

# Clients' Right to Competent and Ethical Treatment

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*Although clients do not have a right to effective treatment, they do have a right to competent and ethical treatment. Clients have a right to expect that social workers will provide services in a manner consistent with prevailing practice and ethical standards. This article explores social workers' obligation to provide service competently and ethically, focusing especially on issues related to social workers' guaranteeing treatment results, expertise, and competence; representing qualifications and expertise; monitoring and evaluating treatment effectiveness; and using of research-based knowledge to guide practice.*

Perhaps some among us would like to be able to assert that clients have a right to effective treatment. The claim has an appealing ring to it. Sentimentality aside, however, Kevin Corcoran has reached a very sound and reasonable conclusion. Based on my reading of the legal literature, case law, and relevant statutes, clients do not have a right to effective treatment. Further, social workers do not have a legal duty to provide effective treatment. What social workers have is an obligation to deliver services consistent with the profession's standard of care. That is, social workers are obliged to practice in the way that an ordinary, reasonable, and prudent social worker would act under the same or similar circumstances (Austin, Moline, & Williams, 1990; Cohen & Mariano, 1982; Dickson, 1995; Meyer, Landis, & Hayes, 1988; Reamer, 1994). This mandate does not entail any kind of guarantee to effective treatment per se. Rather, social workers must provide services in a competent and ethical fashion, consistent with prevailing professional standards—perhaps a different sort of guarantee. Not only would it be unreasonable for social workers to guarantee effectiveness, but also it would be unethical, particularly given social workers' modest ability to forecast which of their interventions will “work,” however effectiveness is measured, and which will not.

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Corcoran has provided an insightful analysis of pertinent legal issues concerning whether clients have a right to effective treatment. In my view, however, we must supplement Corcoran's informative assessment in two ways. First, we need to broaden the legal lens, recognizing that although clients may not have a legal right to *effective* treatment, they do have a right to *competent* and *ethical* treatment. Although social workers are rarely sued for "failing to cure" or ineffective treatment (although it has happened), they are sued for various forms of allegedly incompetent, negligent, or unethical practice. Second, I think it is important to broaden the focus to address a variety of ethical issues that are germane to the issue of effective (and competent) treatment. I am not challenging Corcoran's assertions; rather, I would like to supplement them.

### THE RIGHT TO COMPETENT TREATMENT

My recent analysis (Reamer, 1994, 1995a) of malpractice claims filed against National Association of Social Workers (NASW) members who have insurance coverage through the NASW Insurance Trust—the largest insurer of social workers—confirms what Corcoran asserts, that there are few claims filed against social workers alleging ineffective treatment. In fact, between 1969 and 1990, only one claim was filed alleging "failure to cure—poor results," representing only .16% of total claims filed.

However, social workers should know that a significant number of claims have been filed against social workers alleging some kind of incompetent, incorrect, or negligent treatment. Nearly one fifth (18.6%) of claims filed against social workers insured by the Trust were for "incorrect treatment," which could include widely ranging allegations, such as failure to introduce appropriate therapeutic interventions, use of "high-risk" interventions that are not supported by even a significant minority of social workers, or failure to implement intervention techniques properly.

Here are just a couple of examples of lawsuits involving social workers (whether the social work defendants were insured by the NASW Insurance Trust was not disclosed in the case summaries). In *Miller v. Martin, Onesian, Macomb County Community Guidance Center, and St. Joseph Hospital of Mt. Clemens*, a legal secretary who went to St. Joseph Hospital in Michigan with symptoms of panic disorder and agoraphobia alleged that she was discharged to outpatient treatment without being informed of the diagnosis or given an explanation of her condition. The plaintiff claimed that attempts to treat her condition were limited to comments about less painful methods of suicide and New Age spiritual guidance. One of the defendants (Martin)

was a social worker. The case was settled for \$100,000 ("Patient Improperly Treated," 1992, p. 6).

In *Arriaza v. Harvard Community Health Plan* (1991) a suit was filed against a psychiatric facility and several mental health professionals, including a social worker, in Massachusetts. The plaintiff, a 19-year-old patient who jumped from the sixth floor of a psychiatric facility, claimed that the defendants did not properly diagnose his suicidal ideation and did not take proper precautions to prevent a suicide attempt.

Three days after the patient's admission, he was released on a pass to attend a psychiatric group therapy session on the building's sixth floor. After the therapy session, the patient was left briefly unattended. He walked to an open atrium foyer and jumped. The patient's injuries included hip and leg fractures, brain damage, and loss of an eye, kidney, and spleen. The jury found the defendants 85% negligent; the plaintiff ultimately settled for \$3 million during the damages phase of the trial ("Psychiatrists Liable," 1991, p. 1).

In addition, legal claims have been filed for phenomena such as inappropriate handling of confidential or privileged information, failure to diagnose clients' problems properly, improper referral of clients to other specialists, mishandling of suicide risk, sexual impropriety, defamation of character, breach of contract, false imprisonment (for example, related to involuntary hospitalization in a psychiatric facility), and inappropriate termination of services (often called abandonment). What this pattern of claims suggests is that although few social workers are sued by clients claiming to have a right to effective treatment, larger numbers—although clearly a relatively small fraction of practicing social workers—have claims filed against them alleging some kind of malpractice related to *the ways* in which social workers attempt to provide effective treatment.

Thus, social workers should not let down their guard on hearing that clients do not have a legal right to effective treatment. This is an important finding, but I would not want this pronouncement to be misinterpreted to mean that social workers are off of the malpractice and liability hook. Indeed, since the inception of the NASW Insurance Trust program in 1969, malpractice and liability claims filed against social workers have increased considerably (Reamer, 1994, 1995a).

## ETHICAL ISSUES

In addition to broadening the legal lens through which social workers examine issues related to effective and competent treatment, I think we need to hold up an ethical lens. In recent years, social workers have developed an

increasingly mature grasp of ethical issues in the profession (Loewenberg & Dolgoff, 1992; Reamer, 1995b; Rhodes, 1986). This is reflected in social work's burgeoning literature on the subject; the vast majority of publications on social work ethics have appeared since 1980. In addition, the new *NASW Code of Ethics* (1996), ratified in 1996 and constituting the first comprehensive code revision since 1979, also reflects social workers' enhanced understanding of ethical issues related to the profession in general and clinical practice in particular. The *NASW Code of Ethics* Revision Committee, chaired by this author, established a number of new standards that pertain to the general subject of effective treatment (Reamer, 1998).

In my view, there are four key ethical issues pertaining to the general subject of effective treatment. First, social workers need to be careful not to guarantee treatment results inappropriately. As a general rule, social workers do not have the ability to predict precisely the effects that various interventions will have on clients and others. Empirical data may exist in some instances, enabling social workers to assert the *probability* of various outcomes. Typically, such probabilistic statements are based on outcomes reflected in aggregate data gathered as part of clinical or program evaluations. Thus, for example, social workers may be able to say, hypothetically, that based on the research evidence, 32% of children between the ages of 8 and 12 who manifest symptoms of attention deficit disorder, and who receive a prescribed combination of behavioral and cognitive therapy, are likely to experience a statistically significant reduction in symptoms, or something like that. Social workers' ability to know whether a particular child will experience statistically significant symptom reduction is quite limited. The bottom line is that at this point in time, social workers, and other human service professionals for that matter, do not know enough to be able to guarantee results. Anything resembling a guarantee is dangerous, dishonest, and deceptive. As the *NASW Code of Ethics* (1996) states, "Social workers should ensure that their representations to clients, agencies, and the public of . . . results to be achieved are accurate" (standard 4.06 [c]); and "Social workers should not participate in, condone, or be associated with dishonesty, fraud, or deception" (standard 4.04). Clients deserve a candid, forthright assessment of the likelihood of success, period.

Second, social workers must be careful to practice only in areas where they have demonstrated expertise and competence. On occasion, ethics complaints (filed with NASW or state licensing or regulatory bodies) and lawsuits are filed against social workers, alleging that they practiced outside their areas of expertise, resulting in some sort of injury to clients or other parties. For example, social workers who do not have bona fide education

and training in the treatment of eating disorders should not assume sole responsibility for treatment of a client who has been diagnosed with anorexia nervosa. Not only can the social worker not guarantee effective treatment, but also the social worker risks an ethics complaint or lawsuit alleging improper treatment, particularly if the client becomes ill or dies while under the social worker's care. Similarly, social workers who do not have formal education and training in the use of hypnosis should not use the technique; otherwise, social workers risk allegations of unethical conduct or malpractice for practicing without proper education and training and for practicing in a manner that harmed their clients. There are two particularly relevant standards in the *NASW Code of Ethics* (1996): "Social workers should provide services and represent themselves as competent only within the boundaries of their education, training, license, certification, consultation received, supervised experience, or other relevant professional experience" (standard 1.04 [a]); and "Social workers should provide services in substantive areas or use intervention techniques or approaches that are new to them only after engaging in appropriate study, training, consultation, and/or supervision from persons who are competent in those interventions or techniques" (standard 1.04 [b]).

A related issue concerns social workers' use of interventions that are not widely accepted or used and not based on solid research evidence—generally known as "high-risk" interventions. Although there may be considerable value in experimenting with or using nontraditional interventions, social workers must be cognizant of the possibility that such practices may be viewed as risky or harmful. As Corcoran aptly notes, social workers may be vulnerable legally in the absence of a "significant minority" of colleagues who endorse the intervention approach. According to the *NASW Code of Ethics* (1996),

When generally recognized standards do not exist with respect to an emerging area of practice, social workers should exercise careful judgment and take responsible steps—including appropriate education, research, training, consultation, and supervision—to ensure the competence of their work and to protect clients from harm. (standard 1.04 [c])

Third, social workers should not misrepresent their qualifications and expertise. For a variety of reasons, there are instances when some social workers may be tempted to impress clients with their considerable clinical or other expertise, professional credentials, and so on. This may occur, for example, if social workers are eager to attract or solicit new clients and believe that this sort of marketing approach will help, or if, for psychological

reasons, social workers need to embellish their credentials and public persona. Social workers should avoid claiming experience, education, or expertise they do not have, lest clients or prospective clients be misled about the likelihood that social workers' interventions will be effective. As the *NASW Code of Ethics* states,

Social workers should ensure that their representations to clients, agencies, and the public of professional qualifications, credentials, education, competence, affiliations, services provided, or results to be achieved are accurate. Social workers should claim only those relevant professional credentials they actually possess and take steps to correct any inaccuracies or misrepresentations of their credentials by others. (standard 4.06 [c])

Finally, social workers should monitor and evaluate the effectiveness of their interventions, should continually update their knowledge of research-based literature concerning practice effectiveness, and should use research findings to guide practice. Especially since the mid-1970s, social work, as a profession, has strengthened its commitment to empirically based practice. Although actual implementation of this commitment throughout the profession is uneven, at least in principle social workers understand that research and evaluation must be an integral part of practice. Social workers who use intervention approaches for which there is no empirical foundation, who fail to monitor the effectiveness of their interventions, or who do not keep current with research findings in the field related to practice effectiveness risk allegations of unethical conduct or malpractice. There are several relevant *NASW Code of Ethics* (1996) standards:

Social workers should strive to become and remain proficient in professional practice and the performance of professional functions. Social workers should critically examine, and keep current with, emerging knowledge relevant to social work. Social workers should routinely review professional literature and participate in continuing education relevant to social work practice and social work ethics. (standard 4.01 [b])

Social workers should base practice on recognized knowledge, including empirically-based knowledge, relevant to social work and social work ethics. (standard 4.01 [c])

Social workers should monitor and evaluate policies, the implementation of programs, and practice interventions. (standard 5.02 [a])

Social workers should critically examine and keep current with emerging knowledge relevant to social work and fully use evaluation and research evidence in their professional practice. (standard 5.02 [c])

## CONCLUSION

Corcoran is certainly right when he argues that social work's clients do not have a legal right to effective treatment. Neither case law nor statutes support such a claim. Nevertheless, clients do seem to have a right to competent and ethical treatment. To practice competently and ethically, social workers need to have a firm grasp of prevailing standards related to such phenomena as confidentiality and privacy, informed consent, assessment, the proper use of intervention techniques, supervision, consultation, referral, termination of services, and the use of empirically based research to guide and evaluate practice. Although social workers cannot, and should not, guarantee effective treatment, they should be willing to guarantee competent and ethical practice. That much, at least, is within social workers' control.

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