Making Headlines: An examination of top psychiatric issues in today’s news

Psychiatric Malpractice Issues: Potential or Real

Alabama Psychiatric Physicians Association
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Agenda

- Patients at Risk for Violence and Suicide
- Medications
- Social Media: The Myth of a Personal/Professional Gulf
- Termination of the Professional Relationship
Greatest Exposure

Greatest Professional Liability Exposure – Frequency

For psychiatrists:

- Patient suicide / attempted suicide
- Medication misadventure
Greatest Professional Liability Exposure – Severity

Cases involving significant permanent neurological or physical injuries that result in need for life-long care

- Financial costs associated with providing life-long care
- Loss of potential income
- Pain and suffering awards
Psychiatry Claims

**Psychiatry is a low-risk specialty**

- Low risk activities
  - Forensic evaluations & expert testimony
  - Child and adolescent practice
  - Psychoanalysis
Psychiatry Claims

PRMS Overall Experience

- 77% of claims close without indemnity payment or by dismissal or summary judgment
- 20% of claims settle
- 3% go to trial
  - Greater than 99% defense verdicts
Claims trends in 2013

100%
of the cases tried to verdict resulted in a decision in favor of our client.

As compared to 2012, the number of lawsuits filed decreased by 18% and the number of board and administrative complaints dropped by 47%.

The average indemnity payment per claim/lawsuit decreased by 16% as compared to 2012.

75% of cases were resolved without payment.

We successfully obtained reasonable settlements and defense verdicts in a number of significant claims.

Continuing a recent pattern, “Drug Reaction” and “Suicide/Attempted Suicide” were the most identifiable causes of loss. The “Drug Reaction” category includes cases where the main allegation relates to the prescription or management of medication as well as those in which there was a serious side effect or adverse reaction from medication.

There were no PRMS clients involved in any new mass tort filings.

2013 YEAR IN REVIEW
Patients at Risk for Violence and Suicide
Patients at Risk for Violence

Patients at risk for violence are a high-risk malpractice liability exposure:

- Low frequency risk
- High severity risk
- High profile media attention
Violent Patients: Malpractice Exposure

As a treating psychiatrist

- Alleged negligence in:
  - Assessing potential for violence
  - Executing proper treatment plan to prevent/reduce risk to patient and others
  - Properly warning potential victims
  - Complaints to licensing board related to patient’s behavior
Safety of Staff and Self

- Coordinate and plan with building security
- Consider having a panic alarm
- Involve police as necessary for safety
- Identify escape routes out of office
- Avoid isolating clinician
  - No after hours
  - Consider “borrowing” space
Violent Patients: Risk Management

- Be candid about confidentiality
- Utilize current methods of risk assessment
- Careful decision-making
- Commit if necessary
- Warn where appropriate
- Ensure post-discharge plans are followed
Violent Patients: Risk Management

- Stress responsibility to patient and family
- Assure accurate/complete documentation
- Safety of self and staff
- Reduce risk when educating/consulting regarding violent behavior
- Stay current on professional developments
- Termination
- Avoid predicting future safety
PATIENT PRIVACY V. PUBLIC SAFETY

Apr 13, 2015

With the news of the Germanwings co-pilot having been treated for mental health issues, and from what we’re learning as officials continue to investigate the horrific crash, many people are wondering about a patient’s privacy versus a mental health provider’s obligation to warn.
Patients at Risk for Suicide

Cannot predict suicide

but

risk of suicide may be foreseeable
Collecting Information –
About the Patient

- Assess patients at significant points in treatment
- Assessment is ongoing
  - Consider the possibility of comorbid conditions
    - Substance use
    - Medical conditions
- Try to get prior records; if can’t, document attempts
- Obtain collateral information from family and significant others
- Inquire about access to weapons
- Implement a plan to monitor medications
  - Adherence
  - Physiologic and blood level tests
  - Coordinate with other providers
Collecting Information –
Staying Professionally Current

- Know the criteria for involuntary hospitalization
- Consider using reputable assessment guidelines
- Consider using reputable treatment guidelines
  - Document reasons for deviating

Consistently utilize specific, reputable suicide assessment and treatment methodology/resource

SAFE-T (Suicide Assessment Five-step Evaluation and Triage)
www.mentalhealthscreening.org/safet/overview.aspx

Practice Guidelines
Available for the assessment and treatment of a number of conditions, including patients with suicidal behaviors
Resources


Textbook of Suicide Assessment and Management. Robert I. Simon, MD and Robert E. Hales, MD, MBA (eds.), APPI, 2006
Communicating

- Do not rely solely on “no harm contracts”
  - No legal force
  - But ... may be one part of a comprehensive treatment plan
- Consider inquiring about internet activities
- Risk reduction planning should be completed with patient involved
- Educate patient on services available
Communicating

- Communicate with other healthcare professionals
  - Do not hesitate to seek consultation or second opinion
  - Other treating providers, covering providers

- Communicate with family and significant others
  - Involve and educate
  - Stress responsibility
  - Access to weapons

- Remember: patient safety is *exception* to confidentiality

- Consider alerting family members / significant others to risk of suicide without patient authorization when:
  - The risk is significant
  - They do not seem to be aware of the risk
  - They might contribute to patient’s safety
Carefully Documenting

- Document at significant junctures in treatment
  - Initial contact, assessment
  - Noteworthy clinical changes
  - Dangerous behaviors
  - For inpatients, change in privilege level

- Document so that another professional can understand what happened in treatment and why
Medications
Common Allegations

Failure to:

- Perform adequate history and physical
- Properly prescribe
- Obtain consultation or make referral
- Adequately inform of side effects
- Monitor drug levels and physiologic tests
- Recognize and appropriately respond to adverse drug reactions
- Communicate with other providers
- Adequately screen for contraindications
- Access and review PMP data*

* Have not seen cases yet.
Collecting Information – About the Patient

- Assess patients at significant points in treatment
- Assessment is ongoing
  - Consider the possibility of comorbid conditions
    - Substance use
    - Somatic conditions
- Try to get prior records; if can’t, document attempts
- Obtain collateral information from family and significant others
- Implement a plan to monitor medications
  - Adherence
  - Physiologic and blood level tests
  - Monitor for metabolic disorders
  - Coordinate with other providers
Collecting Information – Staying Professionally Current

- Consider using reputable assessment guidelines
- Consider using reputable treatment guidelines
  - Document reasons for deviating
Communicating

The Informed Consent Process

1. The nature of the proposed treatment
2. The risks and benefits of the proposed treatment
3. The alternatives to the proposed treatment
4. The risks and benefits of the alternative treatments
5. The risks and benefits of doing nothing
Medication Guides

Drugs@FDA and DailyMed also contain medication guides as part of drug labeling.

Get email alerts when the Medication Guides page is updated.

Medication Guides are paper handouts that come with many prescription medicines. The guides address issues that are specific to particular drugs and drug classes, and they contain FDA-approved information that can help patients avoid serious adverse events.

FDA requires that Medication Guides be issued with certain prescribed drugs and biological products when the Agency determines that:

- certain information is necessary to prevent serious adverse effects
- patient decision-making should be informed by information about a known serious side effect with a product, or
- patient adherence to directions for the use of a product are essential to its effectiveness.

Please note: All links in the table below go to documents in PDF format.

Medication Guides are available for these products:

* biologic or drug/biologic combination

- Abilify (aripiprazole) [2012 version]
- Absorica (isotretinoin) [2012 version]
- Abstral (fentanyl) [2011]
- Aciphex (rabeprazole sodium) [2012 version]
- Mobic (meloxicam) [2011 version]
- Morphine Sulfate (morphine sulfate oral solution) [2011 version]
- Motrin (ibuprofen) [2007 version]
Communicating

■ If appropriate, involve patients’ families in the informed consent process and throughout treatment
  ▪ Involve and educate
  ▪ Stress co-responsibility for adherence to the treatment plan
  ▪ You can always listen to family members concerns even if the patient doesn’t want them involved

■ Communicate with other healthcare professionals
  ▪ Do not hesitate to seek consultation or second opinion
  ▪ Other treating providers
Off-label Prescribing

- Not in and of itself a professional liability risk

- Use should be based on “firm scientific rationale and on sound medical evidence” [FDA policy, 1982] / “sound scientific evidence and sound medical opinion” [AMA policy, H-120.988 Patient Access to Treatment Prescribed by Their Physicians]

- Use ranges from established standard of care to clearly controversial

- Is the decision to prescribe off-label evidence based? Is there supporting documentation of the psychiatrist’s clinical judgment and decision-making for prescribing this drug in this instance for this patient?

- Communication about off-label use should be part of informed consent process
Off-label Prescribing

- Discuss the off-label nature of the use with the patient

- Consider, discuss with the patient, and document:
  - What is the scientific basis?
  - Is it the standard of care?
  - Why are more conventional therapies not being used?

- Professional liability defense issues
Social Media: The Myth of a Personal/Professional Gulf
Professionalism Survey of State Medical Boards

- 71% responded
- 92% received at least one report of an online professional violation

**Most commonly reported:**
- Inappropriate patient contact
- Inappropriate prescribing
- Misrepresentation of credentials

**Source of reports:**
- Patients / families – 65%
- Other physicians – 50%

- 71% reported disciplinary proceedings held

Social Media Websites: Risk Management Advice

- Technology does not change duty to maintain boundaries
- Use the privacy settings to limit access
- Do not accept Friend requests from patients
- Do not post anything you would be uncomfortable having a patient see
- All content may be discoverable in litigation
- Be aware of ethical reporting obligations
Other Pitfalls
Physician Rating Sites

Response to poor ratings posted by patients

- Do not astroturf
- Do not use meeting standards as a bargaining chip for patients’ silence
- Do use the opportunity to discuss review with the patient
- Can ask the site to take the offending review down (but it doesn’t have to)
- Must maintain patient confidentiality
  - Cannot respond online
Enforcement Example From OCR

Private Practice Ceases Conditional of Compliance with the Privacy Rule

A physician practice requested that patients sign an agreement entitled “Consent and Mutual Agreement to Maintain Privacy.” The agreement prohibited the patient from directly or indirectly publishing or airing commentary about the physician, his expertise, and/or treatment in exchange for the physician’s compliance with the Privacy Rule. A patient’s rights under the Privacy Rule are not contingent on the patient’s agreement with a covered entity. A covered entity’s obligation to comply with all requirements of the Privacy Rule cannot be conditioned on the patient’s silence. OCR required the covered entity to cease using the patient agreement that conditioned the entity’s compliance with the Privacy Rule. Additionally, OCR required the covered entity to revise its Notice of Privacy Practices.

www.hhs.gov/ocr/privacy/hipaa/enforcement/examples/allcases.html#case29
To Google Patients – or Not

Consider:

• What is my purpose?
• What specific information do I need?
• Should I obtain patient’s permission?
• Should patient be present?
• What if I find........?
• Do I include in record?
• Am I increasing liability exposure?
Physician, Google Thyself

Consider:

- Yes, you ARE on the Internet
- Manage your image
- Social media postings
- Reviews
- Professional profiles
Termination of the Professional Relationship
Termination

■ It must be clear to all parties who is/is not a patient
■ Once care has ended, properly terminate the professional relationship
■ Patient perceptions are key
■ Exit without abandoning
  ▪ Notice to the patient is key
■ May need to set firm time limits
■ Take good care of the patient in the meantime
Termination

- Get the information to the patient that the patient needs to make treatment decisions
- The patient’s needs must be met throughout the process
  - But, those needs might not have to be met by you
Termination

“When a physician engages, as here, to attend a patient without limitation of time, he cannot cease his visits except, first, with the consent of the patient, or secondly upon giving the patient timely notice so that he may employ another doctor; or thirdly, when the condition of the patient is such as no longer to require medical treatment – and of that condition the physician must judge at his peril. Here it is not shown that the plaintiff was no longer in need of medical attention; so that the defendant had no right to discontinue his attendance, unless either the plaintiff consented or he gave her proper notice; and if he left her without such consent or such notice he was guilty of grave professional negligence.”

*Becker v. Janinski*, 15 NYS 675, 1891

“[after a review of abandonment cases] It will be noted that each case uniformly holds there is actionable abandonment only in the *absence of reasonable notice or of providing an adequate medical attendant*...”

*Lee v. Dewbre*, 362 S.W.2d 900, 1962
Termination

1. Give reasonable notice/time to find alternative treatment
   - Modal time: 30 days
2. Educate on treatment recommendations
   - Might include: caution against abrupt discontinuation of medication, reminder of driving restrictions, urge patient to find a new psychiatrist ASAP, others
3. Assist with finding alternative treatment
   - Specific name of willing provider generally not required
4. Offer to provide records, as requested by the patient
5. Send follow-up letter
   - Both certified and regular mail or
   - Delivery confirmation
Termination

Compare:

- Your licensing board
- Facility/group policies & procedures
- Provider contracts
Patient in crisis?

Termination by:

Psychiatrist

No

Standard Process

Yes

Very Risky

Modified Process

Patient

Assess
Termination FAQ

■ Are there times when I should not send a termination letter?

■ Over the years, a number of my patients have been lost to follow-up. I’d like to send letters. How far back should I look when sending termination letters to patients who have stopped treatment?

■ Should I notify the patient’s therapist about the termination?

■ Can I terminate treatment with a patient who I just hospitalized?
Termination FAQ

- I sent a termination letter, but it was returned. What should I do?
- A former patient called for advice. Can I give advice without renewing the treatment relationship?
- A patient I am terminating with called for a refill. Can I give the refill without renewing the treatment relationship?
- If the patient will not come in for a termination session, can I just send a termination letter?
Questions?