Law and Ethics

Santa Clara County

September 22, 2022

9:00 am – 4:30 pm

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Informational only

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Mousekeeping

- Webinar platform – Quick tour of how it works
  - Mute button, microphone, sound
  - Handouts
  - Questions
  - Tech problems? Please reference the troubleshooting tips on the chat board
- CE certificates
- Breaks
- Polls

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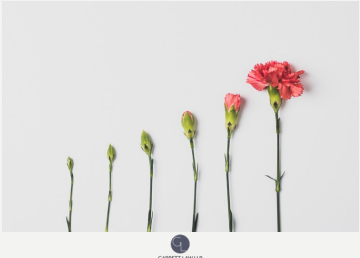
Sample poll question



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Agenda

- Legal update
- Confidentiality
  - Review of basics
  - Review of certain uses & disclosures
- Involuntary mental health care: The LPS Act
- Tarasoff duty to warn
- Ethics and professionalism

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Legal update

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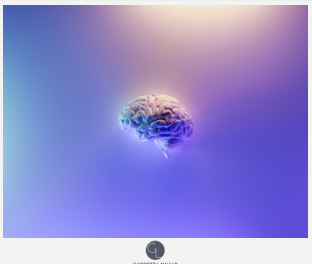
Legal update: Mental health



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Legal update: AB 309

AB 309: Pupil mental health: model referral protocols

- Creation of model referral protocols for addressing pupil mental health concerns
- Due date for protocols depends on disbursement of state funding

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Legal update: AB 309

Dept. of Education shall develop model referral protocols for addressing pupil mental health concerns

- EDC §49428.1
- (a) The department [i.e. the State Department of Education] shall develop model referral protocols for addressing pupil mental health concerns.

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Legal update: AB 309

Dept. of Education shall consult with a variety of stakeholders

- In developing these protocols, the department shall consult with
  - the State Department of Health Care Services,
  - the members of the Student Mental Health Policy Workgroup,
  - local educational agencies that have served as state or regional leaders in state or federal pupil mental health initiatives,
  - county mental health programs,

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Legal update: AB 309

Dept. of Education shall consult with a variety of stakeholders (continued)

- current classroom teachers and administrators,
- current schoolsite classified staff,
- current schoolsite staff who hold pupil personnel services credentials,
- current school nurses,
- current school counselors,
- and other professionals involved in pupil mental health as the department deems appropriate. . . .
- (The list goes on)

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Legal update: AB 309

Use shall be voluntary; Designed for use by a variety of parties

- (b) These protocols shall be designed for use, on a voluntary basis, by
  - schoolsites,
  - school districts,
  - county offices of education,
  - charter schools,
  - the California School for the Deaf,
  - and the California School for the Blind,

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Legal update: AB 309

Designed for use by a variety of parties, including programs operated by postsecondary educational institutions

- and by teacher,
- administrator,
- school counselor,
- pupil personnel services,
- and school nurse
- preparation programs operated by postsecondary educational institutions.

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Legal update: AB 309

Model protocols must meet multiple requirements

- The protocols shall do all of the following:
  - (1) Address the appropriate and timely referral by school staff of pupils with mental health concerns.
  - (2) Reflect a multitiered system of support processes and positive behavioral interventions and supports.
  - (3) Be adaptable to varied local service arrangements for mental health services.

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Legal update: AB 309

Model protocols must meet multiple requirements (continued)

- (4) Reflect evidence-based and culturally appropriate approaches to pupil mental health referral.
- (5) Address the inclusion of parents and guardians in the referral process.
  - (FAM §6924, HSC §124260, *et al.* may be instructional)
- (6) Be written to ensure clarity and ease of use by certificated and classified school employees.

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Legal update: AB 309

Model protocols must meet multiple requirements (continued)

- (7) Reflect differentiated referral processes for pupils with disabilities and other populations for whom the referral process may be distinct.
- (8) Be written to ensure that school employees act only within the authorization or scope of their credential or license. This section shall not be construed as authorizing or encouraging school employees to diagnose or treat mental illness unless they are specifically licensed and employed to do so.
- (9) Be consistent with state activities conducted by the department in the administration of federally funded mental health programs.

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Legal update: AB 309

Model protocols shall be completed within two years of the date funds are received or allocated

- (f) The model referral protocols shall be completed and made available within two years of the date funds are received or allocated to implement this section.

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Legal update: AB 309

Dept. of Education shall post the model protocols on its website

- (d) The department shall post the model referral protocols on its internet website so that they may be accessed and used by educational institutions specified in subdivision (b).

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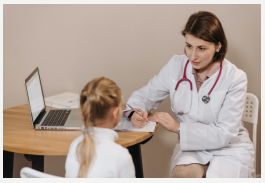
Legal update: SB 428

SB 428: Health care coverage: adverse childhood experiences screenings

- Health insurance plans and policies shall cover screenings for adverse childhood experiences (ACEs)



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Legal update: SB 428

Health insurance policies shall cover screenings for ACEs

- INS §10123.51
- (a) A health insurance policy issued, amended, or renewed on or after January 1, 2022, that provides coverage for pediatric services and preventive care, as required by this chapter . . . shall additionally include coverage for adverse childhood experiences screenings. . . .

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Legal update: SB 428

Definition: "Adverse childhood experiences"

- INS §10123.51
- (b) For purposes of this section, "adverse childhood experiences," or "ACEs," means an event, series of events, or set of circumstances that is experienced by an individual as physically or emotionally harmful or threatening and that has lasting adverse effects on the individual's functioning and physical, social, emotional, or spiritual well-being.

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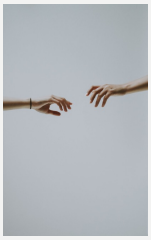
Legal update: AB 451

AB 451: Transfer of a person with a psychiatric emergency medical condition

- Certain facilities shall accept a transfer of a person with a psychiatric emergency medical condition (in some instances)



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Legal update: AB 451

Who is trying to initiate the transfer?

- HSC §1317.4b
- . . . a health facility . . . that maintains and operates an emergency department

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Legal update: AB 451

Which facilities may have to accept the transfer?

- (a) A psychiatric unit within a general acute care hospital, . . .
- a psychiatric health facility of **more than 16 beds,** . . .
  - (Per DHCS, five currently exist in CA: Arleta, Long Beach, Oakland, Sacramento, Santa Clara)
- or an acute psychiatric hospital . . .
- shall accept a transfer of a person with a psychiatric emergency medical condition . . .

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Legal update: AB 451

When must they accept the transfer?

- and the receiving facility shall provide emergency services and care to that person . . . if all of the following requirements are met:
- (1) The treating physician at the sending facility has determined that the patient is medically stable and appropriate for treatment in a psychiatric setting and has included that determination in the patient's medical record.
- (2) The facility has an available bed.
- (3) The facility has appropriate facilities and qualified personnel available to provide the services or care.

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Legal update: AB 451

Facilities that the law expressly excludes

- (c) This section shall not apply to a facility listed in Section 4100 of the Welfare and Institutions Code.
  - E.g. Various state hospitals, various facilities under contract with the State Department of State Hospitals to provide competency restoration services, etc.
- (d) This section shall not apply to a psychiatric health facility that is county owned and operated.

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Legal update: AB 451

Definition: "Psychiatric emergency medical condition"

- HSC §1317.1
- (k)(1) "Psychiatric emergency medical condition" means a mental disorder that manifests itself by acute symptoms of sufficient severity that it renders the patient as being either of the following:
  - (A) An immediate danger to himself or herself or to others.
  - (B) Immediately unable to provide for, or utilize, food, shelter, or clothing, due to the mental disorder.

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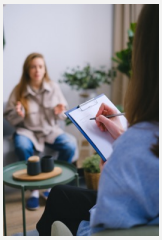
Legal update: SB 507

SB 507: Mental health services: assisted outpatient treatment

- Effective July 1, 2021
- Updates to eligibility for assisted outpatient treatment
- Updates to the mental health professional's affidavit



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Legal update: SB 507

Less stringent eligibility criteria

WIC §5346: Old law's "requisite criteria"	WIC §5346: New law's "requisite criteria"
(3) . . . the person is **unlikely to survive safely in the community** without supervision. [AND] (6) The person's condition is **substantially deteriorating.** [AND] (8) . . . the person is in need of assisted outpatient treatment **in order to prevent a relapse or deterioration** that would be likely to result in grave disability or serious harm to the person or to others, as defined in Section 5150.	(3)(A) The person is **unlikely to survive safely in the community** without supervision and the person's condition is **substantially deteriorating.** [OR] (B) The person is in need of assisted outpatient treatment **in order to prevent a relapse or deterioration** that would be likely to result in grave disability or serious harm to the person or to others, as defined in Section 5150.

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Legal update:
SB 507

New affidavit requirement (Mental health professional's affidavit accompanies petition to court)

WIC §5346: Old law: Mental health professional's opinion on whether the defendant has capacity to give informed consent regarding psychotropic medication	WIC §5346: New law: Mental health professional's opinion on whether the defendant has capacity to give informed consent regarding psychotropic medication
§5346(b)(5)(B) does not exist in the old law.	. . . (b)(5)(B) An examining mental health professional in their affidavit to the court shall address the issue of whether the defendant has capacity to give informed consent regarding psychotropic medication.

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Legal update:
988 phone line

988 phone line: National Suicide Prevention Lifeline

- National Suicide Prevention Lifeline phone number is now available via a three-digit number (in addition to a ten-digit number)
- New number: 988

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Legal update:
988 phone line

Transition to a three-digit National Suicide Prevention Lifeline phone number

- Three-digit number (new): 988
- 10-digit number: 1-800-273-TALK (8255)
  - National Suicide Prevention Lifeline website: ". . . (1-800-273-8255) will always remain available to people in emotional distress or suicidal crisis, even after 988 is launched nationally."

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Legal update:
988 phone line

July 16, 2022: Call, text, and chat available nationwide

- 988 features call, text and chat capabilities
  - Chat: 988lifeline.org
- SAMHSA, July 15, 2022: "The 988 Suicide & Crisis Lifeline is a network of more than 200 state and local call centers supported by HHS through the Substance Abuse and Mental Health Services Administration (SAMHSA)."

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Legal update:
988 phone line

California and the "no wrong door" approach

- September 3, 2021: California's Department of Health Care Services (DHCS) announced that it "will invest $20 million in California's network of emergency call centers to support the launch of a new 988 hotline, an alternative to 911 for people seeking help during a mental health crisis."
  - DHCS is promoting CA's 988 as a hotline for *any* type of mental health crisis

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Legal update:
988 phone line

California and the "no wrong door" approach

- September 3, 2021: "'When people are in a mental health crisis, they need to get quick help from the right place at the right time,' said California Health and Human Services Secretary Dr. Mark Ghaly. 'While the 911 system is dedicated to public safety emergencies, the launch of the 988 hotline next summer gives people an easy-to-remember number to call for focused support during behavioral health emergencies.'"

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Legal update:
988 phone line

Future vision for 988

- SAMHSA, July 15, 2022: "Over time, the vision for 988 is to have additional crisis services available in communities across the country, much the way emergency medical services work."

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Legal update: COVID-19 and other diseases

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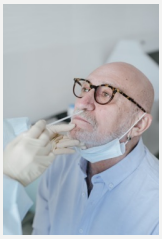
Legal update:
SB 510

SB 510: Health care coverage: COVID-19 cost sharing

- Parts of this bill have retroactive application back to March 4, 2020
- Eliminates cost sharing, deductibles, *et al.*, for COVID-19 testing, immunizations, and some related services



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Legal update:
SB 510

Health care service plans shall cover the costs for COVID-19 **diagnostic and screening testing**

- HSC §1342.2
- (a) Notwithstanding any other law, a health care service plan contract that covers medical, surgical, and hospital benefits . . . shall cover the costs for COVID-19 diagnostic and screening testing and health care services related to diagnostic and screening testing approved or granted emergency use authorization by the federal Food and Drug Administration for COVID-19, regardless of whether the services are provided by an in-network or out-of-network provider.

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Legal update:
SB 510

No copayment, coinsurance, or deductible for COVID-19 **diagnostic and screening testing**

- Coverage required by this section shall not be subject to copayment, coinsurance, deductible, or any other form of cost sharing. Services related to COVID-19 diagnostic and screening testing include, but are not limited to, hospital or health care provider office visits for the purposes of receiving testing, products related to testing, the administration of testing, and items and services furnished to an enrollee as part of testing.

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Legal update:
SB 510

No prior authorization requirements on COVID-19 **diagnostic and screening testing**

- (2) A health care service plan contract shall not impose prior authorization or any other utilization management requirements on COVID-19 diagnostic and screening testing.

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Legal update: SB 510

Rules re: **diagnostic and screening testing** will change for out-of-network providers after the federal public health emergency

- (4)(B) The requirement in this subdivision to cover COVID-19 diagnostic and screening testing and health care services related to testing without cost sharing, when delivered by an out-of-network provider, shall not apply with respect to COVID-19 diagnostic and screening testing and services related to testing furnished on, or after, the expiration of the federal public health emergency. All other requirements of this subdivision shall remain in effect after the federal public health emergency expires.

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Legal update: SB 510

Health care service plans shall cover the costs for COVID-19 **immunizations, etc.**

- (b)(1) A health care service plan contract that covers medical, surgical, and hospital benefits shall cover without cost sharing any item, service, or immunization that is intended to prevent or mitigate COVID-19 . . .

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Legal update: SB 510

No copayment, coinsurance, or deductible for COVID-19 **immunizations, etc.**

- (3)(A) A health care service plan subject to this subdivision shall not impose any cost-sharing requirements, including a copayment, coinsurance, or deductible, for any item, service, or immunization described in paragraph (1), regardless of whether such service is delivered by an in-network or out-of-network provider.

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Legal update: SB 510

No prior authorization requirements on COVID-19 **immunizations, etc.**

- (4) A health care service plan subject to this subdivision shall not impose prior authorization or any other utilization management requirements on any item, service, or immunization described in paragraph (1) or to items or services that are necessary for the furnishing of the items, services, or immunizations described in subparagraph (D) of paragraph (3).

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Legal update: SB 510

Rules re: **immunizations, etc.** will change for out-of-network providers after the federal public health emergency

- (3)(E)(ii) The requirement in this paragraph to cover any item, service, or immunization described in paragraph (1) and to cover items or services that are necessary for the furnishing of the items, services, or immunizations described in subparagraph (D) without cost sharing when delivered by an out-of-network provider will not apply with respect to an item, service, or immunization furnished on or after the expiration of the federal public health emergency. All other requirements of this section shall remain in effect after the federal public health emergency expires.

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Legal update: SB 510

Retroactive application

- (d) This section shall apply retroactively beginning from the Governor's declared State of Emergency related to the SARS-CoV-2 (COVID-19) pandemic on March 4, 2020.
  - i.e. Retroactive application to:
    - COVID-19 diagnostic and screening testing and health care services related to diagnostic and screening testing
    - Any item, service, or immunization that is intended to prevent or mitigate COVID-19

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Legal update: SB 510

Bill also addresses cost sharing, etc. for future public health emergencies

- HSC §1342.3
- (a) A health care service plan contract that covers medical, surgical, and hospital benefits . . . shall cover, without cost sharing and without prior authorization or other utilization management, the costs of the following health care services to prevent or mitigate a disease when the Governor of the State of California has declared a public health emergency due to that disease:

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Legal update: SB 510

Bill also addresses cost sharing, etc. for future public health emergencies (continued)

- (1) An evidence-based item, service, or immunization that is intended to prevent or mitigate a disease as recommended by the United States Preventive Services Task Force that has in effect a rating of "A" or "B" or the Advisory Committee on Immunization Practices of the federal Centers for Disease Control and Prevention.
- (2) A health care service or product related to diagnostic and screening testing for the disease that is approved or granted emergency use authorization by the federal Food and Drug Administration, or is recommended by the State Department of Public Health or the federal Centers for Disease Control and Prevention.

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Side bar: At-home COVID-19 tests

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Side bar: At-home COVID-19 tests

At-home COVID-19 tests: Medicaid and CHIP beneficiaries

- Eligibility: Medicaid and CHIP beneficiaries
- Limits on free tests: HHS has not set any limits yet . . .
- Acquisition procedures: Contact your insurance program for instructions on how to acquire the free tests (acquisition procedures vary)

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Side bar: At-home COVID-19 tests

At-home COVID-19 tests: Medicare beneficiaries

- Eligibility: Medicare Part B beneficiaries, including those enrolled in a Medicare Advantage plan
  - CMS: "Medicare won't cover over-the-counter COVID-19 tests if you only have Medicare Part A (Hospital Insurance) coverage . . ."
- Limits on free tests: Eight/calendar month
- Acquisition procedures: Pick up tests from participating pharmacies or participating health care providers
  - CMS: "A partial list of participating pharmacies can be found at https://www.medicare.gov/medicare-coronavirus."

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Side bar: At-home COVID-19 tests

At-home COVID-19 tests: Privately insured individuals

- Eligibility: Privately insured individuals
- Limits on free tests: Eight/month
- Acquisition procedures: Contact your insurance program for instructions on how to acquire the free tests (acquisition procedures vary)

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Side bar:
At-home COVID-19 tests

At-home COVID-19 tests: Individuals with residential address or PO box

- Eligibility: Must have a residential address or PO box
  - No requirements concerning health insurance
- Limits on free tests: Sixteen per residential address/PO box
  - Former limits: Four tests; Eight tests
- Acquisition procedures: Order for USPS delivery through www.covidtests.gov

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Now back to legal update . . .

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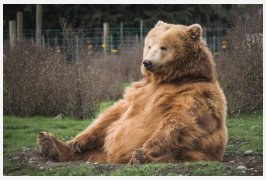
Legal update:
SB 742

SB 742: Vaccination sites: unlawful activities: obstructing, intimidating, harassing, etc.

- Took effect October 8, 2021 (urgency statute necessary for the immediate preservation of the public peace, health, or safety)
- Criminal penalties for obstructing, injuring, harassing, intimidating, or interfering with a person within 100 feet of a vaccination site



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Legal update:
SB 742

New crime: Obstructing, injuring, harassing, etc. a person within 100 feet of any vaccination site

- PEN §594.39
- (a) It is unlawful to knowingly approach within 30 feet of any person while a person is within 100 feet of the entrance or exit of a vaccination site and is seeking to enter or exit a vaccination site, or any occupied motor vehicle seeking entry or exit to a vaccination site, for the purpose of obstructing, injuring, harassing, intimidating, or interfering with that person or vehicle occupant.
  - Note: This law is not limited to COVID-19 vaccination sites

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Legal update:
SB 742

Criminal penalties

- (b) A violation of subdivision (a) is punishable by a fine not exceeding one thousand dollars ($1,000), imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment.

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Legal update:
SB 742

Definition: "Harassing"

- PEN §594.39
- (c)(1) "Harassing" means knowingly approaching, without consent, within 30 feet of another person or occupied vehicle for the purpose of passing a leaflet or handbill to, displaying a sign to, or engaging in oral protest, education, or counseling with, that other person in a public way or on a sidewalk area.

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Legal update: SB 742

Definition: "Vaccination site"

- PEN §594.39
- (c)(6) "Vaccination site" means the physical location where vaccination services are provided, including, but not limited to, a hospital, physician's office, clinic, or any retail space or pop-up location made available for vaccination services.

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Legal update: AB 1113

AB 1113: Public postsecondary education: exemption from tuition and fees

- Public California community colleges and universities shall not charge fees or tuition to surviving spouses and surviving children of certain healthcare workers who died of COVID-19

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Legal update: AB 1113

No fees or tuition for surviving spouses and surviving children of certain healthcare workers who died of COVID-19

- EDC §68120.3
- (a) Notwithstanding any other law, no mandatory systemwide fees or tuition or mandatory campus-based fees of any kind shall be required or collected by the Regents of the University of California, the Board of Directors of the Hastings College of the Law, the Trustees of the California State University, the Board of Governors of the California Community Colleges, or any campus of the University of California, the California State University, or the California Community Colleges, from any surviving spouse or surviving child of a deceased person who met all of the following requirements:

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Legal update: AB 1113

No fees or tuition for surviving spouses and surviving children of certain healthcare workers who died of COVID-19 (continued)

- (1) The deceased person was a resident of this state.
- (2) The deceased person was a licensed physician or a licensed nurse employed by or under contract with a health facility regulated and licensed by the State Department of Public Health to provide medical services or a first responder employed to provide emergency services as described in Section 8562 of the Government Code.

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Legal update: AB 1113

No fees or tuition for surviving spouses and surviving children of certain healthcare workers who died of COVID-19 (continued)

- (3) The deceased person's principal duties consisted of providing medical services or emergency services during the COVID-19 pandemic state of emergency.
- (4) The deceased person died of COVID-19 during the COVID-19 pandemic state of emergency.

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Legal update: AB 1113

Requirements for those who qualify

- (b) . . . a person who qualifies for the waiver of mandatory systemwide fees and tuition and mandatory campus-based fees under this section . . . shall meet all of the following requirements:

66

Legal update:
AB 1113

Requirements for those who qualify (continued)

- (1) Enrollment as an undergraduate student at a campus of the University of California or the California State University or as a student at a campus of the California Community Colleges.

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Legal update:
AB 1113

Requirements for those who qualify (continued)

- (2) Documentation that the student's annual income, including the value of any support received from a parent, does not exceed the maximum household income and asset level for an applicant for a Cal Grant A award, as set forth in Section 69432.7.
  - Reference https://www.csac.ca.gov/post/cal-grant-income-and-asset-ceilings for income and asset ceilings

2022-23 CAL GRANT PROGRAM INCOME CEILINGS

	Cal Grant A and C
Dependent students and Independent students with dependents other than a spouse	
Family size:	
Six or more	$135,000
Five	$125,100
Four	$116,800
Three	$107,500
Two	$104,900
Independent students	
Single, no dependents	$42,800
Married, no other dependents	$49,000

2022-23 CAL GRANT PROGRAM ASSET CEILINGS

Dependent students [1]	$90,400
Independent students	$43,000

[1] This ceiling also applies to independent students with dependents other than a spouse.

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Legal update:
AB 1113

Requirements for those who qualify (continued)

- (3) The surviving child or spouse was a resident of California during the COVID-19 pandemic state of emergency.

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Legal update:
AB 1113

Definition: "COVID-19 pandemic state of emergency"

- EDC §68120.3
- (e)(1) "COVID-19 pandemic state of emergency" means the period of time from the first declaration of emergency on March 4, 2020, until the Governor lifts the state of emergency.

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Legal update:
AB 789

AB 789: Hepatitis B and C screening tests

- Some healthcare providers must proactively offer hepatitis B and C screening tests to adult patients

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Legal update:
AB 789

To whom must you offer a hepatitis B screening test and a hepatitis C screening test?

- HSC §1316.7
- (a) An adult patient
- who receives primary care services
- in a facility, clinic, unlicensed clinic, center, office, or other setting where primary care services are provided,

72

Legal update: AB 789

To whom must you offer a hepatitis B screening test and a hepatitis C screening test? (continued)

- shall be offered a hepatitis B screening test and a hepatitis C screening test, to the extent these services are covered under the patient's health insurance, . . .

73

Legal update: AB 789

Exceptions

- unless the health care provider reasonably believes that one of the following conditions applies:
  - (1) The patient is being treated for a life-threatening emergency.
  - (2)(A) The patient has previously been offered or has been the subject of a hepatitis B screening test or hepatitis C screening test.
    - (B) This paragraph does not apply if the health care provider determines that one or both of the screening tests should be offered again.

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Legal update: AB 789

Exceptions (continued)

- (3) The patient lacks capacity to consent to a hepatitis B screening test or hepatitis C screening test, or both.
- (4) The patient is being treated in the emergency department of a general acute care hospital, as defined in subdivision (a) of Section 1250.

75

Legal update: AB 789

If the patient is hepatitis B surface antigen (HBsAg) positive, a health care provider shall offer followup care or a referral

- (b)(1) If a patient accepts the offer of the hepatitis B screening test and the test is hepatitis B surface antigen (HBsAg) positive, a health care provider shall offer the patient followup health care or refer the patient to a health care provider who can provide followup health care.

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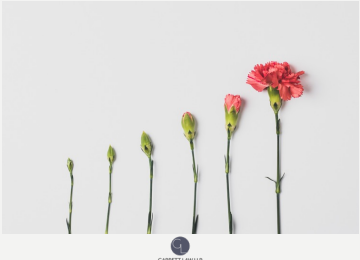
Legal update: AB 789

If the patient is hepatitis C positive, the health care provider shall offer followup care or a referral

- (2) If a patient accepts the offer of the hepatitis C screening test and the test is positive, the health care provider shall offer the patient followup health care or refer the patient to a health care provider who can provide followup health care. The followup health care shall include a hepatitis C diagnostic test (HCV RNA).

77

Poll questions 1 – 2



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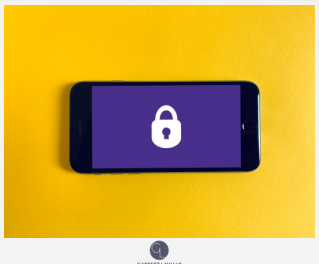
Legal update: Confidentiality



79

Legal update: AB 133

AB 133: "California Health and Human Services Data Exchange Framework"

- Various effective dates
- Creates the California Health and Human Services Data Exchange Framework

80

Legal update: AB 133

Statewide framework that will require the exchange of health info among many CA health care entities and CA govt agencies

- HSC §130290
- (a) On or before July 1, 2022 . . . the California Health and Human Services Agency . . . shall establish the California Health and Human Services Data Exchange Framework . . . that will govern and require the exchange of health information among health care entities and government agencies in California.

81

Legal update: AB 133

Not intended to be a single repository of data . . .

- (1) The California Health and Human Services Data Exchange Framework is not intended to be an information technology system or single repository of data, rather it is technology agnostic and is a collection of organizations that are required to share health information using national standards and a common set of policies in order to improve the health outcomes of the individuals they serve.

82

Legal update: AB 133

Real-time access or exchange of health information

- (2) The California Health and Human Services Data Exchange Framework will be designed to enable and require real-time access to, or exchange of, health information among health care providers and payers through any health information exchange network, health information organization, or technology that adheres to specified standards and policies.

83

Legal update: AB 133

By January 31, 2024: Info must be exchanged for treatment, payment, and operations purposes (for many entities)

- (b)(1) On or before January 31, 2024, the entities listed in subdivision (f), except those identified in paragraph (2), shall exchange health information or provide access to health information to and from every other entity in subdivision (f) in real time . . . for treatment, payment, or health care operations.

84

Legal update: AB 133

First wave of affected entities
By January 31, 2023: Execute agreement
By January 31, 2024: Begin info exchange

- (f) On or before January 31, 2023, . . . the following health care organizations shall execute the California Health and Human Services Data Exchange Framework data sharing agreement pursuant to subdivision (a):
  - (1) General acute care hospitals, as defined by Section 1250.
  - (2) Physician organizations and medical groups.
  - (3) Skilled nursing facilities, as defined by Section 1250, that currently maintain electronic records.
  - (4) Health care service plans and disability insurers that provide hospital, medical, or surgical coverage that are regulated by the Department of Managed Health Care or the Department of Insurance. This section shall also apply to a Medi-Cal managed care plan under a comprehensive risk contract with the State Department of Health Care Services . . .
  - (5) Clinical laboratories, as that term is used in Section 1265 of the Business and Professions Code, and that are regulated by the State Department of Public Health.
  - (6) Acute psychiatric hospitals, as defined by Section 1250.
    - But are psychiatric hospitals actually in the "second wave"? See next slide . . .

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Legal update: AB 133

Second wave of affected entities
By January 31, 2023: Execute agreement
By January 31, 2026: Begin info exchange

- (b)(2) The requirement in paragraph [b](1) shall not apply to
- physician practices of fewer than 25 physicians,
- rehabilitation hospitals,
- long-term acute care hospitals,
- acute psychiatric hospitals,
- critical access hospitals, . . .
- rural general acute care hospitals with fewer than 100 acute care beds,
- state-run acute psychiatric hospitals,
- and any nonprofit clinic with fewer than 10 health care providers
- until January 31, 2026.

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Legal update: AB 133

What about county providers?
CA must "encourage" county health, public health, and social services to join

- (e) On or before January 31, 2023, the California Health and Human Services Agency shall work with the California State Association of Counties to encourage the inclusion of county health, public health, and social services, to the extent possible, as part of the California Health and Human Services Data Exchange Framework in order to assist both public and private entities to connect through uniform standards and policies. . . .

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87

Legal update: AB 133

Master patient indices

- (h) On or before July 31, 2022, the California Health and Human Services Agency shall develop . . . a strategy for unique, secure digital identities capable of supporting master patient indices to be implemented by both private and public organizations in California.

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88

Legal update: SB 24

SB 24:
Healthcare providers and domestic violence protective orders

- Takes effect January 1, 2023
- Healthcare providers must create protocols that will prevent the disclosure of info to a party that a court has restrained via FAM §6322

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89

Legal update: SB 24

Courts may restrain a party from accessing certain records re: their minor child

- FAM §6323.5
- (b)(1) . . . in accordance with Section 6322, a court may include in an ex parte order a provision restraining a party from accessing records and information pertaining to the health care, education, daycare, recreational activities, or employment of a minor child of the parties.

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90

Legal update: SB 24

By February 1, 2023: Protocols due

- (c)(1)(A) An essential care provider shall, on or before February 1, 2023, develop protocols relating to the provider's compliance with the order described in subdivision (b), including, at a minimum,

91

91

Legal update: SB 24

Minimum requirements for the protocols

- designating the appropriate personnel responsible for receiving the protective order,
- establishing a means of ensuring that the restrained party is not able to access the records or information,
- and implementing a procedure for submission of a copy of an order and for providing the party that submits the copy of the order with documentation indicating when, and to whom, the copy of the order was submitted.

92

92

Legal update: SB 24

Definition: "Essential care provider"

- FAM §6323.5
- (a)(2) "Essential care provider" includes a public or private school, health care facility, daycare facility, dental facility, or other similar organization that frequently provides essential social, health, or care services to children.

93

93

Legal update: Tobacco

94

94

Legal update: AB 541

AB 541: SUD programs: tobacco assessments

- SUD programs shall assess patients for use of tobacco products at intake, and then offer treatment or referral if appropriate

95

95

Legal update: AB 541

SUD programs shall assess patients/clients for use of all tobacco products at intake

- HSC §11756.5
- (a) An alcoholism or substance use disorder recovery or treatment facility licensed under this division [i.e. Division 10.5 of the Health and Safety Code] or an alcohol or other drug program certified by the department [i.e. the State Department of Health Care Services] . . . shall assess each patient or client for use of all tobacco products at the time of the initial intake.

96

96

Legal update:
AB 541

Assessment shall include questions recommended in the most recent version of the DSM, or similar guidance

- This assessment shall include questions recommended in the most recent version of the Diagnostic and Statistical Manual of Mental Disorders under tobacco use disorder, or similar evidence-based guidance, for determining that an individual has a tobacco use disorder.

97

Legal update:
AB 541

For a patient/client with tobacco use disorder, SUD programs shall do all of the following

- (b) For a patient or client with tobacco use disorder, a licensed facility or certified program, as described in subdivision (a), shall do all of the following:
  - (1) Provide information to the patient or client on how continued use of tobacco products could affect their long-term success in recovery from substance use disorder.
  - (2) Recommend treatment for tobacco use disorder in the treatment plan.
  - (3) Offer either treatment, subject to the limitation of the license or certification issued by the department, or a referral for treatment for tobacco use disorder.
    - If the patient wants you to make a referral, remember to get the patient's written consent before you make the referral

98

Legal update:
AB 541

Definition: "Tobacco product"

- BPC §22950.5
- (d)(1) "Tobacco product" means any of the following:
  - (A) A product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to, cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, or snuff.
  - (B) An electronic device that delivers nicotine or other vaporized liquids to the person inhaling from the device, including, but not limited to, an electronic cigarette, cigar, pipe, or hookah.
  - (C) Any component, part, or accessory of a tobacco product, whether or not sold separately.

99

Legal update:
AB 541

Definition: "Tobacco product" (continued)

- (2) "Tobacco product" does not include a product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes where the product is marketed and sold solely for such an approved purpose.

100

Legal update:
SB 395

SB 395: Excise tax: electronic cigarettes

- Effective July 1, 2022
- 12.5 percent sales tax on e-cigarettes/related products

101

Legal update:
SB 395

12.5 percent sales tax on e-cigarettes (as defined)

- RTC §31002
- (a)(1)(A) Beginning July 1, 2022, a purchaser shall pay a tax on the purchase for use in this state of an electronic cigarette from a retailer at the rate of 12.5 percent of the sales price of the electronic cigarette.

102

Legal update: SB 395

Disbursement of the revenue

- RTC §31005
- (b) . . . all amounts in the California Electronic Cigarette Excise Tax Fund are continuously appropriated without regard to fiscal year as follows:

103

Legal update: SB 395

Disbursement of the revenue (continued)

- (1) Eighteen percent of the moneys to the Health Education Account, . . . for tobacco control programs . . .
- (2) Twelve percent of the moneys into the California Children and Families Trust Fund . . .
- (3)(A) Forty-eight percent of the moneys to fund the Proposition 56 Medi-Cal Physicians and Dentists Loan Repayment Act . . .

104

Legal update: SB 395

Disbursement of the revenue (continued)

- (4) Five percent of the moneys to the Department of Health Care Access and Information to fund the Health Professions Career Opportunity Program . . .
- (5) Seven percent of the moneys to the University of California to support the joint program in medical education between the University of California San Francisco (UCSF) School of Medicine, UCSF Fresno, and the University of California, Merced, including, but not limited to, using funds to establish new residency and clinical rotation positions for program participants and graduates in the San Joaquin Valley.
- (6) Ten percent of the moneys to the Small and Rural Hospital Relief Fund . . .

105

Legal update: SB 395

Definition: "Electronic cigarette"

- RTC §31001
- (c)(1) "Electronic cigarette" means any of the following:
  - (A) A device or delivery system sold in combination with any liquid substance containing nicotine that can be used to deliver to a person nicotine in aerosolized or vaporized form, including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah.
  - (B) A component, part, or accessory of a device described in subparagraph (A) that is used during the operation of the device if sold in combination with a liquid substance containing nicotine.
  - (C) A liquid or substance containing nicotine, whether sold separately or sold in combination with any device, that could be used to deliver to a person nicotine in aerosolized or vaporized form.

106

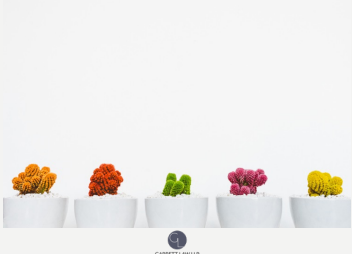
Legal update: SB 395

Definition: "Electronic cigarette" (continued)

- (2) "Electronic cigarette" does not include a product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for other therapeutic purposes if that product is marketed and sold solely for that approved use.

107

Legal update: Miscellaneous



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Legal update: SB 447

SB 447: Civil actions: decedent's cause of action: pain and suffering damages

- Damages for pain, suffering, or disfigurement now available in an action or proceeding by a decedent's personal representative or successor in interest (in some instances)

109

Legal update: SB 447

Decedent's representative usually cannot recover on the decedent's pain, suffering, or disfigurement. However . . .

- CCP §377.34
- (a) In an action or proceeding by a decedent's personal representative or successor in interest on the decedent's cause of action, the damages recoverable are limited to the loss or damage that the decedent sustained or incurred before death, including any penalties or punitive or exemplary damages that the decedent would have been entitled to recover had the decedent lived, and do not include damages for pain, suffering, or disfigurement.

110

Legal update: SB 447

Law now temporarily allows decedent's representative to recover on the decedent's pain, suffering, or disfigurement

- (b) Notwithstanding subdivision (a), in an action or proceeding by a decedent's personal representative or successor in interest on the decedent's cause of action, the damages recoverable may include damages for pain, suffering, or disfigurement if the action or proceeding was granted a preference pursuant to Section 36 before January 1, 2022, or was filed on or after January 1, 2022, and before January 1, 2026.

111

Legal update: SB 447

Plaintiffs must report recovery of the pain, suffering, or disfigurement damages to the Judicial Council

- (c) A plaintiff who recovers damages pursuant to subdivision (b) between January 1, 2022, and January 1, 2025, inclusive, shall, within 60 days after obtaining a judgment, consent judgment, or court-approved settlement agreement entitling the plaintiff to the damages, submit to the Judicial Council a copy of the judgment, consent judgment, or court-approved settlement agreement . . .

112

Legal update: SB 447

Judicial Council shall submit report to Legislature

- (d)(1) On or before January 1, 2025, the Judicial Council shall transmit to the Legislature a report detailing the information received pursuant to subdivision (c) for all judgements, consent judgements, or court-approved settlement agreements rendered from January 1, 2022, to July 31, 2024, inclusive, in which damages were recovered pursuant to subdivision (b). . . .

113

Legal update: SB 447

In professional negligence claims against health care providers, noneconomic losses still capped at $250K

- (e) Nothing in this section alters Section 3333.2 of the Civil Code.
  - CIV § 3333.2
  - (a) In any action for injury against a health care provider based on professional negligence, the injured plaintiff shall be entitled to recover noneconomic losses to compensate for pain, suffering, inconvenience, physical impairment, disfigurement and other nonpecuniary damage.
  - (b) In no action shall the amount of damages for noneconomic losses exceed two hundred fifty thousand dollars ($250,000).*
    - *AB 35 will steadily increase this cap. On January 1, 2023, the cap will increase to $350,000. By January 1, 2033, the cap will reach $750,000. From there, it will increase by 2% per year.

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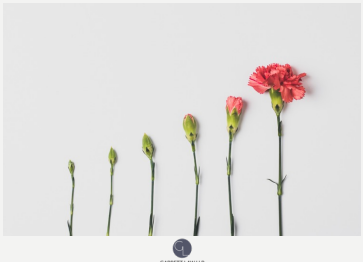
Poll questions 3 – 4



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Confidentiality

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Confidentiality – Basics

Basic Confidentiality Rule – Applicable to All Disciplines

- Don't talk unless you MUST or MAY!

shhhhhhhh!

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Confidentiality – Basics

Basic Confidentiality Rules

- All confidentiality laws default to "no"
- So, unless you are aware of an exception, you simply cannot speak!
- Keep in mind, there may be different, stricter rules (e.g., HIV test results, or Part 2 SUD info) for different disciplines
- HIPAA preemption rule: follow the most "stringent" law

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Confidentiality – Basics

Important to know what kind of PHI you've got, to know how much protection it gets!

HIPAA – all information (PHI)	**SUMMER**	
Civil Code §56.10 (CMIA – physical)	**SPRING**	
W&I §5328 (LPS – mental health)	**FALL**	
H&S 120980 (HIV)	**WINTER**	
42 CFR Part 2 (SUD)	**BLIZZARD**	

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Confidentiality – Basics

Another way to "visualize" it...

PHI

45 CFR 160 and 164

Mental Health

CA Welf. & Inst. § 5328

SUD

42 CFR Part 2

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Confidentiality – Exceptions

HIPAA "Must" and "May" Disclosures

- "Must"
  1. To the **Secretary of DHHS** (45 CFR 160.310)
  2. To the **patient** seeking "access" (45 CFR 164.524)
- "May"
  1. **Treatment,** payment or operations (TPO) (45 CFR 164.506)
  2. **Written authorization** (45 CFR 164.508)
  3. **Verbal permission** (limited) (45 CFR 164.510)
  4. **No authorization** (45 CFR 164.512 (a) – (l))

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Confidentiality – Exceptions

Sharing PHI for Treatment Purposes – HIPAA

- **Protected Health Information (PHI)**
- **45 CFR 164.506 - Uses and disclosures to carry out treatment, payment, or health care operations.**

(a) ***Standard: Permitted uses and disclosures.*** Except with respect to uses or disclosures that require an authorization under §164.508(a)(2) through (4) or that are prohibited under §164.502(a)(5)(i), a covered entity may use or disclose protected health information for treatment, payment, or health care operations as set forth in paragraph (c) of this section, provided that such use or disclosure is consistent with other applicable requirements of this subpart.

(c) ***Implementation specifications: Treatment, payment, or health care operations.***

(1) A covered entity may use or disclose protected health information for its own treatment, payment, or health care operations.

(2) A covered entity may disclose protected health information for treatment activities of a health care provider.

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Confidentiality – Exceptions

Sharing PHI for Treatment Purposes – HIPAA

- **45 CFR 164.501 – Definitions ("Treatment Purposes")**
  - *Treatment* means the provision, coordination, or management of health care and related services by one or more health care providers, including the coordination or management of health care by a health care provider with a third party; consultation between health care providers relating to a patient; or the referral of a patient for health care from one health care provider to another.

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Confidentiality – Exceptions

Sharing PHI for Treatment Purposes – California Law

- **Physical Health**
  - **Civil Code 56.10(c)(1)** – ok to share for "treatment and diagnosis" of the patient
  - **Civil Code 56.10(c)(14)** – ok to share if "otherwise specifically authorized by law"
- **Mental Health**
  - **Welfare & Institutions Code 5328(a)(1)** - ok to share with another healthcare professional who has "medical or psychological responsibility" for the care of the patient
  - **Welfare & Institutions Code 5328.04** – ok to share with a county social worker, probation officer, foster care public health nurse or other person legally authorized to have custody or care of a minor, for the purpose of coordinating health care services and medical treatment…mental health or developmental disabilities, for the minor.

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Confidentiality – Exceptions

Treatment Purposes – California Law – cont.

- **HIV**
  - **Health & Safety Code 120980 (l)** When the results of an HIV test … are included in the medical record of the patient who is the subject of the test, the inclusion is not a disclosure for purposes of this section.
  - **Health & Safety Code 120985(a)** …the results of an HIV test that identifies or provides identifying characteristics of the person to whom the test results apply may be recorded by the physician who ordered the test in the test subject's medical record or otherwise disclosed without written authorization … to the test subject's providers of health care … for purposes of diagnosis, care, or treatment of the patient, ….

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Confidentiality – Exceptions

Sharing for Treatment Purposes – Federal Law – Part 2 (SUD)

- **Substance Use Disorder**
  - **42 CFR Part 2, §2.12(c) Exceptions…(3)** – *Communication within a part 2 program or between a part 2 program and an entity having direct administrative control over that part 2 program.* The restrictions on disclosure in the regulations in this part do not apply to communications of information between or among personnel having a need for the information in connection with their duties that arise out of the provision of diagnosis, treatment, or referral for treatment of patients with substance use disorders if the communications are:

(i) Within a part 2 program; or

(ii) Between a part 2 program and an entity that has direct administrative control over the program.

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Confidentiality – Basics

Sharing Health Info with Written Authorization

- **HIPAA – 45 CFR 164.508 – Disclosures of PHI with Written Authorization are permitted**
- **CA law**
  - **Physical Health Info – Civil Code 56.10(a)** No disclosures unless you first have authorization, unless specific exception requires or permits you to make the disclosure
  - **Mental Health Info – W&I 5328(a)(2)** If the patient, with the approval of the physician and surgeon, licensed psychologist, social worker with a master's degree in social work, licensed marriage and family therapist, or licensed professional clinical counselor, who is in charge of the patient, designates persons to whom information or records may be released, except … (*this law doesn't compel disclosure of third party confidential info shared by family member*)….
  - **HIV – H&S 120980(a)** Any person who negligently discloses results of an HIV test, as defined in subdivision (c) of Section 120775, to any third party, in a manner that identifies or provides identifying characteristics of the person to whom the test results apply, except pursuant to a written authorization…(fines and penalties described)
- **Federal Law**
  - **SUD – Part 2, §2.33** - If a patient consents to a disclosure of their records under §2.31, a part 2 program may disclose those records in accordance with that consent ….

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Involuntary mental health care: The LPS Act

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LPS Act

The LPS Act

- 1967 – Lanterman Petris Short Act (LPS Act) – complete change in how mental health care was going to be provided in CA
- Institutionalization would be replaced with "community-based care"
- "Least restrictive means" was a stated goal
- Everyone was happy with this plan: save money, more humane care

this:

Instead of this:

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LPS Act

Legislative intent specifically articulated in statute

WIC 5001. The provisions of this part and Part 1.5 (commencing with Section 5585) shall be construed to promote the legislative intent as follows:

(a) To **end the inappropriate, indefinite, and involuntary commitment** of persons with mental health disorders, developmental disabilities, and chronic alcoholism, and to eliminate legal disabilities.

(b) To provide **prompt evaluation and treatment of persons with mental health disorders** or impaired by chronic alcoholism.

(c) To **guarantee and protect public safety.**

(d) To **safeguard individual rights through judicial review.**

(e) To provide individualized treatment, supervision, and placement services by a **conservatorship program for persons who are gravely disabled.**

(f) To encourage the **full use of all existing agencies, professional personnel, and public funds** to accomplish these objectives and to prevent duplication of services and unnecessary expenditures.

(g) To **protect persons with mental health disorders** and developmental disabilities from criminal acts.

(h) To provide **consistent standards for protection of the personal rights** of persons receiving services under this part and under Part 1.5 (commencing with Section 5585).

(i) To provide services in the **least restrictive setting** appropriate to the needs of each person receiving services under this part and under Part 1.5 (commencing with Section 5585).

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LPS Act

Beliefs at the time

- Psychiatric emergency clinics will be built in every community for patients in crisis, so time between §§5150 and 5151 will be minimal
- Patients will not use drugs or alcohol, and will be in relatively good health
- No one who is DTS will have acted yet so new physical health concerns won't exist
- Drug companies tell the truth, and a cure for the symptoms AND the underlying mental illness is just around the corner
- There will be enough hospitals, beds, and staff to handle the rare emergencies that require inpatient care

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LPS Act

Law as written and originally envisioned: in case of psychiatric emergency…

- <u>Step one</u>:
  - §5150 – "hold and transport"
    - Patient taken directly to "designated locked facility"
    - Based upon "probable cause" assessment
    - By law enforcement, member of attending staff of "designated locked facility," designated members of mobile crisis team, or other professionals designated by the County

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LPS Act

If a person has a psychiatric emergency...

- Step two:
  - §5151 – "assess and admit"
    - Patient receives mental health assessment at door of the "designated locked facility"
    - By a mental health professional
    - If less restrictive means not feasible, then and only then, will patient be admitted for "evaluation and treatment" up to 72 hours

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LPS Act

The LPS Act: as written

Step 1: 5150 – "hold and transport" (to designated facility)

↗ MEDICAL CLEARANCE

BIG GAP — FINDING A BED

↘ ARRANGING SAFE MODE OF TRANSFER

Step 2: 5151 – "assess and admit" (for eval. & treatment up to 72 hours, as last resort)

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LPS Act

Reality check: why gap is sometimes hours or days...

- It's hard to find a bed in a designated LPS 72-hour facility, especially if the patient is:
  - young
  - old
  - sick (or COVID-exposed)
  - pregnant
  - aggressive

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LPS Act

Gaps in the LPS Act & Questions not answered in the law

- What happens/should happen between the 5150 and the 5151?
  - What exactly does "medical clearance" entail? (which diagnostic tests are appropriate/needed?)
  - What if patient refuses diagnostic screening tests (e.g. labs)?
  - What if patient wants to leave the Emergency Department?
- What happens to the "hold" if the patient is admitted to the hospital (e.g. to ICU)? Is the hold revoked, moot, lifted?
- What happens when you can't find a bed, and it's been 72 hours?
- Which begs the point, **when does the 72-hour clock start?**

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When Does The 72 Hour Clock Start?

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LPS Act – The Clock

When does the 72-hour clock start?

- **WIC §5150** – the moment the custodial hold begins?

or:

- **WIC §5151** – the moment the person is admitted into a designated LPS-facility?

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LPS Act – The Clock

The statutory language (WIC §5150)

- WIC §5150(a) When a person, as a result of a mental health disorder, is a danger to others, or to himself or herself, or gravely disabled, a peace officer, professional person in charge of a facility designated by the county for evaluation and treatment, member of the attending staff, as defined by regulation, of a facility designated by the county for evaluation and treatment, designated members of a mobile crisis team, or professional person designated by the county may, upon probable cause, take, or cause to be taken, the person into custody for a period of up to 72 hours for assessment, evaluation, and crisis intervention, or placement for evaluation and treatment in a facility designated by the county for evaluation and treatment and approved by the State Department of Health Care Services. …

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LPS Act – The Clock

The statutory language: WIC §5151

- WIC §5151 – If the facility designated by the county for evaluation and treatment admits the person, it may detain the person for evaluation and treatment for a period not to exceed 72 hours...

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LPS Act – The Clock

So, when do counties start the clock?

- Some start it at WIC §5150 and will "**refresh**" **or** "**extend**" the original hold if more time is needed
- Others write a **brand new hold** aka a "serial hold" or "stacked hold" or "parking lot hold"
- Others **don't start the clock** until WIC §5151, so they don't have to deal with it directly in the ED

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LPS Act – The Clock

Arguments "for" and "against"

- **WIC §5150**
  - Patients' Rights Advocates: *Every minute you deny a person their freedom is harmful. The whole point of the LPS Act is the minimum necessary intrusion on the rights and liberties of individuals!*
- **WIC §5151**
  - NAMI: *Our loved ones deserve and need 72 hours of intensive inpatient psychiatric evaluation and treatment. They receive no psychiatric treatment while seated on a stool, sometimes for hours or even days, in front of a busy ED nursing station!*

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AB 2275 – The Clock

AB 2275 – Proposed Legislation: Clock start time will be at §5150

- **WIC §5150(a)**
  - **The 72-hour period begins at the time when the person is first detained.**
- **WIC §5151(a)**
  - If the facility designated by the county for evaluation and treatment admits the person, it may detain the person for evaluation and treatment **for a period not to exceed 72 hours from the time that the person was first detained pursuant to Section 5150.**

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AB 2275 – Due Process

AB 2275 – Other provisions to assure due process for patients

- Patient rights' advocate must be notified by the facility if "serial hold" is written.
- Certification hearing at day 7 from initial detention

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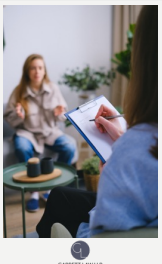
"Lifting" the Hold (Prior to Admission) – Telehealth can be utilized



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LPS Act – Lifting the Hold

Lifting the 5150 hold now: Legal Pathway #1

- 5150(c) The professional person in charge of a facility designated by the county for evaluation and treatment, member of the attending staff, or professional person designated by the county shall assess the person to determine whether he or she can be properly served without being detained. If, in the judgment of the professional person in charge of the facility designated by the county for evaluation and treatment, member of the attending staff, or professional person designated by the county, the person can be properly served without being detained, he or she shall be provided evaluation, crisis intervention, or other inpatient or outpatient services on a voluntary basis….

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LPS Act – Lifting the Hold

Lifting the 5150 hold now: Legal Pathway #2

- §5151(b) Prior to admitting a person to the facility for treatment and evaluation pursuant to Section 5150, the professional person in charge of the facility or a designee shall assess the individual to determine the appropriateness of the involuntary detention….

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LPS Act – Weapons Prohibitions

Weapons Prohibitions

- AB 1968 - Amended/replaced W&I Code §8103
  - Eff. 1/1/20 – **Lifetime ban** on gun ownership for those involuntarily admitted (**W&I §5151**) into locked designated LPS facility as **danger to self (DTS) or danger to others (DTO)** if individual has been **previously admitted involuntarily DTS or DTO at any time during the preceding 365-days.**

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LPS Act – Weapons Prohibitions

Weapons Prohibitions – Notice to Patients

- Prior to or concurrent with discharge, patients must be given information about the weapons prohibition, and about their right to petition a court for a hearing for relief from the prohibition
- Facility must provide copy of the most recent DOJ "Patient Notification of Firearm Prohibition and Right to Hearing Form" to the patient (BOF 4009C)
- DOJ updated this form as of January 1, 2020

BUREAU OF FIREARMS
REQUEST FOR HEARING FOR RELIEF FROM FIREARMS PROHIBITION

Please forward completed form to the superior court of your county of residence.

149

LPS Act – Weapons Prohibitions

Weapons Prohibitions – cont.

- Law now says that facility shall NOT submit the form on behalf of the person subject to the prohibition.
- (Be sure staff knows this, since prior law required the facility to forward the form to the Superior Court unless the patient stated they did not want this assistance.)

150

LPS Act – Form

5150 Application Form Copy = Original

- Law clearly states (and form does too) that a copy of the application form SHALL be treated as the original.
- This should have dispelled the myth once and for all that a "wet ink original" is needed by transport staff or a receiving facility, but we still get reports that some folks are not aware that this type of request violates the law!

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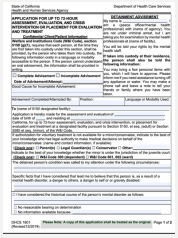
LPS Act – Form

5150 Application Form (rev. 12/2019)

- 5150 Application Form:
- www.dhcs.ca.gov
  - Forms & Publications
    - Mental Health
      - Mental Health Certification Forms
        - DHCS 1801 (MH 302)



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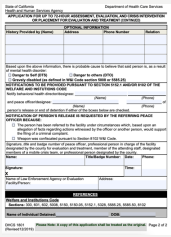
LPS Act – Form

Application Form – Page 2

- Page 2 includes space to document:
  - Historical course of person's mental disorder reflecting info gleaned from others that supports "probable cause" determination (reflecting §5150.05 that requires that third-party **relevant** information be considered)



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LPS Act

Making Things Better

- ❑Meet regularly to discuss problem areas and develop policy where law is silent – everyone at the table!
- ❑Invite: Patients' Rights, NAMI, law enforcement, mental health, CBO's, CSU's, transport agencies and companies, volunteers, hospitals, etc.
- ❑Update (and keep current) your list of every possible inpatient bed, phone numbers, fax numbers, supervisors, and the "trouble-shooters" who are good at making things work.

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LPS Act

Making Things Better – cont.

- ❑Clarify who will sit with the patient
- ❑Decide who will assesses and reassesses patients on holds who are waiting for a bed in your local ED
- ❑Clarify who can/will transport the patient
- ❑Meet regularly with all of the "players" to work on the "rough edges" and make policies better
- ❑Clarify confidentiality rules
- ❑Clarify resources for crisis stabilization and meaningful discharge planning
- ❑Improve documentation.

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LPS Act

Examples of New Approaches

- **Rideout Hospital and Sutter-Yuba Mental Health** – embedded PET team in the ED; "experiment" that is working well!
- **SLO and Tenet Hospitals** – similar agreement to provide work area and space to County crisis workers (working well)!
- Ask your local hospital if **PET team** can at least have a room in the ED to assess and help patients with behavioral health issues – might include help to write a hold, lift a hold, provide stabilizing treatment, or help with arranging transfers ("getting a bed").
- Also, consider working directly with ED clinicians to provide education about involuntary hold laws, and how the physicians might themselves, or with telehealth support, help stabilize patients experiencing a mental health emergency.

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LPS Act

Final thoughts

- Be nice to your patients – they're scared, and upset, and having a terrible day
- Don't let your staff add to stigma (for example, don't use the term "frequent flyer")
- Pick your battles (e.g., not always necessary to insist on removing shoes, or taking all jewelry away from the person) – you aren't booking them into jail!
- Remember the Golden Rule....

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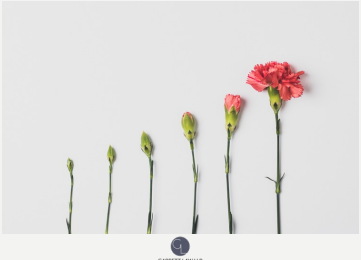
Poll questions 5 – 6



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Tarasoff duty to warn

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Tarasoff

History

- Facts
  - A graduate student at UC Berkeley confided "concerning things" about his obsession with Tatiana Tarasoff to his psychotherapist at the student health center in the Spring and Summer of 1969
    - a referral for "5150" (brand new LPS law) was made to campus police who found no probable cause that he was a danger to self or others (he denied any plans to hurt this young woman) under the new LPS Act statutes
    - the therapist felt that his hands were tied and that he was bound by the psychotherapist/client privilege and that he could do nothing further
    - in October 1969 the grad student went to the Tarasoff home, hid in the bushes until her mother left the house, and then murdered Tatiana on her front porch

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Tarasoff

History – Caselaw

- *Tarasoff v. Regents of the University of California*, 17 Cal. 3d 425, 551 P.2d 334, 131 Cal. Rptr. 14 (1976)
  - California Supreme Court held in 1974 that a therapist has a "duty to warn" reasonably identifiable third parties, and law enforcement if appropriate, if the therapist knows, or *should reasonably know*, that the client poses a serious risk of harm; changed to a "duty to protect" in 1976 rehearing of the case

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Tarasoff

Tarasoff – Statutory Law (addressed dicta from Court re: "or should reasonably know")

- **Civil Code 43.92** - provides immunity to psychotherapists, as defined by **Evidence Code 1010**, from liability for failure to predict and/or warn of a patient's violent behavior in all cases **except** when:
  1. the patient communicates a serious threat against a reasonably identifiable victim or victims, **and**
  2. the psychotherapist fails to discharge their "duty to warn" by notifying law enforcement and the victim

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Tarasoff

Evidence Code 1010 – "psychotherapist" defined (eff. 1/1/22)

- As used in this article, "psychotherapist" means a person who is, or is reasonably believed by the patient to be:
- (a) A person authorized to practice medicine in any state or nation who devotes, or is reasonably believed by the patient to devote, a substantial portion of their time to the practice of psychiatry.
- (b) A person licensed as a psychologist under Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and Professions Code.
- (c) A person licensed as a clinical social worker under Chapter 14 (commencing with Section 4991) of Division 2 of the Business and Professions Code, when they are engaged in applied psychotherapy of a nonmedical nature.
- (d) A person who is serving as a school psychologist and holds a credential authorizing that service issued by the state.
- (e) A person licensed as a marriage and family therapist under Chapter 13 (commencing with Section 4980) of Division 2 of the Business and Professions Code.
- (f) A person registered as a registered psychological associate who is under the supervision of a licensed psychologist as required by Section 2913 of the Business and Professions Code, or a person registered as an associate marriage and family therapist who is under the supervision of a licensed marriage and family therapist, a licensed clinical social worker, a licensed professional clinical counselor, a licensed psychologist, or a licensed physician and surgeon certified in psychiatry, as specified in Section 4980.44 of the Business and Professions Code.

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Tarasoff

Evidence Code 1010 – "psychotherapist" defined (eff. 1/1/22)

- (g) A person registered as an associate clinical social worker who is under supervision as specified in Section 4996.23 of the Business and Professions Code.
- (h) A psychological intern as defined in Section 2911 of the Business and Professions Code who is under the primary supervision of a licensed psychologist.
- (i) A trainee, as defined in subdivision (c) of Section 4980.03 of the Business and Professions Code, who is fulfilling their supervised practicum required by subparagraph (B) of paragraph (1) of subdivision (d) of Section 4980.36 of, or subdivision (c) of Section 4980.37 of, the Business and Professions Code and is supervised by a licensed psychologist, a board certified psychiatrist, a licensed clinical social worker, a licensed marriage and family therapist, or a licensed professional clinical counselor.
- (j) A person licensed as a registered nurse pursuant to Chapter 6 (commencing with Section 2700) of Division 2 of the Business and Professions Code, who possesses a master's degree in psychiatric-mental health nursing and is listed as a psychiatric-mental health nurse by the Board of Registered Nursing.
- (k) An advanced practice registered nurse who is certified as a clinical nurse specialist pursuant to Article 9 (commencing with Section 2838) of Chapter 6 of Division 2 of the Business and Professions Code and who participates in expert clinical practice in the specialty of psychiatric-mental health nursing.

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Tarasoff

Evidence Code 1010 – "psychotherapist" defined (eff. 1/1/22)

- (l) A person rendering mental health treatment or counseling services as authorized pursuant to Section 6924 of the Family Code.
- (m) A person licensed as a professional clinical counselor under Chapter 16 (commencing with Section 4999.10) of Division 2 of the Business and Professions Code.
- (n) A person registered as an associate professional clinical counselor who is under the supervision of a licensed professional clinical counselor, a licensed marriage and family therapist, a licensed clinical social worker, a licensed psychologist, or a licensed physician and surgeon certified in psychiatry, as specified in Sections 4999.42 to 4999.48, inclusive, of the Business and Professions Code.
- (o) A clinical counselor trainee, as defined in subdivision (g) of Section 4999.12 of the Business and Professions Code, who is fulfilling their supervised practicum required by paragraph (3) of subdivision (c) of Section 4999.32 of, or paragraph (3) of subdivision (c) of Section 4999.33 of, the Business and Professions Code, and is supervised by a licensed psychologist, a board-certified psychiatrist, a licensed clinical social worker, a licensed marriage and family therapist, or a licensed professional clinical counselor.
- *(Amended by Stats. 2021, Ch. 647, Sec. 74. (SB 801) Effective January 1, 2022.)*

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Tarasoff

Tarasoff requirements not connected to 5150 DTO

- The person who makes a Tarasoff threat is indeed a danger to others but unlike probable cause for 5150 there is no need that it be "due to a mental health disorder"
  - Person could simply be angry, seeking revenge or other reasons
  - Sometimes it is linked and person is also placed on an involuntary hold, but that is never a requirement
- The fact that the person is arrested and put in jail does not relieve you from duty to warn
- The fact that the person is hospitalized does not relieve you from the duty to warn

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Tarasoff

Ewing Cases 2004

- Facts – father conveyed to his son's psychiatrist the "serious threat" that his son, the patient, had made to the father about his plan to kill his ex-girlfriend's new boyfriend
- No Tarasoff warning by either the psychiatrist or the hospital where the patient was admitted on 5151 "danger to self" was ever made
- Patient subsequently murdered the new boyfriend
- Trial Court – dismissed cases that the victim's parents brought against the psychiatrist and hospital based on literal reading of Civil Code §43.92 (patient **himself** didn't communicate a serious threat to the psychotherapist)
- Appellate Court – remanded to lower courts for trial of facts to determine if the threat was serious – the fact that it was communicated via the father did not release the defendants from their obligation to warn; thus, if a person close to the patient who is in contact with the psychotherapist conveys the threat, it can trigger a Tarasoff "duty to warn"

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Tarasoff

Documentation of the elements of the "duty to warn" is key

- Is the threat "serious"?
  - potential harm is horrible AND
  - person is not joking, fantasizing, or exaggerating for effect
- This will always be a clinical judgment call, so make sure your rationale is documented, and supports the action (or inaction) you took!

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Tarasoff

Confidentiality Exceptions

- HIPAA – 45 CFR 164.512
  - (a) if required by law (e.g., *Tarasoff v. Regents of UC*)
  - (j) to avert a serious threat to health or safety (e.g., a Tarasoff warnings & weapons restrictions)
  - (k)(3) to protect the President and certain other elected officials
- State Law – WIC 5328
  - (a)(7) to gov't law enforcement to protect certain elected officials
  - (a)(18) if patient presents a serious danger of violence

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Tarasoff

But, if threat was conveyed in an SUD Program to a psychotherapist...

- Part 2 does not have a confidentiality exception for Tarasoff
- Avoid conflict with Part 2 by not identifying the patient or yourself as being "connected" to an SUD program
  - So, e.g., say to victim and to law enforcement, "this is Sally Smith, MFT, calling from 'County Behavioral Health'"

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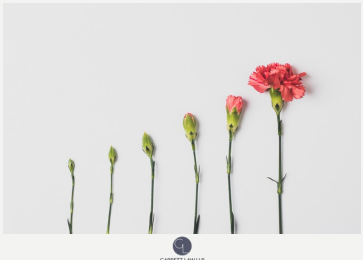
Poll questions 7 – 8



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Ethics and professionalism

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Ethics/Professionalism

Hippocratic Oath

- I will use those (treatment) regimens which will benefit my patients according to my greatest ability and judgement, and I will do no harm or injustice to them.

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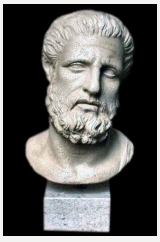
Ethics/Professionalism

Hippocratic Oath

- Whatever I see or hear in the lives of my patients, whether in connection with my professional practice or not, which ought not to be spoken of outside, I will keep secret, as considering all such things to be private.



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Ethics/Professionalism

Is it ever ok to violate privacy?

- Easy answer: No.
- If an exception to confidentiality is the reason for the disclosure, it is not a privacy violation. But, if there is no clearly stated legal pathway, it is a breach!
- If you have concerns about a patient, you can always discuss with your chain of command, file an incident report (per your agencies protocol), or talk to risk management; just be sure to observe the "minimum necessary rule."

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Ethics/Professionalism

What Does "Professionalism" Mean?

- Compliance with the law
- Following policies and procedures
  - Timeliness
  - Respectful treatment of patients, visitors, co-workers and others
  - Documentation of care provided and related activities such as referrals
  - Non-discrimination/harassment
  - Dress and demeanor
- Avoidance of dual relationships/boundary issues

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Ethics/Professionalism

Dual Relationships and Boundary Issues

- Dual relationship happens when you are two different "things" to the same person – therapist AND aunt, SUD counselor AND sponsor, psychiatrist AND fellow alto in the church choir
  - Some happen **after** the therapeutic relationship starts
  - Some happen **before** the therapeutic relationship starts
  - All are potentially problematic – ask your chain of command for help!

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Ethics/Professionalism

Dual Relationships and Boundary Issues

- Boundary issues happen when you use the therapeutic relationship as a springboard to another relationship:
  - For example, you become your client's
    - Lover
    - Banker
    - Landlord
  - Always problematic, sometimes criminal
  - License will be at risk, patient harm will be presumed

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Ethics/Professionalism

Patient Relationships – "Firing" a Patient

- Terminating the relationship - While it is tempting to fire a non-compliant or "difficult patient" you are much better off if the patient simply "quits you" instead
- Patient abandonment – you must make reasonable attempts to assure that there is a safe "handoff"
  - Letter should outline reasons (after warning letter has first been sent), and then offer to send records

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Ethics/Professionalism

Patient Relationships – "Firing" a Patient - continued

- Contractual Obligations – if you are the Medi-Cal managed care provider, you may be the ONLY provider for those patients; under your contract, your only option may be to transfer the care to someone else in the provider network
- Ethics – in behavioral health especially, the behaviors that cause noncompliance and difficult issues for providers are often related to the symptoms of the underlying diagnosis, and our patients may not have many options for getting care from someone else

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Ethics/Professionalism

Defending Yourself or County from Unfair or Untrue Yelps

- You can't, because it is a violation of privacy to even acknowledge that someone is your patient!
- Best alternative: General announcement to the public with positive news about your facility, and how hard everyone works to provide good care to your clients.

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Ethics/Professionalism

Photography, Social Media

- Typical policy that reduces risk of privacy breach: no photos,
- Typical policy that reduces distractions: no video/audiotaping
- When you are providing treatment, being recorded can interfere with providing good patient care
  - It's hard to be 100% "there" if you're distracted, e.g. Sarah Purcell being given a flu shot on live TV using the same needle that was just used on Gary Collins, September 24, 1993)

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Ethics/Professionalism

Beware: social media is not "private"

- Healthcare examples – continued
  - Salem, OR oncology nurse posting on TikTok how she imagined her hospital co-workers would react when they learned that she took her kids to mask-free birthday parties and flaunted other COVID-19 recommendations when she went out in public spaces
  - Anchorage dentist who posted video of himself performing dental extractions while on his hoverboard

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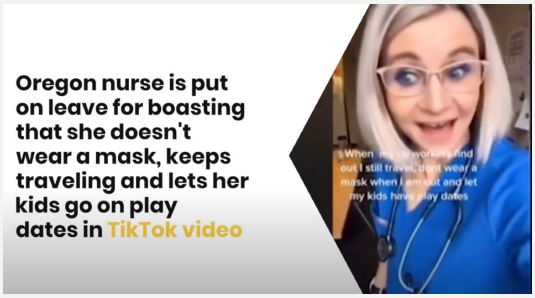

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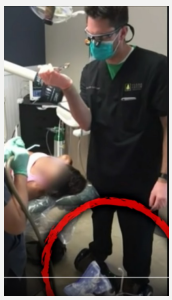

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Ethics/Professionalism

Social Media – Conflicts That Are Posted by Others

- When others post to social media:
  - Uber driver: "I'm not your driver."
  - Neurology resident: "Do you know who I am?"
  - Videotaped by bystanders and posted to YouTube
  - Fired by Miami Hospital soon after

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Ethics/Professionalism

Social Media – Things You Say and Post Yourself

- Social media:
  - What you say can hurt you (sometimes years into the future)
  - When you are publicly saying things that disparage your employer, your boss, or your clients, those statements will likely have consequences (remember, the 1st amendment protects your speech from being silenced by the government, but not from reactions of others).

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Ethics/Professionalism

Social Media – Facebook Warning

- HR Professionals being told by employment practices liability lawfirms that it is corporate negligence to NOT check applicants' Facebook pages prior to scheduling an interview

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Ethics/Professionalism

Social Media – continued

<u>Healthcare examples</u>

- A former first-year Cleveland Clinic resident published a public apology in January 2019 after the hospital released details of her termination for an offensive social media history from 2011-2017 that surfaced in 2018.

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Ethics/Professionalism

Texting → Conflict w/your Boss

- Jennifer Kent, Director, CA Department of Health Care Services since 2014, fired in September 2019
- What did she do?
  - she sent a text to a friend criticizing anti-vaccination protesters that mentioned the Golden Bear statue at the State Capitol (nicknamed by DHHS staff, "Bacteria Bear")
  - it got circulated amongst Capitol lobbyists and was then picked up and published by the LA Times

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Ethics/Professionalism

Texting → Conflict

- What did Jennifer Kent's text say?

The Capitol is filled with a bunch of flat-earthers today. My poor sweet Bacteria Bear is dripping with unvaccinated booger-eater germs.
#believeinscience #vaccinateyourgdkids

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Ethics/Professionalism

Texting → Conflict

- The next day, Jennifer Kent was fired from her very good job by Governor Newsom.
- Moral of the story: you have a right to free speech, and you won't go to jail for expressing your views; but everyone, including your employer, also has a right to respond to your speech and decide it is not acceptable to them!

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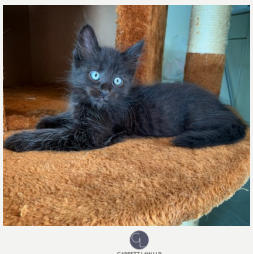
Ethics/Professionalism

If you aren't sure, remember "at the least, do no harm . . ."



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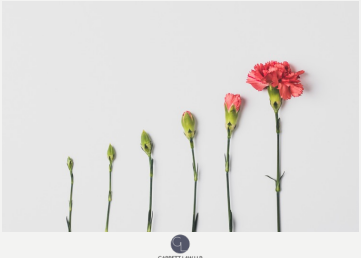
Poll questions 9 – 10



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Questions?

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