



Supervisors inherently assume more risk

Question: I am a licensed professional counselor and work in a county agency that provides services to the mentally ill.

My job entails supervising workers who perform initial screening for involuntary commitment and find space for our clients in area hospitals. My state does not require these workers to be licensed. I am also expected to act as the clinical supervisor for two graduate counselors who are completing their hours to become fully licensed. Do I face an increased liability risk because of these job functions and, if so, what can I do to minimize this risk?

Answer: As a supervisor, your job entails greater risk than if you were responsible solely for your own clients. Supervisors are often named in malpractice suits against mental health professionals and institutions on the basis that the supervisor is “vicariously” liable for the acts of the supervisee. Furthermore, the supervisor may be found independently liable on the basis of negligent supervision (see pages 240-242 and 265-271 of the seventh edition of *The Counselor and the Law: A Guide to Legal and Ethical Practice*, a book published by the American Counseling Association that I co-authored with Burt Bertram).

A case recently brought in the Commonwealth of Virginia is illustrative of the problems inherent in your practice setting. This past November, state Sen. Creigh Deeds filed a \$6 million wrongful death lawsuit against the commonwealth, the Rockbridge Area Community Services Board (the local agency providing mental health, developmental disability and substance abuse services, pursuant to oversight by the Virginia Department of Behavioral Health and Developmental Services) and Michael Gentry, the “evaluator/license eligible mental health professional” who provided preadmission screening to Deeds’ son, Austin “Gus” Deeds (see media.graytvinc.com/documents/DeedsLawsuit.pdf for a copy of the actual complaint).

According to the complaint, a local magistrate issued an emergency custody

order for Gus after Sen. Deeds expressed serious concern regarding his behavior. Gus was transported to a local hospital and waited hours before the evaluation was conducted. Gentry, the evaluator, found that Gus met the criteria for hospitalization and called several local hospitals. The complaint further alleges that the evaluator faxed Rockingham Memorial Hospital twice to inquire about available bed space but did not follow up after it turned out that he had a wrong number. Furthermore, the complaint states that at least five hospitals, including Rockingham, had available space. Gus Deeds’ mother also allegedly told Gentry that Gus would kill his father and himself if he were not hospitalized. Furthermore, Gentry was supposedly aware of Gus’ history of suicide attempts and recent behavior. After a two-hour extension of the original four-hour order by the magistrate, Gentry released Gus into his father’s custody. The next morning, Gus stabbed Sen. Deeds 13 times and then killed himself.

What can you, as a supervisor, learn from this case? First, as a licensed professional, you are the one responsible for the actions of your supervisees. As the Deeds case demonstrates, mental health workers who perform important screening functions are not always licensed. Gentry was required to be *certified* by the Commonwealth of Virginia for the specific purpose of performing screening evaluations for hospitalization, but there is no evidence to show that he was *licensed* as a mental health professional, which would require a higher degree of learning and clinical experience. You might consider working with your own state and local agencies to educate them regarding the benefits of hiring licensed workers for evaluations.

Second, make sure you have adequate professional liability insurance to cover not only your own risks, but also your liability in supervising others. Insurance companies often impose a premium surcharge for supervisory liability coverage because their risk is, in turn, increased. If that is the case, you might negotiate with your agency to

cover the cost of increased supervisory or vicarious liability coverage or request that your salary be increased to compensate for your additional risk. If your agency claims that you are covered, ask to see the actual policy and details of coverage.

Third, ensure that there are adequate agency policies and procedures governing your supervisees’ duties. Follow up to make certain that these policies are actually being followed. For example, if your supervisees are expected to contact local hospitals, make sure that any policy regarding documentation of such contacts is being rigorously implemented. Likewise, if evaluations are to be conducted within a certain time frame, monitor your supervisees’ actions to confirm compliance.

Finally, as a clinical supervisor of counseling graduates, make sure that you follow your state licensure board regulations. This may encompass your supervisory training, meetings with supervisees, review of records, creation of a thoughtful and thorough supervisory contract that sets the parameters of the relationship, availability to supervisees and so on. If these actions are not completed, then you open yourself up to licensure board complaints and civil malpractice lawsuits.



The question addressed in this column was developed from a de-identified composite of calls made to the Risk Management Helpline sponsored by ACA. This information is presented solely for educational purposes. For specific legal advice, consult your own local attorney. ♦

Anne Marie “Nancy” Wheeler, an attorney licensed in Maryland and Washington, D.C., is the risk management consultant for the ACA Ethics Department.

Letters to the editor:
ct@counseling.org