RESIDENT OWLERY

WELCOME TO THE NEXT EDITION OF "RESIDENT OWLERY," a newsletter developed by Professional Risk Management Services® to provide psychiatry residents in training with *owl* you need to help manage your risks as you prepare to start your psychiatric careers. Featuring risk management resources, educational articles, and the latest announcements and events from PRMS, this quarterly newsletter will share relevant news, useful tips, and important updates in the field of psychiatry to help keep you, your patients, and your practice safe, from residency to retirement.

WHAT YOU'LL FIND INSIDE:

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10 THINGS ABOUT: ESTABLISHING A PHYSICIAN-PATIENT RELATIONSHIP

1. Formation of the physician-patient relationship is based upon the mutual agreement of the physician and patient who enter into the relationship. Absent an exception to the general rule, no duty exists for a physician in private practice to treat or care for any particular individual unless he or she agrees to do so. However, once a physician agrees to enter into a treatment relationship, the physician becomes ethically and legally bound to fulfill all the obligations and duties associated with that relationship until it has been terminated by either one or both of the parties. When you make an initial appointment with a patient, it's a good idea to manage expectations regarding the establishment of a treatment relationship. Let the patient know that your first appointment is for an evaluation only so that you may determine whether you will be a good fit. In other words, whether you believe you can help the patient and whether the patient is someone with whom you want to work. If this is made clear and you decide you are not a good fit, you can simply advise the patient of this with no need to formally terminate care. Remember never to prescribe for someone you don't intend to keep treating as this will create a treatment relationship that must then be formally terminated - typically with 30 days' notice. You should avoid using appointment scheduling services that do not give you an opportunity to screen patients or to explain your evaluation process.
2. A physician-patient relationship is also established when a physician is called upon to see a patient in a hospital or other facility. There the relationship is typically not based upon mutual agreement but by necessity of treatment. Although the physician will be responsible for the care of the patient while at that facility, it is understood that the treatment relationship is terminated once the patient is discharged. Of course, the physician can be liable for harm that comes to the patient after the patient is discharged – for example a patient who commits suicide shortly after leaving the hospital - so it is necessary to ensure that the patient is truly ready to be discharged.
3. It is possible to establish a physician-patient relationship unintentionally; for example, in a social setting where someone, knowing that you are a psychiatrist, asks you about their own situation. If that person believes that he or she was given treatment advice, then that person may be able to establish the existence of a treatment relationship for the purpose of bringing a malpractice action should harm come to them from following your advice. In that instance, a judge or jury would be responsible for deciding whether the "patient's" conclusion as to the existence of a physician-patient relationship was reasonable. There is nothing wrong with providing general information regarding a condition or type

of treatment. However, it should be made clear to the person requesting the information that you are only speaking in general terms and, because every case is different, the person should be examined by a psychiatrist for actual treatment recommendations.

4. You should exercise extreme caution when responding to emails from individuals seeking treatment advice who are not patients. Particularly if you are affiliated with a major hospital or academic institution, it may be quite easy for someone to determine your email address. If an individual poses a question and specific advice is given, then just as with conversations in an informal setting, a person may be able to establish the existence of a treatment relationship. It is best to respond to the individual advising them that you don't discuss such matters via email and invite them to make an appointment with you or another psychiatrist. As a side note, answering emails from non-patients may not only inadvertently create a treatment relationship; it may also place you in a situation where you are deemed to be practicing medicine without a license if you are not licensed in the state where the sender is located when he or she posts their message.

5. Most physicians have had the experience of the friend or family member who has what appears to be a pretty routine problem and needs a prescription. Anytime a prescription is given, there is a presumption that a physician-patient relationship has been established. With that relationship comes all the attendant requirements, which may include such things as a written treatment record and the need for a physical examination before a prescription may be given. Physicians should also be cognizant of their ethical restrictions in this area. Pursuant to the AMA Code of Medical Ethics, Opinion 1.2.1, physicians generally should not treat members of their immediate family. The exception to this would be in "emergency settings or isolated settings where there is no other qualified physician available." Further, "Except in emergencies, it is not appropriate for physicians to write prescriptions for controlled substances for … immediate family members." Remember also that if you prescribe a medication for a condition that is not typically part of psychiatric practice and the person suffers a reaction and sues, you may not have malpractice coverage as this could be outside of the definition of the practice pf psychiatry for which you are covered.

6. Many physicians now have practice websites, some of which allow readers to post questions. If someone who is not a patient poses a treatment question, depending upon the physician's response, an argument may be made that a treatment relationship was established. Ideally, non-patients should not be given the opportunity to pose questions; however, if they are, specific treatment recommendations should never be given, and questioners should be directed to seek a physician's care. If prospective patients are able to download forms to complete prior to their initial appointment, they should understand that this does not guarantee that they will be accepted as a patient.

7. Although this might be a more difficult connection to establish, physicians who routinely give lectures

or prepare articles or other publications for non-physicians should be careful to include disclaimers clearly stating that advice given is not intended as treatment advice and is not intended to establish a physician-patient relationship. Further, they should remember to give only general advice in response to any inquiries from attendees.

8. "Curbside" consults are a routine and accepted aspect of medical practice. In the true curbside consult, one physician essentially "picks the brain" of a colleague to help him or her think through a difficult clinical situation or to take advantage of the knowledge of a colleague with more expertise in a given area. In this setting, the physician from whom the opinion is sought has no independent duty to the patient as the physician seeking information is free to either accept or reject the consultant's suggestions and retains responsibility for the patient. This all changes, however, if the consultant physician takes steps toward treating the patient such as entering orders or prescribing medication. If called upon to do a formal consult with a patient, your role should be clarified and the patient made to understand the limits of your involvement in their care and with whom to follow up.
9. Physicians are often called upon to perform forensic evaluations. Although no treatment relationship is established between the evaluator and the evaluee, the evaluator still has a duty to the evaluee. While individual courts have differed on exactly what that duty entails, most seem to agree that a physician performing an independent medical evaluation or IME would have the duty to not injure the evaluee, the duty to properly diagnose the evaluee's condition, the duty to inform the evaluee of a potentially serious medical condition of which he or she may be unaware, and the duty to maintain confidentiality.
10. The answer to the question of whether an on-call physician assumes a duty of care when responding to an ER physician is one that will vary from jurisdiction to jurisdiction and will depend upon the specific facts in each situation. The answer may also depend upon expectations set forth in hospital bylaws, policies and procedures, contracts or other agreements. While there is no way to definitively answer the question here, physicians should be aware that when on call, they may have a duty to patients about whom they are contacted, particularly if specific treatment advice is given.

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A Teaching Resource

www.prms.com/mock-trial

View from the Jury Box: Clark v. Stover *A Psychiatric Malpractice Mock Trial*

Go inside the courtroom for a psychiatric mock trial involving a patient suicide, with an emphasis on expert testimony.

To Access Training Materials:

1. Go to PRMS.com/Mock-Trial
2. Enter your name and training program

Questions may be directed to Donna Vanderpool, MBA, JD, PRMS' Vice President of Risk Management: Vanderpool@prms.com

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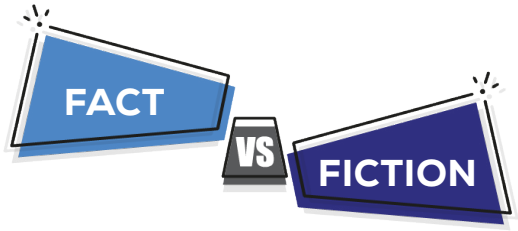

WHAT DO YOU THINK - FACT OR FICTION?

FACT OR FICTION?

If you have a patient who owes you a large sum of money, you may refuse to schedule the patient or to provide refills until he/she either catches up with their payments, or agrees to a suitable repayment plan.

What do you think - fact or fiction?

Fiction!

So long as a patient is under your care, your licensing board expects you to meet their clinical needs. Refusing to see them or to prescribe necessary medication until they are able to pay could be grounds for a claim of abandonment. If a patient can't or won't timely pay your fees, you can initiate termination of the treatment relationship, but you must not withhold treatment until the termination becomes effective. It is also not appropriate to withhold a patient's medical records until they have paid their past-due bills. This practice is specifically precluded under HIPAA, as well as the laws of many individual states.

HAPPY HOLIDAYS

This holiday season, PRMS is proud to support organizations working to support wellbeing and mental health in our local community and across the country. Join us in supporting: **Arlington Food Assistance Center,** which provides dignified access to free groceries and allows families to devote their limited financial resources to obligations such as housing, utilities, medication, and other basic needs in the Northern Virginia area; **Free2Talk**, whose mission is to provide financial assistance to Virginia kids and teens' families who are unable to afford and/or access speech and mental health therapy; **Give an Hour**, a national organization dedicated to transforming mental health by building strong and healthy individuals and communities; and **Child Mind Institute**, which is dedicated to transforming the lives of children struggling with mental health and learning disorders by providing evidence-based care and resources, training educators in underserved communities, and developing breakthrough treatments.

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