



RISK

How To Mitigate the Risk in Your Practice

NASW KS Chapter, October 28, 2023.

Presenters:



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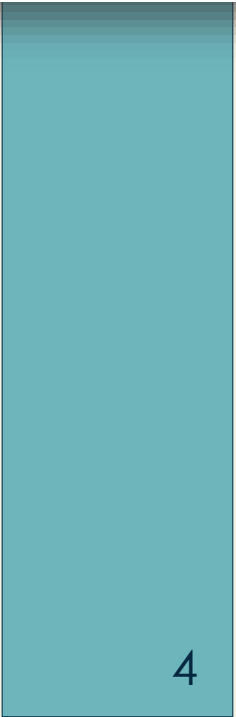
Dina Larsen, CPHRM

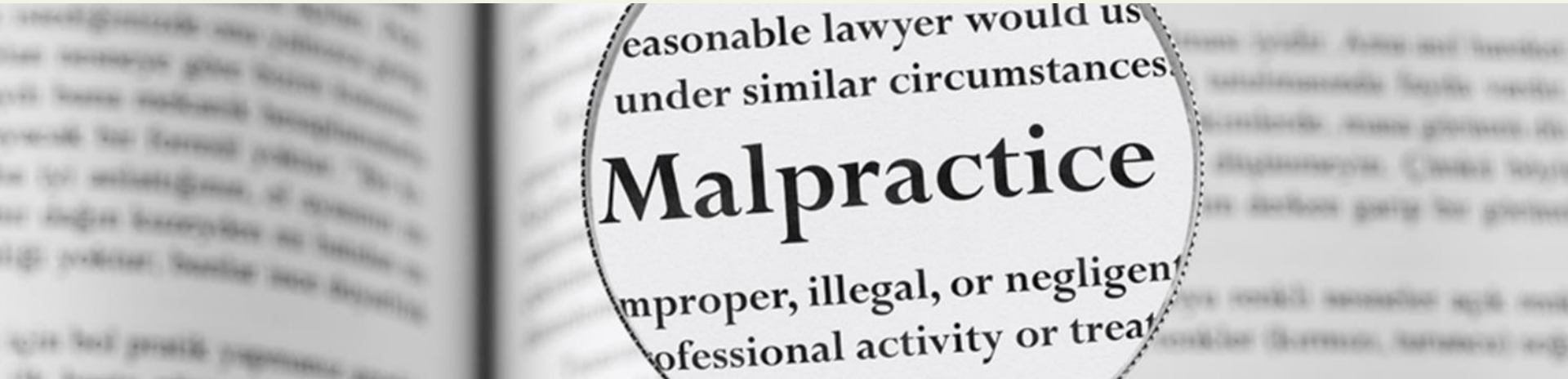
Learning Objectives:

- After this workshop, attendees will be able to:
- Recognize the inherent risk management challenges of practice.
- Review standard of practice in light of technology and the importance of following their profession's Code of Ethics and Technology Standards.
- Sharing insight regarding 'hot spots' and emerging issues in contemporary social work practice.
- Identify how to anticipate and ethically and responsibly manage unanticipated events such as incapacitation, death or a natural disaster.



Refresher on the Basics





Malpractice is a form
of professional
negligence.



Five Major Elements:

- A legal duty
- A professional's obligation to adhere to standard of care
- Breach of that duty
- Client or others suffered measurable harm or injury (Damage)
- Proximate cause



Basic



More than just “managing risk”...it means:

- Being aware
- Communicating clearly
- Managing expectations
- Documenting well



Process for Ethical Decisions

- Facts rely on timely and careful recording.
- Do not chart casually; record with precision.
- Accuracy helps resolve controversy.
- Ensure that your recording represents ethical practice.

Pay Attention to State Laws

- States have their own regulatory boards.
- Know the Standards of Professional Conduct of your State Licensing Board.
- All states mandate social workers report child abuse or neglect, and most states require them to report elder abuse or neglect.
- Most states have some form of precedent and case law governing one's duty to warn.
- Subpoenas and other legal documents have deadlines.

Protecting Privacy and Confidentiality:



- You are responsible for safe-guarding the social worker-client relationship.
- Beware of informal communications and do not provide “curbside counseling”
- Do not promise confidentiality in group sessions.

Informed Consent Is...

- Intended to guarantee clients' freedom, privacy, and safety
- Based on clients' clear understanding of the services provided
- Dependent on clients' comprehension of their individual service plans



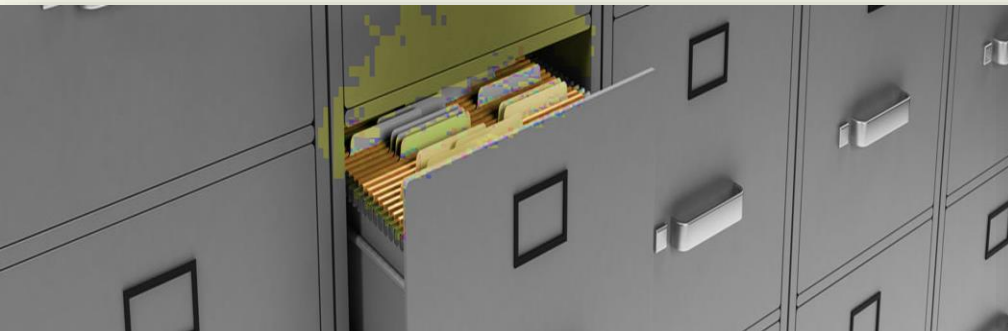


Records have two primary defense purposes,

- to document what did or did not help the client
- to document the quality of care provided to the client

Gather & Preserve the Records

- A “Record” includes all progress notes, clinical notes, correspondence, emails, text messages, and billing records.
- You should never ALTER a record.
- Make a copy of the record for the attorney and keep the original.



The Best Line of Defense is Good Documentation



- Informed consent, including agency protocol
- Consistent format
- Assessment/Diagnosis
- Treatment plan
- Session notation
- Objective
- Factual
- Concise
- Ongoing safety checks
- Compliance with state regulations

Documentation



- Be accurate and write for the external audience.
- Make sure you reflect the services provided in a legible & legal format, but not lengthy.
- Your notes should be contemporaneously recorded and carefully preserved, even after termination.



You should also keep good documentation of your education:

- continuing education credits
- information about new practice areas
- developing policies for yourself

Areas of Ongoing Concern



Hot Spots

Assessments and Evaluations

- Mandated reporting of child or elder abuse and neglect
- Potentially homicidal or suicidal cases
- Custody/parental abilities
- Suicidality





Suicide Interventions

- Be trained in and use nationally recognized assessment and protocol.
- Monitor appointment scheduling and be readily accessible upon client's arrival.
- If a no show, track down immediately to fulfill duty



Danger of Dual Relationships

Dual Relationships can:

- Blur boundaries
- Lead to exploitation by either party
- Harm the client

A good guideline: When in doubt, don't.



Of Using Technology

- NASW Code of Ethics was updated August 4, 2017 to include the use of technology in social work practice.
- All ethical standards in this Code of Ethics are applicable to interactions, relationships, or communications, whether they occur in person or with the use of technology.

Telehealth

- Practitioner competence
- Is the client a good candidate for telehealth?
- Informed Consent
- Confidentiality
- What to do in an emergency?
- Practicing across state lines





Risk of Using Social Media

- Understand the risks when using social media
- Acceptable ways to use personal media
- Four concerns when using social media
 - ✓ Client Confidentiality
 - ✓ License Issues
 - ✓ Personal Reputation
 - ✓ Casting a Negative Light on the Profession

Specific Risks of Interacting with Clients in Social Media

If you choose to use social media,

DO NOT FRIEND CLIENTS

- Violating Client Confidentiality
- Assumption of Risk and Legal Liability
- Violating Client Privacy
- Maintaining Professional Boundaries

Spousal Relationships... Precondition Agreement to

- Provide a written statement to each and all parties that explains that you, as the practitioner, are a neutral and unbiased intermediary, and that you, as a matter of fact, shall not act as an advocate for or against any party.
- Advise the parties in writing at the time of any settlement or other such agreement, to have such agreement reviewed independently by a lawyer of their choice prior to the execution of the agreement.



Spousal Relationships... Precondition Agreement to

Create a documented record of resistance to future disclosure... You must protect yourself and comply with state mandates while avoiding a contempt citation when not releasing records that are under a subpoena.



Spousal Relationship Therapy



- Make practitioner notes thorough with full documentation clarity
- Precondition therapy with agreements with all parties and in writing
- Make sure your attorney and you construct a road map and game plan in anticipation of subpoenas coming at you from battling spouses

What About



?

Anyone can be held partially accountable
for malpractice actions
of subordinates, assistants,
students, supervisees,
or sometimes even colleagues.



Supervision/ Consultation



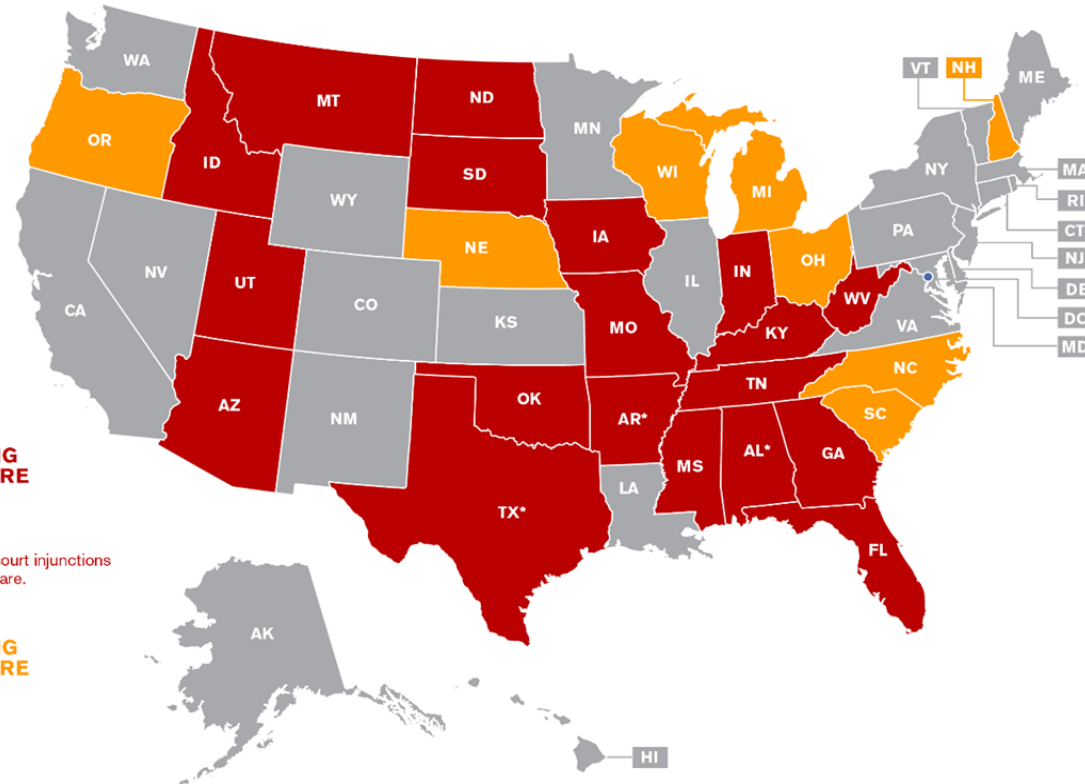
- Most Common Liabilities for Social Workers:
- Inadequate and improper supervision, or social work guidance.
- Sexual impropriety, either between supervisee and supervisor, student and instructor, or between social worker and client.

Emerging Issues





Gender-Affirming Care Bans Impacting Youth



LAW OR POLICY BANNING GENDER AFFIRMING CARE HAS PASSED UP TO AGE 18

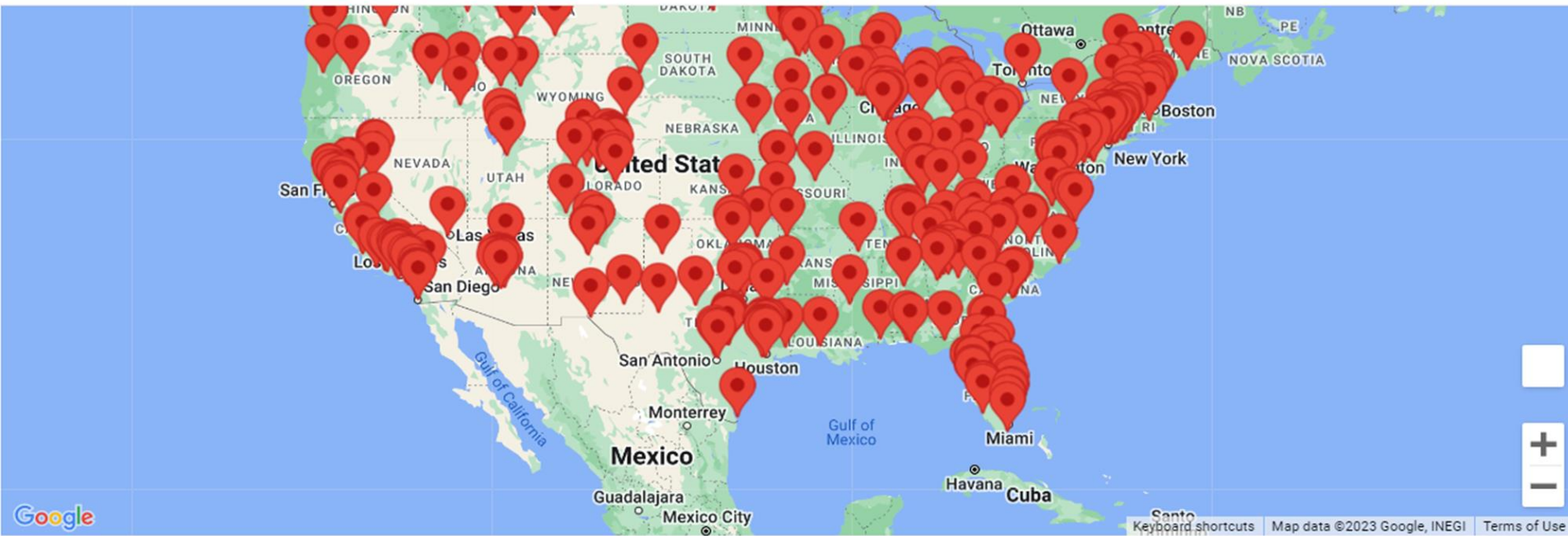
*In Alabama, Arkansas and Texas, court injunctions are ensuring continued access to care.

LAW OR POLICY BANNING GENDER AFFIRMING CARE IS BEING CONSIDERED UP TO AGE 18

Source: Human Rights Campaign Foundation

<https://www.hrc.org/resources/attacks-on-gender-affirming-care-by-state-map>

Map of Ketamine Providers



Source: The American Society of Ketamine Physicians, Psychotherapists, and Practitioners (ASKP3)

Proactive Planning

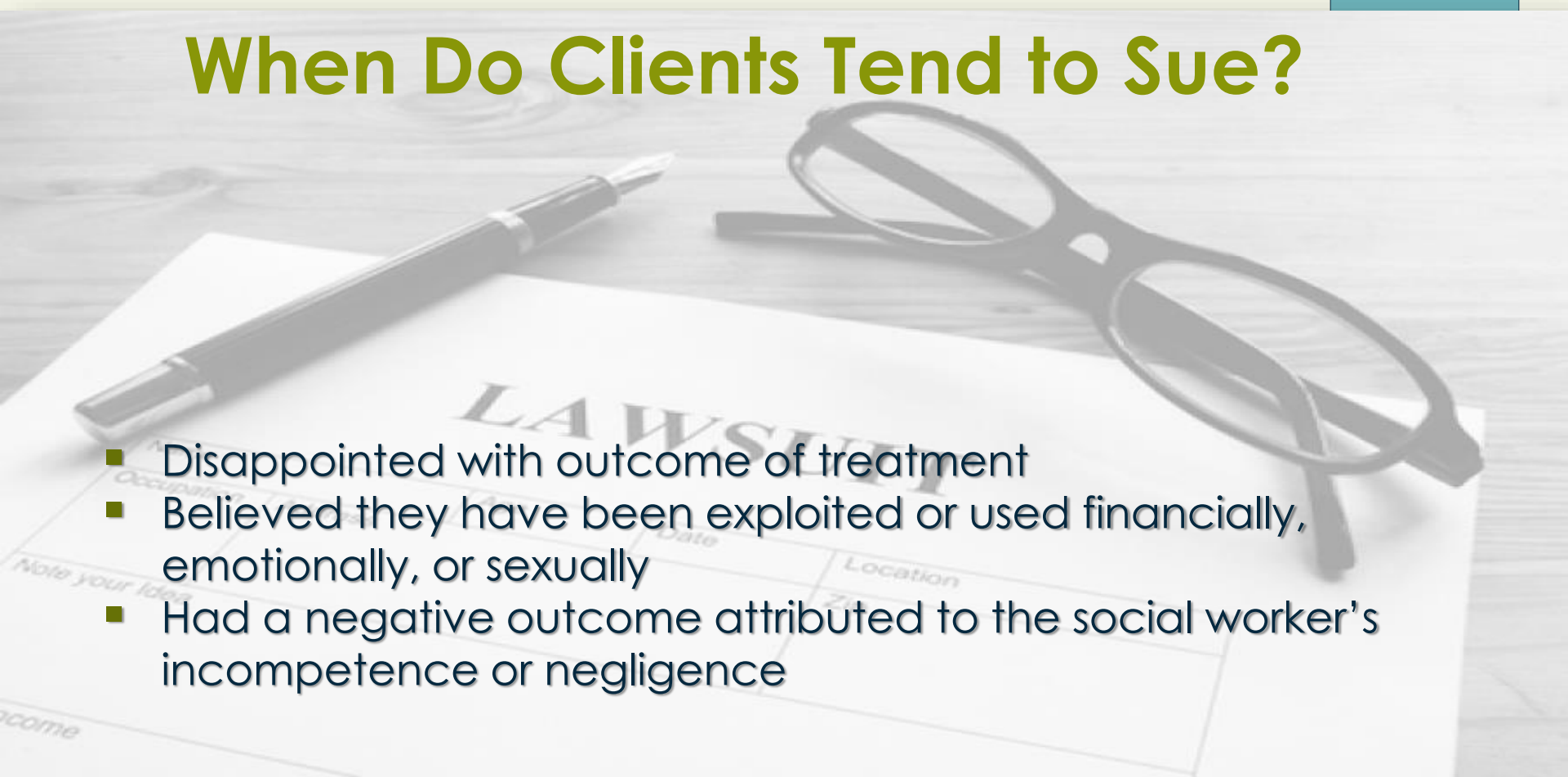
- Death
- Illness
- Natural Disaster
- Closing Practice
- Retiring



Insurance Basics



When Do Clients Tend to Sue?

- 
- Disappointed with outcome of treatment
 - Believed they have been exploited or used financially, emotionally, or sexually
 - Had a negative outcome attributed to the social worker's incompetence or negligence



If a Claim is Made Against You...

- The best thing to do is remain **CALM** and move on to the next step.
- Admit nothing and cease contact with the client (or client's attorney).
- Follow defense attorney instructions and be patient.

What Should You Report?

- **Report:**
- Lawsuits and notice of summons
- Demand for money or a threat of suit
- Subpoenas and deposition requests
- Board of Examiners or professional regulatory body letters
- Receipt of Attorney letters
- Any occurrence that gives you a “bad feeling”

Timing of reporting is crucial



Why Should I Have My Own Malpractice Insurance?

- Peace of mind as you practice as a professional social worker.
- For its portability when you change jobs.
- Does your agency's policy have sufficient coverage? You are not the policyholder!



RISK
MANAGEMENT
LOSSES
SAFEGUARD
PROTECTION
LIABILITY
ACCIDENT
POLICY
INVESTMENT



Understanding Claims-made Insurance

A claims-made insurance policy will cover you for incidents that happen between the enrollment date and expiration of your policy, but claims must be reported while the policy is in force.





Having Tail Coverage



An extended reporting coverage/protection for future claims that are made based on events that occurred during the time period your policy was in force.

Our Liability Insurance Solutions

- Professional Liability Insurance
 - ❖ Students
 - ❖ Individual Professionals
 - ❖ Business – Social Service Agencies
- General Liability
- Cyber Liability





What Sets Us Apart:



- Social Workers on the Board of Directors
- Advocacy through underwriting and claims
- Risk management HOTLINE exclusive for our policyholders
- Risk Management Education

References & Resources

- NASW Code of Ethics
<https://www.socialworkers.org/About/Ethics/Code-of-Ethics>
- Technology Standards
<https://www.socialworkers.org/Practice/NASW-Practice-Standards-Guidelines/Standards-for-Technology-in-Social-Work-Practice>
- HIPAA Breach Reporting <https://www.hhs.gov/hipaa/for-professionals/breach-notification/breach-reporting/index.html>
- NASW ASI Avoiding Malpractice Tips
<https://policyholder.naswassurance.org/avoiding-malpractice-tips/>

Time for Questions

