

**Ethics and Risk
Management
Challenges in
Social Work
Documentation:
A Primer**

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Objectives

The goals of today's training:

- Highlight the critical importance of documentation in social work
- Explore complex documentation decisions
- Review state-of-the-art documentation standards
- Identify the ways in which quality documentation protects clients and enhances risk management (especially related to litigation and licensing board complaints)

**I Will
Try to
Keep
You
Awake!**



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

A Little History

Documentation guidelines from the first national
Conference of Boards of Public Charities in 1874:

- Kinds of mental and moral perversion
- Descriptions of morbid and debasing conditions of the mind
- Points at which neglect of social and moral duties began
- Information regarding the totally idiotic or weak-minded in three generations, living and dead
- Total inebriates in three generations, living and dead
- Capacity for self-support without the direction and control of a superior authority or constant advice and supervision

(from Sidell)

Core Documentation Issues



Content



Language and terminology



Credibility



Access to records and
documents

Ethical Risks

MISTAKES: INADVERTENT DOCUMENTATION ERRORS



ETHICAL JUDGMENTS: DELIBERATE DECISIONS ABOUT WHAT AND HOW TO DOCUMENT



ETHICAL MISCONDUCT: FRAUDULENT DOCUMENTATION



The Importance of Precision in Documentation

8

The challenge of *amphiboly*: Ambiguity in speech and documentation, especially from uncertainty of grammatical construction. Amphiboly occurs when the grammar of a statement is such that several distinct meanings can obtain.

- Let's eat, grandma. v. Let's eat grandma.
- Her parents watered the flowers, yet they died.
- If you take the motor out of the car, I will sell it to you cheap.
- Red tape holds up new bridge.
- A woman, without her man, is nothing. v. A woman: Without her, man is nothing.

Amphiboly in Behavioral Health

9

Sue has not been depressed for more than three weeks.

The client reported that he will not use drugs when he has custody of his child.

Both parents tried to take care of the children, but they were hospitalized.



Why Documentation Matters: Case Examples

Unprofessional Documentation


ALMS License Information : 2018 x +

https://www.pfr.maine.gov/ALMSOnline/ALMSQuery/ShowCaseDetail.aspx?DetailToken=B90CBC0AE779DE5A02F450141EB5FB54F5B1F4084FC809D0E133EA...

Maine.gov A secure, online service provided by the State of Maine

Regulatory Licensing & Permitting

Search → Search Individuals → Search Result → 2018-SOC-13829

 DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION
OFFICE OF PROFESSIONAL AND OCCUPATIONAL REGULATION
BOARD OF SOCIAL WORKER LICENSURE

2018-SOC-13829

Date Opened: 01/08/2018
Date Closed: 04/11/2019
Respondent Name: [NOLAN MAURICE THOMPSON](#)
Respondent License: LC3625

Decision and Order

Resolution Date: 04/11/2019
Document: [SOC13829 Thompson.pdf](#)

Basis for Action [\(1 record\)](#) [hide](#)

Description
Billing
Dual relationship
Records
Unprofessional conduct

Type here to search

76°F Mostly cloudy 9:15 AM 6/27/2021

Documentation Errors

Cook County jury orders Lutheran social services agency to pay \$45M for toddler allegedly murdered by mom

By Cook County Record | Mar 30, 2018

Home » Stories » 2018 » March

STATE COURT FEDERAL COURT LEGISLATION CAMPAIGNS & ELECTIONS LAWSUITS HOT TOPICS REFORM LEGAL ROUNDUP OPINION DIRECTORY

TRENDING

EX-Saint Anthony HR director says hospital fired her for opposing 'pay-for-play' scheme with Madigan. Sandoval

'Overwhelming circumstantial evidence' Serpico behind Melrose Park's harassment campaign vs family: New filing

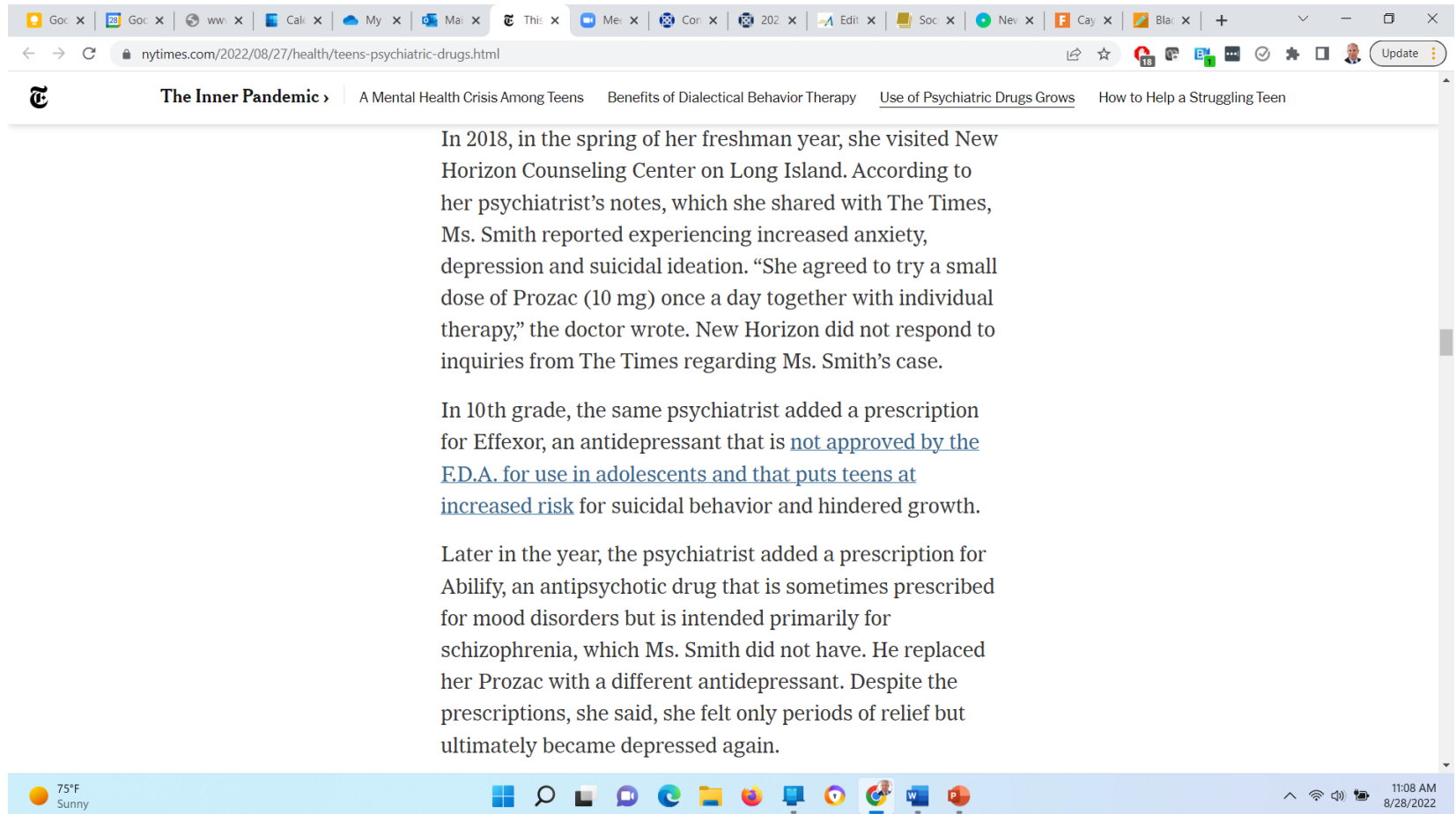
Appeals panel: 'Stateless' law firm partners means ex-Trump advisor Carter Page can't sue over Steele dossier in federal court

Settlement doesn't mean a settling party's share of blame in injury lawsuit considered 'uncollectable': IL Supreme Court

IL Supreme Court: Court foreclosure filing

76°F Mostly cloudy 9:17 AM 6/27/2021

Documentation Judgments: When Clients Share Your Notes



The screenshot shows a web browser window with multiple tabs open. The active tab is a New York Times article titled "The Inner Pandemic" with a sub-header "A Mental Health Crisis Among Teens". The article text is as follows:

In 2018, in the spring of her freshman year, she visited New Horizon Counseling Center on Long Island. According to her psychiatrist's notes, which she shared with The Times, Ms. Smith reported experiencing increased anxiety, depression and suicidal ideation. "She agreed to try a small dose of Prozac (10 mg) once a day together with individual therapy," the doctor wrote. New Horizon did not respond to inquiries from The Times regarding Ms. Smith's case.

In 10th grade, the same psychiatrist added a prescription for Effexor, an antidepressant that is [not approved by the F.D.A. for use in adolescents and that puts teens at increased risk](#) for suicidal behavior and hindered growth.

Later in the year, the psychiatrist added a prescription for Abilify, an antipsychotic drug that is sometimes prescribed for mood disorders but is intended primarily for schizophrenia, which Ms. Smith did not have. He replaced her Prozac with a different antidepressant. Despite the prescriptions, she said, she felt only periods of relief but ultimately became depressed again.

The browser's taskbar at the bottom shows the system tray with a temperature of 75°F Sunny, the date 8/28/2022, and the time 11:08 AM. The taskbar also contains icons for various applications including Windows, Search, File Explorer, and Microsoft Word.

The Importance of Careful Documentation

The screenshot shows a web browser displaying the Casper Star Tribune website. The browser's address bar shows a search for 'G'. The website header includes the 'Casper Star Tribune' logo, a search bar, and a 'Subscribe for \$1' button. The navigation menu lists categories: E-Edition, News, Obituaries, Opinion, Sports, Entertainment, Lifestyles, and Jobs. The weather is shown as '41° Partly Cloudy'. The main content area features a 'TOP STORY' section with the headline 'Jury acquits men on all counts in Powell Medicaid fraud case'. Below the headline, it says 'CJ Baker Powell Tribune Via Wyoming News Exchange 2 hrs ago 0'. A video player is embedded below the text, showing a building with a sign that reads 'NWTC Northwest Wyoming Treatment Center'. The Windows taskbar at the bottom shows the system tray with a temperature of 46°F, a 'Partly sunny' weather icon, and the time 12:35 PM on 3/16/2022.

CASPER Star Tribune

Search Casper Star-Tribune

Subscribe for \$1

E-Edition News Obituaries Opinion Sports Entertainment Lifestyles Jobs 41° Partly Cloudy

TOP STORY

Jury acquits men on all counts in Powell Medicaid fraud case

CJ Baker Powell Tribune Via Wyoming News Exchange 2 hrs ago 0

NWTC
Northwest Wyoming Treatment Center

46°F Partly sunny

12:35 PM 3/16/2022

Disclosures to Law Enforcement: 42 CFR Part 2

Woman sues Pennington County x +

https://rapidcityjournal.com/news/local/woman-sues-pennington-county-authorities-for-alleged-violation-of-her/article_e136dc0b-47c3-508a-9f9c-3c1d53...

Rapid City Journal News Obituaries Sports Opinion Entertainment Lifestyles COVID-19 Buy & Sell Log In Become a Member

Woman sues Pennington County authorities for alleged violation of her civil rights

Mike Anderson Jul 24, 2016 Updated Jul 31, 2017

SUBSCRIBE NOW \$1*/mo. for 3 months!

1 of 4

The Purple Seat Cushion
Shop Now
Ad - Purple®

Type here to search

77°F Mostly cloudy 9:20 AM 6/27/2021

The Importance of a Paper/Digital Trail

The screenshot shows a web browser window displaying a Washington Post article. The browser's address bar shows the URL: [washingtonpost.com/education/2021/12/05/michigan-school-shooting/](https://www.washingtonpost.com/education/2021/12/05/michigan-school-shooting/). The page header includes the Washington Post logo with the tagline "Democracy Dies in Darkness" and a user profile for "dsiegel". The article is categorized under "Education" and has the headline: "After Michigan school shooting, experts question what could have prevented it". Below the headline is a large photograph of a school building with a sign that reads "OXFORD WILDCATS" and "HOME OF THE OXFORD WILDCATS". To the right of the main image is a "MOST READ EDUCATION" section featuring a video thumbnail of a man at a laptop and two article teasers: "1 With purchase of edX, this company is betting big on a prestige brand in online higher education" and "2 They trusted a coach with their girls". The Windows taskbar at the bottom shows the search bar, task view, and several open applications, with the system tray displaying "45°F Sunny" and the time "3:52 PM 12/5/2021".

Parents' Access to Records of Minor Clients

The screenshot shows a web browser window with the address bar containing the URL <https://www.courts.state.nh.us/supreme/opinions/2005/berg112.htm>. The page content is as follows:

THE SUPREME COURT OF NEW HAMPSHIRE

Hillsborough – northern judicial district
No. 2005-002

IN THE MATTER OF
KATHLEEN QUIGLEY BERG AND EUGENE E. BERG

Argued: July 13, 2005
Opinion Issued: October 18, 2005

Harvey & Mahoney, P.A., of Manchester (J. Campbell Harvey on the brief and orally), for the petitioner.

Wiggin & Nourie, P.A., of Manchester (L. Jonathan Ross and Elizabeth M. Leonard on the brief, and Ms. Leonard orally), for the respondent.

Judith A. Roman, of Concord, by brief, as guardian ad litem for the minor children.

Duggan, J. This is an interlocutory appeal from an order of the Superior Court (Mangones, J.), approving the recommendation of the Marital Master (Leonard S. Green, Esq.), denying the guardian ad litem's (GAL) motion to seal the therapy records of the parties' children. We reverse and remand.

We accept the facts as presented in this interlocutory transfer and additional facts that are undisputed by the parties. The petitioner-mother, Kathleen Quigley Berg, and the respondent-father, Eugene E. Berg, are divorced. Pursuant to the final divorce decree, they have joint legal custody of their four children, whose ages range from eleven to seventeen. The mother has primary physical custody, while the father has specific custodial time with the children.

After entry of the final divorce decree, the children at times did not visit the father as scheduled, because either they refused to do so or they were not made available for visitation by the mother. The children reported to the mother instances of alleged inappropriate conduct by the father and their reasons for not wanting to visit. As a result, the mother arranged for individual counseling to address each child's resistance to visitation and his relationship with the father. Three children remain in regular individual counseling. Each child's therapist has

The browser's taskbar at the bottom shows the Windows Start button, a search bar with the text "Type here to search", and several application icons including File Explorer, Microsoft Edge, Google Chrome, and Microsoft Word. The system tray on the right displays the weather as "77°F Mostly cloudy", the time as "9:22 AM", and the date as "6/27/2021".

Clients' Remote Access to Clinical Notes

The screenshot shows a web browser window with the URL <https://www.opennotes.org/onc-federal-rule/>. The page features the OpenNotes logo and a navigation menu with items: Research & Initiatives, For Patients, For Healthcare Professionals, News, and About. The main content area has a blue background with the following text:

Federal Rules Mandating Open Notes

On April 5, 2021, federal rules implemented the bipartisan 21st Century Cures Act specifying that 8 types of clinical notes are among electronic information that *must not be blocked and must be made available free of charge to patients*. To meet the interests of some patients, the rules allow specified exceptions.

Below this, there is a section titled "Federal Rules on Interoperability and Information Blocking, and open notes" with a sub-headline: "Beginning April 5, 2021, the program rule on Interoperability, Information Blocking, and ONC Health IT Certification, which implements the 21st Century Cures Act, requires that healthcare providers give patients access without charge to all the health information in their electronic medical records "without".

At the bottom right, there is a Creative Commons Attribution 4.0 International License logo and text: "Except where otherwise noted, the content by OpenNotes is licensed under a Creative Commons Attribution 4.0 International License."

The Windows taskbar at the bottom shows the search bar, task view, and several application icons. The system tray on the right shows the weather (77°F Mostly cloudy), time (9:23 AM), and date (6/27/2021).

Documenting Online Searches

Eye on Ethics: To Google or Not to Google | x

https://www.socialworktoday.com/news/eoe_092215.shtml

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Eye on Ethics

To Google or Not to Google: That Is the Question
By Frederic G. Reamer, PhD
September 2015

Martha was a clinical social worker at a community mental health center that serves people who struggle with persistent mental illness and addictions. Martha began working with a 37-year-old man, Zachary, who sought treatment to help him address his cocaine addiction. His probation officer referred Zachary to Martha; the court placed Zachary on probation following his conviction on a felony shoplifting charge. Zachary told Martha that he had shoplifted to support his cocaine habit; he stole items that he would then sell at a local flea market.

Education Guide
Education Spotlight
Social Service Directory
Webinars

Social Work Today
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Social Work Today

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77°F Mostly cloudy 9:27 AM 6/27/2021

“False Claims” and Billing Fraud

OFFERED BY [Office of Attorney General Maura Healey](#)

PRESS RELEASE

Private Equity Firm and Former Mental Health Center Executives Pay \$25 Million Over Alleged False Claims Submitted for Unlicensed and Unsupervised Patient Care

Largest Settlement of its Kind; AG's Office Previously Reached a \$4 Million Settlement with the Mental Health Center

FOR IMMEDIATE RELEASE:
10/14/2021

Office of Attorney General Maura Healey

BOSTON — In the largest settlement of its kind, a private equity firm and former executives of South Bay Mental Health Center, Inc. (SBMHC) have agreed to pay \$25 million for allegedly causing fraudulent claims to be submitted to the state's Medicaid Program, known as MassHealth, for mental health care services provided to patients by unlicensed, unqualified, and improperly supervised staff members at clinics across the state.

MEDIA CONTACT

Emalie Gainey

Phone
(617) 727-2543

Online
Emalie.Gainey@mass.gov

Feedback

Falsified Records

The screenshot shows a web browser window displaying an NBC News article. The browser's address bar shows the URL <https://www.nbcnews.com/id/wbna35696311>. The page header includes the NBC NEWS logo, the article title "Social workers guilty of fraud in starvation case", and social media sharing options. The main content area features the word "WORLD" on the left, followed by the article title "Social workers guilty of fraud in starvation case" in large white text on a dark blue background. Below the title is a sub-headline: "Four social workers are convicted in a fraud case stemming from the starvation death of a disabled Philadelphia teen whose emaciated body was found with maggot-infested bedsores." A photograph of a young girl with glasses and a red shirt is positioned below the text. The Windows taskbar at the bottom shows the search bar, several application icons, and system information including the temperature (77°F), weather (Mostly cloudy), and time (9:47 AM, 6/27/2021).


Social workers guilty of fraud in starvation case

SHARE THIS — f t e ...

WORLD

Social workers guilty of fraud in starvation case

Four social workers are convicted in a fraud case stemming from the starvation death of a disabled Philadelphia teen whose emaciated body was found with maggot-infested bedsores.



Type here to search

77°F Mostly cloudy 9:47 AM 6/27/2021

Paying the Price for Falsified Records

The screenshot shows a web browser window with the URL <https://www.bop.gov/inmateloc/>. The page header includes the Federal Bureau of Prisons logo and the tagline "Courage. Respect. Integrity. Correctional Excellence." Below the header is a navigation menu with links for Home, About Us, Inmates, Locations, Careers, Business, Resources, and Contact Us. The main content area is titled "Find an inmate." and contains a search form. The search form has two tabs: "Find By Number" and "Find By Name". The "Find By Name" tab is active, and the search criteria are: First Name: Mickal, Middle Name: (empty), Last Name: Kamuvaka, Race: (dropdown menu), Age: (input field), and Sex: (dropdown menu). Below the search form, it displays "1 Result for search MICKAL KAMUVAKA". The result card for MICKAL KAMUVAKA includes a placeholder for a photo, the Register Number: 63849-066, Age: 72, Race: Black, Sex: Female, Located at: Tallahassee FCI, and Release Date: 05/02/2025. There is also a "Related Links" section with links for Facility Information, Call or email, Send mail/package, Send money, Visit, and Voice a concern. The Windows taskbar at the bottom shows the search bar, task view, and several application icons, along with system tray information: 77°F Mostly cloudy, 9:49 AM, 6/27/2021.

Federal Bureau of Prisons
Courage. Respect. Integrity. Correctional Excellence.

Search bop.gov

Home About Us Inmates Locations Careers Business Resources Contact Us

Find an inmate.

Locate the whereabouts of a federal inmate incarcerated from 1982 to the present. Due to the First Step Act, sentences are being reviewed and recalculated to address pending Good Conduct Time changes. As a result, an inmate's release date may not be up-to-date. Website visitors should continue to check back periodically to see if any changes have occurred.

Find By Number Find By Name

First Middle Last Race Age Sex

Mickal Kamuvaka

1 Result for search **MICKAL KAMUVAKA** Clear Form Search

MICKAL KAMUVAKA
Register Number: 63849-066
Age: 72
Race: Black
Sex: Female
Located at: [Tallahassee FCI](#)
Release Date: 05/02/2025

Related Links
[Facility Information](#)
[Call or email](#)
[Send mail/package](#)
[Send money](#)
[Visit](#)
[Voice a concern](#)


Type here to search 77°F Mostly cloudy 9:49 AM 6/27/2021

Sexual Exploitation + Fraudulent Documentation

The screenshot shows a web browser window displaying a news article. The browser's address bar shows the URL: [powelltribune.com/stories/medicaid-fraud-sexual-assault-results-in-prison-time-for-former-cheyenne-counselor,35397?](https://www.powelltribune.com/stories/medicaid-fraud-sexual-assault-results-in-prison-time-for-former-cheyenne-counselor,35397?). The article title is "Medicaid fraud, sexual assault results in prison time for former Cheyenne counselor". The article is dated "Posted Tuesday, October 19, 2021 8:00 am". The main text describes the sentencing of William Dale Robinson, a former Cheyenne counselor, to three to five years of incarceration for a felony count of second-degree sexual assault. The article also mentions a concurrent sentence for obtaining property by false pretenses. On the right side of the page, there is a "LOCAL NEWS" section with several headlines: "Federal fugitive apprehended in Cody", "Drought conditions 'extreme' or 'severe' in Park County", "Two area artists to be honored", "Education advisory group begins seeking public input", and "PHS art students take on their most complicated assignment". At the bottom of the page, there is a "elevel11 COUNTY CONNECTION" logo and a video player showing a close-up of a coffee cup. The Windows taskbar at the bottom shows the search bar, several open applications, and the system tray with the date and time: 4:20 PM 1/12/2022.

Medicaid fraud, sexual assault results in prison time for former Cheyenne counselor

Posted Tuesday, October 19, 2021 8:00 am



William Dale Robinson

CHEYENNE (WNE) – A former Cheyenne counselor convicted of sexually assaulting a patient and defrauding Medicaid received prison time during a hearing Friday morning in Laramie County District Court.

Laramie County District Judge Catherine Rogers sentenced William Dale Robinson to three to five years of incarceration for a felony count of second-degree sexual assault by a health care provider. Under Wyoming law, a person commits the crime when they have sexual contact while acting in their “capacity as a health care provider in the course of providing care, treatment, services or procedures to maintain, diagnose or otherwise treat a patient’s physical or mental condition.”

Robinson said he and a patient had sexual contact during a regularly scheduled therapy session in July 2018, and that he billed Medicaid and received reimbursement for both the June and July visits.

A 12- to 16-month sentence for a felony count of obtaining property by false pretenses in an amount greater than \$1,000 – associated with incorrectly billing Medicaid – will run concurrently with this sentence. Robinson had one day of credit for time served.

Robinson, who is 38, brought a cashier’s check for \$6,397.36 to the courtroom. It’s the amount he’d falsely claimed from Medicaid and he agreed to repay the sum to the Wyoming Department of Health’s Division of Healthcare

LOCAL NEWS

- Federal fugitive apprehended in Cody
- [Drought conditions ‘extreme’ or ‘severe’ in Park County](#)
- Two area artists to be honored
- Education advisory group begins seeking public input
- PHS art students take on their most complicated assignment

elevel11

COUNTY CONNECTION

41°F Sunny 4:20 PM 1/12/2022

The Consequences of a Digital Footprint

The screenshot shows a web browser window with the following content:

- Browser Tab:** Ex-therapist to serve 2-10 years
- Address Bar:** https://www.mlive.com/annarbornews/2008/03/extherapist_to_serve_210_years.html
- Article Title:** Ex-therapist to serve 2-10 years for sexual assault
- Metadata:** Updated Apr 05, 2019; Posted Mar 11, 2008
- Social Media:** Facebook and Twitter icons.
- Author:** By [anash](#)
- Past coverage:**
 - [Ex-therapist faces prison for assaulting patients](#)
 - [Woman files lawsuit against former therapist and U-M](#)
 - [Ex-therapist faces new sexual assault charges](#)
 - [Attorney accuses ex-therapist of preying on patients](#)
 - [Ex-therapist accused of sexual misconduct with patients](#)
- By:** ART AISNER
The Ann Arbor News
- Text:** Thomas Higgins doesn't fit the typical profile of a criminal, much less a sexual predator.
- Advertisement (Right):** Microsoft Security. Security is innovation. Cut threat alert volume by up to 90%. [LEARN MORE >](#)
- Advertisement (Bottom):** Advertisement
- Taskbar:** Windows search bar, taskbar icons (Edge, Chrome, Word, PowerPoint), system tray (73°F Partly cloudy, 9:10 AM 6/28/2021).

Fraudulent Documentation

USDOJ: US Attorney's Office - W x +
https://www.justice.gov/archive/usao/miw/news/2011/2011_0317_OOrtizButton.html

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THE UNITED STATES ATTORNEYS OFFICE
WESTERN DISTRICT of MICHIGAN
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NEWS

KALAMAZOO SOCIAL WORKER IS MOST RECENT IN A SERIES OF PROFESSIONALS SENTENCED TO FEDERAL PRISON FOR HEALTH CARE CRIMES

FOR IMMEDIATE RELEASE March 17, 2011

GRAND RAPIDS, MICHIGAN – Olga Ortiz-Button, age 57 of Kalamazoo, Michigan, was sentenced to 24 months in federal prison and ordered to pay \$276,794.00 in restitution for a scheme that bilked insurance carriers for over a quarter of a million dollars of counseling services that were never provided. Ortiz-Button, a Licensed Masters Social Worker who did business as the Christian Counseling Center, PLC, was also ordered by Chief United States Judge Paul Maloney to serve two years of supervised release after she is released from prison. At the sentencing hearing, Chief Judge Maloney emphasized that this sentence was intended to both punish the fraud and to deter other health care professionals from engaging in

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81°F Mostly cloudy 9:16 AM 6/28/2021

The Consequences of Fraud

The screenshot shows a web browser window with the URL <https://www.bop.gov/inmateloc/>. The page header includes the Federal Bureau of Prisons logo and the tagline "Courage. Respect. Integrity. Correctional Excellence." A search bar is present with the text "Search bop.gov". A navigation menu contains links for Home, About Us, Inmates, Locations, Careers, Business, Resources, and Contact Us.

The main content area is titled "Find an inmate." and includes a sub-header: "Locate the whereabouts of a federal inmate incarcerated from 1982 to the present. Due to the First Step Act, sentences are being reviewed and recalculated to address pending Good Conduct Time changes. As a result, an inmate's release date may not be up-to-date. Website visitors should continue to check back periodically to see if any changes have occurred."

There are two tabs: "Find By Number" and "Find By Name". The "Find By Name" tab is active. The search form includes fields for First, Middle, Last, Race, Age, and Sex. The "Middle" field has a tooltip that says "Middle Name or Initial". Below the form, it displays "1 Result for search **Olga Ortiz-Button**". There are "Clear Form" and "Search" buttons.

The search result for **OLGA ORTIZ-BUTTON** shows the following details:

- Register Number: 15562-040
- Age: 67
- Race: White
- Sex: Female
- Released On: 01/18/2013

Related Links:

- [Call or email](#)
- [Send mail/package](#)
- [Send money](#)
- [Visit](#)
- [Voice a concern](#)

The Windows taskbar at the bottom shows the search bar with "Type here to search", several application icons, and system tray information including "81°F Mostly cloudy" and the date "6/28/2021".

Practitioner Fraud

United States Department of Justice
Offices of the United States Attorneys

THE UNITED STATES ATTORNEY'S OFFICE
WESTERN DISTRICT of NEW YORK

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Department of Justice
U.S. Attorney's Office
Western District of New York

FOR IMMEDIATE RELEASE Wednesday, February 18, 2015

Social Worker Sentenced For Defrauding Blue Cross Blue Shield

CONTACT: Barbara Burns
PHONE: (716) 843-5817
FAX: (716) 551-3051

BUFFALO, N.Y.--U.S. Attorney William J. Hochul, Jr. announced today that Nina Jafari, a licensed clinical social worker, 64, of Amherst, N.Y., who was convicted of health care fraud, was sentenced to 30 months in prison by U.S. District Judge Elizabeth A. Wolford.

A message from US Attorney James P. Kennedy for Law Enforcement Appreciation Day

REPORT COVID-19 CRIME
Contact the National Center for Disaster Fraud Hotline: 866-720-5721 or justice.gov/DisasterComplaintForm

JUSTICE 101

81°F Mostly cloudy 9:22 AM 6/28/2021

The Consequences of Fraud

The screenshot shows a web browser window with the URL <https://www.bop.gov/inmateloc/>. The page header includes the Federal Bureau of Prisons logo and the tagline "Courage. Respect. Integrity. Correctional Excellence." A search bar is present with the text "Search bop.gov". A navigation menu contains links for Home, About Us, Inmates, Locations, Careers, Business, Resources, and Contact Us.

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There are two tabs: "Find By Number" and "Find By Name". The "Find By Name" tab is active. The search form includes fields for First, Middle, Last, Race, Age, and Sex. The search results show "1 Result for search NINA JAFARI".

1 Result for search NINA JAFARI

	NINA JAFARI Register Number: 22189-055 Age: 71 Race: White Sex: Female Released On: 05/31/2017	Related Links Call or email Send mail/package Send money Visit Voice a concern
---	--	--

The Windows taskbar at the bottom shows the search bar with "Type here to search", several application icons, and system tray information including "81°F Mostly cloudy" and the date "9:23 AM 6/28/2021".

Standard of Care

What a ***reasonable*** and ***prudent*** practitioner, with the same or similar training, should 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)



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)

The Relevance of Documentation During Legal Proceedings

A typical attorney's request in a "Notice to Produce":

Papers, publications, drafts, telex messages, memoranda (whether formal or informal to the file or otherwise), notes, notations, interviews, data, work papers, diaries, agendas, bulletins, notices, announcements, minutes, folios, interoffice communications, interdepartmental communications (whether formal or information or otherwise), correspondence, books, transcripts, affidavits, statements, summaries, opinions, court pleadings, steno-graphic notes, indices, analyses, questionnaires, answers to questionnaires, telephone logs, lists; minutes of meetings and other reports, records or recordings of telephone conversations, conferences, meetings or other conversations, forms, studies, plans, specifications, evaluations, contracts, agreements, licenses, invoices, checks, drafts, vouchers, ledgers journals, books or records of accounts, bills, receipts, desk calendars, appointment books, calculations, charts, graphs, maps, surveys, drawings, shop drawings, renderings sketches, diagrams, schematics, data sheets, microfilms, price lists, tabulations, bids, bid materials, quotations, supplements, amendments, addenda, blue prints, statements of account, orders, purchase orders, brochures, pamphlets, manuals, warranties, literature, inspection re-ports, operation reports, maintenance reports, notebooks, communiques, requests for change orders, change orders, requests for information, requests for drawing approval, drawing approvals, punch lists, schedules, job calendars, cash flow studies, computer tapes, punch cards, computer printouts, data processing input and output, magnetic tapes, computer programs, computer program coding sheets, any retrievable data whether in computer storage or carded or taped or coded or stored electrostatically, electromagnetically or otherwise, and all transcripts thereof, programming instructions and other material necessary to understand the above-mentioned computer related items, all other records kept by electronic means, all other writing, and all things similar to any of the foregoing, regardless of their author or origin, however, denominated.

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*.]

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*

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)

Assessing Documentation *Procedures*

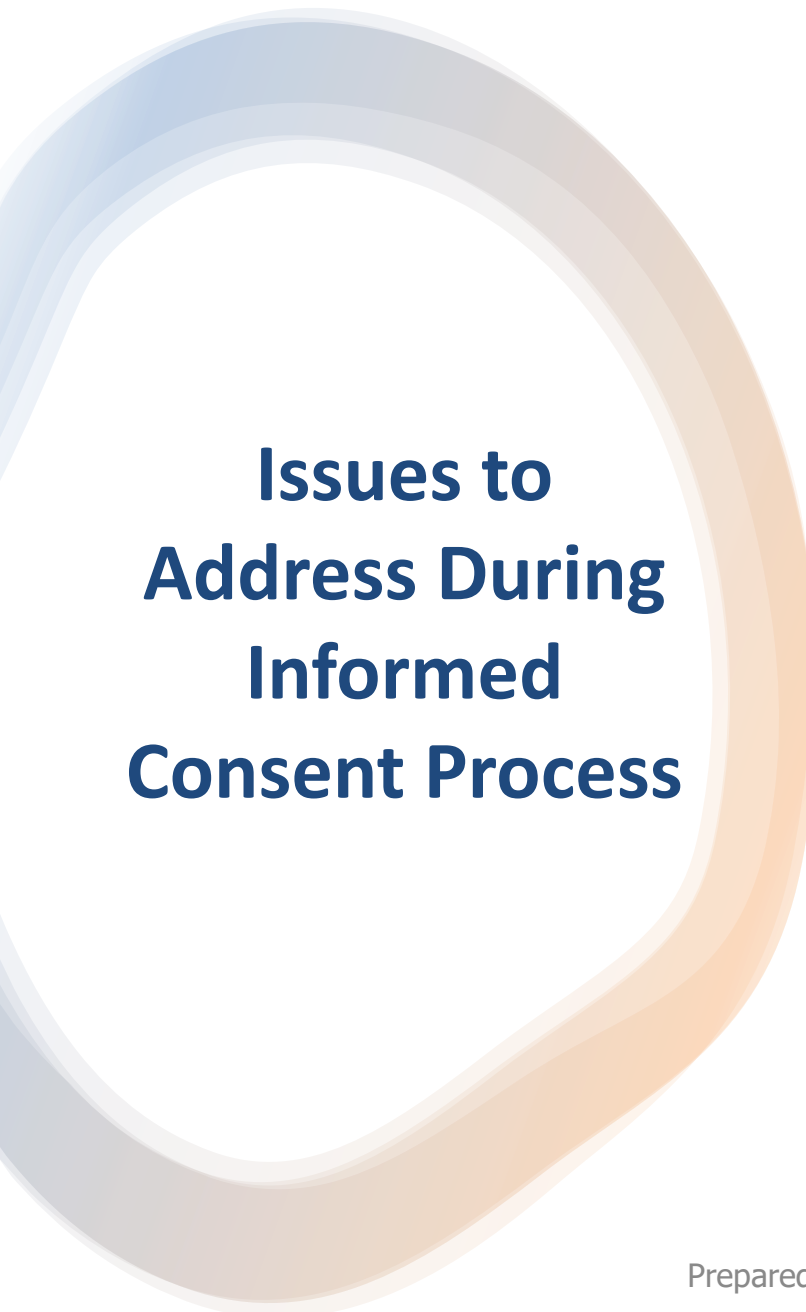
- **Documentation:** The agency has appropriate procedures in place to ensure proper documentation.
- **1 point - no risk:** *practitioners routinely follow proper procedures when they document in clients' records*
- **2 points - minimal risk:** *practitioners usually follow proper procedures when they 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*

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)

Online and Distance Services: Informed Consent

- Importance of revising standard consent-to-treat form to address remote service delivery
- Sample documentation in chart: “In light of the declaration of federal and state emergencies related to the COVID-19 virus, and the [state] Medicaid Program Instructions During the COVID-19 State of Emergency, pursuant to which [the state health insurance commissioner] instructed all health insurers to update their telemedicine policies to include remote services for behavioral health providers, I have suspended all in-person services and will exclusively use services via telephone and video. I will read and explain, as necessary, the attached informed consent form to all clients, answer all questions and document the verbal consent obtained from the clients.”



Issues to Address During Informed Consent Process

- What telehealth means
- Continually assess appropriateness of telehealth
- Client can opt out of telehealth visit at any time, but during pandemic this may change social worker's ability to provide services
- Risks/benefits of telehealth
- Risks of interception/hacking, breach of confidentiality
- Electronic communications can be forwarded, intercepted, or changed without client's knowledge, despite social worker taking reasonable measures
- Client's location



Issues to Address During Informed Consent Process (continued)

- Electronic systems accessed by employers, friends or others are not secure and should be avoided
- Need to use secure network, not public WiFi
- Risk of sessions disrupted by technology failures; need to plan for that possibility
- Assume risk of using video platform that may not provide secure HIPAA-compliant protection
- Need back-up plan and safety plan

Issues to Address During Informed Consent Process (continued)

- Responsibility to take reasonable steps to protect client from unauthorized use of electronic communications by third parties; find private place for session where will not be interrupted, other people not present and cannot hear
- Importance of verifying client identity
- Failure to comply with procedures may terminate visit
- Responsibility of client to verify identity, credentials of provider
- In general, telehealth sessions may not be used for emergencies, time sensitive matters; social worker has limited ability to respond to emergencies; need for emergency contacts

Issues to Address During Informed Consent Process (continued)

- Limits related to non-visual communications, e.g., inability to see/interpret body language
- Confidentiality still applies, subject to usual exceptions
- No recording of any online sessions by either party
- If having suicidal or homicidal thoughts, actively experiencing psychotic symptoms/mental health crisis that cannot be resolved remotely, may need higher level of care
- Sample consent form—NASW Assurance:
<https://naswassurance.org/pdf/telehealth-informed-consent.pdf>

Electronic Records: Ethics and Risk Management Advice

- Utilize appropriate clinical decision support tools, including alerts, guidelines, tracking, and reminder functions.
- If you choose to override or ignore an alert or reminder, document briefly the clinical justification.
- Avoid cutting and pasting.
- Ensure appropriate, applicable templates; understand the automatic populating features and default language.
- Ensure appropriate data input and retrieval.
- Periodically print out a client record and evaluate for adequacy. Would another clinician (such as a subsequent provider or an expert witness) be able to understand what happened in treatment and why?
- Understand metadata—and the fact that the user's every key stroke will be tracked and recorded.
- Ensure appropriate security protections on hardware (including portable devices) and software; an example is an automatic lock-out after a specified period of inactivity.
- Ensure compliance with federal and state confidentiality law, including confidentiality agreements with those third parties accessing your electronic health record.
- Prevent inappropriate access and disclosure; appropriate employee training is key.

Client Portals and Remote Access: Ethics and Risk Management Advice

- Define appropriate use.
- Determine how clients will communicate through the portal and what they should expect for a response turnaround time.
- Determine if clients will be permitted to upload information to be included in their record, how the information will be uploaded, and what types of information will be accepted.
- Develop and implement a portal user agreement that includes what the client may expect from the office practice. Describe unacceptable uses, such as emergency or urgent situations, and specify the consequences. Use the agreement as a teaching tool and as documentation of informed consent. Provide the client with a signed copy of the agreement and maintain a copy at the practice.
- Include language on the appropriate portal pages—such as the entry page and the messaging window—that clearly states the portal is not continuously monitored, must not be used for urgent communications, and that portal users are to call 911 in the event of a medical emergency.
- Consult with legal counsel to determine if your state has specific requirements.
- Determine whether and how the portal may be used by clients who are minors. This raises the question of whether and when parental access to the minor client's portal should be limited or completely restricted. Answers to these questions will be driven by your state's laws pertaining to services minors may obtain based on their own consent, and whether health information related to these services may be blocked from display on the portal to prevent parental access to the information.

Consider Conducting a Privacy Audit

Privacy audits are designed to ensure compliance with recognized standards. Practitioners can conduct privacy audits for the purposes of:

- detecting unauthorized access to client information;
- establishing a culture of responsibility and accountability;
- reducing the risk associated with inappropriate access;
- providing forensic evidence during investigations of suspected and known security incidents and breaches to client privacy, especially if sanctions against a workforce member, business associate, or other contracted agent will be applied;
- tracking disclosures of PHI;

(continued)

Privacy Audits (cont'd.)

- responding to client privacy concerns regarding unauthorized access by family members, friends, or others;
- evaluating the overall effectiveness of the organization's policy and user education regarding appropriate access and use of client information (this includes comparing actual workforce activity to expected activity and discovering where additional training or education may be necessary to reduce errors);
- detecting new threats and intrusion attempts;
- identifying potential problems; and
- addressing compliance with regulatory and accreditation requirements.

Steps in a Privacy Audit

1. **Determine the activities that will be tracked or audited.** Obtain and review documentation to determine whether audit controls have been implemented over information systems that contain or use PHI.
2. **Select the tools that will be deployed for auditing and system activity reviews.** Inquire of management as to whether systems and applications have been evaluated to determine whether upgrades are necessary. Obtain and review documentation of tools or applications that management has identified to capture the appropriate audit information.
3. **Develop and deploy the information review/audit policy.** Obtain and review formal or informal policies and procedures and evaluate the content to understand whether a formal audit policy is in place to communicate the details of the entity's audits and reviews to the workforce. Obtain and review an e-mail, or some form of communication, showing that the audit policy is communicated to the workforce.
4. **Develop appropriate standard operating procedures.** Obtain and review management's procedures in place to determine the systems and applications to be audited and how they will be audited.

Documentation Tip #1

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- 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.

Less Documentation

- Gratuitous information – It's not essential
- Potentially embarrassing information
- Information that could be misinterpreted by individuals who have access to the record (e.g., clients and their relatives/significant others, colleagues, attorneys)

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More Documentation

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- Crises and critical incidents
- New information that is clinically relevant (including electronically generated, e.g., email, text, telephone)
- High-risk situations where there is a risk to client or other parties
- Legal action is likely (e.g., litigation, licensing board complaint)
- Interruptions in service delivery (e.g., failed appointments)
- Unusual circumstances during assessment (e.g., incomplete assessment forms)

Documentation Tip #2

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- 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).

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 (e.g., “. . . as evidenced by . . .”)

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Documentation Tip #6

- Do not “over document” in a crisis

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Documentation Tip #7

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- Document as soon as possible.
Common standards:
 - Critical incidents: within 24 hours
 - Significant changes in client needs: within 3 days
 - Indicators of progress toward goals: every 3rd service contact
- Edit carefully.
- Beware blanks.
- Write legibly.

Documentation Tip #8

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- Document your explanation of client's right to confidentiality and any boundary issues.
 - Confidentiality exceptions: Threat to self, threat to others, mandatory reporting, supervision/consultation, court orders.
 - Relevant laws and regulations.
 - Policies related to record storage, access by third parties (e.g., managed care organizations, insurers, employee assistance programs).
 - Social media policies.

Documentation Tip #9

- Do not document interventions before they occur.

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Documentation Tip #10

- Use correct grammar (credibility issue).

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Documentation Tip #11

- Do not tamper with or alter records.

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Documentation Tip #12

- Do not document staffing problems in clients' records.

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Documentation Tip #13

- Do not document professional disagreements (“jousting”) in clients’ records

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Documentation
Tip #14

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- Beware spell-check

Candidate for a Pullet Surprise

I have a spelling checker,

It came with my PC.

It plane lee marks four my revue

Miss steaks aye can knot sea.

Eye ran this poem threw it,

Your shore real glad two no.

Its very polished inn it's weigh.

My checker tolled me sew.

(Zar, 1994:

<http://www.bios.niu.edu/zar/poem.pdf>)

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.
 - Summary note for the group
 - Separate notes for group members' individual records when there is an unusual event that affects an individual client

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Documentation Tip #19

- Become acquainted with key national and provincial regulations related to confidentiality and privacy.

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Documentation Tip #20

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- Be familiar with provisions in pertinent state statutes, contracts, codes of ethics, and agency policies related to:
 - Client access to records (including online portals)
 - Record retention
 - Record storage
 - Protection of clients' and collaterals' confidentiality and privacy
 - Access to electronic records (especially in integrated settings)

Documentation
Tip #21

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Beware electronic records risks:

- Copy-and-paste
- Auto population (e.g., dates of entry)
- Clients' remote access (portal)
- The importance of logging off
- Firewalls and break-the-glass protocols in integrated health settings

The “FACT” Approach to Documentation

Factual

Accurate

Complete

Timely

Typical Progress Note

- New information about the client's needs
- Clinician's assessment of the status of the client's needs
- Steps taken toward completion of or movement away from the service plan
- Interventions and service activities
- Assessments of the purpose, goals, plan, process, and progress of treatment or service
- Changes in the purpose, goals, or service plan

(Kagle and Kopels, 2008)

Popular Documentation Format: SOAP

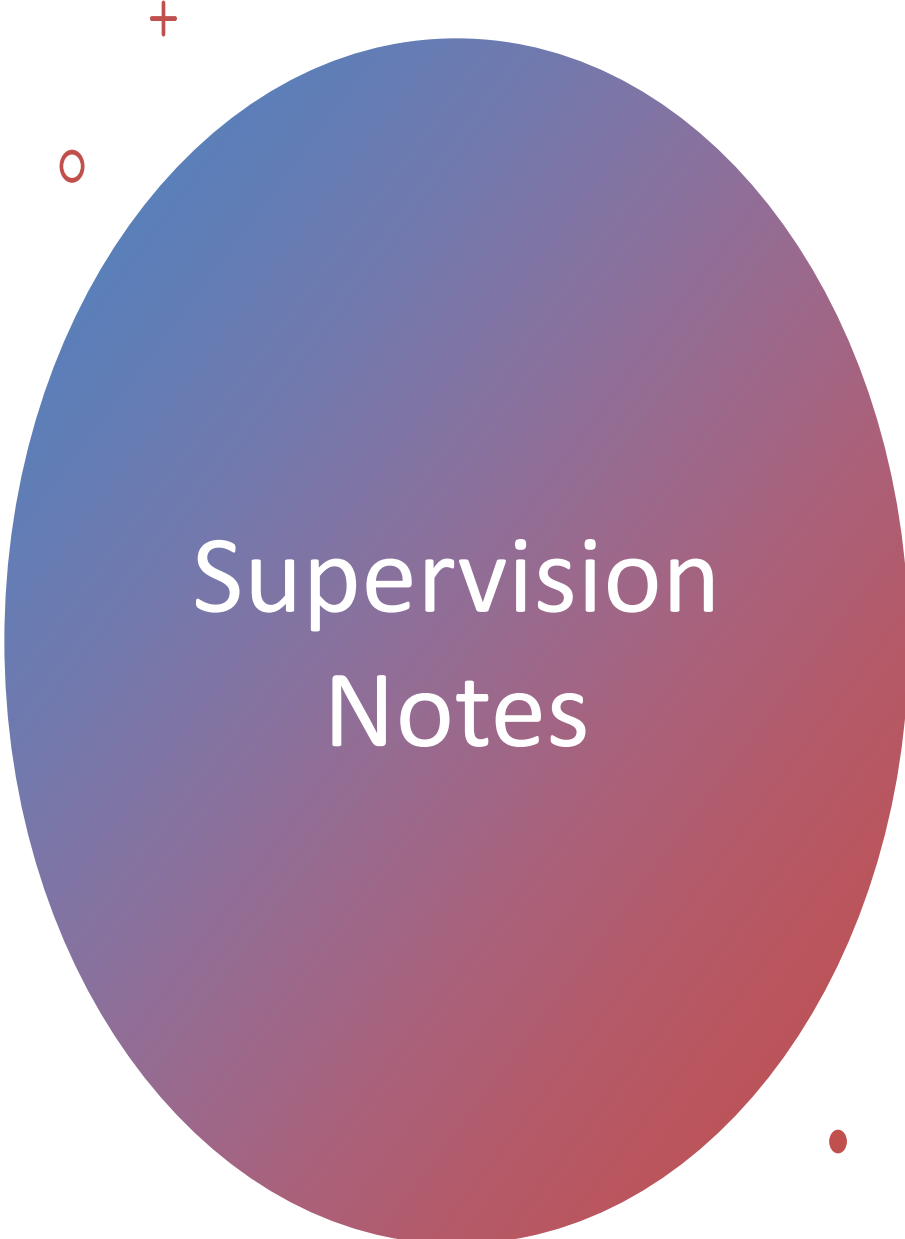
- **S**ubjective information (client report)
- **O**bjective information (facts from practitioner's perspective)
- **A**ssessment (practitioner's conclusions)
- **P**lan

Popular Documentation Format: SOAIG

- **S**upplementary data base information
- **O**bservations
- **A**ctivities
- **I**mpressions
- **G**oals

Popular Documentation Format: DAP

- **Data**
- **Assessment**
- **Plan**



Supervision Notes

- Guidelines given to supervisees (e.g., purpose of supervision, expectations)
- Issues addressed
- Supervisee's strengths
- Feedback from supervisor to supervisee
- Job performance reviews and expectations
- Recommendations regarding future job performance

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Case notes: Example #1

Version A: Ms. A's health is poor. She is not taking care of herself and isn't getting the services she needs.

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Case notes: Example #1

Version B: *Ms. A reports health problems related to her heart and diabetes conditions. She said that she feels depressed and is not getting the help she feels she needs.*

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Case notes: Example #2

Version A: Mr. T clearly
is ready to be
discharged.

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Case notes: Example #2

Version B: Mr. T meets the criteria for discharge, as evidenced by his: (1) satisfactory completion of treatment goals, (2) consistent compliance with staff recommendations, and (3) active participation in development of discharge plan.

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Case notes: Example #3

Version A: It was felt that Ms. D was high risk for substance abuse relapse. Assessed for SA.

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Case notes: Example #3

Version B: The treatment team reviewed and discussed Ms. D's clinical progress. The team concluded that Ms. D is at risk for substance abuse relapse, based on her inconsistent attendance at treatment groups and infrequent participation during group discussions. This writer met with Ms. D immediately after the meeting (2:30 p.m.) and assessed for substance abuse risk.

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Case notes: Example #4

Version A: Ms. L was hostile and resistant during her enrollment in our program.

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Case Notes: Example #4

Version B: On three occasions, Ms. L did not respond to telephone messages to contact this program to schedule an appointment (date01, date02, date03). This writer mailed Ms. L a letter on (date04) asking her to call this office to schedule an appointment. On (date05), Ms. L called me and screamed, “You are never to call me again. Never.” This writer encouraged Ms. L to make an appointment to discuss her concerns. Ms. L responded by saying, “I never want to see you again.” This writer sent Ms. L a follow-up letter on (date06) explaining her status in the program, inviting Ms. L to schedule an appointment, and providing Ms. L with a list of resources in the event she needs assistance.

(Humorous) Documentation Tips

The first set of rules (1-23) was written by Frank L. Visco and originally published in the June 1986 issue of *Writers' Digest*. The second set of rules (24-53) is derived from William Safire's *Rules for Writers*.

1. Avoid Alliteration. Always.
2. Prepositions are not words to end sentences with.
3. Avoid cliches like the plague. (They're old hat.)
4. Employ the vernacular.
5. Eschew ampersands & abbreviations, etc.
6. Parenthetical remarks (however relevant) are unnecessary.
7. It is wrong to ever split an infinitive.
8. Contractions aren't necessary.
9. Foreign words and phrases are not apropos.
10. One should never generalize.
11. Eliminate quotations. As Ralph Waldo Emerson once said, "I hate quotations. Tell me what you know."
12. Comparisons are as bad as cliches.
13. Don't be redundant; don't use more words than necessary; it's highly superfluous.
14. Profanity sucks.
15. Be more or less specific.
16. Understatement is always best.
17. Exaggeration is a billion times worse than understatement.
18. One word sentences? Eliminate.
19. Analogies in writing are like feathers on a snake.
20. The passive voice is to be avoided.
21. Go around the barn at high noon to avoid colloquialisms.
22. Even if a mixed metaphor sings, it should be derailed.
23. Who needs rhetorical questions?

(Humorous) Documentation Tips (continued)

1. Parenthetical words however must be enclosed in commas.
2. It behooves you to avoid archaic expressions.
3. Avoid archaic spellings too.
4. Don't repeat yourself, or say again what you have said before.
5. Don't use commas, that, are not, necessary.
6. Do not use hyperbole; not one in a million can do it effectively.
7. Never use a big word when a diminutive alternative would suffice.
8. Subject and verb always has to agree.
9. Placing a comma between subject and predicate, is not correct.
10. Use your spell checker to avoid misspelling and to catch typographical errors.
11. Don't repeat yourself, or say again what you have said before.
12. Use the apostrophe in its proper place and omit it when it's not needed.
13. Don't never use no double negatives.
14. Proofread carefully to see if you any words out.
15. Hopefully, you will use words correctly, irregardless of how others use them.
16. Eschew obfuscation.
17. No sentence fragments.
18. Don't indulge in sesquipedalian lexicological constructions.
19. A writer must not shift your point of view.
20. Don't overuse exclamation marks!!
21. Place pronouns as close as possible, especially in long sentences, as of 10 or more words, to their antecedents.
22. Writing carefully, dangling participles must be avoided.
23. If any word is improper at the end of a sentence, a linking verb is.
24. Avoid trendy locutions that sound flaky.
25. Everyone should be careful to use a singular pronoun with singular nouns in their writing.
26. Always pick on the correct idiom.
27. The adverb always follows the verb.
28. Take the bull by the hand and avoid mixing metaphors.
29. If you reread your work, you can find on rereading a great deal of repetition can be by rereading and editing.
30. And always be sure to finish what

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 from
Lynne Truss,
*Eats, Shoots &
Leaves*

- 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.

Resources:

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