (make it shorter: انتقاص) of their rights to liberty and due process).

As in criminal trials (المحاكمات الجنائية), defendants (المتهمون) in civil suits (الدعاوى القضائية المدنية) are presumed (/prɪ'zju:md/=Supposed) blameless until proved otherwise. In civil suits the standard of proof required (معيار الإثبات المطلوب) to find defendants liable for their actions (أفعالهم) is preponderance (/prɪ'pɒndərəns/=dominance) of the evidence.

In principle, tort law—which entails(=requires) rules allowing injured parties (الأطراف) (المصابة أو المتضررة) to seek compensation through the courts from those responsible for the harm—performs three important functions in society. First, it deters(=prevents) behaviour that causes injuries. Second, tort law provides opportunity for retribution (=punishment /vengeance/payback) against those responsible for the injury. Finally, tort law provides a mechanism for compensating the injured party (Antler 1987; B.

Bernstein 1981; Bernstein and Hartsell 2004; Edwards, Edwards, and Wells 2012; Litan, Swire, and Winston 1988 as cited in Reamer & Frederic G, 2015).

Most legal actions **القانونية الاجراءات** against social workers involve tort law, or law involving private or civil wrongs or injuries resulting from a breach of a legal duty (as

الذي ينطوي على الأخطاء الخاصة أو الأخطاء/الأفعال غير المشروعة أو الجرم/الأجرام أو الجرم / المدنية

opposed to contract or criminal law **القانون الجنائي**). Torts may be unintentional (negligent) or intentional. Unintentional torts, which include the various forms of negligence and malpractice concern allegations that the social worker's performance fell below the standard of care for the profession. Intentional torts—such as defamation of character or assault and battery **الاعتداء والضرب**—do not require evidence of negligence.

Most tort claims against social workers allege some form of malpractice (unintentional torts). The malpractice suit has its origins in early English common law. In fact, mention of physicians' professional liability dates to the thirteenth century (Hogan 1979). Since then, a variety of landmark court cases have clarified the nature of malpractice. In a classic eighteenth century case involving medical malpractice, for instance, the King's Bench stated (1767), "He who acts rashly acts ignorantly; and although the defendants in general may be as skilful in their respective professions as any two gentlemen in England, yet the Court cannot help saying that in this particular case they have acted ignorantly and unskilfully, contrary to the known rule and usage of surgeons (*/ˈsɜːdʒən/=doctors who perform the surgery*)" (Hogan 1979:8). The first malpractice case on record in the United States was *Cross v. Guthry* in 1794. In this case a physician was found liable in a negligence case related to surgery performed on a woman who later died (Hogan 1979).

1. The elements of malpractice and liability

A malpractice claim must meet four conditions to be successful in court. These include evidence that the practitioner owed a duty to the injured party, the practitioner was derelict in that duty, the plaintiff suffered some sort of harm or injury, and the injury was the direct and proximate result of the breach of that duty (Reamer & Frederic G, 2015).

4. Importance of Human Resources risk management

1. The effective application of legislation and the need for robust business-relevant and integrated Human Resources risk management processes are crucial for all organisations, where success is often dependent on the people within the organisation, and the contribution they can make. **Regardless of what organisations say, in practice, Human Resources management is often not seen as core to the effective performance of the business.** This can arise for a three main reasons:

1. Human Resources is seen as merely (=just, only ,simply) an administrative function that deals with, for example, payroll and records **كشف المرتبات والسجلات**

2. Human Resources activities are often described, whether linked to legislation or not, as administrative 'red tape' **الروتين الإداري**. This comment is made even where the risk of

not handling certain aspects, eg individual performance, special leave, إجازة خاصة, grievances and discipline, المظالم و المجالس التأديبية, in a proactive, balanced and supportive manner can lead to serious consequences. Such consequences can include:

- Reduction in employee productivity and contribution.
- Additional management time.
- Increased employee absence and turnover . معدل الدوران
- Employment tribunal cases. قضايا محكمة العمل
- Legal costs, fines etc. التكاليف القانونية والغرامات