

“Remember that in matters of professional ethics, ignorance is not bliss.”

Mathilda B. Canter

Risk Management: Why

CPH and Associates Insurance

- Why we talk about professional ethics & risk management...education leads to claim prevention
- We wish to ensure best practice of the profession, protect clients and ensuring quality of service delivery.

Learning Objectives

- Learn the common liability claims among mental health professionals.
- Review, as well as learn simple strategies to reduce your risk of intentional or unintentional harm to your patients.
- Review and/or learn about the claim reporting process

Common Claims seen by CPH

- Suicide Prevention
- Dual Relationships
- Breach of Confidentiality
- Abuse Reporting
- Repressed Memory
- Informed Consent/ HIPAA Violation(s)

***Statistics on some categories are somewhat difficult to maintain. Lines are often blurred as multiple categories of risk may be listed in suit or complaint. We do our best to assign the primary risk, and that is how we have determined the statistics in this presentation.

Common Claims: Suicide

- Claims arising from suicides where it is alleged that the client was not treated properly or the counselor failed to recognize the client's symptoms.
- About 8.5% of claims at CPH* involve a suicide risk. These include Board investigations, lawsuits, letters of intent, and record requests

*excluding Deposition Expense Coverage

Suicide Prevention & Assessment

- Assess often...
 - There are over 20 "suicide prediction" scales. Among the most commonly-used are:
 - Beck Scale for Suicide Ideation
 - Suicide Probability Scale
 - Suicidal Ideation Questionnaire
 - Suicidal Behavior History Form
 - Reasons for Living Inventory
 - Child-Adolescent Suicide Risk Potential Index

Suicide Case Example

- Intern received phone call from patient while out to lunch with her boyfriend. Asked patient if she could call her back later. When the insured got around to returning patient's call, many hours later, she learned the patient had committed suicide.
- Both intern and supervisor named in lawsuit
- Questions arose regarding intern's competency to handle the complex case of patient (borderline).
- Settled for \$80,000 plus defense cost. Total cost over \$125,000
- Demonstrates importance of both supervisee and supervisor carrying insurance.

Common Claim: Dual Relationship

- About 16% of CPH claims involve dual relationships*
 - Nearly 50% of dual relationship claims are State Licensing Board Complaints

*excluding Deposition Expense Coverage

Common Claim: Dual Relationships

- Be careful when an individual therapy patient asks for family therapy or couples therapy.
 - Therapist get set up for dual relationship issues and/or breaches of confidentiality between parties.
- NEVER engage in a sexual relationship with client (or former client as defined in ethical codes).
 - Claims are still seen of this nature
 - No such thing as a "true love" exception!
- NEVER engage in business practice with a client (or former client as defined in ethical codes)

Common Claims: Abuse Reporting/ Duty to Warn

- Failure to report potential abuse.
- Reporting abuse where the allegations were unfounded. **KNOW YOUR STATE LAWS!**

HELPFUL HINT* If unsure about a particular circumstance, call child protective services (or appropriate state agency) and ask them as a hypothetical circumstance. If they say the situation is reportable, ask them to specify the section of the reporting law. Be sure to document the phone call in client notes

From Avoiding Liability Bulletin Archives (March 2008, Volume 1)

Common Claim: Abuse Reporting

- Nearly 8% of claims seen involve abuse reporting*
 - Over 50% of abuse reporting claims are state licensing board complaints

*excluding Deposition Expense Coverage

Child Abuse Reporting

Why should I report?

- Research from the past ten years indicates that fewer than 25% of mental health professionals believe that the child benefits from their reports. Kalichman (1999) found that between 29% and 63% of MHPs did not report at least one case of suspected child abuse despite knowing the requirement to do so.
- **Failure of an MHP to report child abuse is breaking the law**
 - Although it is frequently only a misdemeanor in most states.

Ethics and Child Abuse Reporting

- The intention of the law is not for potential reporters to consider possible outcomes when deciding whether to report.
- How a report will change the MHP's relationship with the child or the child's family cannot be a factor in deciding if a report should be made (as it is in some ethical decisions).
- In the case of child abuse, the MHP has to report the abuse.

Common Claims: Repressed Memory

- Patient seeks recourse due to false repressed memory.
- Or... ritual abuse memory is reinforced by the mental health practitioner.

*Information based on past Philadelphia Indemnity Insurance claims.

Repressed Memory Therapy

- In the mid-1990's as RMT grew in popularity, a series of law suits were successfully argued resulting in some of the largest damages in psychotherapy industry
- Minnesota, 1996: Vynnette Hamanne vs. Diane Humenansky. Plaintiff awarded \$2.67 million in damages
 - The average Claim at CPH for professional negligence is between \$30,000-\$50,000. We have paid as high as \$100,000.

Common Claims: Breach of Confidentiality

- Family counseling
 - Confidentiality breach when "client" is more than one person.
- Over 16% of claims involve a breach of confidentiality.
- Over 50% of these claims are in the form of state licensing board complaints

*excluding Deposition Expense Coverage

Breach Of Confidentiality

- Be clear with all participants of counseling about who has access to the records, and whose authorization is needed to release them to others
- Ethics codes traditionally require that possible limitations to clients' right to confidentiality also be disclosed

Common Claims: Informed Consent/HIPAA

- Lack of informed consent.
 - Patient does not agree to the therapy modality and treatment is rendered and treatment causes or exacerbates PTSD symptoms.
- Failure to meet HIPAA requirements
- These represent approximately 4% of CPH claims

The Basics of Informed Consent

- Disclosure
- Understanding
- Voluntariness
- Competence
- Consent

...use language the client can understand

Informed Consent

- Specific Informed Consent Forms for each population:
 - Adults
 - Minors
 - Groups
 - Families
 - Couples
 - Supervision

Informed Consent

- Remember...Informed Consent is an Ongoing Process
- Progress of therapy needs to be discussed and goals revisited on regular basis – does client seem to be benefiting from therapy?
- Revisit the information that the client consented to at the onset of the therapeutic relationship. The MHP should not assume that the client remembers everything on the MHP's Informed Consent to Treatment that the client signed at the first session. Often clients are nervous during an intake, they don't read the information thoroughly, or just don't recall everything on the document.

Having an Ethical Decision-Making Process

- Recognize the problem
- Define the problem
- Develop solutions (with client)
- Choose a solution
- Review the process (with client) and re-choosing
- Implement and evaluate (with client)
- Continued Reflection

*Adapted from Andrew P. Daire, Ph.D, LMHC, NCC. Professor at the University of Central Florida

Understanding Insurance Policies

• Deposition Expense Coverage

- Deposition expenses make up 30% of ALL claims
- Coverage available for "reasonable legal expenses incurred by an insured for appearance at a deposition"-
- CPH coverage – up to \$5000 per deposition/ up to \$15,000 per year
- Our average payment for depositions is between \$1,500-\$3,500

State Licensing Board Investigations

- An increasingly common use of insurance coverage.
- It does not need to be the client; spouse or other family member to file a complaint
- In some cases a board complaint will be filed to build evidence for a later lawsuit.

State Licensing Board Coverage

- Average fees we see for disciplinary complaints is between \$3,500-\$5,000, of course they can be higher
- Covered with CPH and Associates - up to \$25,000 per year

I Have a Claim – Now what?

- Step 1: It is the insureds duty to immediately notify the company of any incidents that might lead to a claim
- Be as specific as possible when communicating with the insurance company
 - Do you expect a claim? Is it likely to be a lawsuit or a State Licensing Board complaint?

CPH "Initial Incident Report"



Initial Incident Report

Print this form and overnight mail or fax to:
CPH & Associates, 711 S. Dearborn, Suite 205, Chicago, IL 60605
Fax: 773-387-0888 (leave a message after faxing to our fax number)

You must answer ALL questions on this form. If something does not apply to you, write "N/A" on that line. Attach additional information as necessary.

1) Policy Number:
if you have more than one policy through CPH and Associates, please make sure to give all policy numbers and include the policy type and date for each on questions # 6 & 7

2) Name of Insured:
(As it appears on your declaration page)

3) DBA:
(Company Name) (Other name used if applicable)

4) Home Phone: _____ Other: _____

5) Work Phone: _____ Other: _____

6) Date First Insured with CPH and Associates: _____

7) Expiration Date of Current Policy: _____

8) Association Membership (check one): JAAMFT AMHCA & State Affiliates CAMFT ACA CSWP JAMPC Non-member (none of the above)

9) Date of Incident in Question: _____

10) Location of Incident (State): _____

11) Dates of Treatment/Evaluation of Involved Client(s): _____
Please be as accurate as possible with dates of incident/treatment. Please be advised that we will be required to deny claims of substance abuse/mental health claims made for incidents not reported. If you have not received both CPH and Associates at the time of the incident or treatment, please contact your other insurance carrier.

12) Type of Claim (check all that apply):

- Professional Liability
- Supplemental Liability
(Only Injury, Property Damage, & Personal Injury Liability)
- Deposition Expense
- State Licensing Board Investigation Expense
- Medical Expense
- First Aid Coverage
- Assault Coverage

53. Did you receive (check all that apply):
If no, what date was it delivered? _____

Summons / Letter of intent
 Subpoena for deposition
 Notice of complaint

54. Do you suspect a claim? Yes No

55. Brief Description of Incident or Claim:
(Please give details in your actual deposition answer as needed.)

PLEASE READ AGREEMENT AND CHECK ONE ANSWER:
 The insured declares the information contained in the incident report is true and that no material facts have been suppressed or misstated.

I Agree I Do Not Agree

Signature: _____ Today's Date: _____

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The Claim Process

- Step 2: the Insurance company will create a file for the customer and set up the necessary defense
- Reimbursements
 - Sometimes a MHP is notified only days before they are requested to depose or submit documents for a deposition. It is in the best interest of the customer to contact a lawyer ASAP. The coverage will then be paid on a reimbursement basis up to the limits of liability. Waiting for the insurance company to set up a file could take too long

If you remember nothing else...

- Document, Document, Document!!
 - If you don't document things when they happen there is no way to prove they did.
