Suicide Prevention Resource Center
Promoting a public health approach to suicide prevention

The nation’s only federally supported resource center devoted to advancing the National Strategy for Suicide Prevention.
The Interface between Clinical Care, Prevention, & Legal Standards

Morton M. Silverman, M.D.
Senior Science Advisor, SPRC
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Disclaimers

✓ I am NOT a lawyer, so don’t quote me!!

✓ My perspective is that of a suicide expert/consultant to colleges/universities that have been sued after a student has died by suicide.

✓ I am both computer- and Power Point-challenged – neither of which are ADA eligible (at least not yet).
Outline of Presentation

✓ Overview of legal terminology and liability
✓ Overview of TJF/SPRC Framework
✓ Key planning documents
✓ Important legal considerations
✓ Questions
✓ Interactive Participation
Definitions

- **GUIDELINES**: criteria, procedures, protocols used where medical outcomes are NOT certain (ex: APA’s Practice Guideline for the Assessment and Treatment of Patients with Suicidal Behaviors – 11/03)

- **STANDARDS**: activities, procedures, protocols used where the medical outcomes ARE certain

- **STANDARDS of CARE**: “that degree of care which a reasonably prudent person or professional should exercise in same or similar circumstances” (Black, 1979). Therefore, a community (not “gold”) standard.
Negligence

Negligence can be described as:

“doing something which he or she should not have done (commission) or omitting to do something which he or she should have done (omission).

Hence, consequences of carelessness or ignorance do not excuse the clinician from liability.

The most common legal action is the failure “reasonably” to protect patients from harming themselves (taking precautions).

Simon (1988)
The Four D’s in Establishing Negligence

Each of these must be demonstrated by the plaintiff by a preponderance of evidence (“more likely than not”; the “51% rule”)

Dereliction of Duty --- Directly causing --- Damages

This concept assumes concepts of causation (causal chain) and that the 4 D’s occurred in close proximity to the time of injury

Rachlin (1984)
Establishing Negligence

✓ FORESEEABILITY (attention to risk assessment)
  – failure to properly diagnose risk

✓ CAUSATION (proximate cause)
  – failure to treat and/or use precautions
  – failure to implement appropriate interventions
Accurate prediction of suicide is extremely difficult (Pokorny, 1983; 1997 – “false positives”). Prediction is a mathematical concept.

When the suicidal behavior is foreseeable, the treatment provided must be consistent with professional standards.

Foreseeability is a clinical and judgmental concept, based on the best available and commonly understood knowledge at the time.
Foreseeability and Causation

Three issues tend to recur in assessing liability cases:

1. Should the administration/clinician have predicted/foreseen the possibility of the violent behavior?

2. Was there sufficient evidence for an identifiable risk of harm (warning signs; risk factors; changes)?

3. Did the administration/clinician do enough to protect the campus/individual?
Adequate Precautions

✓ Documentation
  – who, what, where, when, why, & how
  – phone calls; emails; letters
  – “thinking aloud on paper”
  – “if it isn’t written, it didn’t happen”

✓ Consultation

✓ Availability

✓ Family/Support network involvement

✓ Medical & Mental Health Management

✓ Contingency Plans known to all
Errors

✓ Honest errors of judgment are inevitable in clinical practice – however, good clinical judgment needs to be based on facts and clinical investigation.

✓ There is no place for clinical intuition in the assessment, treatment, and management of suicidal individuals.

✓ An error of prediction, or even judgment, does not necessarily establish negligence.
TJF/SPRC Comprehensive Approach

- Identify Students at Risk
- Increase Help-seeking Behavior
- Promote Social Networks
- Develop Life Skills
- Restrict Access to Potentially Lethal Means
- Provide Mental Health Services
- Follow Crisis Management Procedures

The Jed Foundation; Suicide Prevention Resource Center
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The Jed Foundation; Suicide Prevention Resource Center

http://www.jedfoundation.org/professionals/programs-and-research/framework
TJF Framework: Key topic areas

- Developing a Safety Protocol
  - responding to acutely distressed students
  - hospitalization protocols
  - post-crisis follow-up plan
  - documentation of encounters with students

- Developing an Emergency Contact Notification Protocol

- Developing a Leave of Absence and Re-Entry Protocol
TJF Student Mental Health and the Law (2008)

http://www.jedfoundation.org/professionals/programs-and-research/framework
Contents

✓ Privacy and Confidentiality
  – FERPA
  – HIPAA

✓ Disability Law
  – Americans with Disabilities Act (1990; 2008)
  – Section 504 of Rehabilitation Act (1973)
  – Title VIII of Civil Rights Act (1968)
  – Office of Civil Rights (OCR) of DoE memoranda

✓ Delivering Mental Health Services
Higher Education Mental Health Alliance (HEMHA) A Guide for Campus Teams

http://www.jedfoundation.org/professionals/programs-and-research/campus_teams
A Better Approach

“A prevention plan that guards against common risks, rather than the sensational ones that are much less likely to occur; that relies on a network of collaboration and clear communication; and that contributes to campus-wide awareness and a sense of community, trust, and meaningful human connection.”


http://winter2010.aciajj.org/overview/a-broader-view
EDC/TJF CampusMHAP: A Guide to Campus Mental Health Action (2011)

Sources of Relevant Law: Federal Statutes

1) ADA Amendments Act of 2008 (Titles II and III)

2) Section 504 of the Rehabilitation Act

3) Fair Housing Act
Sources of Relevant Law (cont.)

4) Regulations implementing those statutes (new ADAAA regulations in effect since March 2011)

5) Judicial opinions interpreting those statutes and their regulations

6) U.S. Department of Education’s Office of Civil Rights “Resolution Letters”
The primary obligation under the ADA/Section 504 is to not discriminate against individuals with disabilities

- Includes affirmative obligation to provide reasonable accommodations

- Exception: individuals who poses a “direct threat” to self or others, defined as a “significant risk of substantial harm”

Bazelon Center for Mental Health Law, 2012
“Guidance” from Cases and Federal Guidance

- Individualized assessments, not blanket ("zero tolerance") policies
- Safety concerns must be grounded in evidence, not stereotypes
- Cannot require someone to be "stable" or "cured"
- No blanket waivers for medical information

Bazelon Center for Mental Health Law, 2012
“Guidance” from Cases and Federal Guidance (cont.)

- Clear policies on voluntary or involuntary medical leaves of absence
- Consistent reenrollment criteria
- Clear disciplinary and grievance procedures
- Transparent emergency suspension with an opportunity to present evidence and challenge the decision

Bazelon Center for Mental Health Law, 2012
Specific Challenges

✓ At risk vs. threat assessment committees:
  – Understand the difference between risk and threat
  – Primary focus should be on student support - actual threats are rare and this erodes trust
  – Importance of having a good understanding of relevant laws - fear of FERPA
  – Concept of interlocking committees: academic/dean and psycho-social/student services
Direct Threat Assessment

The Four-Factor Test requires that you analyze:

1) Nature of the risk
2) Duration of the risk
3) Severity of the risk
4) Probability that the potential injury will actually occur

28 C.F.R. § 35.139(b) (Title II, or public, entities); 28 C.F.R. § 36.208(b) (Title III, or private, entities)

Bazelon Center for Mental Health Law, 2012
Direct Threat Assessment

Whether someone poses a “direct threat” must be determined based on an *individualized assessment* (not stereotypes or assumptions) using the most current, objective medical evidence.

Bazelon Center for Mental Health Law, 2012
Specific Challenges

✔ Screening programs and online resources:
  - Are very appealing to many students and often an acceptable way to make contact with treatment system
  - Don’t screen if you do not have the resources to handle the capacity
  - Peer-to-peer programs are very appealing, but you need the resources to supervise properly
  - Look for specific tools that may help you (ex., appointment reminder system)
Resources


Resources (cont.)


• Bazelon Center: Campus Mental Health Legal Action: http://www.bazelon.org/Where-We-Stand/Community-Integration/Campus-Mental-Health/Campus-Mental-Health-Legal-Action.aspx

• U.S. Department of Education Office of Civil Rights: http://www2.ed.gov/about/offices/list/ocr/docs/howto.html

Questions?
Your Turn!