

# MALPRACTICE

*There's more to it Than you might think*

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**Continuing Education Credit** The Commission for Case Manager Certification to provide continuing education credit to CCM<sup>®</sup> board certified case managers and disability specialists.

This course is approved for 2 Hours Ethics CEUs.



# Learning Outcomes

At the conclusion of this session the Case Manager will:

- Articulate the broad scope of malpractice in the context of case management practice and their underlying profession/degree.
- Identify what laws control case management practice.
- Recognize the interplay between documentation, as a legal document and liability exposure.

# CMSA Standards of Practice for Case Management (Rev. 2016)

- **K. STANDARD: ETHICS** Case managers should behave and practice ethically, adhering to the tenets of the code of ethics that underlies his/her professional credential (e.g., nursing, social work, rehabilitation counseling, etc.).
- Awareness of the five basic ethical principles and how they are applied: **beneficence** (to do good), **nonmaleficance** (to do no harm), **autonomy** (to respect individuals' rights to make their own decisions), **justice** (to treat others fairly), **and fidelity** (to follow-through and to keep promises) (CMSA 2016, pg,28).

# Hierarchy of Duty

- Legal mandates (LAWS) supersede all other duties
  - Codified Standards of Practice
  - Codified Scope of Practice
  - Codified Ethical Code
- **REGULATIONS** are rules with authority of law
- Federal law preempts State Law
  - Federal Regulations (HHS, HIPAA ...)
  - Federal Workers Compensation Laws
  - State Practice Acts/Case Law
- Professional Standards of Practice
  - Codes of Professional Conduct
- Employer's Policies & Procedures



FEDERAL  
LAW

STATE  
LAW

CODIFIED  
STANDARDS  
CODES

Professional  
Standards/  
Codes

P&P

## PART 1300 NURSE PRACTICE ACT Section 1300.20 Nursing Delegation

- a) For the purposes of this Section: "Delegation" means transferring to an individual the authority to perform a selected nursing activity or task, in a selected situation. "Nursing Activity" means any work requiring the use of knowledge acquired by completion of an approved program for licensure, including advanced education, continuing education, and experience as a licensed practical nurse or professional nurse, as defined by this Part.
- b) Nursing shall be practiced by licensed practical nurses, registered professional nurses, and advanced practice nurses. In the delivery of nursing care, nurses work with many other licensed professionals and other persons. An advanced practice nurse may delegate to registered professional nurses, licensed practical nurses, and other persons.
- c) A registered professional nurse shall not delegate any nursing activity requiring the specialized knowledge, judgment, and skill of a licensed nurse to an unlicensed person, including medication administration**

# Legal Adherence Crosses all Disciplines

Case Managers . . . Often confront ethical dilemmas

In attempting to resolve ethical dilemmas we are guided and bound by:

- Federal and State Laws and Regulations
- Codes of Ethics for Your professional discipline (i.e., ANA, NASW, AMA)
- CMSA Standards of Practice for Case Managers
- CCMC Code of Professional Conduct (2016, p.4)
- CDMS Code of Professional Conduct (Principle 7, pg. 4; RPC 1.05, 2018, pg.7)
- CRC Code of Ethics (2017, pg,35)

# CRIMINAL vs. Civil Litigation

Statutory Law  
Crime

Tort Law  
A Tort is a CIVIL Wrong

## Plaintiff's Burden of Proof

### General Negligence

- DUTY
- Breach
- Cause
- Harm



# Causation

- “**BUT FOR . . .**” But For the action/inactions of the Defendant, would not have suffered X.
- **Proximate Cause** – “Substantial Factor” test
  - A proximate cause is one that is legally sufficient to result in liability. It is an act or omission that is considered in law to result in a consequence, so that liability can be imposed on the actor.
  - It is the cause that directly produces an event. The event would not have occurred but for the cause

<https://definitions.uslegal.com/p/proximate-cause> (2021).

# Definitions of Malpractice

Medical Malpractice is a tort that arises when a medical professional violates the standard of care owed to a patient and the patient is injured as a result.

**Tort** is a civil wrong for which a remedy may be obtained in the form of damages \$\$\$

- Injury to the client, resulting from
- A failure to exercise “required degree of care, skill or diligence under the circumstances

# Traditional Malpractice Claims

- Failure to **Assess** and monitor a patient.
- Failure to utilize standard of care and/or exceed the scope of practice
- Failure to **Document** thoroughly and objectively
- **Improper use** of medical equipment or procedures,
- **Failure to Communicate** with the patient and his or her family



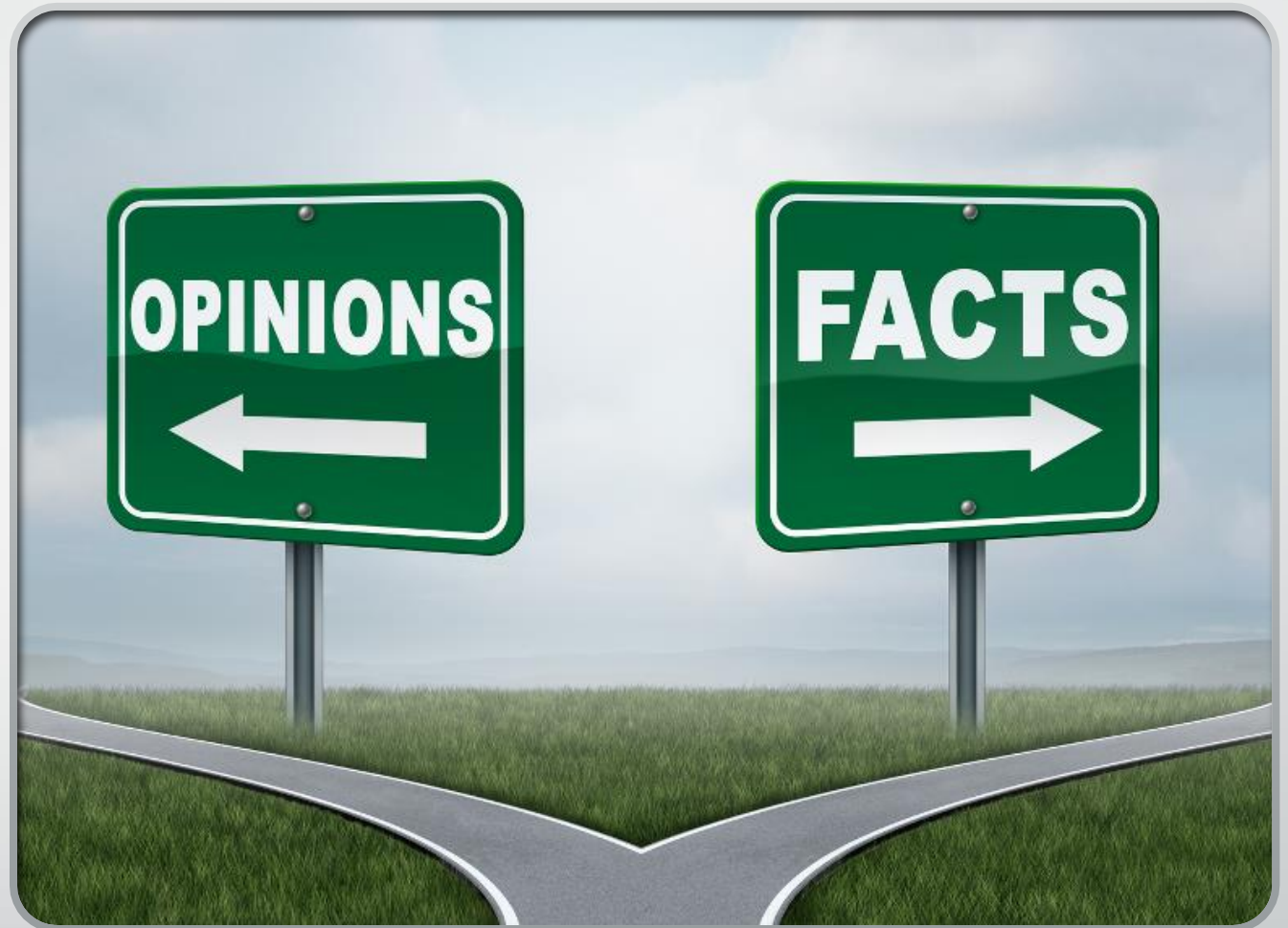
# Plaintiff's Burden of Proof in Professional Negligence (AKA: Malpractice)

- DUTY
- Breach
- Cause
- Harm
- **PLUS**, Expert Witness must testify under Fed/State Rules of Evidence

## One of these things is not like the other

- A **FACT** is something that is known to have happened or to exist, especially something for which proof exists, or about which there is information.

[dictionary.cambridge.org](https://dictionary.cambridge.org)



# What is a fact witness?

- A person who has information relevant to a case based on
  - **Observations** (Visual or auditory)
- In the case of a nurse or other professional
  - Describe what you saw, how it smelled, hot/cold . . .
  - **Who** said/did What? Did the patient cry, laugh, complain . . .
  - Identify and ratify records prepared by you and others
  - **YOU WILL NOT BE ASKED** for your opinion, even if you have one

## What is an expert witness?

A witness qualified by knowledge, skill, experience, training or education to provide scientific, technical, or other specialized opinions about the evidence or a fact issue.

## How is the Expert different from the fact witness?

- Expert is used when specialized information is required
- In a Civil liability (malpractice) lawsuit
  - The Expert Speaks to the specific facts in 3<sup>rd</sup> person/but is not the person who was present
  - Must be impartial, knowledgeable of standards of care, code of ethics, trends and changes in the industry “We used to do it . . . But at the time of this patient . . .”
  - Clarify procedure and consequences of word selection



# Defenses to Malpractice

- **Clinical Innovation**
- **Respectable Minority Opinion**
- **Good Samaritan Acts** – to encourage professionals to act and offer emergent care voluntarily
- **Honest Error in Judgment**
  - Critical Thinking
  - Up-to-date Academic/Professional Authority
  - Education and Experience
- **NOTE** Under Illinois law, **an apology CANNOT** be used as evidence of negligence or liability



# Extra Protections for Professionals

**Illinois Statute of Limitations law** 2 years of the date that the victim discovered or should have discovered his or her injury. However, all medical malpractice actions must be brought no later than four (4) years from the date on which the medical malpractice occurred -- even if the victim was not aware of the malpractice until more than four years later. If the victim is a minor, the statute of limitations is generally longer. If you do not file your claim within the statute of limitations, you may be forever barred from bringing your claim -- even if you have a valid case.

- Limited time extensions by statute <https://statelaws.findlaw.com/illinois-law/illinois-medical-malpractice-statute-of-limitations> (2016).
- **Affidavit of Merit Requirement**
  - Must be submitted with the Complaint
  - Must be prepared by a like-kind professional
  - Failure to file in the time allotted will lead to the dismissal of the Plaintiff's case
  - Illinois adds another hurdle, by requiring Plaintiff's Attorney to submit an affidavit as well.

# MEDICAL MALPRACTICE PAYMENT NURSING MANDATORY REPORT ILLINOIS BOARD OF NURSING

- Every insurance company that offers policies of professional liability insurance to persons licensed under the Illinois Nurse Practice Act or any other entity that seeks to indemnify the professional liability of a person licensed under the Act **shall report** to the Board of Nursing the **settlement** of any claim or cause of action, or final judgment rendered in any cause of action, that alleged negligence in the furnishing of patient care by the licensed individual when the settlement or final judgment is in favor of the plaintiff.
- Reports must be filed with the Board of Nursing in writing within 60 days after a determination that a report is required.

<https://www.idfpr.com/Renewals/Apply/Forms/F2288.pdf>

# What if I'm Sued/served?

- Don't argue with the Server
- Accept and READ the Summons and Complaint
  - **CHECK NAMES & DATES**
    - Where was I working at the time?
    - Which Insurance Co was covering me?
  - Breathe in and out as necessary
- Next Steps: Contact your
  - Employer
  - Insurance Carrier
  - Private Counsel



# Illinois Good Samaritan Protection from Liability

## Illinois Compiled Statutes (ILCS)

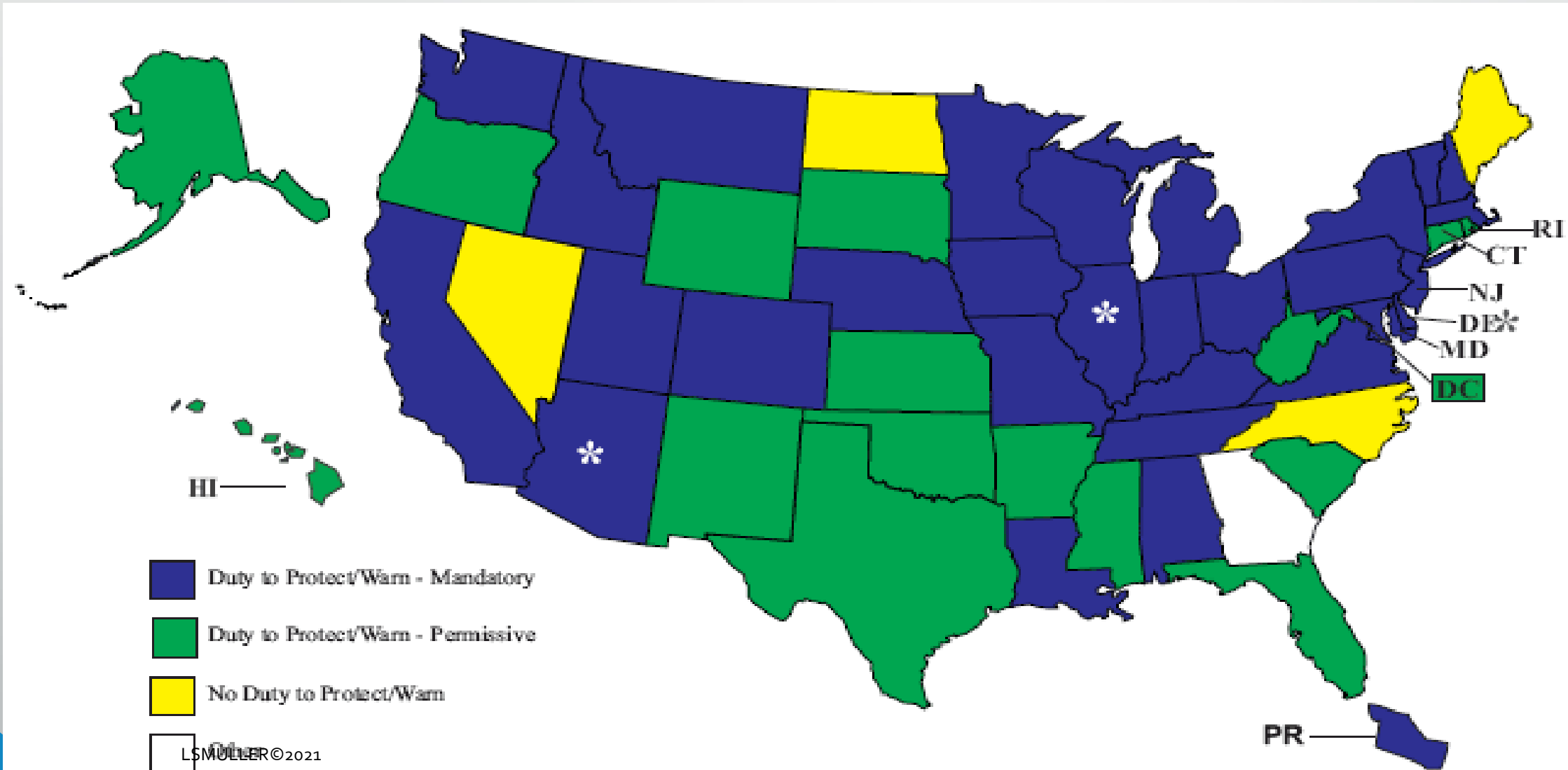
- 745 ILCS 49/5 **Emergency telephone instructions; exemption from civil liability**
- 745 ILCS 49/10 **Cardiopulmonary resuscitation; exemption from civil liability for emergency care**
- 745 ILCS 49/12 **Use of an automated external defibrillator; exemption from civil liability for emergency care**
- 745 ILCS 49/25 **Physicians; exemption from civil liability for emergency care**
- 745 ILCS 49/30 **Free medical clinic; exemption from civil liability for services performed without compensation**
- 745 ILCS **49/34 Advanced practice nurse; exemption from civil liability for emergency care**
- 745 ILCS 49/35 **Nurses; exemption from civil liability for emergency care**
- 745 ILCS 49/40 **Nurses; exemption from civil liability for services performed without compensation**

# What is DUTY TO REPORT/Duty to Warn?

**The Answer varies state to state**

- “In 1976, the California Supreme Court, in the case of Tarasoff v. Regents University of California held: “When a therapist determines, or pursuant to the standards of his profession should determine, that his patient presents a serious danger of violence to another, he incurs an obligation to use reasonable care to protect the intended victim against such danger, establishment of the so called “duty to warn.” (Muller/Fink-Samnack, Professional Case Management, May/June 2019)
- Illinois has adopted Tarasoff

# MANDATORY vs. PERMISSIVE DUTY TO PROTECT/WARN



(National Council of State Legislatures, 2019)

\* Arizona, Delaware and Illinois have different duties for different professions.

# Good Faith Defense

Illinois Mental Health Code, Section 405 ILCS 5/6-103(b),

There shall be no liability on the part of, and no cause of action shall arise against, any person who is a physician, clinical psychologist, or qualified examiner *based upon that person's failure to warn of and protect from a recipient's threatened or actual violent behavior* except where the recipient has communicated to the person a serious threat of physical violence against a reasonably identifiable victim or victims. . . .

# Veracity and Fidelity

- **Veracity** is a legal principle that states that a health professional should be honest and give full disclosure; abstain from misrepresentation or deceit; report known lapses of the standards of care to the proper agencies (Mosby's, 2008),
- When a patient asks you a question, they have a right to an honest answer
- Whether the patient is high ranking, homeless, wealthy, foreign born, your next-door neighbor . . . .

**Indiana** Code 34-30-16-2. **Duty to warn** or to take reasonable precautions;

The duty to warn of or to take reasonable precautions to provide protection from violent behavior or other serious harm arises only under the limited circumstances specified in section 1 of this chapter. The duty is discharged by a mental health service provider who takes one (1) or more of the following actions:

(1) Makes reasonable attempts to communicate the threat to the victim or victims.  
(2) Makes reasonable efforts to notify a police department or other law enforcement agency having jurisdiction in the patient's or victim's place of residence.

(3) Seeks civil commitment of the patient under [IC 12-26](#).

(4) Takes steps reasonably available to the provider to prevent the patient from using physical violence or other means of harm to others until the appropriate law enforcement agency can be summoned and takes custody of the patient.

(5) Reports the threat of physical violence or other means of harm, within a reasonable period of time after receiving knowledge of the threat, to a physician or psychologist who is designated by the employer of a mental health service provider as an individual who has the responsibility to warn under this chapter.

Current as of: 2020 Sec. 2.

# Illinois Mandatory Reporting

- **What Constitutes Abuse** Inflicting or causing, allowing, or creating a substantial risk of physical injury, other than by accident, that causes death, disfigurement, impairment of physical or emotional health, or loss or impairment of any bodily function; committing or allowing to be committed any sex offense; torture, excessive corporal punishment, female genital mutilation; giving child access to controlled substances. (325 ILCS 5/1, *et seq*)
- **Mandatory Reporting Required By** Physician, dentist, **medical/hospital personnel**, substance abuse counselor, Christian Science practitioner, coroner, funeral home employee, EMT, crisis/hotline personnel, school personnel, **social worker, nurse**, day care center worker, psychologist, law enforcement officer, domestic violence program personnel, foster parent, homemaker, childcare worker, probation officer, public and private agency personnel

• **As of 2020, Illinois Law classifies Child Abuse/Neglect as Domestic Violence**



# Remember Abuse is a Crime

- Domestic Violence
- Elder Abuse and Neglect/lack of nourishment
  - Financial/Social Isolationism
- Child Abuse and Neglect/access to nourishment
  - Unsafe Environment
    - Impaired co-workers
    - Workplace bullying
- Public Health Dangers
  - COVID-19
  - Measles/TB

*Abuse of Elders and De*

**FACE IT. IT'S A CRIME**

# Mandatory Reporting: What Must Be Reported?


- **Imminent Danger** \* *That's your 911 call*
  - Harm to self
  - Harm to others
- Abuse and neglect
  - Children
  - Elders – Isolation is a red flag
  - Domestic Violence
  - Workplace Violence



# What does Social Isolation Look Like?

Your client @home, SNF, post-op acute admission complains that she can't buy a newspaper

- You offer to get her one; just this time.
- “OH No! but thank you Mary would be angry with me.”

- Additional Facts from your skilled assessment inquiry
- No visitors, no telephone, Mary is so wonderful; she does everything
- No social life
- No access to SSI, pension, savings, \$\$\$ etc.
- I wish I could talk to my grandchildren. 



# • INTEGRITY

- A concept of consistency of actions, values, methods, measures, principles, expectations, and outcomes
- In ethics, integrity is regarded as the honesty and truthfulness or accuracy of one's actions
- Not just a collection of facts (list) but also your professional input (not personal opinion)

# Mandatory Reporting: What ELSE Must Be Reported?

- Impaired (Odor of an alcoholic beverage and odor of marijuana) even in states with legal use.
- incompetent co-workers
- **Self-Reporting** requirements per
  - State Laws, and
  - Ethical Codes
- **Self-reporting opens up a path to recovery**

# Know your Resources

**The National Domestic Violence Hotline** at 1-800-799-7233. It's open 24/7 and offers a range of different services, including safety planning.

**Veterans' Crisis line** that you can reach in multiple ways. You can call 1-800-273-8255 and press one to talk to someone if you're in crisis and need help, or you can text 838255 from your cell phone to text chat with a crisis responder.

**The Trevor Project** is a great resource for those experiencing bullying or feeling distress over their gender and/or sexual identity. Call its 24/7 crisis line at 1-866-488-7386

**Childhelp National Child Abuse Hotline** at 1-800-422-4453. This hotline is available 24/7.

**The Suicide Lifeline** (1-800-273-8255) is available 24 hours a day, seven days a week and is staffed with professional crisis counselors who want to hear from you.

# Resources and Laws vary State to State

**NAMI HelpLine**

**M – F, 10 a.m.–8 p.m., ET**

**800-950-NAMI (6264)**

**or [info@nami.org](mailto:info@nami.org)**



**Or text "NAMI" to 741741**

**State by State Resources**

Does the Notification of Enforcement Discretion regarding COVID19, and remote telehealth communications apply to violations of §42 CFR Part 2, the HHS regulation that protects the confidentiality of substance use disorder patient records?

*NO, the Notification addresses the enforcement only of the HIPAA Rules.*

*The Substance Abuse and Mental Health Services Administration*

*(SAMHSA) has issued similar guidance on COVID-19 and 42 CFR Part 2,*

*which is available at: [https://www.samhsa.gov/sites/default/files/covid-](https://www.samhsa.gov/sites/default/files/covid-19-42-cfr-part-2-guidance-03192020.pdf)*

*[19-42-cfr-part-2-guidance-03192020.pdf](https://www.samhsa.gov/sites/default/files/covid-19-42-cfr-part-2-guidance-03192020.pdf).*

# What About HIPAA?

- HIPAA does NOT prevent your ability to disclose necessary information about a client to law enforcement, family members of the patient, or others when you believe the patient presents a serious danger to himself or other people.
- “HIPAA has always been and continues to be clear about its intent, which does not preclude one's Duty to Warn.”
- National Instant Criminal Background Check System (NICS) 2016.
  - Background checks for firearms permits can include mental health records

# Case Management Before & After COVID-19

“In the U.S. you need to be authorized to practice by a board of nursing. Practice is where the patient is, and it includes the direct care of [Clients] patients, telehealth, care via telephone, and distance education of nursing students. Licensure requirements can vary by state”

<https://www.ncsbn.org/nurse-licensure-guidance.htm>.



# Documentation is an Essential Case Management Function

- No one can remember everything
- Tell the Client's story
- Give the Employer meaningful expectations
- Quantifying time/services
- Demonstrating/Justifying the need for case management intervention
- Creating a legal record

# Why is Documentation so Important?

- Documentation in all areas of practice effect us, our clients, and case outcomes
  - Reimbursement
  - Access to Resources
  - Return to Work (RTW)
  - Family Dynamics
  - Child Custody/Elder Abuse
  - **Legal Record protects you from Legal Consequences**

# Words have Consequences

## Why do we document?

- Communication
- Continuity/Transitions of Care
- Quality Improvement and Risk Management
- Professional Accountability
- Funding, Reimbursement, Justifying Budget Requests
- Legal Record
- To refresh your recollection over the passage of time

<https://cdn1.nscn.ca/sites/default/files/documents/resources/DocumentationGuidelines.pdf> (2017)

# Practice Tips

## Just the Facts!!

- Don't assume
- Don't Judge
- Just Report/Document What YOU saw, felt, smelled . . .
- You didn't witness the event
  - The Patient stated
  - The Member complained of
  - The pt. described the events of xxx date in great detail
- NOTIFICATION as required – Duty to Report



# What If?

- What would you do if you received an Order via text?
- CALL THE PRACTITIONER IMMEDIATELY
- READ THE TEXT BACK TO THE PRACTITIONER ONE TREAT IT AS A TELEPHONE ORDER
- POLITELY REMIND THE MD, NP, APRN TO CO-SIGN THE "TELEPHONE ORDER" WHEN THEY NEXT COME IN
- DOCUMENT THE ENTIRE CONVERSATION
  - **Texting Orders is Prohibited by Federal Regulation**

# What if?

- You are a CM licensed to practice in Illinois and your client is in NY or California. They call you and ask what to do for increased swelling/redness/pain in the effected area.
- You advise the client to apply ice, take 2 Tylenol™ and the client becomes septic and dies overnight.
- **Direct Liability** is a situation where a person and/or company becomes liable to another based on their act or omission.
- Deviations from Accepted Standards of Practice: Practicing w/o a license, Failure to Assess, Exceeded the Scope of Practice

# What if?

- You are a CM Supervisor and one of your CMs is assigned to help a client manage his/her medication. The CM completely ignores the fact that the client is actively using marijuana (which is legal in the state). The CM omits this essential fact, and you learn that she has made this omission. The client has been prescribed a medication that is contraindicated for consumption/inhalation of cannabis.
- In addition to the CM potentially being directly liable, a CM supervisor could be deemed responsible for the professional conduct of the supervisee and “vicariously liable”.
- **Vicarious Liability** is that liability that a supervisory party bears for the actionable conduct of a subordinate (employee) because of the relationship of the parties (aka: responsibility for harm or damages caused by another person.) Blacks Law Dictionary, 2019.

## What Defense is available under these facts?

- Documentation that demonstrated that you asked about any and all prescriptions, OTCs, other substances (legal or not). Explaining to the client that you are asking this question for their safety. Certain drugs/other substances are contraindicated and can affect each other negatively.
- The client stated that he takes the following medications, 1. 2. 3. and denied taking anything else but an occasional Aspirin.
- Noting that the client is on Coumadin (blood thinner), explained to client the risks and recommending that he call his doctor today.



- Principle 3: Certified Disability Management Specialists shall always maintain objectivity in their relationships with clients.

Principle 5: Certified Disability Management Specialists shall keep their technical competency at a level that ensures their clients will receive the benefit of the highest quality of service the profession can offer.

CDMS Code of Professional Conduct (2018,pg.3)

# Commission on Rehabilitation Counselor Certification



- B6a. RECORDS AND DOCUMENTATION a. REQUIREMENT OF RECORDS AND DOCUMENTATION. Rehabilitation counselors include sufficient and timely documentation in the records of their clients to facilitate the delivery and continuity of needed services. Rehabilitation counselors make reasonable efforts to ensure that documentation in records accurately reflects progress and services provided to clients.
- B6b. CONFIDENTIALITY OF RECORDS AND DOCUMENTATION. Rehabilitation counselors make reasonable efforts to ensure that records and documentation, in any format, are kept in a secure location and that only authorized persons have access to the records (CRC Code of Ethics, 2017, pg.11)

# Patient's Chart and/or Case Management Record is a Legal Document

- Firsthand knowledge only: using your senses
  - I saw, heard, smelled, observed . . .
- When more than one person is involved; *say so*
- Document what client/you did and did not do
  - Treatments, Patient Teaching, Creation of the Plan of Care..., Discussion and with whom . . .
  - Changes and why
- Interactions with patient, family, visitors, other providers, Law Enforcement
  - **Not just that they happened**
  - **Why is it important?**

# Case Management Process

- Assessment
  - Planning
  - Implementation
  - Coordinate Care
  - Monitoring
  - Evaluation
  - **Review & Reconsideration**
- Analyze
  - Interpret
    - Experience
    - Expertise
    - Ethical considerations
  - Report
  - Consult

A 3D puzzle with several white pieces and one prominent red piece. The red piece is in the foreground, slightly to the left, and is the focus of the image. The puzzle pieces are interlocking, and the lighting creates soft shadows, giving it a three-dimensional appearance.

# Advocacy Demonstrates Ethical Considerations

- Who is the Client?
- Documenting your thought process demonstrates ethical considerations
  - Assessing the circumstances
  - Individualizing options
  - Weighing ethical influences
  - Facilitating a Plan of Care
- *What does success look like?*
  - AVOID CUT/PASTE APPEARANCE
  - **EACH CLIENT IS DIFFERENT**

# Word Choices Matter

## Dos & Don'ts of Documentation

- Professionally Objective
- Accurate
- Factual
- Observations
- AVOID opinion, judgmental language, admissions
- There's a big difference between observations and
- Criticism, Sarcasm, descriptive, offensive language

Keep it Simple



# What if?

- The client presents with insect/rodent bites and body odor
- The client explains her situation; you realize she's a hoarder.
- How do you describe this person?
- The client lives like a pack rat!!!!!!!!!!!!!!
- OR
- The client appears to require assistance in improving organizational and hygiene skills



# Code of Professional Conduct

## §16 - Electronic Media

Board-Certified Case Managers (CCMs) will be knowledgeable about, and comply with, the **legal requirements for privacy, confidentiality and security of the transmission and use of electronic health information.**

Board-Certified Case Managers (CCMs) will be **accurate, honest, and unbiased in reporting** the results of their professional activities to appropriate third parties.



# Word Choices Matter

## Dos & Don'ts of Documentation

- What is Normal?
- Remember to use “People First” language
- DO - John (or the client) with Diagnosis
- Don't - Disabled child
- Don't – Describe people as their disability, diagnosis or needs
- DO Visit - <https://www.disabilityisnatural.com/> for useful information on ‘people first’.

- At my acute care hospital, we complete Transfer Information Sheets advising other facilities of the diagnosis, etc. of the patient for potential transfer.
- My Unit Manager told me to leave off certain info about the patient, including the presence of bed bugs on admission and an old diagnosis of schizophrenia.

The Truth  
is an  
**ABSOLUTE**  
Defense

# Legal/Ethical Issues

- Is it OK to do what a manager, supervisor, superior, senior staff, MD, APRN, NP, Administrator, other licensed practitioner tells you to do, even when you know it's wrong?
- You are a licensed/independent practitioner
- What should I do?
- What are the potential consequences?
- *I was just following orders . . . ??????????*

# Potential Consequences

- Falsifying Medical Records
- Civil/Criminal Fraud (State offenses)
  - Tricare, Medicare, Medicaid/Insurance Fraud (Federal and State offenses)
- Contributing to a potential public health crisis
  - Liability to the patient, hospital, SNF, Rehab Center, Nursing Home, anyone adversely affected
  - Loss of License and Certification
  - Arrest and/or Dismissal, Inability to work

# Practitioners Rely on Narrative Notes

- (1) patients' linguistic and narrative idiosyncrasies;
- (2) their level of concern or acuity;
- (3) the appearance of competence;
- (4) the provider's degree of uncertainty; and
- (5) the unique aspects of the clinical case that distinguishes it from other similar cases" (p. 182)

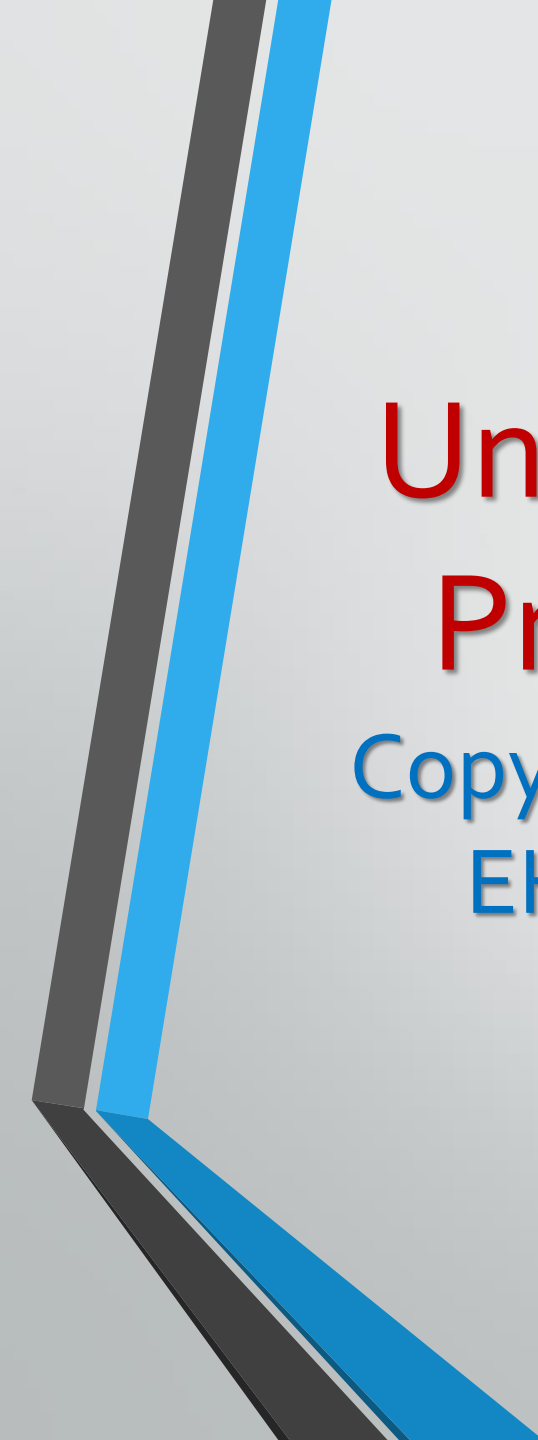
Rosenbloom, S., et. Al. (2011). Data from clinical notes: a perspective on the tension between structure and flexible documentation. *Journal of the American Medical Informatics Association*, 18(2), 181-186.

# Documentation & the Case Management Process

- Maintain Professional Objectivity
- Maintain Ethical Astuteness \* Apply Ethical Principles
- Documentation is a Direct Reflection of your ethical sensibilities and behaviors
- Potential evidence
  - *Tahan, Core Curriculum (2017, p.469), citing Tahan & Stolte-Upman 2006*

# Documentation, Reimbursement and Budgets

- Documentation validates needs, services and results
- If a need/status/condition changes, the case management record should reflect change.
  - What
  - When
  - Why
  - Plan/Amended Plan
  - Result/Outcome



# Unethical Process

## Copy & Paste in EHR/EMR

- Federal officials say the copy-and-paste features common to computers which are used to enter Electronic Medical Records (EMR) and Electronic Health Records (EHR) invite fraud.
- Merely copying and pasting another patient's clinical notes can be considered fraud.
- The Federal Government believes there is a need to reduce the healthcare provider's ability to duplicate notes.

## Reference to other Codes

S 12 - Legal Compliance - Board-Certified Case Managers (CCMs) will be knowledgeable about and act in accordance with federal, state, and local laws and procedures related to the scope of their practice regarding client consent, confidentiality, and the release of information.



Rules of Professional Conduct (2016)

## Our Clients Rely on our Documentation

- In a Louisiana case, a case manager's assessment was used to ascertain whether a claimant's injury was work related.
- At trial, the Employee claimed the CM's assessment was not sufficient
- On Appeal, the Court held: case manager's visit, assessment, and recommendations did constitute "reasonable effort" to ascertain an employee's exact medical condition and the injury was work related.
- CMSA Core Curriculum (2016), *citing* Cochennic v. Dillard's, 668 So.2d 1161 (La. App. 5 Cir)].

## You can't make this up . . .



- Acute care Case Manager is completely disgusted with how a patient was treated in his hospital.
- After discharge he goes on Twitter to 'vent'
- "This should have never happened..."
- Family goes to a lawyer to complain about the events of the hospitalization
- What do you think happens next????

## Practice Tips

- READ – Lifetime learning supports case management
- Participate in professional associations, committees, academia, continuing education
- Pool resources Collaborate with colleagues
- Never be afraid to ask for help or admit you're not sure!
- **THE TRUTH IS AN ABSOLUTE DEFENSE**
- Documented Truth is your best ally
- **THINK BEFORE YOU WRITE!!!!!!!!!!!!!!!!!!!!**

# Questions ??

**Thank You**  
for your Time & Attention



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# References

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