

# LEGAL ISSUES IN CASE MANAGEMENT

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## OBJECTIVES

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- Identify the elements of a medical malpractice lawsuit
- Identify at least 3 areas of potential legal liability in Case Management
- Identify at least 3 ethical considerations for the Case Manager

## **COMMISSION FOR CASE MANAGER CERTIFICATION RULES OF CONDUCT THAT WILL BE ADDRESSED**

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- Rule 1: A Board-Certified Case Manager (CCM) will not intentionally falsify an application or other documents
- Rule 3: Board-Certified Case Manager (CCM) will not violate the code of ethics governing the profession upon which the individual's eligibility for the CCM designation is based
- Rule 4: A Board-Certified Case Manager (CCM) will not lose primary professional credential upon which eligibility for the CCM designation is based
- Rule 5: A Board-Certified Case Manager will not violate or breach the Standards for Professional Conduct.

## **Medical Malpractice**

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# ELEMENTS OF MEDICAL MALPRACTICE CASE

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- DUTY
  - BREACH OF DUTY
  - BREACH IS PROXIMATELY RELATED TO ALLEGED INJURY
  - DAMAGES

## DUTY

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- **Definition of Case Management:** The basic concept of case management involves the timely coordination of quality services to address a client's specific needs cost-effectively and safely to promote optimal outcomes (Perez, R. (2018). *CMSA's Integrated Case Management: A Manual For Case Managers By Case Managers*. Springer Publishing Company. Pg. 249)
- Duty arises from your license, education and the Rules of Profession, job description
- Policies and Procedures provide some guidelines, but do not cover everything.

## **BREACH IN STANDARD OF CARE**

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- Care fell below the Standard of Care
- Comes from Rules of the Profession, Policies and Procedures
- Standard of care: What would a reasonable person, with your level of education and training, in your profession, do in the same circumstance
- Attorneys do medical research and retain experts to determine if there is a breach
- Experts testify as to Breach of Duty

## **PROXIMATE CAUSE**

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- The alleged injury/damages has to be proximately related to the alleged breach in the Standard of Care
- Example: Nurse takes vitals over several hours, repeatedly notes BP is very high on patient at risk for a bleed, documents it but does not report it, client has a stroke

# DAMAGES

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- Lawsuits are extremely pricey for the attorney; damages must be significant, and they must feel high likelihood of winning
- There can be Duty, Breach and Proximate Cause, but damages are minimal, may face disciplinary problem, but most likely not legal as the cost of litigation would far outweigh a minimal award for damages
- Example: Nurse administers the wrong medication, this causes patient's blood pressure to drop, causing him to faint. He is given IV fluids and quickly recovers. Although there was Duty, Breach and proximate cause, his monetary damages are small.

# AREAS OF CONCERN FOR CASE MANAGERS

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- Putting cost over quality of care
- Not fully apprising client of benefits they are due could lead to safety issues for client
- Negligent referral
  - Knowingly encouraging a client or directing a client to an inappropriate physician or other provider
- Delaying treatment:
  - Knowingly causing a delay in a client's treatment
  - Misrepresenting importance of care causing a delay in treatment

# PREVENTION

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- Clearly outline your roll to client at the initial interview
- Accurate documentation
- If client needs a referral to a physician, ensure your recommendations are timely and appropriate and provide them with multiple options and allow them to choose
- Maintain your license, certifications, CEU's (CCMC Rule 4)
- Critical Thinking
- Don't let others, i.e. adjusters, superiors, attorneys, family or providers force you into decisions that would breach your duty or Standard of Care
- Ensure the client receive the care they are entitled, that will keep them safe

# CRITICAL THINKING

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- Why is Critical Thinking so important
- Nearly every malpractice case I have been a part of, the signs were all there pointing to the problem that should have led to timely treatment to prevent the damages, but they were ignored or dismissed
- What is Critical Thinking:
  - Merriam Webster: ...the act or practice of thinking critically (as by applying reason and questioning assumptions) in order to solve problems, evaluate information, discern biases etc...
  - Oxford Languages: ...the objective analysis and evaluation of an issue in order to form a judgement

## HOW TO THINK CRITICALLY

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- Think beyond obvious surface level explanations
- Question assumptions and challenge status quo
- Be open to other ideas
- Analyze all available information: what is the information telling you!!!
- Consider various perspectives: don't jump at the first conclusion
- Think creatively consider various possibilities

## ETHICAL CONCERNS

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First and foremost, act in the best interest of your client

- Not the insurance company
- Not your employer
- Not provider's
- Not client's family
- Not attorney's

# ETHICAL CONCERNS

- Understand your role: Only act within your defined job. Do not let clients ask you to perform tasks not within your job descriptions
- Never accept gifts/money in exchange for making a referral to a particular provider
- Billing practices: If working using billable hours, make sure to document billing accurately (CCMC Rule 1)
- Do not let clients, families, attorneys, adjusters pressure you into recommendations you know are not appropriate
  - Client wants to continue receiving a benefit that is no longer appropriate for examples off work, attendant care, replacement services, they pressure you to get orders from the doctor and to justify it to the adjuster
- Documentation, must be an accurate reflection of events (CCMC Rule 1)
- Do not violate the Standards for Professional Conduct (CCMC Rule 5)

# ABOVE ALL

“Despite the cost of health care, the complexity of the delivery system, and the unprecedented burdens of supply and demand placed on healthcare personnel, the patient care experience is the priority and must be timely, safe and high quality”

Perez, R. (2018). *CMSA's Integrated Case Management: A Manual for Case Managers by Case Managers*. Springer Publishing Company pg. 247

# OTHER LEGAL CONSIDERATIONS

Driving a client in your personal vehicle

- What is your company's policy?
- Do they provide excess insurance in case of an injury to client
- What is your insurance company's policy? Check with your agent

Fraudulent billing: do not bill for work you did not do and do not over-inflate billing

Snowbird Clients

- Unless you are licensed in the state that your client is vacationing in, you cannot provide services (CCMC Rule 3)

HIPPA especially with texting clients. Ask their express permission to text

Informed consent: Explain your roll, services you will provide, limits to your roll. Provide them a copy of your consent form to review and ask questions

# QUESTIONS??

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**CONTACT  
INFO**

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