LEGAL ASPECTS OF FIELD EDUCATION

Disclosure of Student Status

Disclosing one’s student status establishes an honest relationship with clients from the outset. We strongly encourage student and field instructor to talk about this important issue and suggest that they discuss, in particular, how the student might inform clients about the student-client-field instructor relationship. It is also important for students and field instructors to talk about students’ feelings about their status and how clients may react to this knowledge. We’d like students to be reassured that they do bring knowledge and experience to the field internship. Student status denotes the need for additional knowledge and skills, which is gained by working closely with the field instructor. Finally, the nature of the student-client relationship assumes that a knowledgeable, experienced field instructor/social worker is the third party in that relationship.

Malpractice and Malpractice Insurance Coverage

NCSSS has mandatory professional liability (malpractice insurance) coverage for students. The carrier for the policy is the Chicago Insurance Company. The policy provides $2,000,000 per claim and $5,000,000 in the aggregate. Students registered for field education are required to purchase this coverage for the entire period they are in field. Students should verify that they have been billed for this coverage though this billing should happen automatically whenever a student is registered for Field/Field Seminar. The coverage is restricted to school-related, agency-based activities involving field education only during the fall-spring semesters when students are in the internship.

Malpractice is a specialized form of negligence requiring certain characteristics in order for there to be a legal basis for action. These are as follows:

- A duty or obligation, recognized by law, requiring the actor to conform to a certain standard of conduct.
- A failure on his/her part to conform to the standards required.
- A reasonably close causal connection between the conduct and the resulting injury.
- Actual loss or damage resulting to the interests of another. (Prosser 1971)

Even though malpractice charges against social workers are relatively uncommon, it’s important to be aware of some student-client situations that could lead to criminal or civil action. They include the following:

- Failure to inform the client of student status;
- Providing treatment without obtaining proper consent;
- Keeping inaccurate or inadequate records;
- Administering inappropriate or radical treatment;
- Failing to consult with or refer to a specialist;
- Failing to seek proper supervision;
- Failing to take action to prevent a client’s suicide;
- Failing to warn third parties of potential harm [as well as] … breaching confidentiality;
- Exhibiting professional misconduct, such as engaging in sexual relations with clients;
- Failing to report child abuse or neglect;
- Abandoning clients or failing to be available when needed. (Zakutansky and Sarles 1993, 340).

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1 Bogo and Vayda, (158).
2 Cited in Bogo and Vayda, (157-158)
3 Cited in Bogo and Vayda, (151)
Health Insurance Coverage

All students are required to carry health insurance coverage during the course of their graduate studies. Students are strongly encouraged to be very knowledgeable about what their policy does/does not cover. In particular, students should be familiar with their policy's emergency room coverage. Over the years, several interns have been sent to the emergency room during the course of their studies because of a health condition judged to be serious. In at least one situation, the intern later received a bill exceeding $1,000 for which she was responsible.

Informed Consent

Informed consent is a legal term, indicating that a client has given consent for services. “The process should involve (1) determining client competence; (2) providing complete service information; (3) ensuring client understanding; and (4) documenting the informed consent.” Field instructors are asked to discuss with their students the importance of making sure that clients truly understand procedures, the nature of a request for information and its limits, and whether any consequences might ensue if they should choose not to give consent. They should speak with students about agency policies and procedures regarding informed consent.

Confidentiality and Privileged Communication

It is important for students to be well informed about issues regarding confidentiality and privileged communication. Students should be informed about agency policies and regulations regarding who can gain access to confidential records, and under what conditions/circumstances. Information about clients should never be released without evaluating whether and how it can be released.

In almost all situations, a client’s consent must be sought before disclosing any information to others since technically, information in the client’s case record belongs to him/her. Exceptions would include emergency situations to save a person’s life; when protection of minors is involved; to prevent a crime from occurring; or when required by law.

Confidentiality refers to “an ethical responsibility that protects clients from unauthorized disclosure of information given in confidence to a mental health professional.”

Privilege is a legal concept, referring to “an individual’s right to not have confidential information revealed in court or other legal proceedings without permission.” “Privileged communication” means that information told to a professional by a client or patient does not have to be disclosed (unless overruled by the courts).

See also the NASW Code of Ethics (1.07, 1.08).
Documentation and Recordkeeping

Paperwork! The bane of social workers, and yet there are critically important, legal implications of keeping records. As part of their orientation to agencies, students should learn what documentation is required by their agencies. It is important to keep in mind that records are admissible in legal proceedings and can be subpoenaed. Private notes can also be subpoenaed.

Documentation Tip List

1. Know your agency’s policy and procedures for documentation.
2. Use ink, preferably black, because black ink is most legible if records are copied.
3. Use the appropriate form and documentation format.
4. Record your name at the bottom of each entry legibly, along with contact information.
5. Write specific dates rather than a day of the week.
6. State the source of all information documented, e.g. “client stated.”
7. Keep recording focused on the presenting problem and purpose of the intervention.
8. Avoid repeating information that has been recorded previously.
9. Avoid using uncommon abbreviations and social work jargon.
10. Use descriptive words as needed. Avoid subjective wording, such as “appeared sad.” Instead, you may want to write, “The patient became tearful as she talked about her son’s illness.”
11. Utilize a diagnostic label only if it has been firmly established, e.g. “Client reports drinking 15 cans of beer a day” vs. “client is an alcoholic.”
12. Never record impressions as facts.
13. Document areas that may be unclear. State when these areas might/will need to be explored further, e.g. if a client exhibits anger and social worker is unaware of the source of the anger.
14. Documentation should reflect a plan for each entry. Future entries should continue to reflect how the plan is being addressed or how the plan has changed.
15. The outcome of the work done is what is important to those reading the documentation. Don’t dwell on the “process.”
16. Keep recordings up to date so that others can see progression of intervention. Example: Assigned social worker is on vacation and colleague can identify what has been done and what still needs to be addressed.
17. If documenting an omission, clearly identify your entry as a late entry; be sure to cross-reference it to the page where it should have appeared.
18. When writing in the multidisciplinary chart, write on every line. Do not insert notes between lines or leave empty spaces for someone else to insert a note.
19. Draw a single line through an error and write “error” – never erase or use white-out.

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9 Scott, Linda, BrintzenhofeSzoc, Karlynn and Shaffer, Hillary, Developing effective tools for social work documentation within a changing healthcare system. (2000).
10 Rogers, Gayla et al, (90)
NCSSS HIPAA Privacy Policy

_Policy:_ Neither NCSSS, nor its faculty, staff, or students are, as such, entities covered under the Health Insurance Portability and Accountability Act (HIPAA). However, because NCSSS faculty, staff, and students may require and have access to “individually identifiable health information” (IIHI) in order to meet field education objectives, NCSSS will advise its faculty, staff, and students to treat all IIHI accessed during field education in accordance with the HIPAA “Standards for Privacy of Individually Identifiable Health Information.” Faculty, staff, and students will also be expected to adhere to any individual mental health or health care facility policy/procedure not addressed in this document but governing the facility to which they or their students are assigned for field education. The final HIPAA privacy regulations can be found at 45 CFR Part 164.

_Definition:_ *Individually identifiable health information* is information that is a subset of health information, including demographic information collected from an individual, and:

(1) Is created or received by a health care provider, health plan, employer, or health care clearinghouse; and
(2) Relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and

(i) That identifies the individual; or
(ii) With respect to which there is a reasonable basis to believe the information can be used to identify the individual. 45 CFR § 160.103.

_The following are examples of Individually Identifiable Health Information (IIHI):_

**Clinical Information:** Test results, diagnoses, notes, names and specialties of physicians or other care providers  
**Financial Information:** Health insurance coverage, itemized bills and charges  
**Educational and training information:** Procedure logs, case studies, process recordings, psychosocial assessments, training notes  
**Research Information**

_Q. Will I be covered under HIPAA once I begin my clinical practice upon graduation?_

Social workers will be covered entities required to comply with HIPAA for all of their clinical record keeping if they transmit any individually identifiable health information electronically in connection with certain specific financial and administrative transactions (primarily conducted with health plans.)

_Q. Am I covered by HIPAA now as a student?_

Students, while not covered per se under HIPAA, are bound by state law on the confidentiality of medical records. Students are also bound by moral and ethical obligations to maintain confidentiality. Protection of IIHI is a core component of caring for patients. Patients who fear that personal information will be shared are less likely to share it. This can lead to ineffective care, or even worse, care which may harm the patient.

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11 Social workers will mainly be covered by The DC Mental Health Information Act of 1978 or comparable laws in Virginia or Maryland, where the clinical practicum is located.
Q. What about case notes written after a case management meeting, or a discharge planning meeting – not psychotherapy but containing private information? Is this IIHI?

This would be covered under the broad definition of individually identifiable health information under HIPAA. If you have any doubts about whether information is covered under HIPAA, treat it as covered information.

Psychotherapy notes are accorded special privacy protections under HIPAA. Ordinarily, written client consent is required before psychotherapy notes can be disclosed to anyone.

NCSSS Requirements Regarding HIPAA:

1. Some NCSSS students will have had HIPAA training in an employment setting and/or will receive HIPAA training in their placement setting. In these cases, they are to submit documentation showing successful completion of the training to the Office of Field Education by the end of their first semester in the field internship.

2. When students have not had HIPAA training, they are required to complete very basic training by reading HIPAA information available on our website (http://ncsss.cua.edu/field/HIPAA.cfm) and then satisfactorily completing an on-line quiz by earning a score of 80 or above. A student must satisfy this requirement by the end of the fall semester in order to continue in field in the spring semester; no exceptions will be made.

3. Faculty, staff and students are advised to maintain the privacy of individually identifiable health information by taking the following steps to protect against disclosure of IIHI:

   • Social work interns in a clinical setting must ensure that they do not bring IIHI back into the classroom. Faculty, staff, students, and trainees are to use de-identified information when in a classroom setting. A patient's identifying information is not needed for educational purposes.
   • Students should not retain any IIHI after the need to use it has ended.
   • IIHI must be used only for research and/or education. Students must not share or discuss information outside the classroom.
   • In all instances, follow the HIPAA guidelines of the placement setting. For example, a health care facility or clinical site may have a strict rule prohibiting taking any IIHI from the setting back to the classroom.

Resources:

See The DC Mental Health Information Act of 1978; summarized at: http://counsel.cua.edu/dclaw/Misc/DCMHIACFM

HIPAA Highlights for Social Workers online at http://www.socialworkers.org/hipaa/default.asp (password required)

12 Psychotherapy notes are defined in the regulation as “notes recorded (in any medium) by a health care provider who is a mental health professional documenting or analyzing the contents of conversation during a private counseling session or a group, joint, or family counseling session and that are separated from the rest of the individual’s medical record.”

Excluded from the definition of psychotherapy notes are medication prescription and monitoring, counseling session start and stop times, modalities and frequencies of treatment furnished, results of clinical tests, and any summary of the following items: diagnosis, functional status, treatment plan, symptoms, prognosis, and progress to date.
General Information on HIPAA available on the Office of General Counsel web page
http://counsel.cua.edu/fedlaw/Hipaa.cfm

Statement of Agreement (Affiliation Agreement)

The university requires that a Statement of Agreement between The Catholic University of America and the Agency be signed by both parties and maintained on file in the Office of Field Education. This statement formally recognizes mutual expectations and responsibilities of all parties involved in field education. The agreement is sent to the agency by the Office of Field Education (OFE) and is then signed by the agency director or designee and returned to the OFE. After the Provost of The Catholic University of America and the Dean of NCSSS sign the agreement, a copy will be sent back to the agency. Any proposed amendments to the agreement must be reviewed and approved by the University General Counsel prior to obtaining signatures. Since Fall 1999, an addendum for those sites agreeing to supervise students as part of the Federal Work-Study Program has been attached to the agreement. Any agency assigned an intern receiving this funding must sign this addendum. The agreement renews automatically, unless the Agency requires annual renewal, or either party chooses to terminate the agreement.

Sexual Harassment

Sexual harassment is a form of sexual discrimination prohibited by Title VII of the Civil Rights Act of 1964, Section 1604.11, and, as such, is prohibited at The Catholic University of America. Harassment is always destructive to the learning and working environment, adversely affecting student’s performance in the internship. Sexual harassment may take a variety of forms, ranging from subtle pressure for sexual activity to sexual assault. Sexual harassment may be physical, verbal or nonverbal. Even if the agency has no sexual harassment grievance policy, students may file complaints of sexual harassment directly to the Office of Civil Rights, U.S. Department of Education.

Safety Issues

The School recognizes that there are inherent risks to agency staff and students in any situation requiring contact with the public. While fulfilling the agency’s mission of providing services, it is the student’s responsibility to be aware of the need for personal safety and to minimize risks as much as possible.

The agency has primary responsibility for orienting students to agency-specific safety issues. Field instructors are asked to discuss safety issues with students at the beginning of the semester. Safety issues can arise in the agency as well as in the community. We ask that a social worker accompany any student on home visits until the student feels comfortable making such visits alone. Students should not make home visits alone if there is any reason to believe that a potential danger exists. Students should ‘check in’ with the field instructor or designee after every home visit.

As a rule, students are not to use their own cars to transport clients. In those few situations where the agency cannot function without staff and students transporting clients in their own cars, a formal agreement must be worked out between the student and agency.

Critical Incidents

A Critical Incident is any unusual occurrence that involves a student’s physical or emotional safety in the course of conducting his/her duties and responsibilities as a field practicum student. The Critical Incident Reporting procedure provides information regarding the role of the Office of Field Education, the student(s), the field agency site, and faculty and staff regarding reporting critical and/or safety incidents occurring at the student’s field site. The Office of Field Education, together with the Dean and/or his designee, is responsible for receiving, reviewing and investigating all unusual incidents involving any student in a field site.
Reporting Responsibilities:

1. The student shall advise his/her field instructor either in person or by phone immediately after a critical incident has occurred.
2. The field instructor shall notify the OFE that an incident has occurred, providing the nature, situation surrounding the incident, extent, date/time and action taken by the agency.
3. The student shall complete a Report of Critical Incident form and submit it to the OFE, with a copy to the field instructor.
4. The Director of Field Education shall notify the Dean, the Program Chair, the field liaison, the student’s adviser, or other faculty as appropriate for action and/or follow-up as needed.
5. The Director of Field Education shall take appropriate steps to interview the student, provide him/her with appropriate supports and/or recommend further counseling or medical intervention as necessary.
6. As appropriate, the Director of Field Education shall provide the Associate Dean and/or the BSW or MSW Program Chairperson with timely updates regarding the situation including any corrective strategies that are formulated.
7. When appropriate, CUA personnel, e.g. the Office of General Counsel, should be notified and forwarded a copy of the Report of Critical Incident Form and a written report of any additional action that has been taken.