

A TEACHING RESOURCE FOR PSYCHIATRY RESIDENTS

VIEW FROM THE JURY BOX:

Clark v. Stover

A Psychiatric Malpractice Mock Trial

THE LITIGATION PROCESS

EXHIBITS

At trial, exhibits are documents, charts, reports, illustrations, etc., which are entered into evidence in an effort to persuade or convince the jury. Exhibits are important to a party's case because tangible, physical evidence may illustrate a point more vividly than oral testimony. An item becomes an exhibit and a part of the record after it is identified by a witness and there is testimony establishing its relevance to the issues in the case.

RISK MANAGEMENT TIPS

Be aware that, in any malpractice lawsuit, some portion or all of the patient treatment records will probably be used as an exhibit. Patient treatment records that are introduced as exhibits are available for the jury to review during its deliberations.

Prior to making a claim or filing a lawsuit, the plaintiff's attorney will have obtained a copy of your record. Many attorneys subsequently subpoena the clinicians' records simply to identify alterations to records the patient previously obtained. If *any* alterations are made, they will destroy your credibility and/or possibly render your case indefensible.

Good record keeping is a great defense in a lawsuit. In many lawsuits it will be your word against the patient's or the patient's family. In these situations, clear and concise treatment records are critical. Remember, if you review your records and find them lacking, *do not*, under any circumstance alter the records in any way. **Poor records will simply be classified as poor records, but altered records will completely destroy your credibility.**

Sometimes at trial, portions of the record are reproduced on large display boards or projected via an overhead projector, and magnified several times their actual size, to illustrate a point. If you are ever tempted to alter a treatment record, even when you think there is legitimate information that should be added, imagine the impact on a jury when the alteration is projected onto a six-foot screen in the courtroom.

