



Social, Legal and Ethical Issues

HDC 3600-02

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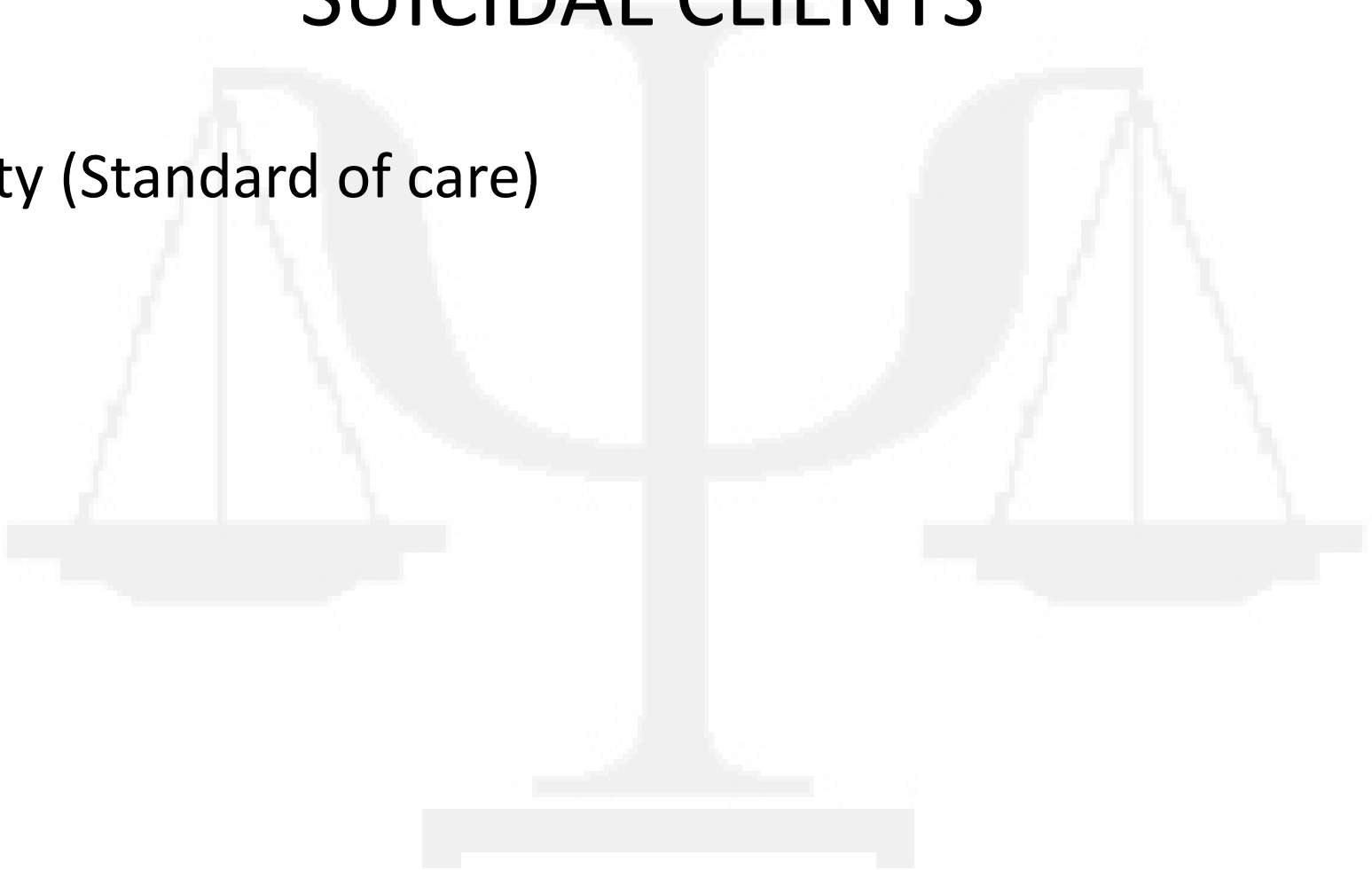
Overview: Week 3



- Suicide
 - Risk factors, risk reduction, Cases
- Custody reports, PAS
 - *Ghayoumi v McMillan*
 - *Chaffin v Ellis*
- Electronic communications
 - E-risk Guidelines
 - AMA Guidelines Electronic Communication

SUICIDAL CLIENTS

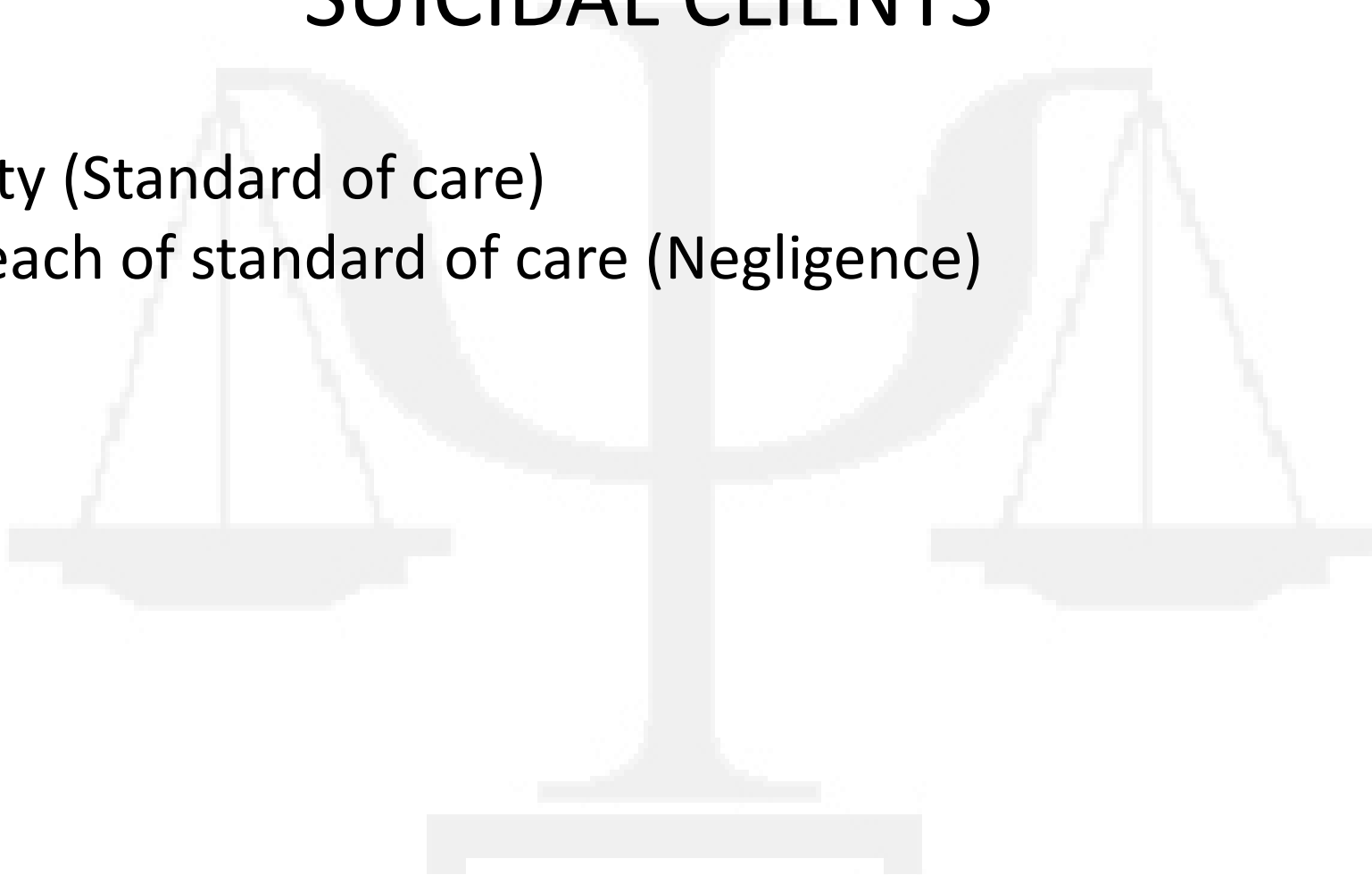
Duty (Standard of care)



SUICIDAL CLIENTS

Duty (Standard of care)

Breach of standard of care (Negligence)

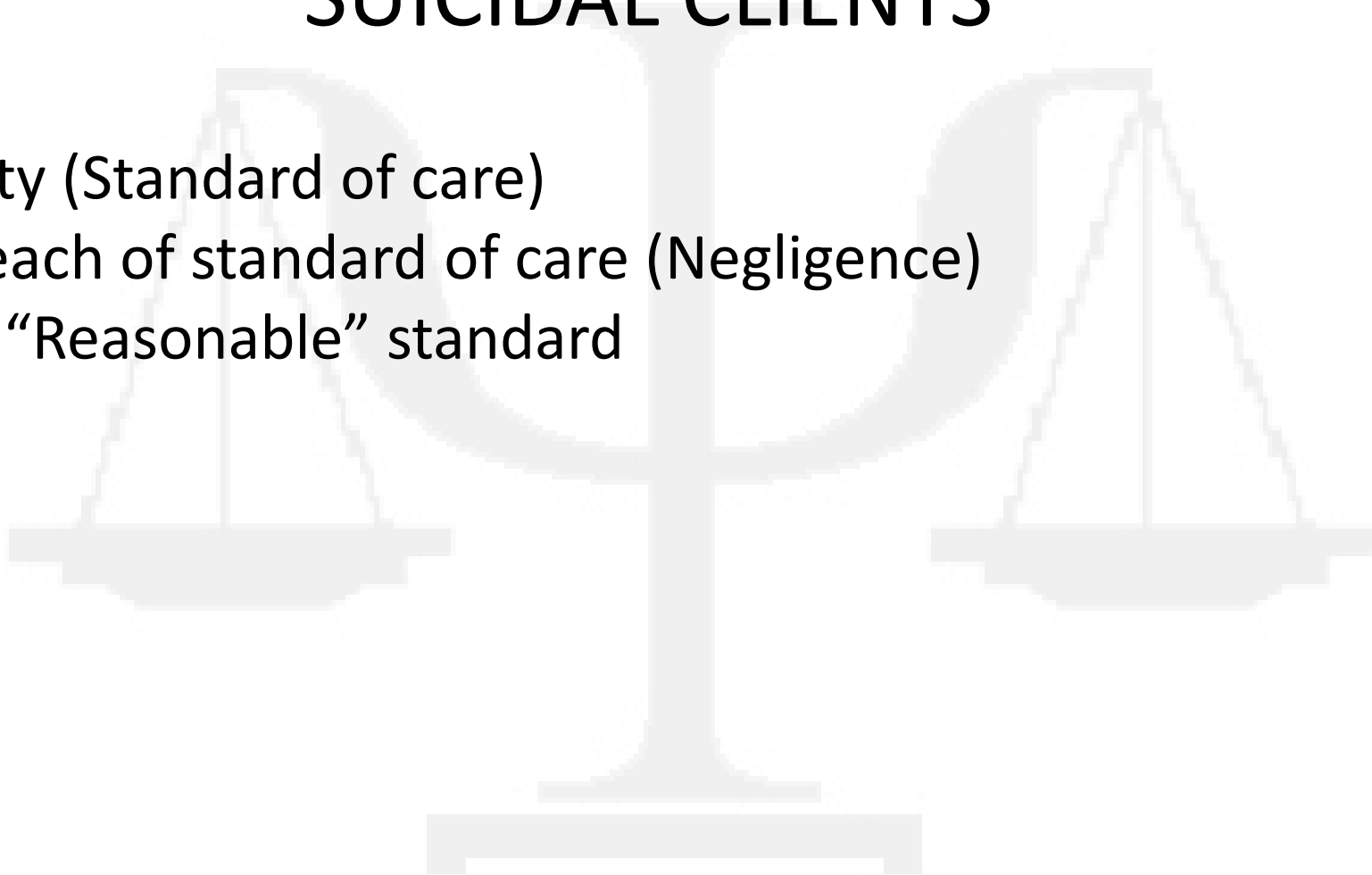


SUICIDAL CLIENTS

Duty (Standard of care)

Breach of standard of care (Negligence)

“Reasonable” standard



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Acts of commission v omission

SUICIDAL CLIENTS



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Proximate cause

SUICIDAL CLIENTS



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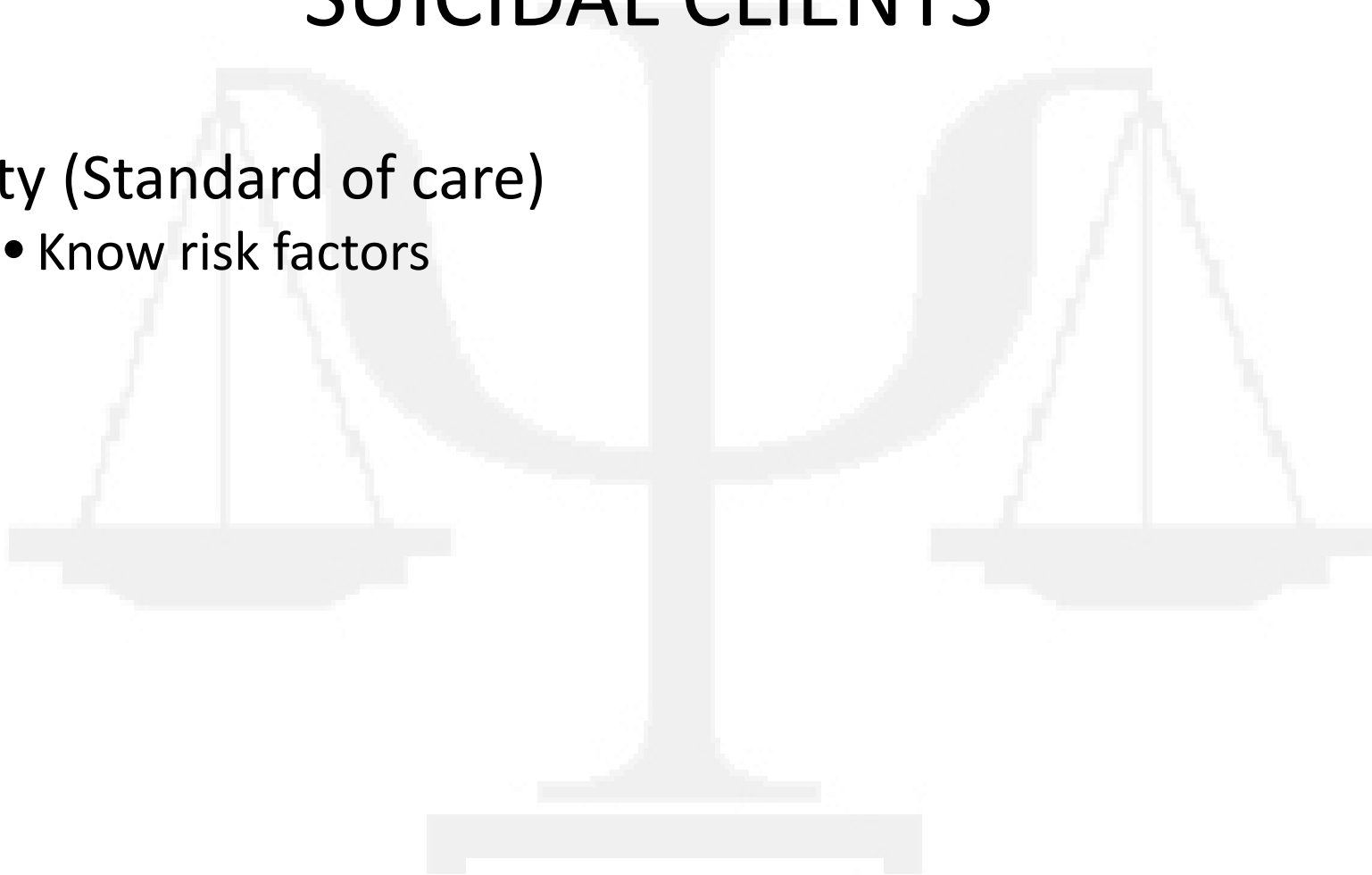
Proximate cause

Damages

SUICIDAL CLIENTS

Duty (Standard of care)

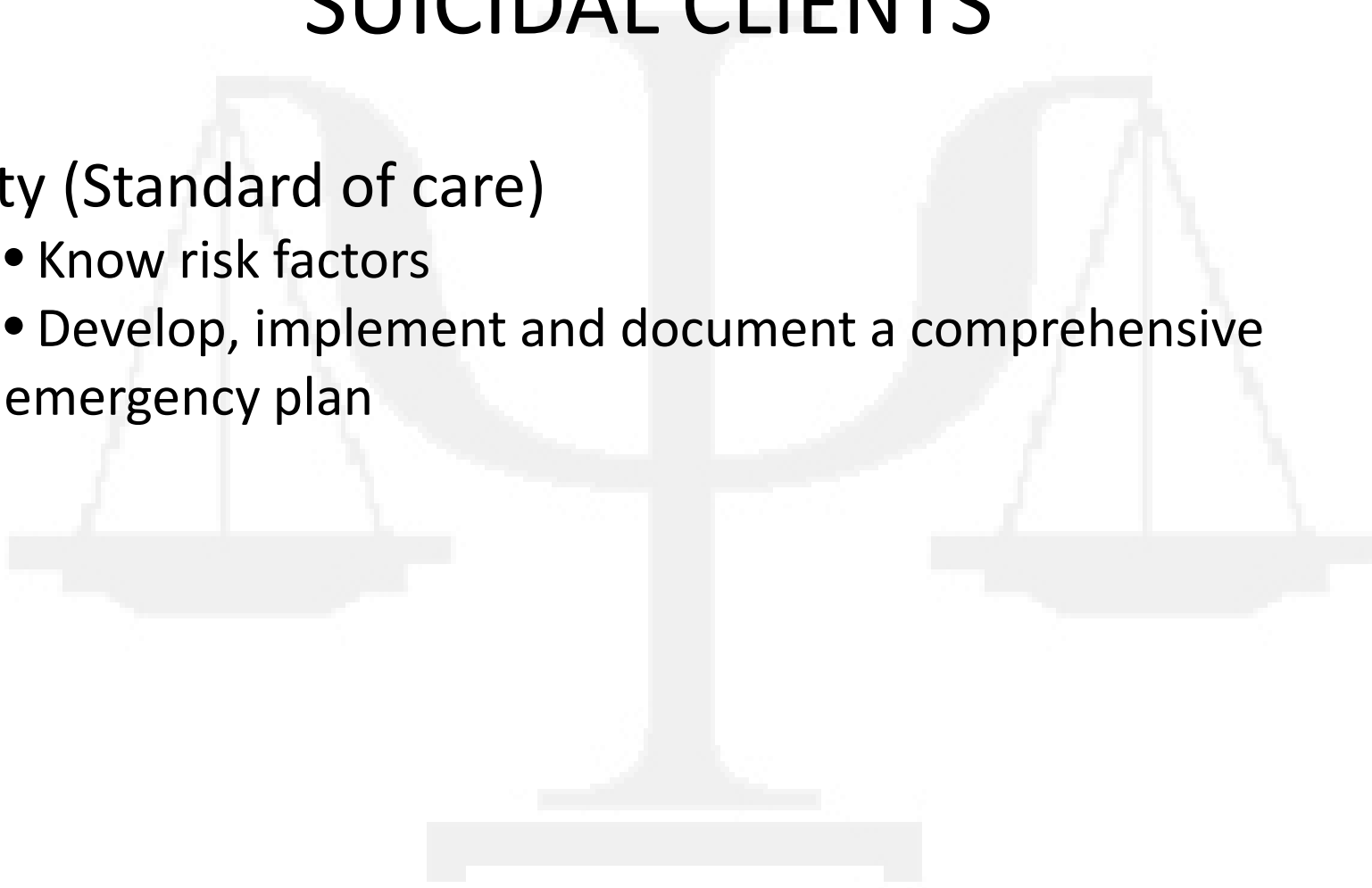
- Know risk factors



SUICIDAL CLIENTS

Duty (Standard of care)

- Know risk factors
- Develop, implement and document a comprehensive emergency plan



SUICIDAL CLIENTS



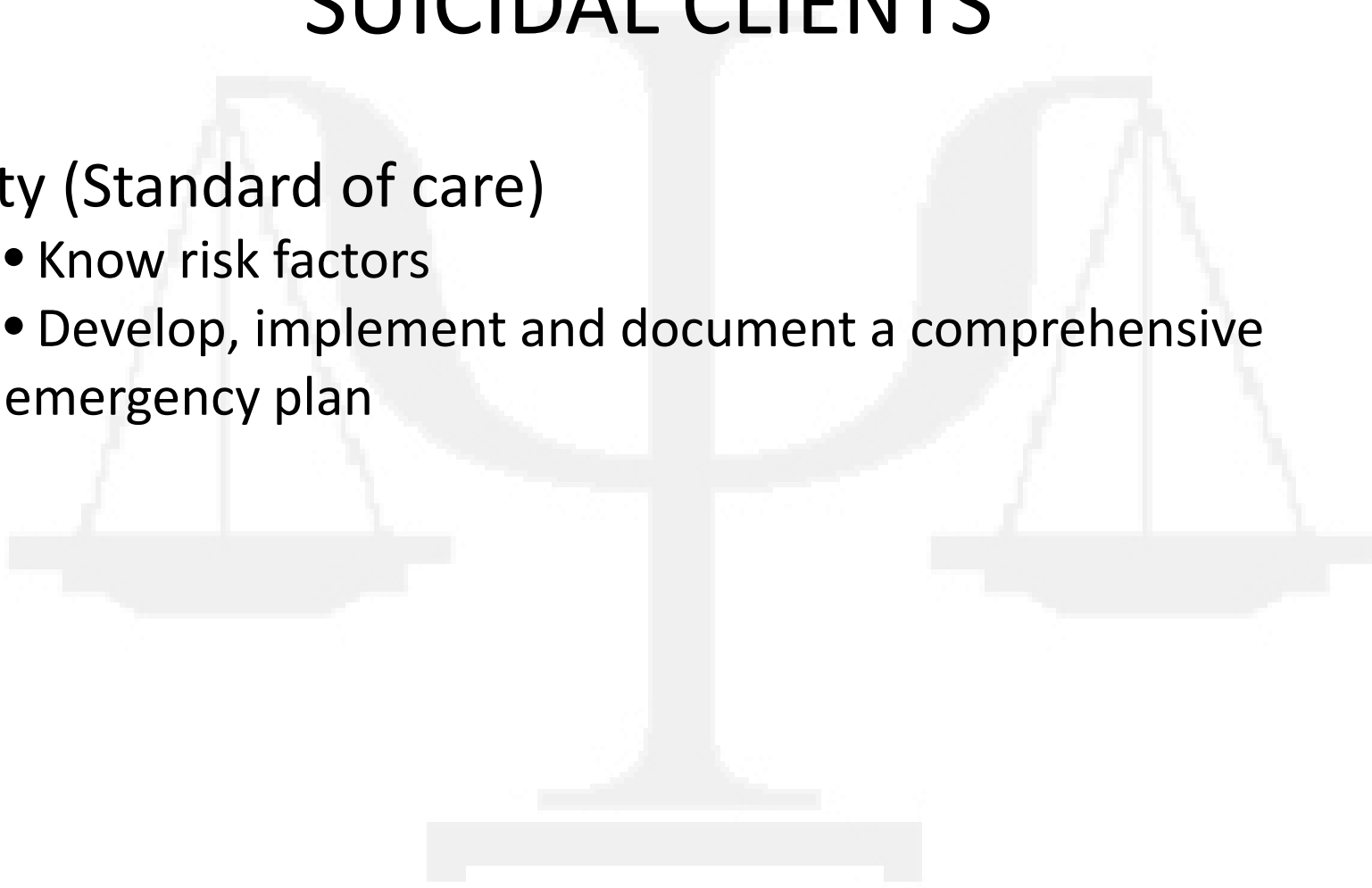
Duty (Standard of care)

- Know risk factors
 - APA (<http://www.apa.org/monitor/feb00/suicide.html>)
 - Suicide Prevention Resource Center (<http://www.sprc.org>)
 - In [handout](#)

SUICIDAL CLIENTS

Duty (Standard of care)

- Know risk factors
- Develop, implement and document a comprehensive emergency plan



SUICIDAL CLIENTS

Duty (Standard of care)

- Know risk factors
- Develop, implement and document a comprehensive emergency plan
 1. Consider criteria for involuntary hospitalization
 2. Offer voluntary hospitalization
 3. Offer referral for medication and/or adjustment of medication
 4. Offer increased counseling sessions
 5. Offer emergency contact numbers and back up numbers
 6. Contract for non-suicide
 7. Arrange for contact with client in between counseling sessions
 8. Structure activities and contacts with others

SUICIDAL CLIENTS

Stepakoff v Kantor: (393 Mass. 836 1985)

Husband has been suicidal in past but treated by Dr. Kantor for 15 months. Wife decides to divorce and tells Dr. Kantor that this is going to happen. Kantor has an emergency meeting with Husband. Kantor goes on vacation 2 days after wife's warning. Found not negligent because

1. Husband did not meet the legal standard for involuntary hospitalization
2. A treatment plan was developed to care for Husband at emergency meeting

SUICIDAL CLIENTS

Bates v Denny: (No. 89 CA 0401 1990)

Bates was chronically suicidal. Was sent to the ER after falling down flight of stairs. Mother told ER physician about recent suicide attempts. ER evaluated him and ultimately discharged him home, telling the family to keep a close eye on him and remove weapons. Bates died next day from self inflicted GSW to head.

MD found not negligent because:

1. Bates was not actively suicidal evaluation
2. Not psychotic
3. Could not involuntarily hold him
4. Scheduled a follow-up appointment
5. Informed the family of his needs

SUICIDAL CLIENTS

[Atkinson v St. of Tennessee](#): (TN Court of Appeals, 2010) No expert testimony was offered to establish the standard of care in addressing suicidal inmates. Case was dismissed. They cited another case, *Cockrum v. State* 1992 case:

“These precautions included increased observation, cell searches, increased restraints, increased medication, removal of potentially harmful objects, and the use of paper clothing”

SUICIDAL CLIENTS

Harris v Jain: (TN Court of Appeals, 2009)

In order for the plaintiff to get to trial, they have to provide an expert witness that can testify to what the standard of care is, and that the defendant breached that standard. The expert must be from TN or an adjoining state, must be familiar with the standard of care in the community, and standard of care of a similar professional like the defendant. Here they used an internist to testify against a pediatric psychiatrist.

SUICIDAL CLIENTS



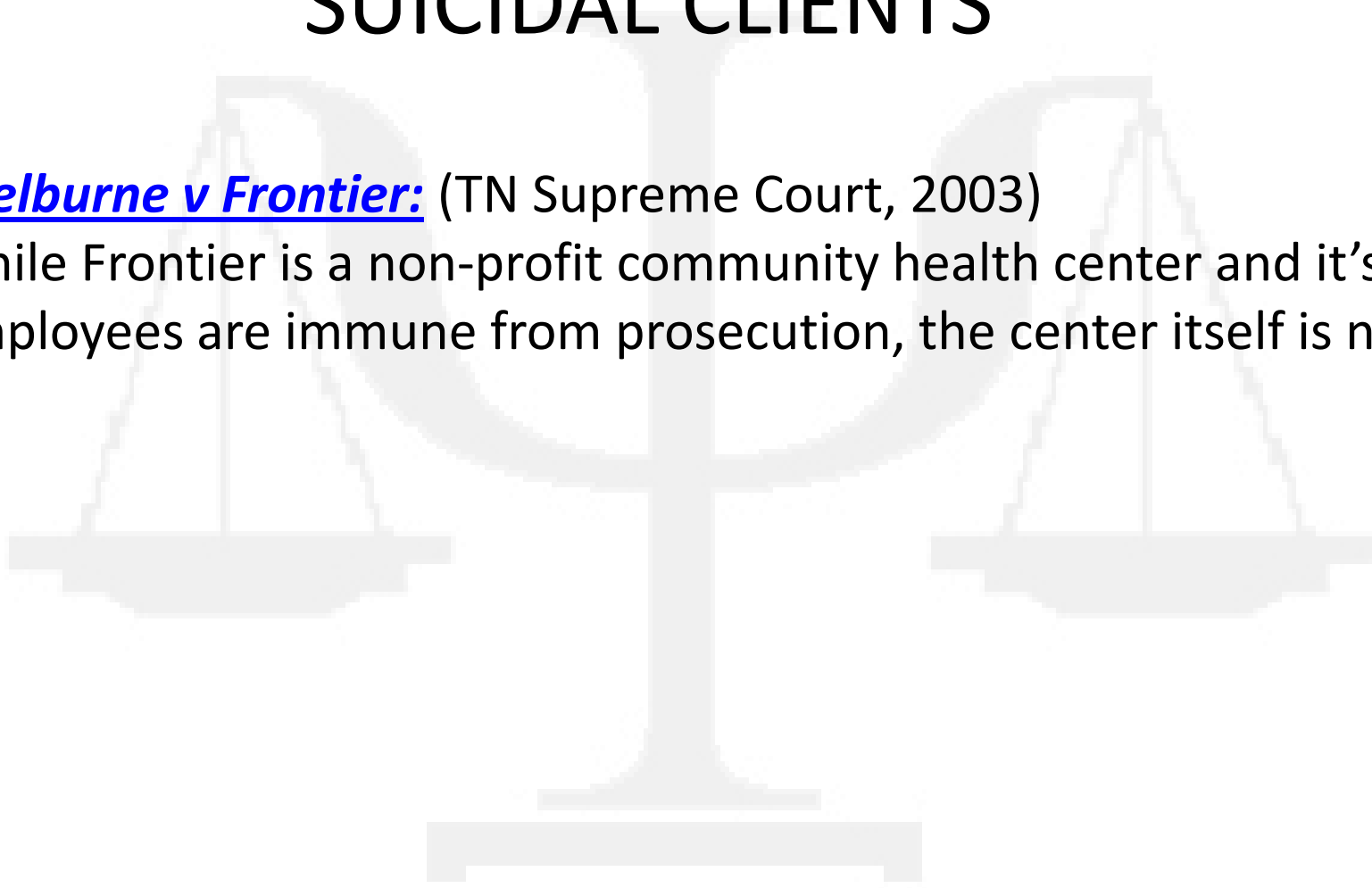
Drake v Williams: (TN Court of Appeals, 2008)

Suicide itself is not a “superseding, intervening cause”; cited case where client was “prematurely discharged in light of his continuing active suicidal ideation, based on improper considerations of insurance coverage, and an inappropriate reliance on his non-suicide contract with his parents.”

SUICIDAL CLIENTS

Shelburne v Frontier: (TN Supreme Court, 2003)

While Frontier is a non-profit community health center and its employees are immune from prosecution, the center itself is not.



SUICIDAL CLIENTS

[Vickroy v Pathways](#): (TN Court of Appeals, 2004)

Don't sign a commitment paper unless you personally have examined the client.

“the physician, psychologist, or designated professional shall immediately examine the person and decide whether the person is subject to admission to a hospital or treatment resource under Section 33-6-403” and noted that his acts “we construe as a claim for false imprisonment” and “denial of due process”.
Sought \$4,500,000.

Custody Evaluations



“Critical review of Child Custody Evaluation Reports”, Family Court Review Vol. 40 No 2, April 2002

“Child Custody Cases: A Content Analysis of Evaluations and Practice” Professional Psychology: Research and Practice 2002: Vol. 33 No 6, 557-565

Tennessee Cases

Custody Evaluations



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Custody Evaluations



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5. Observation of parent-child interaction (76%)

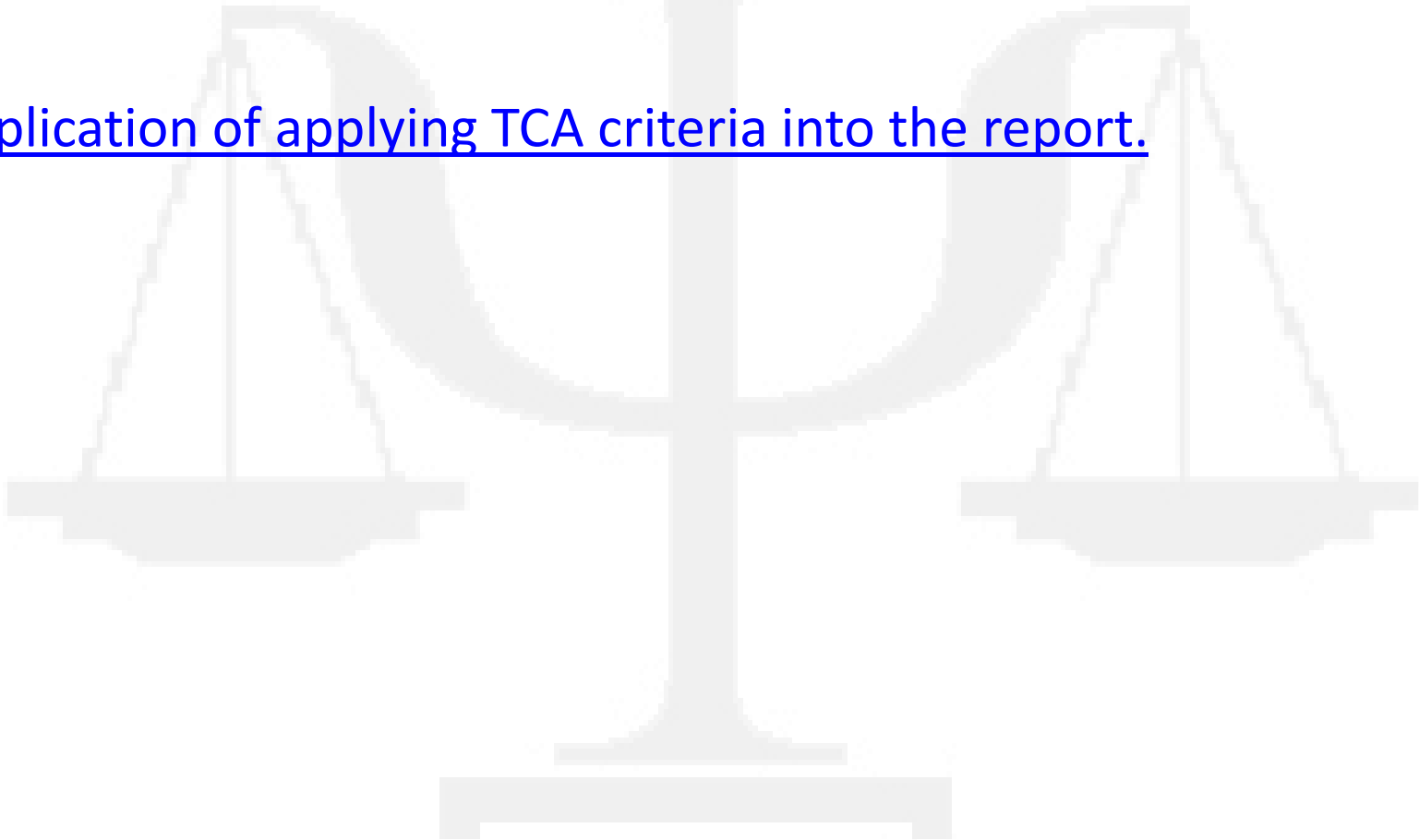
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6. Reports too long and narrative doesn't fit the criteria

Custody Evaluations

[Application of applying TCA criteria into the report.](#)



Custody Evaluations



[“Child Custody Cases: A Content Analysis of Evaluations and Practice”](#) Professional Psychology: Research and Practice 2002:
Vol. 33 No 6, 557-565

Table 1: Guidelines

Table 2: % Evaluations that followed recommendations

Table 3: Friend of Court evals much different from private

Custody Evaluations



Schroedel v Bumgarner: (TN Court of Appeals, 2010)

Mother sought more time with minor child and employed Sr. Psych Examiner to evaluate Mother and Stepfather who were accused of being abusive. MMPI, interviews (4 hrs), and called DCS re abuse allegations. Court didn't comment on evaluation but did not substantially change the parenting arrangement.

Custody Evaluations



Keller v Keller: (TN Court of Appeals, 2008) Here the Father took the minor to a psychologist who testified that Mother's frequent moves was created a material change in circumstances. The trial court did not agree. The Mother did not provide expert testimony so the Appellant Court overruled the Trial Court.

Bottom line: better to have a court ordered evaluation, but don't go to court with only one side having an expert.

Custody Evaluations



In re Madison N.J.M.: (TN Court of Appeals, 2008) Case where grandmother was the primary custodial parent d/t mother's neglect. Father instituted proceedings to gain more parenting time. Court order co-parenting therapy for the grandmother-Father "parents."

Custody Evaluations



Gentile v Gentile: (TN Court of Appeals, 2010) Court ordered on its own a forensic parenting assessment which involved a psychiatrist and psychologist team. Father hired his own psychologists who did not meet with the parties or the minor. Court gave more credibility to the court-ordered evaluation.

Custody Evaluations

Everett v Everett: (TN Court of Appeals, 2009) Knoxville case. They utilize a Special Master who court-ordered a custody evaluation. The parties had filed exceptions to the Master's report. At trial, judge admitted he had not read the transcript of the Master's hearing, including the testimony of the psychologist. He did read report only. Trial court erred in not reading the testimony of the psychologist and merely relying on the report.

Custody Evaluations



Covill v Covill: (TN Court of Appeals, 2009) Hamilton County. Court-ordered psychologist spent 19 hrs evaluating parties, utilized the ASPECT test. Father had been PRP and continuation of this was the recommendation. Mother hired psychologists to review the report. She attacked the ASPECT but the court agreed with the court-ordered psychologist.

Custody Evaluations



Cone v Cone: (TN Court of Appeals, 2010) Robertson County. Mother accused Father of sexual abuse on numerous occasions, all unfounded by DCS. Mother got a TRO based on new allegations. GAL ordered psych evaluation of all parties and minor. They found no sexual abuse. Mother employed psychologist who reviewed records. Court based decision on work of GAL-appointed evaluators.

Custody Evaluations

[Chaffin v Ellis](#): (TN Court of Appeals, 2005) Williamson County Good read. Court appointed psychologist and Father also employed two psychologists; all did evaluations. Court-ordered psychologist did not testify at trial. Mother also hired a psychiatrist to testify about her emotional condition. Father sued judge, her attorney, the supervising entity, and court-ordered psychologist. Case dismissed but Father had to pay \$92,000 in attorney fees to the defendants.

Custody Evaluations

Burden v Burden: (TN Court of Appeals, 2007) Knoxville Case. Parties had a week-to-week arrangement. Here the Father selected psychologist and Mother consented. Psychologist evaluated the parties and submitted report but did not testify. No objection was made and no other expert testified. Evaluation favored the Mother. Court ignored it and left the visitation “as is.” Appeals Court took great exception to judge’s ignoring psychologist recommendations in the absence of an other expert and not citing evidence why.

Custody Evaluations

[Adams v Adams](#): (TN Court of Appeals, 2008) Gibson County. Father sought change of custody. Psychologist evaluated mother, father and his new wife, the minor children, and conducted collateral interviews. 33-page report. Brickland Perceptual Scales to children to see how they perceived parents and stated results coincide with Court's opinion in 97% of time. While results favored mother, father was awarded the change in custody, with the psychologist not making a recommendation.

Bricklin Perceptual Scales™ (BPS™)

by Barry Bricklin, Ph.D.

Since its publication in 1984 the BPS has become the premier custody evaluation test in use today. It has been administered more than 50,000 times, used in all 50 states, and accepted and relied upon by courts throughout the United States and Canada.

This unique and efficient data-based test is widely used by professionals who must make decisions regarding child custody. The Bricklin Perceptual Scales (BPS) is designed primarily for children who are at least 6 years old. The test assesses the child's perception of his or her parents in four major areas: Competence, Follow-up Consistency, Supportiveness, and Possession of Admirable Personality Traits.

The child responds to two sets of parallel questions, 32 pertaining to the mother and 32 to the father. Each question is printed on a separate card. On the back of each card is a response continuum—a long black line with a “Very Well” printed at one end and “Not so Well” at the other. The examiner reads the question, and the child gives a spoken response. The examiner then asks the same question, worded a little differently, and the child answers by punching a hole in the card somewhere along the response continuum. This second response, considered the more important of the two, reflects the child's nonverbal assessment of the parent in question.

BPS results have been validated against the decisions of independent mental health professionals, opinions of courtroom judges, and scores on the Perception-of-Relationships Test.

Custody Evaluations



Ghayoumi v McMillan: (TN Court of Appeals, 2006)

Court-ordered evaluators have absolute judicial immunity from prosecution to “be free from intimidation and harassment by a dissatisfied litigant.”

Non Face-to-Face Counseling

Email contacts



Non Face-to-Face Counseling

Email contacts

Chat-based contacts/treatment



Non Face-to-Face Counseling

Email contacts

Chat-based contacts/treatment

Telephone-based therapy



Non Face-to-Face Counseling

Email contacts

Chat-based contacts/treatment

Telephone-based therapy

Skype or video-based contacts



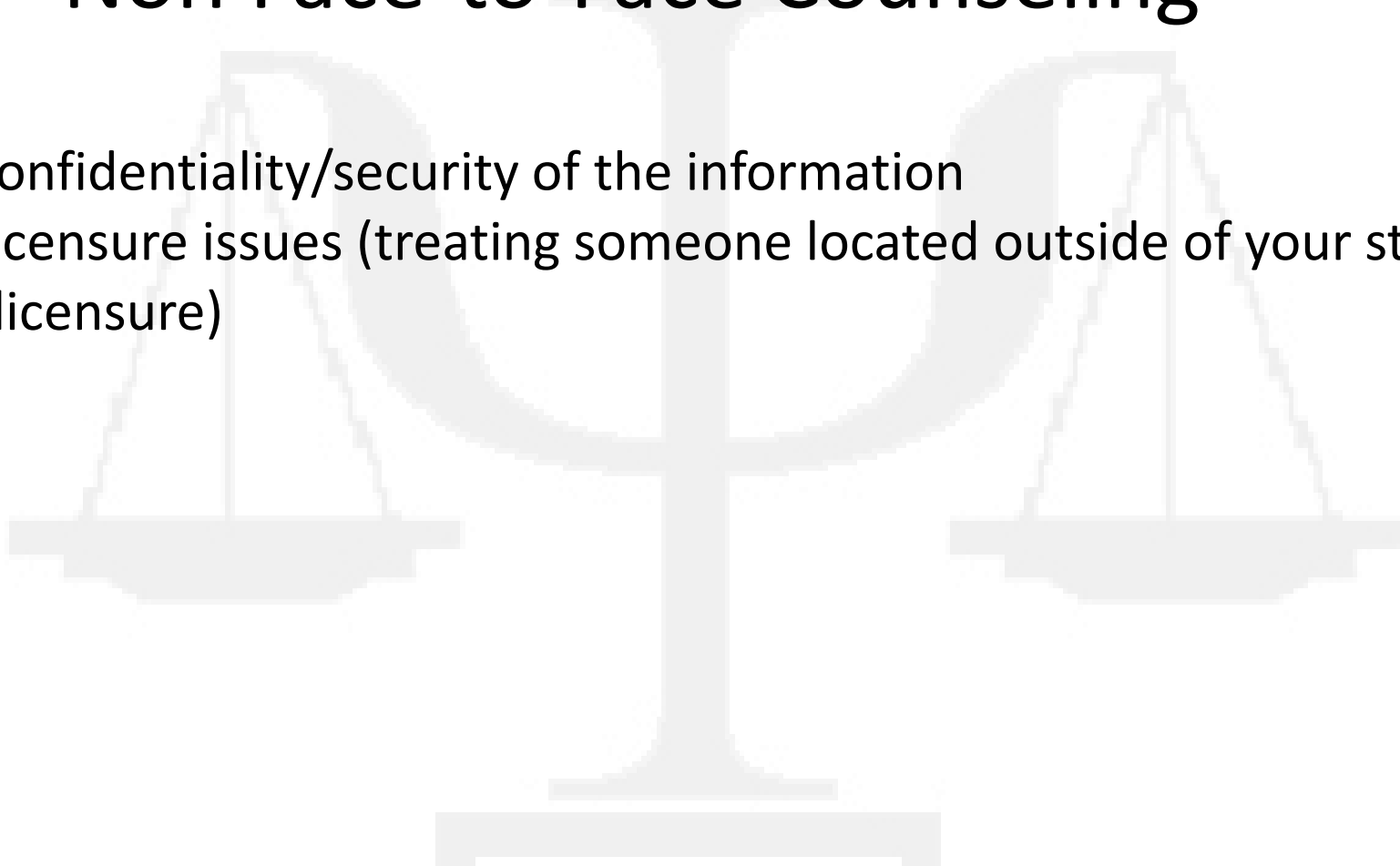
Non Face-to-Face Counseling

- Confidentiality/security of the information



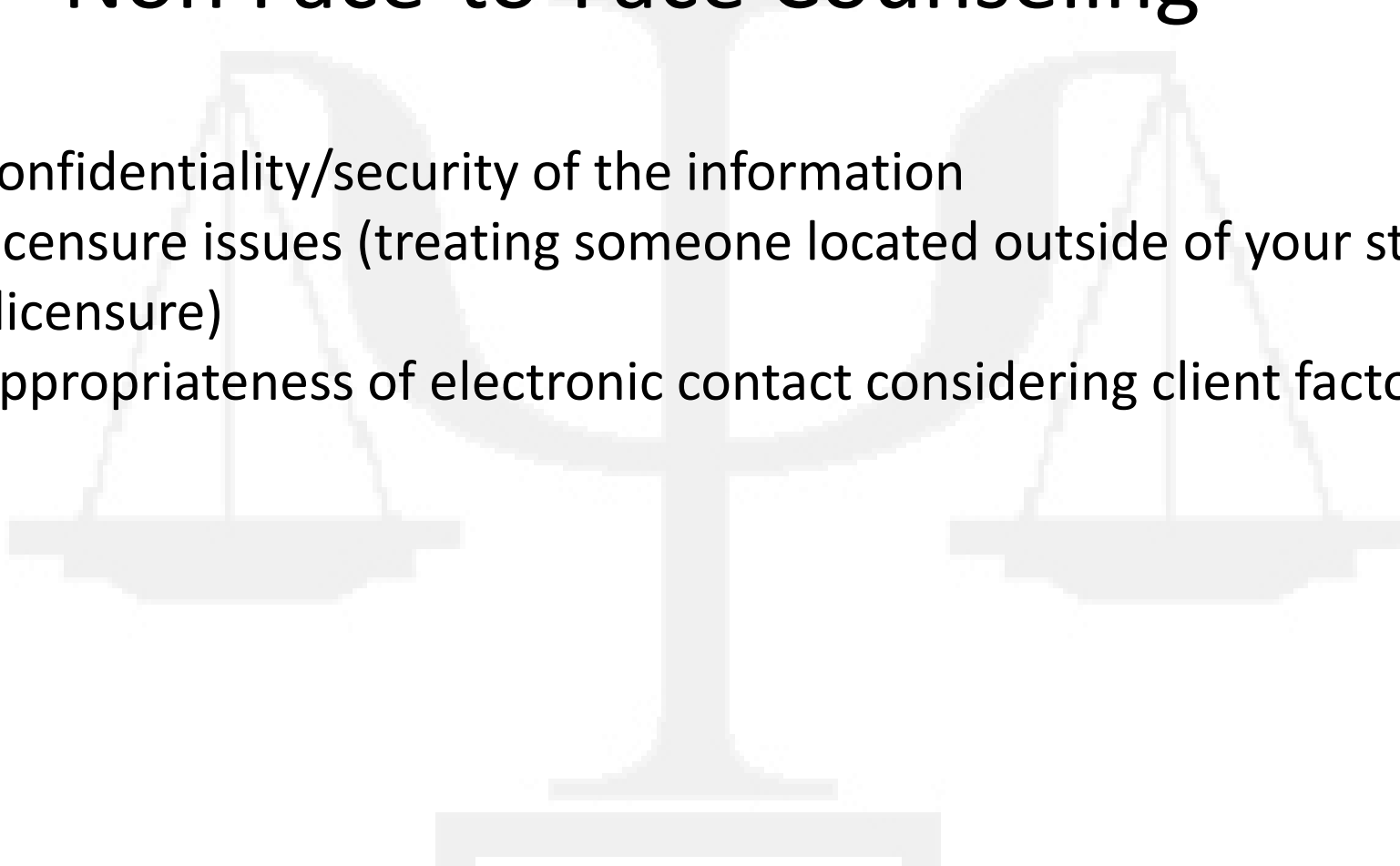
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- Licensure issues (treating someone located outside of your state of licensure)



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- Appropriateness of electronic contact considering client factors



Non Face-to-Face Counseling

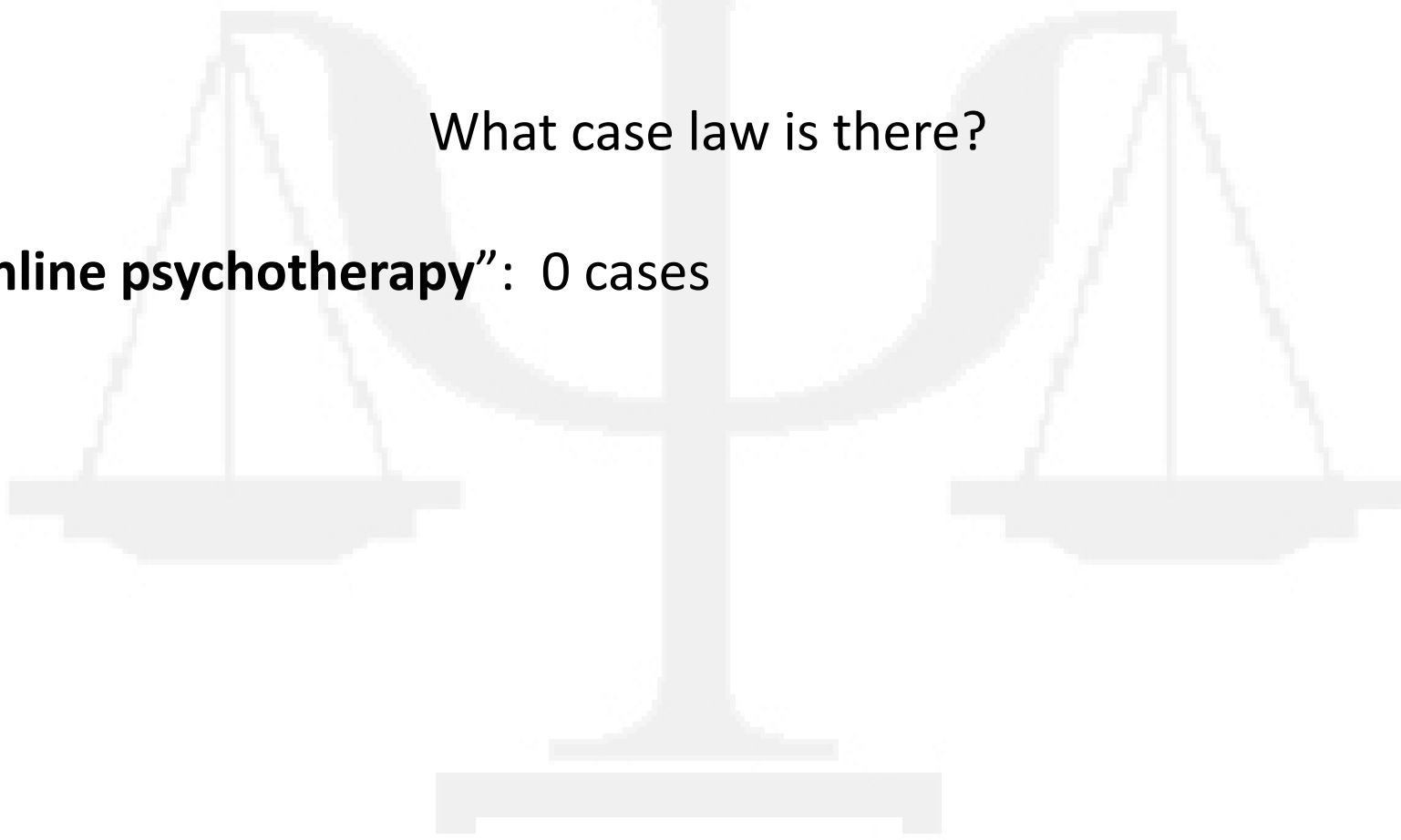


- Confidentiality/security of the information
- Licensure issues (treating someone located outside of your state of licensure)
- Appropriateness of electronic contact considering client factors
- Therapist factors (training, skill with electronic communication, expertise in handling technology)

Non Face-to-Face Counseling

What case law is there?

“online psychotherapy”: 0 cases



Non Face-to-Face Counseling



What case law is there?

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“online counseling”: 0 cases

Non Face-to-Face Counseling



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“email” AND “psychotherapy”: 16 cases; 1 involved subpoena of records including emails between psychologist who performed a court-ordered evaluation and one of the parents evaluated

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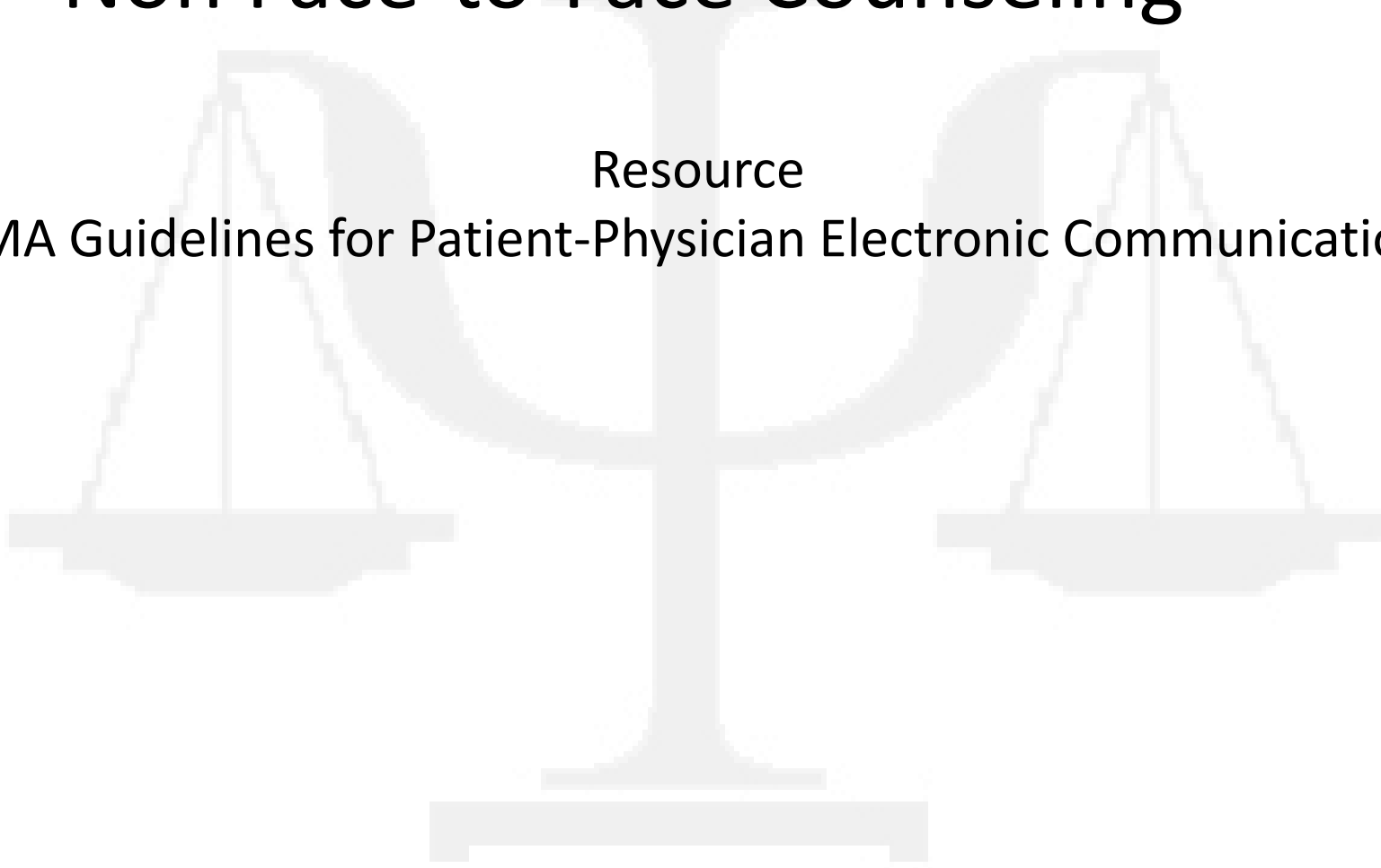
“email” AND “psychotherapy”: 16 cases; 1 involved subpoena of records including emails between psychologist who performed a court-ordered evaluation and one of the parents evaluated

“telepsychiatry”: 3 cases; 2 dealt with a governmental breach of duty in selecting a telepsychiatry; the other was a sex offender evaluation done in a one-hour telepsychiatry session.

Non Face-to-Face Counseling

Resource

AMA Guidelines for Patient-Physician Electronic Communications





Legal Issues Frequently Encountered for the Practitioner

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