Reducing Malpractice Risk in Responding to Potential Suicide
(A Clinical Perspective)

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Disclosures

- This educational activity is not commercially supported
- The planners and presenter have no conflict of interest to declare
- No off-label use will be discussed by the presenter
- Criteria for successful completion
  - Attendance for the entire activity
  - Completion of the participant evaluation
Objectives

- Outline key elements of a strong suicide prevention program
- List top risk reduction priorities related to suicide prevention and treatment
- Describe one associated outcome of the quality improvement process in reducing liability
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Suicide is a National Public Health Challenge

Suicide Rate/100,000 in Custody & the Community (all age groups combined)

- Jails: 42
- State & Federal Prisons: 16
- Community: 11
Legal Landscape
Lawsuits

- Suicide is a troublesome issue
- It frequently results in law suits with allegations
- Allegations of civil rights violations (claims of deliberate indifference violating 42USC 1983)
- Allegations of professional negligence (malpractice)

Aele, 2007
Deliberate Indifference

- An intentional denial or delay of access to care, necessary treatment and failure to use professional judgment
- Criminal recklessness

To be liable the official must be

1. Aware of the facts from which the inference could be drawn that a substantial risk of serious harm exists
2. Draw the Inference, and
3. Fail to take reasonable steps to alleviate risk
Negligence

- Failure to use ordinary care" through either an act or omission

  ✓ **somebody does** something that a reasonably careful person would not do under the circumstances; or

  ✓ **somebody does not exercise** the amount of care that a reasonably careful person would use under the circumstances
Formula for Evaluating Negligence

1. The defendant owed a duty to the plaintiff (or a duty to the general public, including the plaintiff)

2. The defendant violated that duty

3. As a result of the defendant's violation of that duty, the plaintiff suffered injury

4. The injury was a reasonably foreseeable consequence of the defendant's action or inaction

_Expert Law, 2003_
(1) the proper standard of care by which to measure the defendant's conduct

(2) a breach of the standard of care by the defendant

(3) a causal link between the defendant's breach and an injury and

(4) a cognizable injury or damages

Weldon-Linne & Vogt, 2011
Gross Negligence

- Conduct or a failure to act that is so reckless that it demonstrates a substantial lack of concern for whether an injury will result

*Expert Law, 2003*
Criteria for Assessing Professional Liability in Cases of Suicide

- Forseeability
- Reasonableness of professional judgment
- Thoroughness through which treatment plan are implemented

Schwitzgebel & Schwitzgebel, 1980
Pause for Thoughts
Case Examples
Criteria for Assessing Professional Liability in Cases of Suicide

- Forseeability
- Reasonableness of professional judgment
- Thoroughness through which treatment plan are implemented

Schwitzgebel & Schwitzgebel, 1980
A parole officer referred Mr. Sweeney to the mental health clinician because he thought Mr. Sweeney may be depressed.

The mental health clinician had a lot of cases to see that day.

When Mr. Sweeney arrived he had a smile on his face and the mental health clinician asked him how he was doing and if he was ok.

Mr. Sweeney responded yes. The mental health clinician thanked him for coming and Mr. Jones left.

Two hours later Mr. Sweeney hung himself.
Criteria for Assessing Professional Liability in Cases of Suicide

- Forseeability
- Reasonableness of professional judgment
- Thoroughness through which treatment plan are implemented

Schwitzgebel & Schwitzgebel, 1980
Case 2

- A county jail detainee hung himself after telling jail psychiatrist that he was suicidal and planned to kill himself this evening.
- The psychiatrist saw the inmate and ordered continuous watch but this was not followed.
Criteria for Assessing Professional Liability in Cases of Suicide

- Forseeability
- Reasonableness of professional judgment
- Thoroughness through which treatment plan are implemented

Schwitzgebel & Schwitzgebel, 1980
Case 3

- A hospital patient was left restrained in 4 point medical to teach him a lesson by the attendant.
- There was no follow up which violated the facility policy for checks.
- At the end of the four hours the patient was found dead.
Criteria for Assessing Professional Liability in Cases of Suicide

☑* □ Forseeability

☑* □ Reasonableness of professional judgment

☑* □ Thoroughness through which treatment plan are implemented

Schwitzgebel & Schwitzgebel, 1980
A correctional officer removed shoes & socks from a detainee, placed him on suicide watch and instructed personnel to place him on suicide watch.

He was observed in the cell without clothes to be in a frog-like position.

A newly hired physician assistant was asked to observe him to help in determining if the cell should be opened.

The physician assistant concluded that the cell should not be opened as the detainee was merely sleeping.

However at that point he was dead.
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Schwitzgebel & Schwitzgebel, 1980
A nurse assessed an inmate’s risk of suicide using a structured tool developed by the facility psychiatrist.

The inmate was determined not to be suicidal.

One hour later the inmate completed suicide.
Criteria for Assessing Professional Liability in Cases of Suicide

- Forseeability
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Schwitzgebel & Schwitzgebel, 1980
Pause for Response
Arthur Hudson was treated by 2 doctors & a medical student at an inpatient facility for major depression and suicidal ideas between 3/2-3/8.

Scheduled for an intensive outpatient program (3/15, the first available date).

Before leaving the hospital he promised to take prescribed meds and to "contract for safety". Apparently when he did so, however, he hesitated when asked if he would contract for safety with his wife.

The day before his outpatient treatment Mr. Hudson completed suicide.

His wife started a wrongful death action against the Hospital, the doctors and medical student.

The jury found the defendants had departed from accepted standards of psychiatric care by failing carefully & competently to evaluate Mr. Hudson following the discussion of the contract for safety at the
This decision was later reversed with a finding of no malpractice. The Court stated that a medical provider cannot be held liable for a mere error in professional judgment. Rather, what is required is that a provider's treatment decision must be "something less than a professional medical determination".

Court noted that the plaintiff's expert testified Mr. Hudson had been properly diagnosed and treated.

With respect to Mr. Hudson's "hesitation" at the discharge meeting, the Court noted that while the plaintiff's expert failed to offer any testimony that the "hesitation" should have led to a different course of treatment.
Reducing Malpractice Risk
Reduce Your Risk of Malpractice Allegations

- The majority of malpractice cases do not stem from unforeseeable problems, but rather from situations that could have been avoided if only they were recognized and anticipated.

- The major causes for successful malpractice lawsuits arise from areas over which the therapist often has excellent control.
Professional Malpractice Actions Involving Suicide

- Failure to perform an adequate suicide risk assessment
  - Failure to take an adequate history

- Failure to take adequate precautions
  - Restrain from the means to suicide e.g. remove dangerous objects
  - Failure to observe/monitor the patient continuously, or with adequate frequency

- Failure to medicate properly
  - Negligent or harmful use of medications

Packman et al, 2004; Roberts et al, 2008
Strategies to Reduce the Risk of Malpractice Allegations

- Ensure widely accepted suicide prevention practices are specified in policies
- Follow professional guidelines & national standards
- Implement key clinical practices
- Look for lessons in quality improvement in any event
Essential Components of a Suicide Prevention Program

- Staff Training
- Identification & screening
- Assessment & Risk Management planning
- Treatment
- Communication
- Supervision
- Safe Housing
- Intervention
- Notification
- Investigation, Mortality review & Psychological Autopsy
- Support of Affected Persons
Professional Guidelines
State & National Standards

- Scope of practice for your specific professional designation, certification and/or licensure in your state and the standard of care to which you will be held

- Follow your professional guidelines e.g. nursing, psychology, counselor etc.

- Professional guidelines (nursing, psychology, counselor)

- Follow applicable national standards (NCCHC, ACA, JCAHO, ACHSA, American Psychiatric Association)
Key Clinical Practices Guidelines

- If you think that a person may be suicidal you have a duty to act and ensure the person has access to care and safety.
- If a person is referred to you (via self or other source) for behavior or symptoms suggesting suicide intent you have a duty to see that person, screen for risk and provide intervention responses to inmate's suicide behaviors/cognitions.
- Do not use reverse kites or practices that do not result in a face to face interview.
- Always provide health care that meets the standard of care, even on busy days.
Key Clinical Practices Guidelines

- Carefully assess the patient and provide suicide assessments that met a standard of care
  - Clinical evaluation & mental status exam
  - Review of relevant records
  - Gathering necessary collateral information
  - Identifying risk & protective factors
  - Synthesizing all of the above
  - Employing clinical judgment to assess risk

Knoll, 2009
Key Clinical Practices Guidelines

- Develop a risk management plan targeting modifiable factors
  - Address risk & protective factors found in your assessment
  - Focus on reducing the immediate risk for suicide & preventing a future re-occurrence of a heightened risk
  - Include periodic assessment of suicide risk
  - Do not rely on contracts

- Follow your risk management plan

- Document all complaints and medical treatment, clinical decisions, changes to treatment plan, suicide risk assessment, consultations, patient refusals & informed consents
Pause to Consider
Quality Improvement
Quality Improvement Checklist

- Training
- Suicide Identification, Screening and Assessment
- Communication
- Housing
Quality Improvement Checklist

- Supervision
- Intervention
- Treatment
Quality Improvement Checklist

- Notification
- Death Reports
- Corrective Action Plan
- Staff and Inmate/Juvenile Support
Audience Questions
Summary

- Three criteria for suicide liability
  - Forseeability
  - Reasonableness of professional judgment
  - Thoroughness through which tx plan are implemented
- Have an organized plan to prevent and manage suicide risk
- Follow national practice standards
- Practice Quality Improvement
To Receive CE Credit from California Board of Registered Nurses

- Complete online participant evaluation
- Include RN license number for certificate
- Certificate and handouts will be sent by email
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