



Prifysgol Cymru
Y Drindod Dewi Sant
University of Wales
Trinity Saint David

SHSS4062 PDP

ACCOUNTABILITY

Trawsnewid Addysg; Trawsnewid Bywydau
Transforming Education; Transforming Lives



www.uwtsd.ac.uk

Negligence

- Law
- A civil wrong (tort) causing injury or harm to another person or to property as the result of doing something or failing to provide a proper or reasonable level of care.

Negligence

- Litigation is increasing
 - – Growth in expectations from patients
 - – Publicity re: compensation settlements
- July (1998) NHS facing £2.3 billion bill for negligence
- 2012 NHS facing £15.7 billion bill for negligence
- Estimated to reach £19bn (1/5th total budget)
- Highest compensation award £8m for brain injury
- Employed therapist unlikely to be sued personally – employer!
Vicarious liability
- Private practitioner: must ensure they have the necessary insurance cover to pay out any compensation claims.

Negligence

- Plaintiff/claimant alleges
 - Personal injury/death
 - Damage or loss of property caused by another
- Successful claims demonstrate:
 - 1. The defendant (therapist) owed a duty of care to the plaintiff
 - **2. The defendant was in breach of that duty (substandard care)**
 - 3. That breach of duty caused reasonably foreseeable harm to the plaintiff/claimant

Negligence

- Breach of duty of care: Substandard Care
- You are only qualified to perform skills that you have been taught and deemed competent in
- If YOU modify the technique OR use a technique you have not been formally taught and assessed in YOU are NEGLIGENT
- IF you perform the skill as you were taught BUT were taught incorrectly: Educational Negligence

Negligence

- A therapist may have undertaken a training course in a new therapy (e.g. Aromatherapy/acupuncture etc).
- If they decide to use these new skills at work without the agreement of their employer and through the use of these new skills a patient is harmed, the employer may refuse to accept
- Vicarious Liability as they were not acting in the course of their employment.
- Inform employer of all new skills acquired (CPD courses)

Negligence

- Other scenarios for possible negligence claims
 - Inadequate time to see patient (incorrect diagnosis)
 - Giving inappropriate advice (e.g. Aggressively stretch)
 - Failure to give advice (return to contact)
 - Delegation of tasks (YOU are responsible for anyone YOU have delegated too, e.g. Interns, students, junior staff, colleagues)
 - Incomplete handover of information for referrals (e.g. Change to lead therapist)

Record Keeping

- CSP

“One of the rights of every patient is that their medical records are full, clear and held securely”

- Records should be:-

- Accurate
- Contemporaneous
- Legible
- Presentable
- Signed (and name printed)
- Dated

Record Keeping

- Principles to follow in record keeping:
 - Records should be made ASAP after the event (max 24 hours)
 - They should be accurate, comprehensive and clear
 - They should be written legibly and be jargon-free
 - They should avoid opinion and record facts
 - They should be signed and dated (print name)
 - They should not include any abbreviations other than standard use abbreviations
 - They should not be altered, where changes are made the original entry should be crossed out, but still readable.
 - Any change should be signed and dated.

Record Keeping

- Storage and safe keeping
 - Must be accessible to those who need them
 - Restricted to those who do not
 - Stored for 7 years (or 7 years after patient reaches 18)
 - Disposed of securely maintaining confidentiality
- Lost records
 - Disciplinary action if failure to take reasonable care (i.e. Stolen from car)

Record Keeping

- Ownership and control of record
 - Owned by the health professional who made them
 - Should be agreed prior to assessment and treatment as to what access will be arranged and whether patient held should be records.
- Computerised Records
 - Eliminates illegibility but typo's/autocorrect errors common
 - Especially on patient names

Record Keeping

- Public Liability
- • Equipment issues
 - – Is it safe
 - – Fit for purpose
 - – Used appropriately
 - – Maintained appropriately
- • In private practice (club OR clinic) use only approved equipment from approved suppliers
- • **Do not**
 - – modify it in any way,
 - – use for anything other than its intended use,
 - – make your own cheaper version,
 - – ignore the maintenance schedule.

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Public Liability

- Self employed
 - Payment
 - In advance/post session
 - Do not allow a patient to accrue debts
- Insurance
 - Public liability
 - Medical indemnity
- Work abroad
 - Must inform the SST, additional cover may be required

The Therapist as a Private Practitioner

- In the sporting context
 - You must meet the sports minimum standards i.e. Sports trauma
 - You must discuss with the club/team if you are employed by them who assumes responsibility for any errors
- Usually at amateur level it is YOU
- At professional level it is the CLUB
- Clarity re: boundaries of confidentiality, access to notes.
- Conflict re: duty of care and service level agreements

The Therapist as a Private Practitioner

- Relationships with Players
 - Any improper relationship with a patient would be regarded as misconduct and should lead to a disciplinary hearing and even dismissal
 - Sexual impropriety
 - Exploitation of vulnerable and mentally incompetent adults
 - Acceptance of gifts

The Therapist as a Private Practitioner

- Social Media
 - Use privacy settings
 - Google yourself !
 - If use twitter etc have a professional site NOT a personal site.
 - ANYTHING you post will reflect on YOU, YOUR BUSINESS or YOUR TEAM/ EMPLOYER
 - Consider WHO has ACCESS to your sites (players, patients)
 - Any social media content that reflects poorly on the BSc (Hons) or, its staff, the School of Sport Health and Outdoor Education, the Faculty or the University as a whole or the Society of Sports Therapists will result in a fitness to practice disciplinary and may result in your withdrawal from your programme of study.

The Therapist as a Private Practitioner

- Working with Children (DBS update)
 - Child Protection Training specific for your sport
 - Duty of care to report suspicions of abuse to the appropriate person (child protection officer, Doctor)
 - Not breaching confidentiality here
 - Protecting the welfare of the patient

The Therapist as a Private Practitioner

- Consent
 - Under 16 in England and Wales
 - Under 18 in Scotland
- Chaperone
 - Confidentiality is same (parent/guardian)
 - Access to records is same (parent/guardian)
- **If child under 16 wishes to access records they must be deemed (by holder) capable of understanding the records.**

Record Keeping

- A patient behaves very aggressively towards the therapist during an injury assessment. This is uncharacteristic but the therapists makes a note of this in the patients records
- In the next session, the patient is very apologetic and requests that the therapist deletes the aggressive behaviour from their notes
- Should the therapist:-
 - Comply and delete the entry
 - Refuse

Record Keeping

- You are working in a clinical setting. A colleague of yours has to go home and has asked you to take on one of their patients.
- You re-assess them, make a diagnosis and see from their previous notes that they are not contraindicated from the treatment plan.
- You administer the treatment.
- The patient returns to say that they suffered a miscarriage and blame your therapeutic intervention
- There was nothing in the notes re: pregnancy
- Who is negligent?
 - You
 - Your Colleague

Record Keeping and Comms

- HAMED v. MILLS, TOTTENHAM HOTSPUR & COWIE (2015)
- Clinical negligence action brought by a catastrophically brain-injured (via HCM) young footballer against those responsible for his medical care.
- Two doctors (Cardiologist and Club)
- Echo and ECG performed, no one informed (player and parents)
- Cardiologist inadequately communicated the issue, but the Spurs doctor and hence club were fined (30/70).
- Total pay out £10million

Record Keeping and Comms

- Vicarious Liability
- Negligence
 - Private Practitioner
 - Duty of care owed
 - Breach of duty of care
 - Substandard care
 - Causing reasonable foreseeable harm
- Record Keeping
- Public Liability
 - Child Protection
 - Access to records (Who/Why/Record)
- Accountability