



UW PACC

Psychiatry and Addictions Case Conference

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WHAT SHOULD BEHAVIORAL HEALTH CLINICIANS KNOW ABOUT LAW?

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SPEAKER DISCLOSURES

- ✓ Any conflicts of interest?
 - None

OBJECTIVES

1. Recognize that clinicians have a professional responsibility to stay informed of relevant legal developments
2. Review topics and means to stay informed of relevant law
3. Become familiar with basic principles in law (foundation for future talks on law and behavioral health!)

SURVEY: ASSESSMENT OF MENTAL HEALTH CLINICIAN'S APPROACH TO LEGAL UPDATES

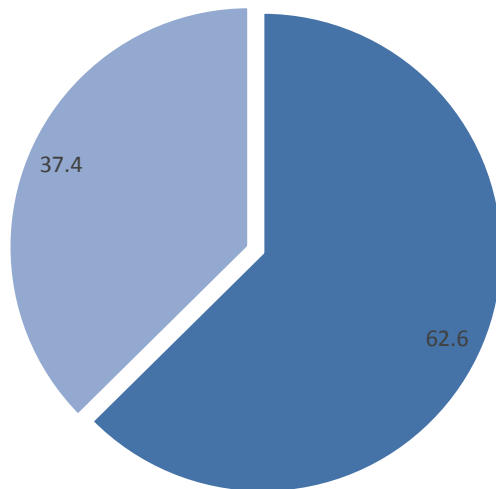
- Survey administered to licensed and in-training Washington State Psychiatrists, Psychologists and Social workers

		Percentage	N
Experience Level	Training in Psychiatry	27.8	32
	Training in Social Work	0.9	1
	Clinical license but not practicing	5.2	6
	Licensed and practicing	65.2	75
Practice Discipline of Those Licensed	Psychiatry	65.4	53
	Psychology	23.5	19
	Social Work	11.1	9
Years in Practice	0-5 years	23	17
	6-10 years	17.6	13
	11-20 years	24.3	18
	21 years or more	35.1	26

SURVEY FINDINGS

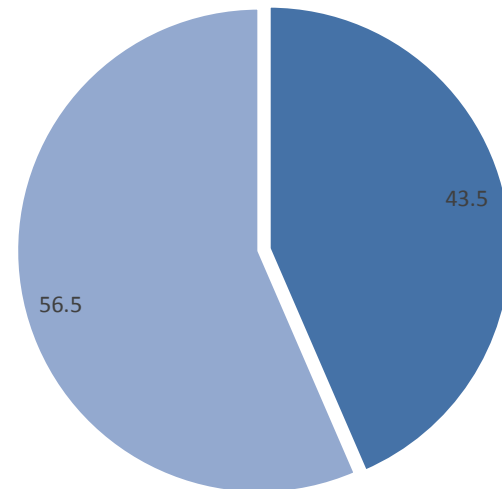
BARNES AND PIEL (AAPL NEWSLETTER, 2022)

Percentage of Respondents Who Seek Out Legal Updates



■ Those who do not ■ Those who do

Percentage of Respondents Aware of Recent ITA Law Changes



■ Unaware ■ Aware

SOURCES FOR LEGAL UPDATES

- **Professional Health Society (i.e. WSMA)**
- **Employer**
- Washington State Legislature Website
- Local Clinical Expert
- News Report
- Professional Legal Organization
- Behavioral Health Advocacy Group (i.e. NAMI)
- Google Search
- Legal Case Database

DESIRED RESOURCES

- Centralized
 - Digital Newsletter
 - Specialized Website
 - Web Based Lecture on Demand
 - Grand Rounds/Lecture
 - Listserv
 - Online Conference
 - Question Answer Session
 - Mailed Newsletter

FUTURE EDUCATIONAL TOPICS OF INTEREST

- A. Duty to Warn/Protect
- B. Regulation of tele-mental health services
- C. Malpractice
- D. Civil Commitment
- E. Firearm rights for persons with mental illness
- F. Informed consent/refusal
- G. Involuntary administration of medications
- H. Guardianship/conservatorship
- I. Professional Licensure/Discipline
- J. Disability
- K. Criminal Responsibility
- L. Competency to Stand trial

What else?

POTENTIAL CONSEQUENCES

- Legal Actions
- Administrative Actions
 - State licensure
 - Clinical privileges
 - Professional societies



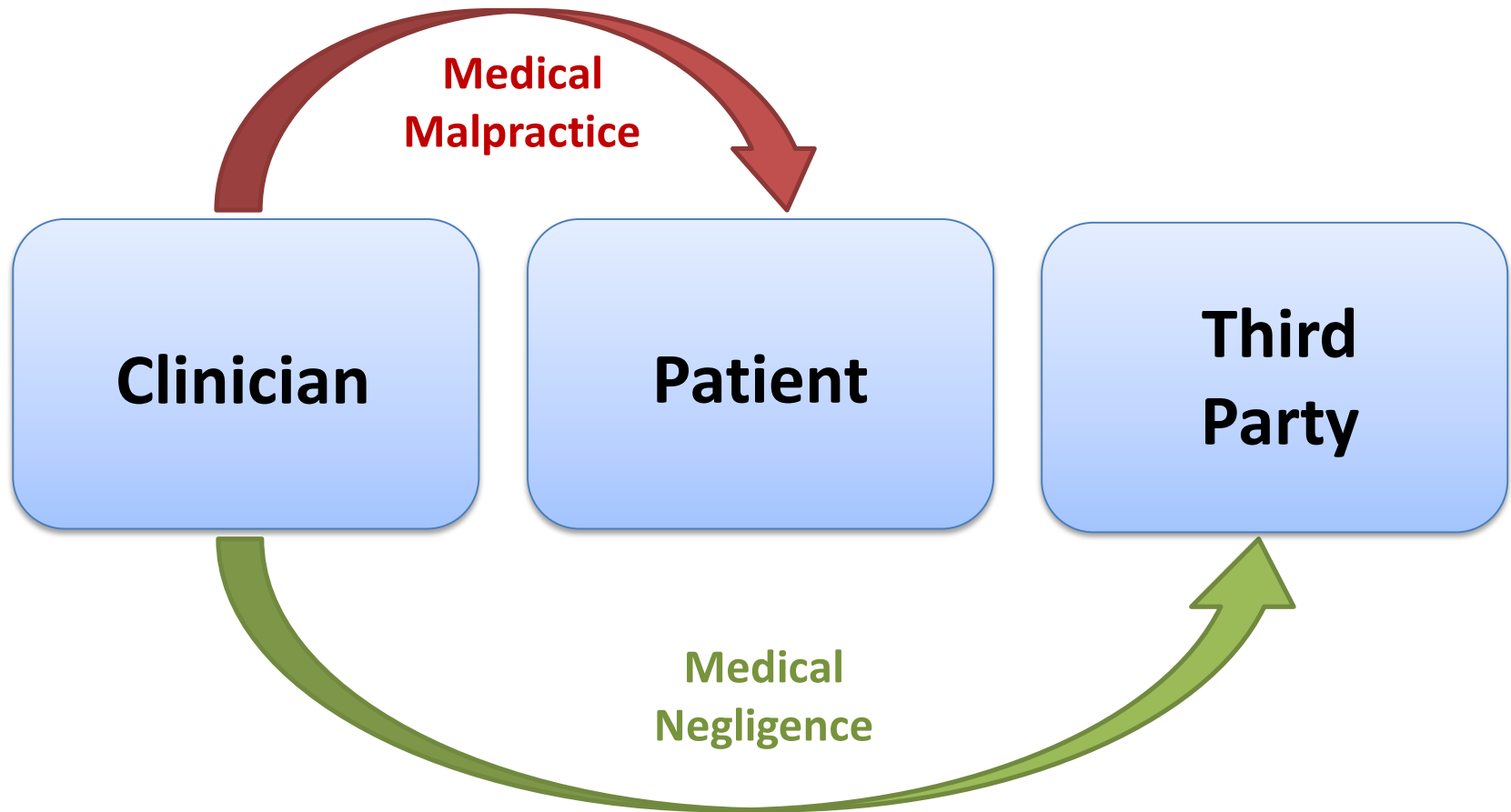
WHY DO BEHAVIORAL HEALTH CLINICIANS GET SUED?

- Suicide/attempted suicide
- Incorrect treatment
- Failure to protect third party
- Breach of confidentiality
- Lack of informed consent
- Unnecessary commitment
- Abandonment
- Boundary violations
- Improper supervision

TORT LAW

- Tort – a civil wrong
- Remedy – purpose is to make the injured party whole
- Intentional torts
 - Battery
 - False imprisonment
 - Sex with patient
 - Defamation of character
- Unintentional torts
 - Failure to exercise a reasonable standard of care

LIABILITY SCHEME



MALPRACTICE ELEMENTS

- Duties a clinician owes to a patient
- Action in negligence
 - Duty of care
 - Dereliction of duty
 - Direct causation
 - Damages

MEDICAL NEGLIGENCE

- Duties a clinician owes a third party due to a relationship with a patient
- Duty to protect third party from violent acts of clinician's patient
 - Special relationship between provider and patient
 - Foreseeable victims
 - Dangerous propensities

EXPERT CONSIDERATIONS

- Whether clinician fell below the standard of care
- Whether actions (or failures) “caused” injury
 - “But for”
 - Foreseeable
- Foreseeability
 - That event (or failure) which, in the natural sequence unaltered by an intervening event is a *substantial factor* in bringing about the injury

STANDARD OF CARE (RCW 7.70.040)

- “The health care provider failed to exercise that degree of care, skill, and learning expected of a reasonably prudent health care provider at that time in the profession or class to which he or she belongs, in the state of Washington, acting in the same or similar circumstances...”
- Modified standard in setting of covid emergency (take into account resources)

STANDARD OF CARE

PIEL AND RESNICK (2017)

- Based on clinical practice, but determined by the law
- Exercise the degree of care that a reasonably prudent provider would exercise in similar circumstances
- Not “best practices” but reasonable and prudent
- Standard is influenced by circumstances and discipline

SUICIDE AND STANDARDS OF CARE

- Was the suicide risk reasonably identified?
 - Reasonable identification of risk factors
 - Reasonable evaluation of protective factors
 - Use of professionally current assessment methods
- Was the risk reasonably treated/addressed?
 - What did the clinician do after identifying the risk?
 - Appropriateness of treatment plan based on clinical assessment
 - Appropriate monitoring of the patient
 - Modification of plan when indicated

DETERMINING STANDARD OF CARE

- Expert testimony
- Law (statutes, case law, regulations)
 - Examples: ITA statute, Volk v. DeMeerleer
- Guidelines from government agencies (DOH, FDA)
- Authoritative clinical guidelines (professional organizations)
- Learned treatise
- Journal articles
- Research reports
- Facility/organizational policies

RISK MITIGATION STRATEGIES

- Familiarity with legal and professional standards
- Clinical information collection
 - Clinical assessments
 - Collateral information (past records, other people)
 - Studies, consults
- Communicate (patient, family)
- Documentation
 - Contemporaneous with decision-making
 - Document if deviating from usual practice
 - Never alter the medical record; addend if needed
- Consultation
 - Other clinicians
 - Legal/risk management

SUMMARY OF KEY POINTS

- Familiarity with relevant legal parameters is a professional responsibility
- Not held to perfect prediction
- Court recognize clinical judgment
- Utilize your education, skills, training
 - Don't relay on attorneys for clinical decisions
- Good clinical care = Best risk management strategy

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