UNDERSTANDING TORT LIABILITY:
Deceit or Fraud, Defamation, and Invasion of Privacy

1) Deceit or Fraud: This tort occurs when there has been a false representation to a client with the intention of misleading her in circumstances under which she would be reasonably entitled to believe the representation.

It is crucial that every hotline volunteer/telephone receptionist be properly trained on how to respond to incoming calls from potential clients. We should never make any false statements to a caller in hopes that the caller will be enticed to make an appointment with the center. Neither should we use half-truths or incomplete statements to get the caller into the center. If the caller asks for an abortion or an abortion referral, she should be told that the center provides neither. However, the counselor should be trained to immediately follow-up such a disclosure with a statement of the positive aspects of the center and how it can help.

Even though an at-risk mother might have an immediate knee-jerk reaction to being pregnant, what she wants more than anything is help and information. Thus, a well-trained hotline worker who informs a caller that ‘the center does not perform or refer for abortions’ will usually be able to establish rapport with the caller by sharing the positive services the center offers. A mother in a crisis pregnancy, even though she is immediately abortion minded, will usually respond to a positive explanation of how the center is able to help.

If the center is not a medical facility, it is also very important to inform the caller that the center is not a medical facility and cannot give a medical diagnosis or a verification of pregnancy. Only a licensed medical facility can perform such a service and the caller should be informed that the center would give an appropriate referral to such a facility.

All office intake forms should clearly state that the center is not a medical facility, does not perform abortions, nor does it provide abortion referrals. A sample intake form is provided in the NIFLA Model Basic Operations Policies & Procedures Manual.

For both Pregnancy Resource Centers (PRCs) and Pregnancy Medical Clinics (PMCs), it is very important NOT to give medical advice over the telephone. The client needs to make an appointment and be seen by your
medical providers in order for medical advice to be given.

2) Defamation: Defamation is defined as any false written or oral statement that exposes any person or any person’s business to public contempt or ridicule. The key element in this tort is that the statement made, whether oral or in writing, is false. Truth is an absolute defense against a cause of action for defamation.

Liability for this tort happens when false statements about abortion providers are made either in publications from PRCs/PMCs or through oral statements from pregnancy help workers.

PRCs/PMCs should exercise care to assure that any statements made, whether oral or in writing, about abortion providers are true and can be documented since the key element of this tort centers on the fact that the statement made is false. For example, if a center has been given information that a particular abortion provider in its community has had several law suits filed against him/her by women who have been injured, such information should not be distributed until it has been thoroughly documented. If a client passes on negative information to a center about a particular abortion provider, such information should be reduced to writing and its truth investigated before it is shared.

3) Invasion of Privacy: Many states allow a tort action for invasion of privacy. This occurs when there is public disclosure of private facts. While the statement made about an individual may be true, if such facts are considered to be private and confidential, a cause of action for invasion of privacy could result.

Confidentiality between a client and a PRC/PMC client advocate must be absolute if trust and confidence in the center is to be established. When such confidentiality is broken and facts about a client shared in private are communicated without the client’s permission, potential liability exists. Exceptions to this rule of confidentiality exist when the law requires that certain information be reported as stated in the next section.

HIPAA laws and state medical privacy laws protect confidential medical information. While HIPAA applies only to medical facilities which bill electronically, NIFLA encourages medical facilities to voluntarily comply with its provisions. More details in this regard are available on the NIFLA website (www.nifla.org) in the Members Area (HIPAA Manual and state specific privacy information), in the NIFLA Medical Clinic Manual and NIFLA’s Legal Tips.

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