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Legally Speaking — Do Librarians Need Liability Insurance?

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Should librarians purchase liability insurance? Do we need to worry about malpractice? This issue is tied to the question of whether librarians can be sued for acts or omissions in our provision of information. I have a complete discussion of this subject in my forthcoming book, The Law of Libraries and Archives, which will be issued shortly by Scarecrow Press.

Here is a summary of the issue. Many commentators have written about the possibility of malpractice, particularly for information brokers. Most theories involve having superceded materials on the shelf or providing incorrect (or incomplete) information.

There is also an issue as to whether, in the event that there might be liability, it would be negligence or malpractice. Black’s Law Dictionary defines negligence as being “the failure to use such care as a reasonably prudent and careful person would use under similar circumstances.” Malpractice, on the other hand, is exclusively for professionals, and is defined as being the “[f]ailure of one rendering professional services to exercise that degree of skill and learning commonly applied under all the circumstances in the community by the average prudent reputable member of the profession. . . .”

Malpractice is much more difficult to prove than ordinary negligence, so librarians would be much better served if our professional skills qualify us for the malpractice standard rather than negligence. Nonetheless, there are significant issues related to the question of which case would be brought against a librarian.

In terms of precedents, there has never actually been a case brought against a librarian for either superceded materials or for incorrect or incomplete provision of information. In fact, some states have statutes that may help to limit liability. For example, Illinois has a statute that limits liability for the provision of information: “A public employee acting in the scope of his employment is not liable for an injury caused by his negligent misrepresentation or the provision of information either orally, in writing, by computer or any other electronic transmission, or in a book or other form of library material.” There is, however, a British case against a chemist for incomplete library research, which is discussed in my book.

So, should librarians purchase malpractice insurance? Or should libraries obtain liability insurance? I would argue that it is the duty of every organization to provide reasonable liability insurance for their professional and paraprofessional employees. Most organizations carry some type of liability policy that covers the acts or omissions of employees for actions within the scope of their employment. Of course, these policy provisions need to be checked from time to time in order to ensure that they meet the needs of the institution and the employees, but I believe that for the most part these types of policies are sufficient to protect librarians against the threat of lawsuits.

The next question is whether there any situations in which provision of information services would be outside the scope of a librarian’s duties. There are in fact three possible scenarios where liability insurance provided by an employer would not be sufficient. The first situation involves a librarian who is doing freelance research on the side. In that case, the librarian is acting as an information broker, and would need to obtain his or her own insurance. Most independent information brokers have their own insurance policies, and so should be a freelance researcher. Since it is not a part of the normal employment situation, the librarian who does freelance research would not be covered by their employer’s “acts and omissions” policy.

The second situation in which an employer policy would not cover a librarian is if he or she was committing the unauthorized practice of law or medicine. There has been a great deal written on this subject, including by myself as a Legally Speaking column. In that situation, the rules of legal or medical malpractice would apply. A librarian who caused harm to a patron with incorrect information while practicing law or medicine without a license could be sued for legal or medical malpractice. Since practicing law or medicine is beyond the scope of a librarian’s duty, this action would not be covered by the employer’s liability insurance.

The remedy for avoiding a lawsuit in this situation is simple: don’t practice law or medicine without a license. Not only is it a crime, but it can also subject librarians to the possibility of legal liability. To avoid practicing without a license while still helping patrons, you can always provide directional assistance. You may help a patron find information in databases, send them to the right place, and help them find information within the materials. However, you’ll never explain any terms or concepts (refer them to the dictionary instead), recommend legal forms or medications (not even aspirin), etc. Let the patron make up his or her own mind. By following these guidelines, you will not only avoid criminal charges, but also legal liability. (For more about this topic, see my forthcoming book from Scarecrow, The Law of Libraries and Archives.)

One final issue needs to be discussed. In the case of a librarian providing information to a medical or legal professional (or their staff), the problem of unauthorized practice of law or medicine does not apply. But is there any possibility of liability for malpractice?

I do not believe that there is anything to fear in this situation. If a librarian provides information to a medical or legal professional or their staff, it is the doctor, lawyer, pharmacist, etc. who will ultimately be responsible for any harm to the patient. The medical or legal professional is ultimately the one who should decide whether information is correct and sufficient. Therefore he or she is the one who holds the ultimate responsibility for incorrect information.

The American Bar Association Model Rules of Professional Conduct discusses this type of situation. The rules relating to competence, diligence, and the exercise of independent professional judgment have been interpreted to mean that an attorney must do a thorough and complete job of researching the case. Failure to thoroughly research is automatically an ethical violation, and would also subject the attorney to malpractice. But this is not malpractice for the librarian, due to another...
provision of the ABA Model Rules. ABA Model Rule 5.3, "Responsibilities regarding nonlawyer assistants with respect to a nonlawyer employed or retained by or associated with a lawyer," gives each lawyer a duty to supervise nonlawyers that perform work or assist the attorney. Ultimately, the bar association holds the lawyer responsible if a librarian does incomplete research. It is the lawyer's responsibility to decide whether the information presented is correct and sufficient. Therefore his or her librarian, paralegal, or other researcher is off the hook.

Similarly, medical professionals (not only physicians, but also nurse, lab professional such as a cytotechnologist, physical therapists, and pharmacists) are ultimately responsible for making up their minds as to whether the information presented to them is sufficient and correct. Therefore, it is the medical professional who will ultimately be on the hook for providing incorrect information to a patient.

To return to the original question: do librarians need to purchase liability insurance? Unless he or she is acting as an information broker, the answer is no. Problems can be avoided by making sure that the employer's liability policy contains proper language for acts or omissions of employees. Librarians can also avoid trouble by not crossing the line to practicing law or medicine without a license (which they should avoid anyway for other reasons). My conclusion is that, except for information brokers, librarians do not need to worry about purchasing malpractice insurance.

Endnotes
1. See, Teresa Pritchard and Michelle Quigley, The Information Specialist: A Malpractice Risk Analysis, 13-3 Online 57 (May 1989);

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opinions that you might be interested in. There will be people to answer questions at the Charleston Conference. Also, job ads will be posted on the message board near the information desk at the Francis Marion.

First, from Christine Frank <Christine_Frank@ruhs.edu> at Rush University Medical Center. — They are seeking an Assistant Director for Collections Management. www.lib.rush.edu/library/Col11nt.Lib.html

Second, Lisa Wheeler <lwheeler@umd.edu> and Lupe O. Fernandes <german@umd.edu> at University of Maryland Libraries are recruiting for a Librarian (Head of Acquisitions). www.lib.umd.edu. Full job description is at www.lib.umd.edu/UMCP/ASD/POOL/lib/bec/00245.html.

Well, that's all we have space for, hope to see you in Charleston!