



Risk Management: Avoiding the Precipice

Bram Fridhandler, PhD

The term “risk management” is used by psychologists to refer to efforts to reduce the likelihood of being disciplined or suffering other adverse professional consequences. We’re familiar with a variety of these outcomes. Discipline by the Board of Psychology (BOP) is the most common, but we may face malpractice lawsuits, HIPAA-related sanctions, and other possibilities such as employer sanctions and discipline of psychoanalysts by local societies. Risk management and ethics are sometimes thought to be synonymous, but the underlying principles of the two are quite different. To highlight the distinction, consider that, from a risk management perspective, there’s no reason to concern oneself about a potential patient suicide if the patient is so isolated no one would file a complaint if they died. From the perspective of ethics and professional responsibility, of course, such a patient warrants our most dedicated efforts. Our ethical

standards are about helping others and refraining from harming them. Risk management, on the other hand, is self-serving, even calculating. Indeed, the APA Insurance Trust (APAIT) book (Bennett et al., 2006), which is the best single source I’ve found for risk management guidance, boils it down to a formula.

Although ethics and responsibility should be our primary concerns, this article focuses on amoral considerations of risk management. As we seek risk management strategies, it’s worth considering what steps will bring the most effective return on our effort. That is, we can consider (1) how likely it is to receive a complaint in a given activity; (2) how serious the consequences of a complaint would be; and (3) how much effort would be required to reduce the chance of a complaint and/or put us in a good position to defend ourselves if a complaint is filed. This is an imperfect undertaking, because our information is inevitably incomplete. Attorneys, for example, have considerable experience to guide them, but an individual attorney’s experience is not necessarily representative and includes only cases that reach the stage of a complaint, which may not accurately estimate the damaging consequences of particular actions or oversights. For example, in his widely cited tips Caudill (n.d.) states that provision of therapy outside the office “should be extremely rare,” but he has no way of knowing how often out-of-office contacts occur with no disciplinary consequences. Accordingly, Bennett et al. (2006) cite reasons that “calculating the exact rate of disciplinary actions against psychologists is difficult” (p. 20). Moreover, even when figures are available, they leave unanswered questions. For example, Bennett et al. (2006) cite figures showing that child custody is one of the most frequent types of discipline by the APA Ethics Committee, but this fact doesn’t tell us what proportion of psychologists involved in child custody actions are disciplined and therefore how much risk would be eliminated by avoiding such cases.

Thus, risk management advisors are like blind men and women and the elephant. Each of us can make recommendations based on what we know but must acknowledge that we only know one part of the elephant. My recommendations come from eight years as an expert reviewer for the Board of Psychology and seven years on the CPA Ethics Committee, together with reading, workshops, and conversations with the learned among us.

Applying the criterion of “largest return on effort” leads me to the following risk management recommendations, each one of which would have prevented adverse consequences in one or more cases I’ve read or been involved with. This is my list, if you will, of the low-hanging fruit of risk management.



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- Adherence to the APA Ethical Standards (American Psychological Association, 2010) is our most important risk management strategy, particularly since the Standards were adopted in toto by the California Board of Psychology for adjudication of complaints.
- Don't have sexual contact with anyone you've ever worked with in a helping role. The BOP rarely terminates a psychologist's ability to practice, but termination is automatic and almost always permanent for sex with a current or recent patient. Discussing feelings of attraction toward a patient with a colleague or consultant can help prevent these career-ending boundary violations. If you are keeping secrets from colleagues about your feelings for a patient, you may be in a countertransference emergency and may need consultation before your next contact with that patient.
- About 800 complaints are filed against California psychologists each year and the vast majority result in an inquiry from the BOP (Wittenberg, 2012). Work with an attorney who specializes in defending mental health professionals in California from the start when responding to a complaint against you. Start by contacting your malpractice carrier, which is likely to pay attorney fees if you have adequate coverage for board complaints. (Make sure you've checked the box on your insurance application, because this coverage isn't always automatic).
- Don't be provocative – for example, taking a defiant tone in letters – in your dealings with BOP staff regarding a complaint against you. This may seem too obvious to state, but some have made this mistake and have probably suffered; BOP staff are human and can eventually be affected by disrespectful treatment. In fact, you should ask yourself why you are interacting with the BOP at all; APAIT recommends all interactions be handled by your attorney.
- When submitting a record in response to a complaint, don't doctor it by fabricating notes, changing dates, or other fraudulent charting. This also may seem obvious, but under the stress of a complaint, people sometimes act quite differently than they do at other times. Sign up for the BOP's email updates on disciplinary actions and you will eventually see people you know to be generally ethical and sound in judgment but who got overwhelmed and made their situation worse.
- Document consent to treatment, at least in a progress note. APA Code 3.10(d) requires this, so failure to do it is automatically a violation of the standard of care.

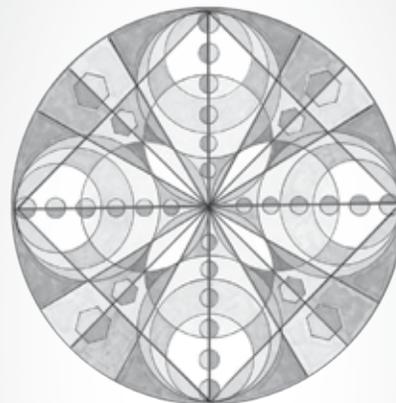
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- Apart from the last two statements, it is hard to define the low-hanging fruit of record-keeping, because keeping thorough records across an entire practice requires considerable time and effort and because it is difficult to predict what record-keeping practices will be found insufficient even to be minimally adequate. One can at least say that it is important to make contemporaneous notes documenting appropriate handling of situations with clear potential to lead to bad outcomes, such as a suicidal patient.
- Whenever you do something that may make someone angry, get all your ducks in a row and keep them that way. For instance, if a therapy patient wants you to write a letter that they should have custody of their child, explain why you can't and document the discussion; if he or she insists on a letter, consider getting written acknowledgement that it won't contain a custody recommendation.
- Discuss confidentiality of therapy information from children and adolescents with parents before the start of treatment and obtain parents' signatures on your written policy. Although therapists may have a legal option to withhold therapy information from parents, informed consent from parents may reduce the likelihood of a complaint and may make a complaint, if it is filed, considerably easier to defend.
- If you keep confidential information in electronic form (progress notes, treatment dates, patient contact information, appointment dates, etc., on a computer, mobile phone, tablet,

external hard drive, remote backup service, cloud drive, etc.), ENCRYPT it. Perhaps the most common lapse is the storage of unencrypted confidential information on personal computers. Under some circumstances, a psychologist who loses unencrypted confidential information is required by law to inform every client whose information was lost (Taube, 2011) and nothing prevents such clients from filing a complaint. Regarding potential discipline, we are aware that Ethics Code Standard 4.01 obligates us to "take reasonable precautions to protect confidential information obtained through or stored in any medium" and this might be interpreted to require encryption. Available encryption software includes TrueCrypt and PGP Whole Disk Encryption, as close to you as your next Google search.

- If you develop a drug or alcohol problem, get help quickly. A DUI, for instance, may be reported to the BOP and lead to discipline.
- Don't withhold requested records for non-payment of bills. Though permitted by the APA Code, it's prohibited under California law [Health and Safety Code 123110 (j)].
- Know what training and experience you would cite as making you competent to provide all services you list on a website. Advertised services can easily become part of materials reviewed by the BOP if a complaint is filed.
- Don't give professional opinions unless you have enough information on which to base them and the customary training for offering them. Like everything else, from a risk perspective, this becomes important in situations where someone may be unhappy enough with you to file a complaint. Child custody disputes are the classic example. Psychologists treating a child or one of the parents sometimes feel they have a professional opinion about custody and may be willing to offer it to the court. Given the growing consensus among experts that these therapists lack the information (and generally the training) needed for such opinions, such therapists are vulnerable to a complaint. ☐

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