Save-the-Date!

June 13 Topic: EHR Tools to Support Integrated Care: Show and Share

- This session will be used to highlight the EHR tools that are being used for Integrated Care workflows.
- Denise Chang, MD will plan to present some tools within the EHR used to enroll and track patients on a registry.
- Please note that this meeting is intended to be an interactive session, participants are welcome to come prepared to demo their own organization's EHR tools!

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CSPAR The Center for Suicide Prevention and Recovery

Friday, May 12, 2023

UW Medicine
DEPARTMENT OF PSYCHIATRY AND BEHAVIORAL SCIENCES

Suicide Care in Health Care Systems: How We Can Do Better in Serving our Patients and Caring for our Clinicians

- To provide primary care providers and behavioral health clinicians with an understanding of how best to serve clients across the suicide care pathway
- Cost:
    - Free to UW Medicine, Seattle Children's Hospital, and VA Puget Sound faculty, clinical staff, and trainees
    - $200 for licensed clinicians outside the UW healthcare system
    - $100 for non-licensed clinicians and trainees outside the UW healthcare system
- Six-hour virtual training
- CME approved*
- Register here: **https://redcap.link/suicide_care**
- Email: cspartrainings@uw.edu

*The University of Washington School of Medicine is accredited by the Accreditation Council for Continuing Medical Education to provide continuing medical education for physicians.

The University of Washington School of Medicine designates this other activity for a maximum of 15 *AMA PRA Category 1 Credits*™. Physicians should claim only the credit commensurate with the extent of their participation in the activity.

Resources

- AIMS Center office hours
- UW PACC
- Psychiatry Consultation Line
  - (877) 927-7924
- Partnership Access Line (PAL)
  - (866) 599-7257
- PAL for Moms
  - (877) 725-4666
- UW TBI-BH ECHO

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Reminders

- Please keep yourself on mute during the didactic
- If you have a question during the presentation (related to the topic or not) please type it in the chat

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Date

Liability Considerations in Integrated Care Settings

Jennifer Piel, MD, JD
Associate Professor
Director, UW Center for Mental Health, Policy, and the Law
Department of Psychiatry & Behavioral Sciences
University of Washington
piel@uw.edu

Speaker Disclosures

- Nothing to disclose

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Disclaimer

- Not legal advice
- Laws and professional guidelines evolve over time
- Variation in state law
- Variation based on discipline

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Learning Objectives

- Review common causes of action against psychiatric providers
- Recognize how different roles can impact liability considerations
- Discuss examples that may arise when working with other clinicians to manage patients' care

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General Legal Concepts

Causes of Action

- **Administrative actions**
  - State licensure
  - Clinical privileges
  - Professional societies
  - Medicare/Medicaid exclusion action

- **Legal actions**

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Legal Actions Against Psychiatrists

Professional Risk Management Services (PRMS) 1986-2022

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

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Tort Law

- **Tort – civil wrong**
- **Remedy – purpose is to make the injured party whole**
- **Intentional torts**
  - Battery
  - False imprisonment
  - Sex with patient
  - Defamation of character
- **Unintentional torts**
  - Medical malpractice
  - Negligent supervision
  - Negligent hiring

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Negligence

- **Elements of a negligence action**
  - Duty of care
  - Dereliction of duty
  - Direct causation
  - Damages

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Duty of Care

Clinician-patient relationship

- Clinician affirmatively acts in a patient's care by examining, diagnosing, treating or agreeing to do so
- Usually established by mutual consent
- Creates a legal duty to the patient
- Informed by:
  - Degree to which clinician influences the patient's care
  - Existence of a prior relationship
  - Contractual relationships (may be implied)

Special relationship

Foreseeability

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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 the 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)

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Standard of Care

Piel and Resnick (2017)

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

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You Are The Jury....

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Facts of the Case

- The patient presented to a clinic with abdominal pain, fever, chills, and other symptoms.
- A NP examined the patient, drew blood, and performed various tests. The NP believed the patient needed to be admitted to a hospital.
- The NP called Fairview (the closest hospital) and spoke with a physician, a hospitalist. The physician did not recommend hospitalization, and also did not review the patient's records
- The patient left the clinic and later died from sepsis caused by an untreated staph infection.
- The patient's estate sued the physician and Fairview for medical malpractice.

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Warren v. Dinter (Minn. 2019)

- Minnesota Supreme Court ruled that physicians can have a duty to a patient, even without a patient/physician relationship.
- A duty arises between a physician and an identified third party (patient) when the physician provides medical advice (action or inaction) and it is foreseeable that the third party will rely on that advice.
- The court recognized that other jurisdictions would likely have decided the case differently.

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Clinical Roles

Clinical Roles

- **How does the clinician/consultant relate to the patient?**
  - What role did the clinician play in the care of the patient?
  - Were they sufficiently involved to confer a duty on the provider?
- **General rule – liability relates to the degree of "control" over the patient's care**
  - Consultant
  - Co-managed/shared responsibility
  - Oversight/supervisory roles

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Consultant

Informal	Formal
• Treating clinician requests informal advice/peer-to-peer • Patient identify unknown • Contact with patient atypical • No documentation • No payment	• Treating clinician requests opinion • Patient identity is known • Communicate with patient • Examine the patient • Record review • Documentation • Prescribe or deliver other treatment • Employment/contractual relationship • Payment

Consultant

Informal	Formal
• General advice • Recommendations are accepted/rejected by treating clinician ("Take it or leave it")	• Advice is specific to the patient's situation • Expectation that recommendations will be followed
• Treating clinician has legal duty to patient	• Consultant has a legal duty to patient

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Co-Managed/Shared Responsibility

- **Shared information**
- **Shared responsibility**
- **Independent *or* interdependent responsibilities**
- **Defining roles**
  - Who prescribes?
  - Who monitors safety risks?
  - How are concerns communicated among providers?
  - Who should the patient contact for urgent needs?

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Oversight/Supervisory Roles

- **Decisions/actions of others can be imputed on a supervisory clinician**
- **Legal theories:**
  - Vicarious liability/respondent superior
  - Negligent supervision
- **May confer liability even if your personal care of the patient met the standard of care**
- Supervisors should be aware of **the tasks and competency of other providers** to determine appropriate level of oversight

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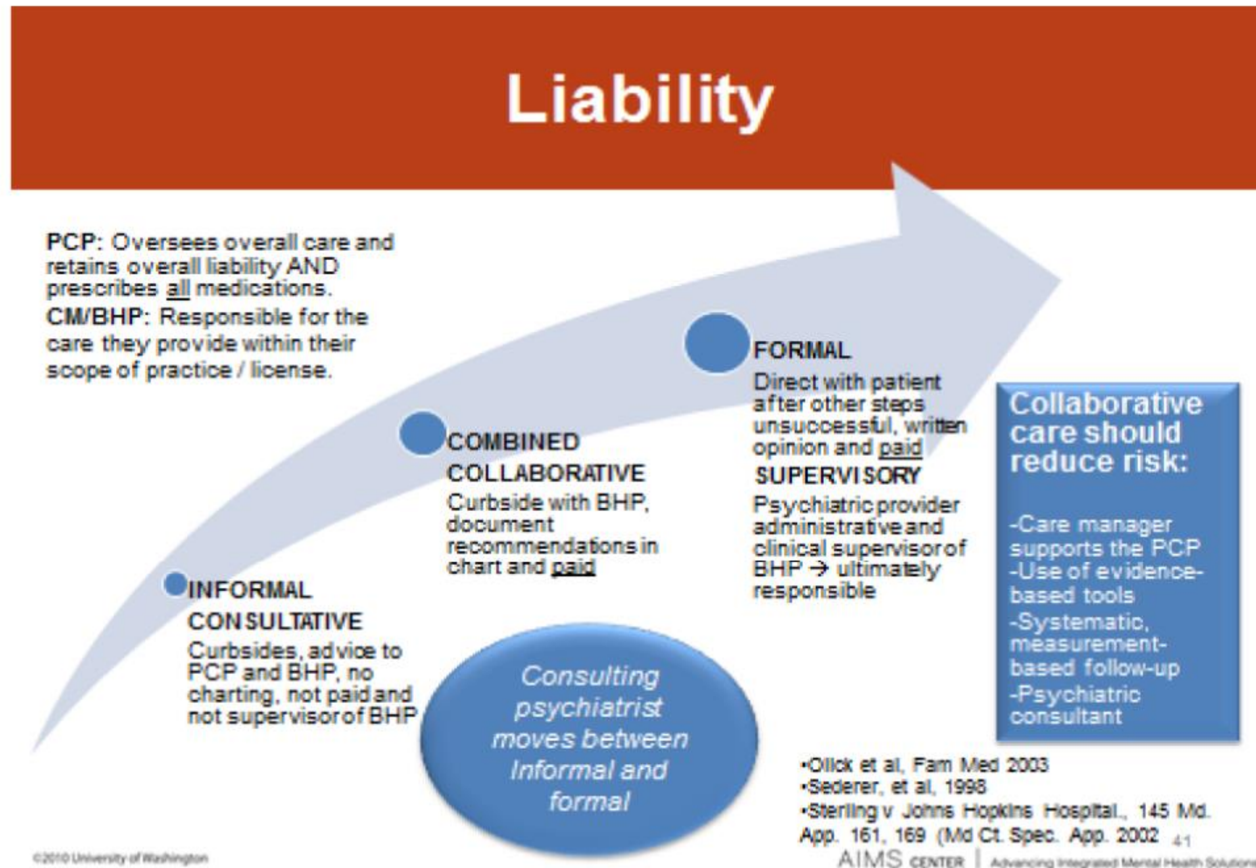
Modes of Consultation and Liability

APA Resource Document on Risk Management and Liability Issues in Integrated Care Models (2014)



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Approach to Examining the Facts & Circumstances

- Is there a patient-clinician relationship?
- Is there an alternate duty based on contractual relationships or supervision?
- How much control did the clinician have over the patient's care?
- Did the clinician act as a reasonably prudent person would on the basis of foreseeable risk of injury?

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Examples

Related Scenarios

- On-call clinician
- Coverage for a colleague
- Peer-to-peer consultation line
- Consult based on record-review only
- Give verbal advice and later bill
- Added to sign an electronic chart note

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Risk Management

- Define your role and responsibilities
- Understand roles of other clinicians caring for the patient
- Become familiar with organization's protocols and policies
- Be aware of your employment/contractual obligations
- Seek additional consultation (colleague, HR, risk management, legal)

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Takeaways

- Although liability risk is generally low for most aspects of integrated care delivery, it is not NONE.
- Be clear about the responsibilities for patients “shared” with other clinicians. **Know YOUR responsibilities for the patient’s care**.
- Liability risk generally flows from the amount of responsibility you assume over the patient’s care. Can the requesting clinician “take it or leave it”?
- Informal consultation supports collegial bonds and public policy; but formal consultation may be more appropriate in some cases.
- You may be liable for the acts of persons you supervise. Be familiar with the providers’ education and training and make provisions for appropriate supervision.
- Good communication – including documentation – can go a long way to clarify roles and responsibilities.

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Resources

- Warren v. Dinter, 926 N.W.2d 370 (Minn. 2019)
- Piel JL, Resnick PJ. Malpractice. In R Schouten (Ed.), Mental Health Practice and the Law, New York: Oxford University Press, 2017
- Bland et al. APA Resource Document on Risk Management and Liability Issues in Integrated Care Models, 2014
- APA Resource Document: Guidelines for Psychiatrists in Consultative, Supervisory, or Collaborative Relationships with Non-physician Clinicians, 2009

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Additional Free Resources for Washington State Healthcare Providers

*No cost

EDUCATIONAL SERIES:

- AIMS Center office hours
- UW Traumatic Brain Injury – Behavioral Health ECHO
- UW Psychiatry & Addictions Case Conference ECHO UW PACC
- UW TelePain series About TelePain (washington.edu)
- TeleBehavioral Health 101-201-301-401 Telehealth Training & Support - Harborview Behavioral Health Institute (uw.edu) | bhinstitute@uw.edu

PROVIDER CONSULTATION LINES

- UW Pain & Opioid Provider Consultation Hotline Consultation (washington.edu) – 844-520-PAIN 7246)
- Psychiatry Consultation Line - (877) 927-7924
- Partnership Access Line (PAL) (pediatric psychiatry) - (866) 599-7257
- PAL for Moms (perinatal psychiatry) - (877) 725-4666

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Questions and Discussion

- Ask questions in the chat or unmute yourself

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Registration

- If you have not yet registered, please email uwictp@uw.edu and we will send you a link

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