Preparing for Risk in Behavioral Health Care – This stuff isn’t made up – HR maybe the highest risk!

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Jerry A. Jenkins, M.Ed., LADAC, MAC

Preparation for Risk in Behavioral Health Care – This stuff isn’t made up – HR maybe the highest risk!

Welcome
Objectives
Presentation Format - Vignettes

It is not uncommon for clinical and administrative staff to aspire to leadership positions – program director, chief of operations, chief of compliance, HR director, Executive Director/CEO or similar roles and responsibilities. College courses and majors along with workshops, seminars, webinars, books and other educational tools are used to help prepare for the ever-changing area of managing and leading people. Is human resources and the managing of people the highest-risk venture in behavioral healthcare?

Many assume it is clinical work. This workshop will focus on HR using real examples of the breadth of issues that may arise at any time. Emphasis will be on the need to be attuned to legal precedents and the regulatory environment throughout employment processes.

Presented by:
Jerry A. Jenkins, MEd, LADAC, MAC
Preparing for Risk in Behavioral Health Care – This stuff isn’t made up – HR maybe the highest risk! Check out recent news - Kentucky.

The former director of materials management at Three Rivers Medical Center in Louisa, Ky., pleaded guilty March 1 to mail fraud and admitted stealing more than $781,000 worth of medical and office supplies from the hospital, according to the Lexington Herald Leader.

Lashea Hudnall, the former director of materials management at the 90-bed hospital, pleaded guilty more than two years after she was arrested and charged with stealing supplies from the facility. Ms. Hudnall admitted in her plea agreement that she took medical supplies and office equipment from the hospital and sold them online between January 2014 and August 2015, according to the report.

Ms. Hudnall sold at least $781,099 in supplies she stole from the hospital to buyers in the U.S. and China, according to court documents cited by the Herald Leader.

Ms. Hudnall is scheduled to be sentenced in June. She faces a maximum sentence of 20 years in prison.

Preparing for Risk in Behavioral Health Care – This stuff isn’t made up – HR maybe the highest risk! Check out recent news - Oregon.

Bay Area Hospital in Coos Bay, Ore., fired newly hired COO Larry Butler Jr. after five days of employment and learning of his criminal history. Mr. Butler was named COO of the hospital in May. He was employed four days before the criminal history was discovered, hospital spokesperson Kim Winker told Becker’s.

“He was immediately terminated upon learning about [his] background,” she said. In August 2015, Mr. Butler was sentenced to five years in federal prison for defrauding two of his former employers, according to the Justice Department.

Mr. Butler was convicted of wire fraud and false representation of a federal benefit number. The Justice Department said he used false credentials, a false Social Security number and other false documentation to defraud Metairie-based Louisiana Health Cooperative and Baton Rouge, La.-based Mary Bird Perkins Cancer Center. He also used company credit cards to pay for personal expenses, according to the Justice Department.

Mr. Butler was placed on suspension after the hospital learned of potential issues and fired upon learning about his criminal background. During Mr. Butler’s employment, the hospital verified that no patient protected health information was accessed and he never had access to employees’ sensitive personal information, according to the hospital statement.

Although there is no indication sensitive information was breached, the hospital said it is conducting a audit of its systems "to ensure that all patient data has been maintained in full and strict confidence."
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The former director of risk management at West Tennessee Healthcare has been sentenced to 18 months in prison for wire fraud.

Melanie Haste allegedly engaged in a fraud scheme that allowed her to steal hundreds of thousands of dollars from the Jackson, Tenn-based system, the Jackson Sun reported June 17. An investigation revealed that $375,000 was stolen or was attempted to be stolen by Ms. Haste over a three-year period, according to WBBJ.

Ms. Haste was sentenced after pleading guilty to one count of wire fraud in January. In addition to the prison term, the court ordered Ms. Haste to pay more than $209,000 in restitution to West Tennessee Healthcare.

Prepared for Risk in Behavioral Health Care – This stuff isn’t made up – HR maybe the highest risk! – Objectives

Objective 1
List at least three (3) regulatory bodies impacting human resources policies and procedures in behavioral health.

Objective 2
Describe the importance of primary source verifications, background checks and detailed references.

Objective 3
Explain the role of legal consultation in human resources related matters.

Preparing for Risk in Behavioral Health Care – This stuff isn’t made up – HR maybe the highest risk! – Regulatory bodies impacting behavioral health

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Preparing for Risk in Behavioral Health Care – HR may be the highest risk! – Regulatory bodies impacting behavioral health

Mission: To foster, promote, and develop the well-being of the wage earners, job seekers, and retirees of the United States; improve working conditions; advance opportunities for profitable employment; and assure work-related benefits and rights. (https://www.dol.gov/general/aboutdol)

- Employee Retirement Income Security Act (ERISA) by Employee Benefits Security Administration
- Davis-Bacon Act – also called Davis-Bacon wage determinations for construction projects with federal funding over $2k.
- Family and Medical Leave Act (FMLA)*
- Fair Labor Standards Act (FLSA)
- Occupational Safety and Health Act (OSHA)
- Americans with Disabilities Act (ADA)*

The U.S. Equal Employment Opportunity Commission (EEOC) is responsible for enforcing federal laws that make it illegal to discriminate against a job applicant or an employee because of the person's race, color, religion, sex (including pregnancy, transgender status, and sexual orientation), national origin, age (40 or older), disability or genetic information.

Most employers with at least 15 employees are covered by EEOC laws (20 employees in age discrimination cases). Most labor unions and employment agencies are also covered. The laws apply to all types of work situations, including hiring, firing, promotions, harassment*, training, wages, and benefits. https://www.eeoc.gov/overview

The IRS is a bureau of the Department of the Treasury and one of the world's most efficient tax administrators. https://www.irs.gov/about-irs/the-agency-its-mission-and-statutory-authority
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Others:
- US Department of Commerce – National Institute of Standards and Technology (NIST) (IT security)
- US Department of Defense – TRICARE as well as contracts with DOD
- US Department of Education – if you have a residential educational component
- US Housing and Urban Development (HUD) – Grants and vouchers e.g., Community Development Block Grants (CDBG); Section 8, McKinney-Vento Homeless Assistance Act; Veterans Affairs Supportive Housing (VASH)
- US Department of Justice – US Drug Enforcement Administration if you have prescribers or a pharmacy as well as enforcing ADA regulations governing malls and local government services and public accommodations.
- US Department of Veterans Affairs (VA) – if you contract to serve veterans
- US Department of Transportation – if you have commercial fleets for transportation of people or supplies.
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- Various licensing requirements and other regulations including fire, building and food handling codes.
- FASB – The Financial Accounting Standards Board who establishes GAAP – Generally Accepted Accounting Principles
- Compliance with guidance from US DHHS OIG et al (https://oig.hhs.gov/compliance/)
- Board of Directors – number, terms, skills and interests vary – May also have an owner or owner group if in for-profit company
- Union or non-union employer?
- Court and Labor Relations determinations

Organizational cultural – good, bad, ugly or somewhere in between! Consider impact of social media.

Cliques

Need for dress and appearance codes including considering tats, piercings, footwear and hygiene.

Try to hire best staff available. Direct reports need to be competent in assessing risk management.

Strong HR consultation either within company or available through other means.

Retain legal counsel (I recommend being on speed dial.)

Build peer relationships – you need someone to talk to as events occur.

Make sure company insurance is up to date – General liability, cyber, D&O, Professional liability.
Objective 1
List at least three (3) regulatory bodies impacting human resources policies and procedures.

Objective 2
Describe the importance of primary source verifications, background checks and references.

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Explain the role of legal consultation in human resources related matters.

Preparing for Risk in Behavioral Health Care – This stuff isn't made up - HR maybe the highest risk! – Here we go.

Preparing for Risk in Behavioral Health Care – This stuff isn't made up - 10/08/22
HR maybe the highest risk! – Hang on, here comes the vignettes. #1

Starting with a fast pace and will deep dive on the last two.

You are the director of a multi-functional 64-bed SUD residential program doing detox, adult and adolescent long-term treatment both with a week-long family component.

What do you do when a newly admitted client informs you that he was buying his drugs from the senior counselor in adolescent program last week?

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You are the Director of a clinic that includes a day treatment for seriously mentally ill and co-occurring SUD, IOP, OP, psychiatric and pharmacy services. Due to suicidality, a client has been referred to the day treatment program specifically for daily monitoring including medications. The latter included picking up medications daily to insure she never had a lethal dose (LD) of prescribed medications.

While entering the day treatment area, you just happen to see the nurse handing her ALL her medications as she exited the building, gets into her car and drives off.

Upon confirming the nurse had given her basically a month's supply of medication which far exceeded LD, what do you do?
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You are the Director of a community mental health clinic. Over the Thanksgiving Holiday, a Senior Counselor (LPC) specializing in SUD and women’s issues travels with her husband to her family home a couple of hours away. While traveling, she has a heart attack which resulted in oxygen deprivation for several minutes before she was revived. The residual impact was a loss of short-term memory. Following rehab, she returns to work.

During the return-to-work interview, you conduct a short mental status exam where you confirm her difficulty with short term memory.

What do you do?

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You are the Director of a community mental health system covering ten counties. You are responsible for all clinical and administrative operations (SUD, SED, SMI including residential, supportive living, case management, prevention, crisis response and other specialized services). Budget is $12.5m with over 250 employees.

The HUD Grant Administrator and her clerk ask to see you. They ask why a 10 person men’s residential facility would need a case of feminine hygiene products. Contacting the Resident Manager, you find he did not order or receive said product. Upon further review, you confirm other charged purchases were not validated by the facilities they had been sold to such as gas and vehicle wash located 60 miles from the residence site and the vehicle not being fueled. Reportedly, a brand new fully furnished HUD facility had bought more furniture than was needed.

What do you do?

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You are the Director of a community mental health system described in the previous Vignette.

Again, the HUD Grant Administrator asks to see you. She reports that an employee of XXX Residential facility told her that another employee was having sex with residents. The alleged perpetrator is well known. He is married, late 30’s, County Commissioner and City Council member (yes, rural county with a small county seat), church deacon, very involved with children’s school and community activities and has an exemplary history as an employee.

What do you do?
You are the Executive Director of the largest community mental health center in the state. Your CFO needs a Senior Accountant. She contacted the CPA firm who does the company’s audit and asked if they knew anyone. They make a fee-based referral.

A couple of days following the referral starting, you get a call. The person does not identify himself and asks you not hang up as he has something he thinks you need to know. He tells you the new accounting person had been fired for fraud exceeding $500k and is pending federal prosecution. You discuss the call with your HR Director and CFO. Jointly, the three confront the person who absolutely denies knowledge of any fraud or Federal charges.

The following week you get another anonymous call. This time he gives you a court docket number. What do you do?

You are the Executive Director of the largest community mental health center in the state. You have a Master’s Degreed Counselor who clinical staff have concerns about due to reports from clients not caring for his mannerism as well as staff due to his non-engagement and what was described as “secretiveness.” Upon being given a corrective action plan due to lack of productivity and participation in treatment teams, he resigns.

A couple months later you are approached by the Medical Director. She received the following letter.

What do you do?

You are the Executive Director of the largest community mental health center in the state. You have a Master’s Degreed Counselor who clinical staff have concerns about due to reports from clients not caring for his mannerism as well as staff due to his non-engagement and what was described as “secretiveness.” Upon being given a corrective action plan due to lack of productivity and participation in treatment teams, he resigns.

A couple months later you are approached by the Medical Director. She received the following letter.

What do you do?
Preparing for Risk in Behavioral Health Care – HR May Be the Highest Risk! – Vignette #7

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Within the following month, three other female clinical leaders have degrading letters as well. “. . . [P]eople wanted me to pass on to you the fact that they think you are a snob.” “. . . [T]hat you were a “female chauvinist pig.”

What do you do?

Mrs.

I know this will be difficult for you to hear but it desperately needs to be said. Recently, I was invited to a wonderful New Year’s party where I had the chance to visit with many of my past co-workers from DSP. At first I was reluctant to go to the party as I didn’t care to run into you. They assured me, however, that you had not been invited. Anyway, everyone at the party asked me to talk with you at least briefly. While we were there, several people actually brought up the fact that you were there too. To say the least, it was awkward. People around the room were staring at me in a way that I’ve never had before. So I’m no longer have faith in the direction you’re providing as Medical Director but, like I said, they don’t feel comfortable addressing issues with you. So, they’ve asked me to do it.

First of all, no one talked with you. Personally, I know right away after the first time I talked with you at the Tudor building that I couldn’t trust you. The way you stared in my eyes was a deal give away to your true intentions and told me right away that you were completely dishonorable. Even then, you know I didn’t want to engage in any sort of professional type of interaction with you. I laughed to myself about how easy other day you’d be checking out my eyes as if you were looking for something to swing over to. I mean, I’m not a lower class type of leader.

From 14 February 2007 letter: “Three current staff members of . . . and one former employee have reported receiving correspondence from you. The correspondence is considered to be quite strange. Therefore, this letter is on behalf of Anchorage Community Mental Health Services and is a formal request you immediately cease such corresponding. Furthermore, you are not welcome on Anchorage Community Mental Health Services property without the expressed prior approval of the Executive Director. Legal counsel has advised that if you do not heed these requests to not be on Anchorage Community Mental Health Services property and cease corresponding with employees, Anchorage Community Mental Health Services will pursue a court order due to your behaviors.”

From: Jerry A. Jenkins, M.Ed., MAC
with Cc to Operations Committee, Board of Directors, Anchorage Community Mental Health Services and ________, Attorney at Law
Preparing for Risk in Behavioral Health Care – This stuff isn’t made up – HR maybe the highest risk! – Vignette #7

And then a couple months later the annual Alaska Psychiatric Association Conference is held at the Alyeska Resort in Girdwood, AK. Staff receiving the previous noted correspondences attend and find on their windshield again an advertisement for his ‘private practice’ and how it might be beneficial to them.

What do you do?

Preparing for Risk in Behavioral Health Care – This stuff isn’t made up – HR maybe the highest risk! – Vignette #8 - CC

Ready for another one??

Presented by:
Jerry A. Jenkins, MEd, LADAC, MAC

10/08/22
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You are the Executive Director of the largest community mental health center in the state. Director of Adult Services contacts you informing you that it was reported to him that Clinical Associate C. C. was being arrested today for DV. Events allegedly occurred involving ex-girlfriend who is employed at a nearby behavioral health provider. Reported he was at her work today as well as at her apartment.

Subsequently you meet with CC and Director of Adult Services informing CC of need to suspend him until DV issues are resolved.

Fifteen minutes following departure, you are alerted that staff have called 9-1-1 due to threatening calls from CC. Following ensuring the building is safe and that CC is not in it, you hear concerns from staff about CC’s purchasing habits allegedly for clients.

They also report he went to military duty in LA but never provided orders but came back with girlfriend #2. Two days later the Director of Adult Services reported “HIPPA violations (non-staff/client in areas of PH – GF#2), allegations via statements of sexual harassment, sexual encounters in the office while reportedly at work, perceived intimidation and questionable purchasing.”

What do you do?

1. Secure the building.
2. Get statements.
3. Cut off credit card.
4. Suspend computer access and analyze hard drive.
5. Review spending receipts. (found jewelry, steaks, lobster, ammunition none of which was acknowledged by clients as receiving)
6. Review credit card use to require client sign receipts acknowledging receiving goods purchased and affirmation by staff of items being bought for authorized purposes.
7. Review Privacy requirements with staff about PH.

Oh, BTW, Army trained sniper with previous deployment in SW Asia.

What do you do?
You are the Executive Director of the largest community mental health center in the state. The Director of Adult Services contacts you informing you that it was reported to her that Clinical Associate MD reportedly has co-leased an apartment with one of his clients. The lease arrangement is confirmed by the leasing company.

What do you do?
Preparing for Risk in Behavioral Health Care – This stuff isn’t made up – HR maybe the highest risk! – Vignette #9 – Part 2 – The warm-up

You are the Executive Director of the largest community mental health center in the state. You see and read the following:

* https://www.adn.com/alaska-news/article/anchorage-betrayal-infuriates-family/2011/01/14/

An Anchorage man’s out-of-state family is outraged that a man he trusted is charged with stealing huge chunks of his fortune.

“All my relatives are furious about it,” said Seattle surgeon Peter Wolff, cousin of victim Sam Lee, 48, and trustee for Lee’s $5 million trust fund money amassed by the victim’s award-winning physicist parents for Lee’s long-term care.

The money that police say William “Mike” Dixiano, 61, took then Lee is just part of the story of Dixiano’s betrayal, Wolff said.

“That wouldn’t necessarily have been so bad if he’d been helping take care of him, but then I find out he left him living in a trailer,” Wolff said.

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* https://www.adn.com/alaska-news/article/man-charged-wifes-slaying-leads-police-body-valley/2012/05/15/

Acting on a tip from a man charged in his wife’s slaying, Anchorage detectives found a body Friday in the Matanuska Valley they linked to the case, police and a prosecutor said Tuesday.

Police say Angela Dixiano disappeared in April 2010 after threatening to expose a fraud scheme in which her husband, William “Mike” Dixiano, allegedly stole hundreds of thousands of dollars from the developmentally disabled heir of millionaire East Coast physicists, according to charges against Mike Dixiano.

Police charged Dixiano, 63, in January 2011 with theft, fraud and forgery, and a grand jury indicted him for his wife’s murder and evidence tampering a month later.

* https://www.monstersandcritics.com/tv/angela-dixiano-was-beaten-to-death-by-her-husband-for-threatening-to-expose-his-fraud/
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Vignette #9 – Part 2 – Now what?

1. ACMS hired Allan Savage as a clinical associate, supervisor, and case manager of Dr. Chen's practice as a result of the preference of a former patient. Mr. Lee was a patient of ACMS.
2. ACMS violated the professional standard of care of a mental health care facility.
3. ACMS violated the professional standard of care of a mental health care facility.
4. ACMS violated the professional standard of care of a mental health care facility.
5. ACMS violated the professional standard of care of a mental health care facility.
6. ACMS violated the professional standard of care of a mental health care facility.
7. ACMS violated the professional standard of care of a mental health care facility.
8. ACMS violated the professional standard of care of a mental health care facility.
9. ACMS violated the professional standard of care of a mental health care facility.
10. ACMS violated the professional standard of care of a mental health care facility.
Preparing for Risk in Behavioral Health Care – This stuff isn’t made up – HR maybe the highest risk! – Vignette #9 – Part 2 – Now what?

**FIRST CAUSE OF ACTION: NEGLIGENCE**

22. The above allegations are incorporated herein by reference.

23. The client set out herein constitute a claim of negligent hiring of a clinical associate and mental health provider by Anchorage Community Mental Health Services in breach of the standard of care of mental health care facilities.

24. ACMHS’s negligent hiring and breach of duty led proximately to the financial exploitation of Mr. Lee and to his emotional distress.

25. Lee experienced financial losses of over $100,000.

26. The gross negligence of ACMHS in hiring Dr. Lee and putting him in a position to exploit by30 individuals is inducing. Lee was entrapped and in reckless disregard of the rights of Lee, and put him damaged and punished.

Presented by:
Jerry A. Jenkins, MEd, LADAC, MAC
Objective 2
Describe the importance of primary source verifications, background checks and detailed references.

Objective 3
Explain the role of legal consultation in human resources related matters.
Preparing for Risk in Behavioral Health Care – This stuff isn’t made up – HR maybe the highest risk! – Vignette #9 – Part 2 – Now what?

From Resume:

**EDUCATION/TRAINING**


**Academic Transcript**

University of Notre Dame
South Bend, Indiana

Name: William Jenkins Jr.

High School: Garfield High School

Graduated: 1967

**Reference**

From Reference:

Describe the importance of primary source verifications, background checks and detailed references.

**Previous Employer Reference Form**

Re: William Jenkins Jr.

Manager: Joe Smith

Name of Reference and Organization: Previous Employer

1. From: 8/16 to 8/19

Is that correct? Yes ( ) No
Preparing for Risk in Behavioral Health Care – This stuff isn’t made up – HR maybe the highest risk! – Vignette #9 – Part 2 – Now what?

<table>
<thead>
<tr>
<th>Emergency Contact:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name: Evelyn Fugelshuster</td>
</tr>
<tr>
<td>Relationship: Wife</td>
</tr>
<tr>
<td>Address: 2904 Kivas Way, Flath, FL 95602</td>
</tr>
<tr>
<td>Work No.: 911-2800</td>
</tr>
<tr>
<td>Home No.: 943-0999</td>
</tr>
</tbody>
</table>

Objective 2
Describe the importance of primary source verifications, background checks and references.

Objective 3
Explain the role of legal consultation in human resources related matters.

• Results – Settled out of court in April 2014.

Ready for the last one? Need to stand and stretch for a moment? Here we go!
Objective 3
Explain the role of legal consultation in human resources related matters.

I get a call at 0655 on Friday morning, 13 March 2015 from the Chief Operations Officer. He received a panicked call moments earlier from a therapist concerned about a Program Manager in the company and his interactions with her. She was fearful feeling harassed and electronically stalked and unsure of his mental condition based on escalating communications.

What do you do?
Objective 3

Explain the role of legal consultation in human resources related matters.

Remarks from Attorney on 1 April 2015:

"Comments from your attorney: I want to stress that this situation is a potential bombshell from a legal perspective. The facts potentially implicate (1) ACMHS' duty to protect an employee from sexual harassment, (2) a claim by ___ of violation of the Americans with Disabilities Act (for conduct that may be caused by a psychiatric disability), and (3) a claim by XXXXXXXXX for FMLA leave."

What do you do?

- Therapist's office remained in restricted area with monitored access. Escort to and from vehicle offered.
- Program Manager not allowed at any site of Therapist. He could only meet with HR Director or CEO at predesignated locations.
- Accepted his resignation.
- Permitted Therapist to address Board of Directors Meeting concerning traumatic experience.

This incident resulted in a Municipality of Anchorage Equal Rights Commission Complaint for sexual and religious harassment which was settled.
Preparing for Risk in Behavioral Health Care – HR Maybe the Highest Risk!

Objective 3
Explain the role of legal consultation in human resources related matters.

This incident resulted in a Municipality of Anchorage EEOC Complaint which was settled.

BTW, do you notify the LPC Board because of the actions of the Program Manager?

It is not uncommon for clinical and administrative staff to aspire to leadership positions – program director, chief of operations, chief of compliance, HR director, Executive Director/CEO or similar roles and responsibilities. College courses and majors along with workshops, seminars, webinars, books and other educational tools are used to help prepare for the ever-changing area of managing and leading people.

Is human resources and the managing of people the high-risk venture in behavioral healthcare? Many assume it is clinical work. This workshop has focused on HR using real examples of the breadth of issues that may arise at any time. Emphasizes has been on the need to be attuned to legal precedents and the regulatory environment throughout employment processes.

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Preparing for Risk in Behavioral Health Care – This stuff isn’t made up – HR maybe the highest risk! – Questions/Comments?

Thank You For Attending!

Jerry A. Jenkins, M.Ed., LADAC, MAC
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Promoting and Practicing Connectivity – Collaboration – Integration – Resource Sharing

Anchorage and surrounding area are Dena’ina Elnena (Dena’ina Country), the traditional homelands of the Dena’ina Athabascan people.

Preparing for Risk in Behavioral Health Care – This stuff isn’t made up – HR maybe the highest risk! – Be Careful Out There!

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Preparing for Risk in Behavioral Health Care – This stuff isn’t made up – HR maybe the highest risk! – The End-