



October 2022

More on social entropy

As leaders of the American Psychiatric Association, we received dozens of communications from members who were shocked by the discriminatory and transphobic commentary in the recent editorial “The accelerating societal entropy undermines mental health” (CURRENT PSYCHIATRY, October 2022, p. 7-8, 27, doi:10.12788/cp.0295). Many of the items on the list Dr. Nasrallah cited as “indicators” of chaos in society are ill-informed and harmful. The attack on gender nonbinary and transgender people, including children, perpetuates stigmatization of, and ongoing harm to, already vulnerable people.

Specifically, citing “lack of certainty about gender identity in children and adults” as an indicator of societal turmoil that undermines mental health is contrary to the scientific understanding of gender identity.

Physicians have professional obligations to advance patients’ well-being and do no harm.

The medical profession, including psychiatry, is at a critical juncture in coming to terms with and dismantling its longstanding history of systemic racism and discrimination. Authors and editors must be aware that harmful and divisive language negatively affects mental health, especially for people who have been subject to discrimination individually and/or as members of historically excluded and/or minoritized groups.

In publishing this editorial, CURRENT PSYCHIATRY failed in its mission to enhance patient care and advance personal development for clinicians. An apology and retraction are in order.

Rebecca W. Brendel, MD, JD, DFAPA
President
American Psychiatric Association

Saul Levin, MD, MPA, FRCP-E, FRCPsych
CEO and Medical Director
American Psychiatric Association

Disclosures

The authors report no financial relationships with any companies whose products are mentioned in this letter, or with manufacturers of competing products.

Dr. Nasrallah responds

I regret that the sentence about gender identity in my October editorial was regarded as transphobic and harmful. While the phrasing reflected my patients’ comments to me, I realize my unfortunate choice of words deeply offended individuals who are transgender, who have been subjected to ongoing discrimination and prejudice.

I apologize to our readers; to my American Psychiatric Association LGBTQAI+ friends, colleagues, and relatives; and to the LGBTQAI+ community at large. The

sentence has been deleted from the online version of my editorial. This has been a teachable moment for me.

CURRENT PSYCHIATRY has long supported LGBTQAI+ individuals and provided education for clinicians about issues related to gender and sexuality. Most recently, we published “A gender primer for psychiatrists” (CURRENT PSYCHIATRY, November 2022, p. 32-33, doi:10.12788/cp.0306). We are also working on an article for publication in a future issue about providing gender-affirming care for individuals who are gender nonbinary or transgender.

Henry A. Nasrallah, MD
Editor-In-Chief

More on psychiatric documentation

Dr. Joshi’s helpful discussion of clinical documentation strategies (“Medical record documentation: What to do, and what to avoid,” CURRENT PSYCHIATRY, October 2022, p. 46, 48, doi:10.12788/cp.0292) incisively frames the medical record as a multiuse tool for both ensuring continuity of care for the patient and demonstrating adherence to the standard of care by the clinician. In a similar vein, I hope the following general medico-legal observations may prove useful to busy psychiatric practitioners.

The mental health record may not always be as confidential as psychiatrists think (or hope) it is. The Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule, for example, generally does not distinguish between medical and mental health information, nor does it provide special rules for the latter (although certain state laws may do so). HIPAA provides added protections for “psychotherapy notes,”

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letters@currentpsychiatry.com

OR

Comments & Controversies

CURRENT PSYCHIATRY

283-299 Market Street

2 Gateway Building, 4th Floor

Newark, NJ 07102

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but this category explicitly excludes progress notes that discuss treatment modalities, diagnosis, and clinical milestones. To retain their protected status, psychotherapists' private, "desk-drawer memory joggers" must never be comingled with the patient chart.¹ For mental health professionals, this distinction underscores the importance of keeping personal details broad in the progress note; scandalous or embarrassing narratives recounted in the medical record itself are routinely accessible to the patient and may be lawfully disclosed to others under specified circumstances.

In addition to avoiding speculation and including patient quotes when appropriate, documenting objectively and nonjudgmentally means annotating facts and observations that helped the clinician arrive at their conclusion. For example, "patient appears

intoxicated" is less helpful than noting the patient's slurred speech, impaired gait and/or coordination, and alcohol odor.

Clinical care and its associated documentation are so intertwined that they can become virtually indistinguishable. In a medical malpractice case, the burden is on the plaintiff to prove their injury resulted from substandard care. Some courts, however, have held that missing or incomplete records can effectively shift the burden from the recipient to the provider of care to show that the treatment at issue was rendered non-negligently.²

Statutes of limitations restricting the amount of time in which a patient can sue after an adverse event are sometimes triggered by the date on which they knew or should have known of the alleged malpractice.³ One of the best ways of ascertaining

this date, and starting the statute of limitations clock, can be a clear annotation in the medical record that the patient was apprised of an unanticipated outcome or iatrogenic harm. In this way, a timely and thorough note can be critical not just to defending the physician's quality of care, but potentially to precluding a cognizable lawsuit altogether.

Charles G. Kels, JD
Defense Health Agency
San Antonio, Texas

Disclosures

The views expressed are those of the author and do not necessarily reflect those of any government agency, nor do they constitute individualized legal advice. The author reports no financial relationships with any companies whose products are mentioned in this letter, or with manufacturers of competing products.

References

1. 45 CFR Parts 160 and 164, Subparts A and E.
2. *Valcin v Public Health Trust*, 473 So. 2d 1297 (1984).
3. *US v Kubrick*, 444 US 111 (1979).

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