Documentation in the Human Services: Ethical and Risk-management Issues

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The Role of Documentation

- assessment
- planning and delivering services
- accountability: clients, insurers, agencies, other providers, courts, utilization review
- continuity and coordination of services
- supervision
- evaluation of services
Core Documentation Issues

- Content
- Language and terminology
- Credibility
- Access to records and documents
Ethical Risks

- Mistakes
- Ethical judgments
- Ethical misconduct
Standard of Care

What an *ordinary, reasonable, and prudent* practitioner, with the same or similar training, would have done under the same or similar circumstances.
Professional Negligence: Key Elements

- Clinician has a duty
- Evidence of breach or dereliction of duty concerning documentation
- Harm or injury
- Evidence of *proximate cause* (or “cause in fact” – an uninterrupted causal connection between the breach of duty and harm)
Forms of Negligence

- **Acts of commission**
  - Misfeasance (wrongful exercise of lawful authority; performing a proper act in an injurious manner)
  - Malfeasance (wrongdoing; performance of a wrongful or unlawful act)

- **Acts of omission (or nonfeasance)**
Assessing Your Documentation Protocol

- To evaluate the quality of your documentation, conduct a thorough assessment of the policies and procedures you use to document. [The following protocol is excerpted from: Frederic G. Reamer, The Social Work Ethics Audit: A Risk Management Tool (Washington, DC: NASW Press, 2001). It includes an outline of key issues to address when you examine the adequacy of your documentation. The first section focuses on your policies and the second section focuses on your procedures.]
Assessing Documentation Policies

- **Documentation**: The agency has appropriate policies in place to ensure proper documentation.

- **1 point - no risk**: clear, comprehensive policies exist concerning practitioners’ documentation in client records, consistent with relevant laws, regulations, and ethical standards

- **2 points - minimal risk**: policies concerning practitioners’ documentation in clients’ records exist, but require minor revision

- **3 points - moderate risk**: policies concerning practitioners’ documentation in client records exist, but require significant revision; policies concerning aspects of practitioners’ documentation in client records need to be created

- **4 points - high risk**: existing policies are inadequate or are seriously flawed; policies need to be created to address a significant number of issues related to practitioners’ documentation in clients’ records
Key Content: Policy

- Social histories, assessments, and treatment plans
- Informed consent procedures
- Contacts with clients (type, date, time)
- Contacts with third parties
- Consultation with other professionals
- Decisions made and interventions/services provided
- Critical incidents
- Instructions, recommendations, advice, referrals to specialists
- Failed and canceled appointments
- Previous or current psychological, psychiatric, and medical evaluations
- Information concerning fees, charges, payments
- Termination of services
- Final assessment
- Inclusion of relevant documents (for example, consent forms, correspondence, court documents, fee agreements)
Key Content: Procedures

- **Documentation**: The agency has appropriate procedures in place to ensure proper documentation.

- **1 point - no risk**: Practitioners routinely follow proper procedures when they document in clients’ records.

- **2 points - minimal risk**: Practitioners usually follow proper procedures when they document in clients’ records, but there are exceptions.

- **3 points - moderate risk**: Practitioners are very inconsistent in their use of proper procedures when they document in clients’ records.

- **4 points - high risk**: Practitioners rarely or never follow proper procedures concerning documentation in clients’ records.
Key Content: Procedures

- Social histories, assessments, and treatment plans
- Informed consent procedures
- Contacts with clients (type, date, time)
- Contacts with third parties
- Consultation with other professionals
- Decisions made and interventions/services provided
- Critical incidents
- Instructions, recommendations, advice, referrals to specialists
- Failed and canceled appointments
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- Information concerning fees, charges, payments
- Termination of services
- Final assessment
- Inclusion of relevant documents (for example, consent forms, correspondence, court documents, fee agreements)
Documentation Tip #1

- Strike a reasonable balance between including too much information and not enough information. Include information that is essential in order to be accountable to (a) the client, (b) colleagues/agency, (c) third-party payers, (d) utilization review organizations, and (e) courts of law. Avoid including gratuitous information, e.g., sensitive information that is not essential or warranted.
Carefully review the language you use to document. Be careful to avoid *defamation of character*. Defamation of character occurs when (a) you say or write something that is untrue; (b) you knew that what you said or wrote was untrue or you should have known that it was untrue; and (c) the party you wrote or talked about was harmed. Defamation of character can occur in two forms: slander (oral communication) or libel (written communication).
Documentation Tip #3

- Handle documentation errors with great care. Avoid “white out.” Acknowledge errors clearly and forthrightly.
Documentation Tip #4

Avoid ambiguous abbreviations.
Documentation Tip #5

Avoid broad characterizations: “poor outcome,” “good result,” “moderate compliance,” “drunk,” aggressive, “combative” – always include specific evidence to support conclusions
Documentation Tip #6

☐ Do not “over document” in a crisis
Documentation Tip #7

- Document as soon as possible and edit carefully.
Documentation Tip #8

☐ Print or write legibly.
Documentation Tip #9

☐ Do not document interventions before they occur.
Documentation Tip #10

- Use correct grammar and spelling (credibility issue).
Documentation Tip #11

☐ Do not tamper with or alter records.
Documentation Tip #12

- Do not document staffing problems in clients’ records
Do not document professional disagreements ("jousting") in clients’ records
Documentation Tip #14

☐ Always include the evidence that supports your conclusions.
Documentation Tip #15

- Document what you know, not what you think.
Documentation Tip #16

☐ Know how to respond to subpoenas of your records.
Documentation Tip #17

- Handle personal notes carefully; be aware of the risks.
Documentation Tip #18

- Document carefully when providing services to couples or families.
Documentation Tip #19

- Become acquainted with key federal and state regulations. Prominent examples include:
  - 42 CFR Part 2 (Confidentiality of Alcohol and Drug Abuse Patient Records)
  - 34 CFR Part 99 (Family Educational Rights and Privacy Act or FERPA)
  - Health Insurance Portability and Accountability Act (HIPAA)
Documentation Tip #20

- Be familiar with provisions in pertinent state statutes, contracts, and codes of ethics related to:
  - Client access to records
  - Record retention
  - Record storage
  - Protection of clients’ and collaterals’ confidentiality and privacy
The Importance of Careful Wording and Documentation

A panda walks into a café. He orders a sandwich, eats it, then draws a gun and fires two shots in the air.

“Why?” asks the confused waiter, as the panda makes towards the exit. The panda produces a badly punctuated wildlife manual and tosses it over his shoulder.

“I’m a panda,” he says, at the door. “Look it up.”

The waiter turns to the relevant entry and, sure enough, finds an explanation.

**Panda.** Large black-and white bear-like mammal, native to China. Eats, shoots and leaves.”

The Importance of Careful Wording and Punctuation: Examples

☐ A woman, without her man, is nothing.
☐ A woman: without her, man is nothing.

☐ The people in the queue who managed to get tickets were very satisfied.
☐ The people in the queue, who managed to get tickets, were very satisfied.

☐ A cross-section of the public.
☐ A cross section of the public.
This material is drawn from: