

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~~
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Core Documentation Issues

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

- Mistakes
 - Ethical judgments
 - Ethical misconduct
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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)
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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)
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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*.]
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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*
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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)
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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*
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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
 - _____ 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)
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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.
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Documentation Tip #2

- 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).
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Documentation Tip #3

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

- Avoid ambiguous abbreviations.
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Documentation Tip #5

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

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

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

- Print or write legibly.
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Documentation Tip #9

- Do not document interventions before they occur.
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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



Documentation Tip #13

- ❑ Do not document professional disagreements (“jousting”) in clients’ records
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Documentation Tip #14

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

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

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

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

- Document carefully when providing services to couples or families.
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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)
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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
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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."

From Lynne Truss, Eats, Shoots & Leaves (New York: Gotham Books, 2003).

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.
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This material is drawn from:

- ❑ Frederic G. Reamer, *Social Work Malpractice and Liability* (2nd ed.) New York: Columbia University Press, 2003.
 - ❑ Frederic G. Reamer, *The Social Work Ethics Audit: A Risk-management Tool*. Washington, DC: NASW Press, 2001.
 - ❑ Frederic G. Reamer, *Ethical Standards in Social Work: A Review of the NASW Code of Ethics* (2nd ed.). Washington, DC: NASW Press, 2006.
 - ❑ Frederic G. Reamer, "Documentation in Social Work: Evolving Ethical and Risk-management Standards," *Social Work*, 50(4), 2005, pp. 325-334.
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