RISK MANAGEMENT
Legal and Ethical Issues for Social Workers

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OVERVIEW

- NASW Code of Ethics
- The Law is Your Friend
  - Ethics and Law Equals Good Practice
  - Lots of Laws Impact Your Life as a Mental Health Provider
- General Primer on Civil Actions
  - Psychiatrists, Psychologists, and Social Workers in Law Suits
  - Risk Management Tips
- Bonus Information
  - Inpatient Commitment
  - Outpatient Basis
  - Voluntary Admissions
Overview

- The Code of Ethics is intended to serve as a guide to everyday professional conduct of social workers. This Code is divided into four sections:
  - **Preamble** – Summarizes the social work profession’s mission and core values.
  - **Purpose of the NASW Code of Ethics** – provides a basic overview of the Code’s main functions and a brief guide for dealing with ethical dilemmas and issues that arise in social work practice.
• **Ethical Principles** – presents broad ethical principles, based on social work’s core values informing social work practice.

• **Ethical Standards** – the largest section includes specific ethical standards to guide the conduct of social workers and provide a basis for adjudication. This section is divided into 5 subsections:
• Though the Code is not meant to be serve as a legal guide for social workers, certain sections, specifically the Ethical Standards, of the Code parallel aspects of the law.
Social Workers’ Ethical Responsibilities to Clients:

- Commitment to Clients (Section 1.01)
- Self-Determination (Section 1.02)
- Informed Consent (Section 1.03)
- Competence (Section 1.04)
- Cultural Competence and Social Diversity (Section 1.05)
- Conflicts of Interest (Section 1.06)
- Privacy and Confidentiality (Section 1.07)
- Access to Records (Section 1.08)
- Sexual Relationships (Section 1.09)
- Physical Contact (Section 1.10)
Social Workers’ Ethical Responsibilities to Clients cont.

- Sexual Harassment (Section 1.11)
- Derogatory Language (Section 1.12)
- Payment for Services (Section 1.13)
- Clients Who Lack Decision-Making Capacity (Section 1.14)
- Interruption of Services (Section 1.15)
- Termination of Services (Section 1.16)
• Social Workers’ Ethical Responsibilities to Colleagues

- Respect (Section 2.01)
- Confidentiality (Section 2.02)
- Interdisciplinary Collaboration (Section 2.03)
- Disputes Involving Colleagues (Section 2.04)
- Consultation (Section 2.05)
- Referral for Services (Section 2.06)
- Sexual Relationships (Section 2.07)
- Sexual Harassment (Section 2.08)
- Impairment of Colleagues (Section 2.09)
- Incompetence of Colleagues (Section 2.10)
- Unethical Conduct of Colleagues (Section 2.11)
• Social Workers’ Ethical Responsibilities in Practice Settings

- Supervision and Consultation (Section 3.01)
- Education and Training (Section 3.02)
- Client Records (Section 3.04)
- Billing (Section 3.05)
- Client Transfer (Section 3.06)
- Administration (Section 3.07)
- Continuing Education and Staff Development (Section 3.08)
- Commitments to Employers (Section 3.09)
- Labor-Management Disputes (Section 3.10)
• Social Workers’ Ethical Responsibilities as Professionals

- Competence (Section 4.01)
- Discrimination (Section 4.02)
- Private Conduct (Section 4.03)
- Dishonesty, Fraud and Deception (Section 4.04)
- Impairment (Section 4.05)
- Misrepresentation (Section 4.06)
- Solicitations (Section 4.07)
- Acknowledging Credit (Section 4.08)
● Social Workers’ Ethical Responsibilities to the Social Work Profession
  ○ Integrity of the Professional (Section 5.01)
  ○ Evaluation and Research (Section 5.02)

● Social Workers’ Ethical Responsibilities to the Broader Society
  ○ Social Welfare (Section 6.01)
  ○ Public Participation (Section 6.02)
  ○ Public Emergencies (Section 6.03)
  ○ Social and Political Action (Section 6.04)
THE LAW IS YOUR FRIEND

Laws which Impact your Practice
- Clinical Social Work and Social Work Practice Act
- NASW Code of Ethics
- Family Educational Rights and Privacy Act (FERPA)
- Individuals with Disabilities Education Act (IDEA)
- HIPAA
- 42 CFR Part 2.1

Know the Law to Improve your Service
Embrace the Law
Know a Lawyer Now
PRIMER ON CIVIL ACTIONS

● Theories of Liability
  ○ Tort Theory
  ○ Contract Theory
  ○ Professional Ethics, i.e., AMA, APA, NASW
  ○ Statutory Liability, i.e., OBRA/EMTALA-- Anti-Dumping Provisions

● Tort Theory/Medical Malpractice
  ○ General Comments
  ○ Good News/Bad News
  ○ Substantive Rise Areas
  ○ Elements of a Tort
• **Contract Theory**
  - Terms of the Contract
  - Performance of Contract by Patient
  - Breach of Contract by Professional
  - Damages

• **Statutory Liability**
  - TOBRA/EMTALA (Emergency Medical Treatment and Active Labor Act)

• Why do People Sue?
• **Risk Management Tips**

- Keep Accurate and Up To Date Records
- Never Alter or Change Records
- Use Consultation
- Identify Problematic Cases Early
- Do Not Discuss Cases Publicly
- Avoid Criticizing Other Practitioners
- Listen to Your Client's Complaints
- Do Not Do Something You Are Not Qualified To Do
- Follow Agency Policy And Procedure
• Risk Management Tips cont.

- Know the Law
- Follow the Code of Ethics
- Professional Training/Continuing Education
- Malpractice Insurance
- Credentials
- Know Your Colleagues
- Use Service Contracts
- Specify And Discuss Limits On Confidentiality
• Defenses Available

- New Tort Law
- Statute of Limitations
- Difficulty Finding Causation
- Difficulty of Finding Actual Damages
- Immunity
Involuntary Admissions of Adult Patients on an Inpatient Basis

- **Historical Background and Context of Involuntary Commitment**
  - The current safeguards surrounding involuntary admission stem from a person’s rights to liberty and due process of law under the constitution with the need to protect persons from harm as set out in *O’Connor v. Donaldson*, 422 U.S. 563 (1975).
Section 1-119. “ Persons subject to involuntary admission on an inpatient basis” means:

- A person with a mental illness who because of his or her illness is reasonably expected, unless treated on an inpatient basis, to engage in conduct placing such person or another in physical harm or in reasonable expectation of being physically harmed;
- A person with mental illness who because of his or her illness is unable to provide for his or her basic physical needs so as to guard himself or herself from serious harm without assistance of family or others, unless treated on an inpatient basis; or
Standard for Involuntary Admission on an Inpatient Basis cont.

- refuses treatment or is not adhering adequately to prescribed treatment;
- because of the nature of his or her illness, is unable to understand his or her need for treatment; and
- if not treated on an inpatient basis, is reasonably expected, based on his or her behavioral history, to suffer mental or emotional deterioration and is reasonably expected, after deterioration, to meet the criteria of either paragraph (1) or paragraph (2) of this Section.
Petitions for Involuntary Admission on an **Inpatient Basis** must be:

- Completed;
- Made by a person 18 years or age or older;
- Given to the facility director of the mental health facility in the county where the respondent resides or is present;
- Filed with the court, together with the initial certificate, proof of service, and second certificate (if completed), within **24 hours** of admission.
• Petitions must include the following:

- The assertion that the respondent meets one of the criteria for involuntary admission.
- Detailed statement of the reasons for the assertion that the respondent is subject to involuntary admission.
- The signs and symptoms of a mental illness.
- A description of any acts, threats or other behavior or pattern of behavior supporting the assertion and the time and place of their occurrence.
• The name and address of the spouse, parent, guardian, substitute decision maker, if any, and close relative, or if none, the name and address of any known friend of the respondent whom the petitioner has reason to believe may know or have any of the other names and addresses.

• The petitioner’s relationship to the respondent and a statement as to whether the petitioner has a legal or financial interest in the matter or is involved in litigation with the respondent.

• The names, addresses and phone numbers of the witnesses by which the facts asserted may be proved.
The name, badge number, and employer of any peace officer who detained and/or transported respondent to the mental health facility, and/or took the respondent into custody.

A statement that petitioner has made a good faith attempt to determine whether the recipient has executed a Power of Attorney or declaration under the Mental Health Treatment Preference Declaration Act, and to obtain copies of these instruments.
• Examination and Certificates on an Inpatient Basis

- Two certificates must be completed for involuntary admission on an inpatient basis.
- Requirements for the Initial Certificate for Involuntary Admission on an Inpatient Basis
  - State that the respondent is subject to involuntary admission and requires immediate hospitalization.
  - Indicate that the physician, qualified examiner, psychiatrist, or clinical psychologist personally examined the respondent.
• Examination and Certificates on an Inpatient Basis cont.

- Indicate that the examination took place not more than **72 hours** prior to admission.
- Contain the clinical observations of the physician, qualified examiner, psychiatrist, or clinical psychologist, and other factual information relied upon in reaching a diagnosis.
- Two copies of the certificate, petition, and proof of service must be filed with the court **within 24 hours** of admission, excluding Saturdays, Sundays and holidays.
Requirements for the **Second Certificate** for Involuntary Admission on an **Inpatient Basis**

- The second certificate must be completed within 24 hours of admission, excluding Saturdays, Sundays, and holidays. It must be “promptly” filed with the court.
  - Who may complete the second certificate:
  - The second certificate must:
Treatment/Medication upon Involuntary Inpatient Admission

- “Treatment” is defined as an effort to accomplish an improvement in the mental condition or related behavior of a recipient. (450 ILCS 5/1-128).
- Includes hospitalization, outpatient services, examination, diagnosis, evaluation, care, training, psychotherapy, pharmaceuticals, and other services provided for recipients by mental health facilities.
- Treatment may begin upon the completion of the petition and first certificate.
- Respondent shall be informed of his or her right to refuse medication upon admission.
- If psychotropic medication is refused, it shall not be given unless it is necessary to prevent the recipient from causing serious and imminent physical harm to the recipient or others and no less restrictive alternative is available. (405 ILCS 5/2-107).
● Telephone Calls for Involuntary Admission on an Inpatient Basis

● Respondent shall be allowed to complete no less than two telephone calls at the time of his admission to such persons as he or she chooses. (405 ILCS 5/3-609).
Timelines for Involuntary Admission on an Inpatient Basis

- **Upon Admission:** Upon commencement of services, or as soon thereafter as the condition of the recipient permits, the following must occur:

- **Within 12 hours:** Within 12 hours of admission, the following must occur:

- **Within 24 hours** (excluding Saturdays, Sundays, and holidays):

- **Within Five Days:**
Duration of Involuntary Admission on Inpatient Basis

- Initial order is valid for a period not to exceed 90 days. Upon new petition and two certificates, court may enter another commitment order for 90 days. 180 day periods thereafter.
Involuntary Admission of Adult Patient on an **Outpatient Basis**

- The new law which took effect on July 29, 2010 created a standard for involuntary admission on an outpatient basis. A person 18 years of age or older who is subject to involuntary admission on an outpatient basis may receive alternative treatment in the community or may be placed in the care and custody of a relative or other person upon court order. (405 ILCS 5/3-750).
Standard for Involuntary Admission on an Outpatient Basis

- A person is subject to involuntary admission on an outpatient basis if:
  - He or she would meet the criteria for admission on an inpatient basis unless treated on an outpatient basis AND treatment on an outpatient basis for the particular individual can only be reasonably ensured by a court order mandating such treatment; OR
  - He or she has a mental illness which, if left untreated, is reasonably expected to result in an increase in the symptoms caused by the illness to the point that the person would meet the criteria for involuntary admission on an inpatient basis, AND on more than one occasion in the past, the mental illness has caused that person to refuse needed appropriate mental health services in the community. (405 ILCS 5/1-119.1(effective July 29, 2010)).
Petitions for Involuntary Admission on an Outpatient Basis

- Petitions must contain the same requirements as petitions for involuntary admission on inpatient basis.
Examination and Certificates for Involuntary Admission on an Outpatient Basis

- Two certificates are required for involuntary admission on outpatient basis.
- The petition for involuntary admission on an outpatient basis may, but does not have to be, accompanied by a certificate of a physician, qualified examiner, psychiatrist or clinical psychologist when filed.
- If no certificate is filed with the petition, the respondent must be examined both by a psychiatrist and by a physician, clinical psychologist, or qualified examiner. (405 ILCS 5/753).
- The court is authorized to enter orders necessary to provide for the examinations upon filing the petition. (405 ILCS 5/753).
Examination and Certificates for Involuntary Admission on an Outpatient Basis cont.

- The court shall set a hearing to be held within 15 days after receiving the second certificate, excluding Saturdays, Sundays, and holidays.
- Requirements for both Certificates for Involuntary Admission on an Outpatient Basis:
  - If a certificate is executed, the examining physician, clinical psychologist, qualified examiner, or psychiatrist may also submit for filing with the court a report in which his or her findings are described in detail.
- Duration of Involuntary Commitment on an Outpatient Basis.
The Mental Health Code was recently amended to provide for notice to petitioners of the respondent’s discharge from a mental health facility and of respondent’s request for informal or voluntary admission prior to adjudication, under certain circumstances.

Section 3-902(d): Petitioner (i.e. the person whose petition for involuntary admission resulted in respondent’s hospitalization) has the right to receive notice of respondent’s discharge from a mental health facility at least 48 hours prior to respondent’s discharge.
Section 3-801: If the petitioner (i.e. the person whose petition for involuntary admission resulted in respondent’s hospitalization) requests in writing to receive notice, he or she must be notified of respondent’s request for informal or voluntary admission prior to adjudication.
Voluntary Admissions of Adult Patients

- **Requirements for Voluntary Admission:**
  - Any person 16 or older, including a person adjudicated a disabled person, may be admitted to a mental health facility as a voluntary recipient for treatment of a mental illness upon the filing of an application with the facility director, if the facility director determines and documents in the recipient’s record that...
Guardianship and Voluntary Admissions:

- The Probate Act and Mental Health Code were recently amended to specify the circumstances under which a court-appointed guardian may admit a ward to a mental health facility. (755 ILCS 5/11a-17; P.A. 096-0612).

- As of January 1, 2010, under the Probate Act, a guardian of the person may not admit a ward to a mental health facility except:
Who may execute an application for voluntary admission:

- Person seeking admission, if 18 or older.
- Any interested person, 18 or older, at the request of the person seeking admission.
- A minor, 16 or older, as provided in Code provisions on admissions of minors.
- Effective January 1, 2010, a guardian can admit under the provisions discussed above.
Timeline for Discharging Voluntary Patient:

• Recipient shall be discharged at the earliest appropriate time not to exceed 5 days, excluding Saturdays, Sundays and holidays, after recipient gives written notice of desire to be discharged.

• The application form for voluntary admission shall contain in large, bold-face type a statement in simple nontechnical terms of the recipient’s right to be discharged in accordance with above.

• Right to be discharged shall also be communicated orally to the recipient and a copy of the application form shall be given to the recipient and to any parent, guardian, relative, attorney or friend who accompanied recipient to the facility.
Review of Voluntary Admissions:

- 30 days after voluntary admission, the facility director shall review the need for continuing hospitalization.
- Every 60 days thereafter a review shall be conducted and reaffirmation shall be secured from recipient for as long as hospitalization is required.
- A recipient’s failure to reaffirm desire to continue treatment constitutes notice of his or her desire to be discharged. (405 ILCS 5/3-404).