

# 6 THINGS YOU CAN DO NOW TO HELP AVOID BEING SUED SUCCESSFULLY LATER

Psychiatrists frequently wonder about what risk management steps they can take right now to effectively reduce their risk of professional liability. Here are six practices that any psychiatrist can use now to reduce their professional liability risk.

Compliments of:



## 1 Practice Good Medicine

- Be careful. Claims against psychiatrists frequently include vague allegations of "improper treatment" and "misdiagnosis." Many times these allegations are groundless, but sometimes the poor outcomes are a result of unfortunate lapses in basic, good medical practice that easily could have been avoided.
- Stay focused on patients' clinical needs. Treating psychiatrists are minimally obligated to obtain an adequate medical and psychiatric history, conduct an appropriate examination, and follow-up with a patient at reasonable intervals to assure that treatment is progressing as desired. Any obligation not met will increase the psychiatrist's professional liability risk.
- Communicate with patients' other clinicians. For the care given by an individual clinician to be as effective as possible, the patient's overall care must be coordinated. Psychiatrists should obtain patients' authorization to communicate with other clinicians, especially in split-treatment situations, so that information can be exchanged freely. Similarly, psychiatrists should attempt to obtain patients' prior treatment records. Past records can give the psychiatrist a more comprehensive and nuanced context in which to understand the patient. Additionally, the psychiatrist may benefit from the experiences of previous clinicians.
- Monitor medications. Medication levels and appropriate physiologic functions should be monitored regularly; patient compliance with monitoring should be tracked.
- Know and follow policies and procedures. Psychiatrists working at facilities or in large practices should know and follow all relevant policies and procedures. The standard of care is largely established by the opinion of other psychiatrists, and since policies and procedures often are the result of a consensus of practitioners, the policies and procedures may be a close approximation to the standard of care.
- Stay current with the field. It is imperative that psychiatrists maintain competency with regard to the medications and other forms of psychiatric treatment they are providing. Psychiatrists should not hesitate to consult with or refer to colleagues when appropriate.
- Do not prescribe for nonpatients. Psychiatrists should not prescribe medication or treatment outside of a formal psychiatrist-patient relationship. This admonition includes prescribing over the Internet when there is no pre-existing psychiatrist-patient relationship, prescribing for individuals never seen by the psychiatrist, prescribing controlled substances for oneself, and covering for friends or family for anything more than an emergency situation. Prescribing medication or treatment creates a physician-patient relationship along with all the attendant obligations.

## 2 Document

The written treatment record stands as a testament of the treatment provided and the decision making behind it. The record comprises a significant and substantial part of the defense against any claim of malpractice against the psychiatrist. Highly defensible cases where the psychiatrist delivered seemingly flawless treatment have been lost or settled because of poor documentation by the psychiatrist.

- Document the informed consent process. All major aspects of patient care (e.g., suicide assessments, session times, authorizations, prescriptions, lab reports, the termination process, and follow-up on missed appointments) should be documented in the treatment record. Documenting the decision-making processes underlying treatment decisions is key to building a supportive record (i.e., what actions were taken and why, as well as what actions were rejected and why).
- Never alter a treatment record. The strength of the treatment record as evidence in a malpractice case is based on the idea that a contemporaneous record of actions and observations can reasonably be relied upon to be true and unbiased. Altering the record can result in an otherwise defensible case being rendered totally indefensible.
- Be familiar with statutory and/or regulatory requirements. Some state legislatures and/or licensing boards require certain minimum information to be made part of the treatment record.

## 3 Safeguard Patient Confidentiality

One of the duties a psychiatrist owes to patients is to maintain confidentiality with respect to information revealed in treatment. Where an exception to confidentiality exists, those exceptions tend to be narrowly tailored to allow the psychiatrist to reveal the least amount of information required to satisfy a legal or ethical requirement. For example, the duty to warn potential victims is frequently limited to disclosing the name of the potential perpetrator and the nature of the potential violence.

- Maintain physical security of information. Paper records should be secured physically. Electronic files, whether located in personal computers, laptops, or PDAs, should be secured both physically and electronically against theft or unauthorized access.
- Do not automatically release information pursuant to a subpoena. In most jurisdictions, a subpoena alone usually is not sufficient to release psychiatric information. Risk management advice is to contact the patient upon receipt of a subpoena and confirm whether the information is to be released. Even if information will not be released, the subpoena must be responded to.
- The obligation to preserve patient confidentiality survives the death of the patient. Upon the death of a patient, the psychiatrist certainly may make himself available to the patient's family. However, proper authorization by the appointed representative of the patient's estate or, in some instances, a court order is almost certainly required to release detailed information or a copy of the record.

## 4 Terminate Treatment with Patients Appropriately

A psychiatrist owes certain legal and ethical duties to patients. In order to know to whom those duties are owed, it must be absolutely clear to the psychiatrist and to all relevant parties exactly who is and who is not a patient. Clarity in this area will reduce the risk of allegations of abandonment and malpractice.

- Follow up with "no-show" patients. The most frequently encountered area of uncertainty is the "no-show" patient. The psychiatrist should follow-up on missed appointments to ascertain the patient's intention with regard to continuing treatment. In some instances, a follow-up letter might be sent. This advice applies to initial appointments, as well, particularly if the new patient seemed to have an urgent reason for making the appointment. It may seem onerous or even counter-intuitive to take such steps in light of the patient's no-show, but if an allegation of abandonment or malpractice were to be made, the psychiatrist likely will be on solid ground having documented the steps taken to ascertain the patient's intent (i.e., having attempted to meet the patient's clinical needs).
- It is risky to terminate treatment with a patient who is in crisis. It can be extremely risky to terminate treatment with an outpatient who is in crisis. Ideally, the psychiatrist should continue treating until the crisis is resolved. If the patient's condition requires hospitalization, the psychiatrist may terminate safely while the patient is hospitalized; the psychiatrist should inform the patient and the in-patient treatment providers that he is no longer the patient's psychiatrist and will not be available upon discharge. A brief, formal follow-up letter is a good idea.

- Do not assume you have been “fired.” When a patient “fires” her psychiatrist, the psychiatrist should assess whether the patient is in crisis. If she is not, a formal termination letter should be sent to the patient confirming that the psychiatrist-patient relationship has been terminated and the psychiatrist is no longer available to the patient. If she is in crisis, the psychiatrist may need to remain involved until further action has been taken to assess and resolve the situation.

## 5 Maintain Clear Boundaries

Boundary violations are stereotypically thought to refer only to sexual activity with a current or former patient. In fact, boundary violations occur in varied and subtle forms. Furthermore, not all boundary violations are created equal; some violations are more serious and potentially damaging than others.

- Do not undertake any course of action that would tend to exploit or hinder the psychiatrist-patient relationship. This means that, for example, the psychiatrist must not enter into a non-treatment business relationship with a patient, must not enter into an employment relationship with the patient, must not loan to or borrow money from a patient, and must not develop a social relationship with the patient outside of treatment. Exceptions may apply in rare circumstances.
- Do not barter services for treatment. If the patient is unable to meet the financial obligations of treatment, the psychiatrist must either structure a workable payment schedule or refer the patient to other resources.
- Be mindful of the potential for boundary issues to arise in any setting. Not all boundary violations appear obvious from the outset. Indeed, many situations begin quite innocuously. Psychiatrists should remain mindful that boundary violations have the potential to appear in any setting.

## 6 Be Nice

An amazing number of lawsuits arise simply because a patient becomes angry with her psychiatrist. Basic politeness and a good “bedside manner” on the part of the psychiatrist can go a long way towards reducing potential liability risk.

- Engage in communication and informed consent. A significant part of being nice includes communicating relevant information promptly and effectively to the patient and seeking the patient’s informed consent to treatment. Psychiatrists should remember that informed consent is a process. As a patient’s situation or treatment alternatives change, the patient should be consulted and her consent renewed. The informed consent process also helps prevent unrealistic patient expectations, a major source of liability risk.
- Be honest. The act of formally apologizing when a potential error comes to light is currently a highly controversial issue, not just in psychiatry but in medicine in general. Expressing heart-felt empathy about a particular outcome may reduce risk for the psychiatrist by strengthening the psychiatrist-patient relationship. However, it is not clear whether the additional acts of accepting blame or admitting error further these goals.
- Practice a good “bedside manner.” Even during a turbulent period, such as terminating with an especially difficult patient, the psychiatrist should try to project a bedside manner that makes clear that the patient’s care comes first.

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