



“Building an Ethical Practice: A Road Map for You and Your Agency”

2024 Gulf Coast Social Work Conference
Joseph T. Monahan, M.S.W., A.C.S.W., J.D.
January 2024



1


1



Introduction

- **Case Study**
 - Social Worker Sara
 - Facts
 - Discussion Points

©2024 MONAHAN LAW GROUP, LLC



2

2

Building an Ethical Practice

- **Social work practice requires the ability to:**
 - Understand the applicable law and ethical standards
 - Identify issues and areas of potential risk
 - Apply tools for making appropriate and ethical decisions
 - Successfully articulate and document the social worker's reasons (and reasoning)
- **"Risk Management"**



3

"Malpractice"

- **Professional negligence**
- **Definition**
- **Elements**
 - Duty
 - Standard of Care
 - Breach
 - Harm/Injury
 - Causation
 - Proximate Cause



4

Basic Risk Management

- **What do we mean...**
 - Being aware
 - Communicating clearly
 - Managing expectations
 - Documenting well
- **Why?**
- **Importance of state laws**
 - Licensing boards



5

Confidentiality

- **Foundation of the therapist-recipient relationship**
- **Complex issues:**
 - Legal
 - Ethical
- **Importance**
 - Risk of civil liability
 - Licensure
 - Ethical standards
 - Improving your practice



6

Confidentiality

- **Exceptions:**
 - Duty to warn/protect
 - Mandated reporting
 - Court-ordered
 - When required by insurance payers, case supervisors, auditors
 - When defending oneself in a lawsuit or license complaint
 - Receiving a valid subpoena under state law
- **Risk management and the “duty to warn”**

©2024 MONAHAN LAW GROUP, LLC



7

7

Things to Remember about

- **All mental health records are confidential...but...**
- **The fact that someone is the recipient to mental health services is confidential information.**
- **Ask: (Who asking? Age of recipient? On what authority?)**
- **Counsel the recipient on the limitations of confidentiality**
- **Subpoena – notify supervisor – legal counsel**
- **Professionals not supposed to re-disclose from other places**
- **Consultation, consultation, consultation!**

©2024 MONAHAN LAW GROUP, LLC




8

8

Informed Consent

- **Informed Consent – the bedrock principle of clinical care, the basis of patient autonomy.**


Informed	Knowing	Voluntary	Communicate
<ul style="list-style-type: none"> • nature, effects, risks and responds to questions 	<ul style="list-style-type: none"> • cognitive process of the patient able to understand the information provided and engage in rational decision about whether to accept treatment 	<ul style="list-style-type: none"> • consent must be voluntary choice free of undue influence by physician, family, clergy or others 	<ul style="list-style-type: none"> • must be able to communicate decision intelligently

©2024 MONAHAN LAW GROUP, LLC  9

9

Informed Consent

- **Intended to protect clients' freedom, privacy, and safety**
- **Based on clients' clear understanding of the services provided**
- **Challenges to obtaining informed consent**
- **Who provides informed consent?**

©2024 MONAHAN LAW GROUP, LLC  10

10

Boundary Issues and Dual Relationships

- **Dual Relationships**
 - Boundary violations v. boundary crossings
 - Assessment
 - Risk Management
- **How Boundary Issues Arise**
 - Intimate relationships
 - Personal benefit
 - Emotional and dependency needs
 - Altruistic gestures
 - Unanticipated circumstances

©2024 MONAHAN LAW GROUP, LLC



11

11

Boundary Issues

- **Ethical Standards**
- **Risk Management**
 - Having a strategy in place
 - Identify the issue
 - Consultation
 - Make a reasoned decision
 - Document the decision-making process and ultimate outcome

©2024 MONAHAN LAW GROUP, LLC



12

12

Termination

- **Proper termination requires a systematic procedure for disengaging the working relationship**
- **Must be concerned about the way services are terminated**
- **Referrals**
 - Three – name, number, address
 - Ensure appropriate referral – risk of liability if client is harmed
 - Follow-up



13

Termination

- **Reasons for termination**
 - Different level of treatment required
 - Therapist unable or unwilling to continue treatment (proper reasons)
 - Conflict of interest develops
 - Client not cooperative/does not participate in treatment
 - Client stops communicating
 - Non-payment
- **Abandonment**
 - Legal concept
 - Form of malpractice



14

Termination

- **Risk management:**

- Start preparing for termination when services are initiated
- Provide appropriate referrals and participate in transition
- Final face-to-face meeting
- Client must understand when, why, and how
- Document discussions of termination
- Send detailed termination letter



15

Clinical Supervision

- **Definition:**

- “The relationship between supervisor and supervisee in which the responsibility and accountability for the development of competence, demeanor, and ethical practice take place.”

- **Common areas of liability in the context of supervision**

- Inadequate and improper supervision or guidance
- Sexual impropriety
 - Supervisee/supervisor
 - Student/instructor
 - Therapist/client




16

Conclusion

- Risk management tips and takeaways
- Case study reviewed:

Thank you!!



17

17



monahan law group, llc
P 312.419.0252 | F 312.419.7428 | www.monahanlawllc.com



55 West Monroe St., Suite 3700
Chicago, IL 60603

Phone: 312-419-0252
Fax: 312-419-7428

18