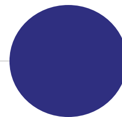
10 THINGS ABOUT …



Arizona Psychiatric Society
March 17, 2022

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Professional Risk Management Services (PRMS)

CME DISCLOSURE

I have no financial relationships with any ineligible companies.

DISCLAIMER

Nothing I say is legal advice.

OBJECTIVES

At the conclusion of this program, learners will be able to:

- Understand the significance of documenting the reasoning behind clinical decision-making.
- Describe the duty owed to an evaluee when conducting a forensic evaluation.
- Describe what to do – and what not to do – with data obtained from prescription monitoring programs.
- Recognize non-adherent patients and implement strategies for improving adherence to treatment recommendations.
- Understand the termination process and modify it for various clinical scenarios.
- Describe key policies and procedures to have in place before starting a private practice.

RESOURCES

www.prms.com/RMTalks

www.prms.com/faq

DOCUMENTATION

DOCUMENTATION

THERE IS NO SUCH THING AS A PERFECT RECORD

DOCUMENTATION

YOUR RECORD AS YOUR DEFENSE

DOCUMENTATION

DO NOT ALTER RECORDS

THE EXPERT WITNESS

Testifies by providing opinion testimony about:

- What the applicable standard of care is
- Whether the defendant met the standard of care
- Whether the breach of the standard of care was the proximate cause of plaintiff's injuries

Bases opinion on:

- Items evidencing the applicable standard of care
- The clinical record
- Clinical experience
- Education
- Etc.

DOCUMENTATION THAT IS MISSING:

- Assessments
- Informed consent process
- Treatments prescribed
- Monitoring
- Decision-making process

DOCUMENTING

APA Practice Guideline for the Treatment of Patients With Suicidal Behaviors.

From Part A (v); Table 9- General Risk Management and Documentation Considerations in the Assessment and Management of Patients at Risk of Suicide

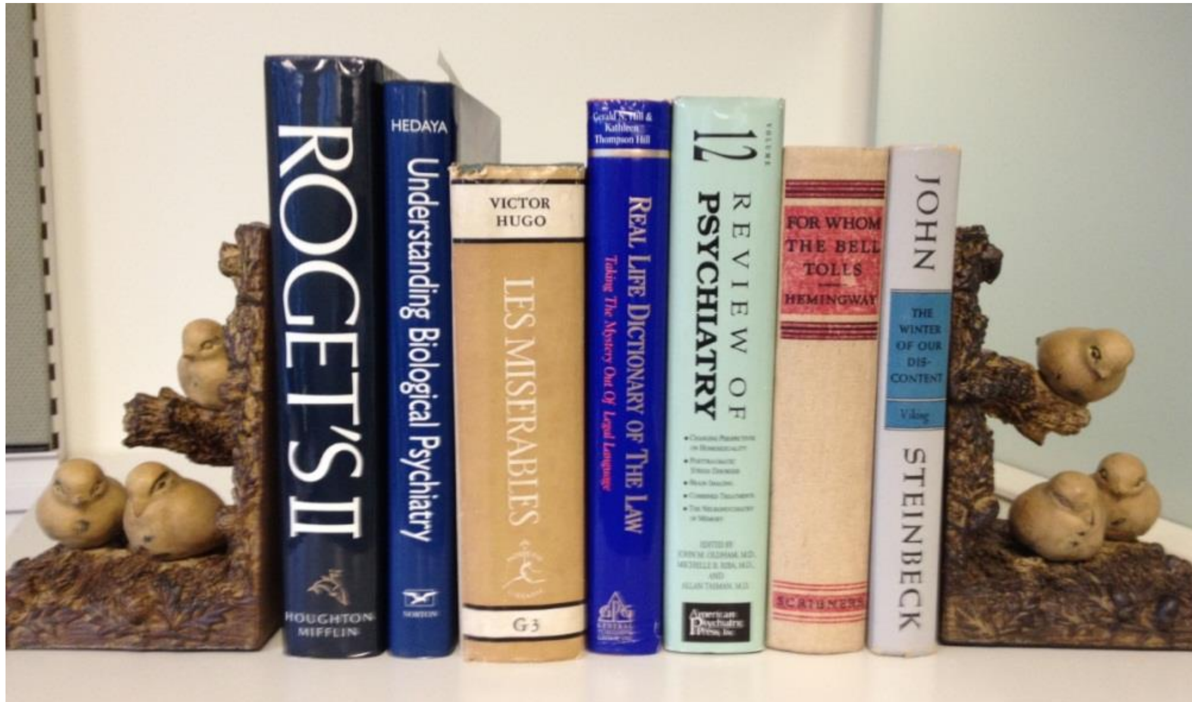
… Careful and attentive documentation, including:

- Risk assessments
- Record of decision-making processes
- Descriptions of changes in treatment
- Record of communications with other clinicians
- Record of telephone calls from patients or family members
- Prescription log or copies of actual prescriptions
- Medical records of previous treatment, if available, particularly treatment related to past suicide attempts

DOCUMENTATION & PROFESSIONAL JUDGMENT – GENERAL PRINCIPLES

- Do not let attorneys and their experts make up their own story about your treatment
  - Document your decision-making
- A physician who chooses one therapeutic approach from a number of reasonable approaches should not be held liable solely because it appears after-the-fact that a different reasonable approach might have been more beneficial
- Courts defer to the treating physician – as long as there is something to base that deference on
  - Contemporaneous documentation of treatment

PROFESSIONAL JUDGMENT



DOCUMENTING

Critical junctures for documentation:

- At first psychiatric assessment or admission
- With occurrence of any suicidal behavior or ideation
- Whenever there is any noteworthy clinical change
- Major medication changes – start, stop, large dose changes
- For inpatients, before increasing privileges or giving passes before discharge…

EHR DOCUMENTATION

EHR DOCUMENTATION

Concerns:

1. Concerns about safety
2. Lack of narrative
3. Issues with template use
5. Autopopulation
6. Copy paste
7. Appropriate billing
8. Too much information
9. Metadata
10. Clinical decision support tools

FORENSIC PRACTICE

POSSIBLE CAUSES OF ACTION RELATED TO FORENSIC ACTIVITIES

Administrative Actions:

- Licensure
- Professional organizations
- HIPAA

Torts:

Unintentional

- Medical malpractice
- Ordinary negligence

Intentional

- Assault and battery
- Breach of contract
- Defamation
- Infliction of emotional distress
- Breach of confidentiality, invasion of privacy
- Misrepresentation

Crimes:

- Perjury
- Statutory violations – mail fraud, wire fraud

IME LIABILITY – IN A NUTSHELL

- Harm claimed by an evaluee can include mental harm
- Trend is to impose liability without the traditional physician-patient relationship
- The following duties, ***at least***, will generally be owed to evaluee:
  - To not injure evaluee
  - To disclose information to evaluee about a potentially serious medical condition
  - To maintain confidentiality
  - To properly diagnose (minority of jurisdictions)
- Immunity generally only applies if IME physician is actually retained by the court – not just retained by a party pursuant to court order
- Anyone can file a board complaint

IME LIABILITY – RISK MANAGEMENT ADVICE

- Confirm IME activities are covered within the scope of your professional liability insurance policy

- Understand your duties owed to evaluee

- Communicate clearly to manage evaluee's expectations:
  - IME is being performed at request of third party
  - IME is different from treatment

- Document thoroughly
  - Consider using "consent to evaluate" document setting out relationships, etc.

IME LIABILITY – RISK MANAGEMENT ADVICE

- Protect confidentiality:
  - Inform evaluee to whom information will be disclosed
  - Obtain evaluee's written authorization prior to releasing information
- Inform the evaluee of significant medical findings and, if appropriate, recommend follow up with another provider
- Understand that if treatment or advice is provided, the duty changes to the full duty owed by treating providers
- Understand the expectations of your licensing board

EXPERT WITNESS LIABILITY – IN A NUTSHELL

- Witness immunity cannot be relied upon as an absolute bar to liability for testimony
- Criminal prosecution, while rare, is possible, and may involve more than perjury charges
- Providing expert testimony is generally considered the practice of medicine, subjecting the witness to oversight by the state licensing board – such as
  - Discipline for unprofessional conduct
  - Determination of when state license is required
  - Determination of standards for expert testimony
- Professional associations are engaging in peer review of and discipline for expert testimony

EXPERT WITNESS LIABILITY – RISK MANAGEMENT ADVICE

- Confirm expert testimony is covered within the scope of your professional liability insurance policy
- Understand and comply with the expectations of state licensing boards (including state where testimony is to be provided), such as standards for expert testimony, licensure requirements for out-of-state witnesses, etc.
- Understand the expectations of state medical associations, such as guidelines for testimony, peer review, etc.
- Understand the expectations of specialty societies, such as guidelines for testimony, peer review, etc.

EXPERT WITNESS LIABILITY – RISK MANAGEMENT ADVICE

- Prepare adequately for the case, and address weaknesses in the case with the retaining attorney
- Avoid providing expert testimony for patients you are treating

NONADHERENT PATIENTS

NON-ADHERENT PATIENTS WHO ARE THEY?

The signs

- Missed appointments
- Labs
- Prescriptions
- Worsening symptoms/no improvement
- Risky behavior

NON-ADHERENT PATIENTS
WHO ARE THEY?

Digging deeper

- How are they taking meds?
- When?
- Doses missed?
- Side-effects
- Refills
- Appointments

BARRIERS TO ADHERENCE

- Health literacy
- Language
- Culture
- Hearing ability
- Poverty

NON-ADHERENCE & MEDICATION

- Anosognosia
- Multiple prescriptions
- Dosing confusion
- Difficulty taking
- Side-effects
- Addiction concerns
- Personality

NON-ADHERENCE & MEDICATION

- Stigma
- Slow results
- Cost
- Benefits not recognized
- Improvement = cure

FACILITATING ADHERENCE

- Bring all medications
- One pharmacy
- Report new meds
- Therapeutic alliance
  - Why used
  - Expectations
  - Patient’s role
  - Factors affecting adherence
  - Role of meds in achieving goals

FACILITATING ADHERENCE

- Written instructions
- Medication flow sheet
- Simplify dosing
- Devices
- Generics
- Patient assistance programs
- Adjust interventions

GOING FORWARD

- Ramifications of non-adherence
  - Patient’s condition
  - Your ability to treat
  - Family?
- Termination
- Document

Guidelines for Psychiatrists in Consultative, Supervisory or Collaborative Relationships with Nonphysician Clinicians

Approved by the Joint Reference Committee, June 2009
Approved by the Committee on Patient Safety, May 2009

"The findings, opinions, and conclusions of this report do not necessarily represent the views of the officers, trustees, or all members of the American Psychiatric Association. Views expressed are those of the authors." – *APA Operations Manual.*

The practice of psychiatry and of other mental health disciplines frequently occurs in the framework of organized health delivery systems. Psychiatrists are working with other professionals and nonprofessionals in hospital settings, community mental health centers, health maintenance organizations, as well as in group practices, and in consultative work with schools, family agencies, court clinics, etc. Interprofessional relationships are an essential aspect of good patient care and should be encouraged. They serve as a valuable educational experience and contribute to the continuing development of all who are concerned with patient care. The addition of other professionals and extenders to the health team enlarges the capacity to provide service. In turn, this requires a review of the role and responsibilities of psychiatrists in the entire range of consultative, supervisory, and collaborative relationships.

OBJECTIVES OF THE PROFESSION OF PSYCHIATRY

and training programs, and establishing its own standards of service. As a responsibility to the public, society may recognize the profession and set up such controls as it may deem necessary.

Education and Training. The responsibilities of psychiatry include the following:

- To inform members of other professions regarding training, experience, areas of special competence, and appropriate spheres of activity of the psychiatrist.
- To assist when invited in the education and training of other professionals in any areas in which psychiatry has a contribution to make, and on subjects within the scope of those other professions as they may be legally defined.
- To encourage and foster ongoing mutual education programs through joint meetings, seminars, and workshops with other professional organizations.

Standards of service. To work in close cooperation with other professionals when requested to do so in order to utilize the expertise of all available professions in the provision of high standards of service to the public.

Ethics. To recognize that the establishment and maintenance of codes of ethics are an internal responsibility of each profession and that complaints against other professionals should be directed to the responsible authorities of the profession concerned.

Manpower, research, and prevention. To collaborate with other professions in these important areas.

Liaison responsibilities. To recognize such responsibilities, the American Psychiatric Association offers the following guidelines in reference to the settings and situations in which problems in interprofessional relations often arise:

www.psychiatry.org/File%20Library/Psychiatrists/Directories/Library-and-Archive/resource_documents/rd2009_CollaborativeRelationships.pdf

PRESCRIPTION MONITORING PROGRAMS

PRESCRIPTION MONITORING PROGRAM

1. Check the database even if not required to
2. Do not disclose reports unless clear requirement
3. Accessing PMP may discourage drug-seekers
4. Do not report patients
   - *"When prescribers identify a patient as potentially having an issue of concern regarding drug use, they are encouraged to help the patient locate assistance and take any other action the prescriber deems appropriate."* www.njconsumeraffairs.gov/pmp/Pages/FAQ.aspx
5. Periodically check yourself if system allows

STARTING A PRACTICE

SAGE ADVICE WHEN STARTING A PRACTICE

TERMINATION OF THE TREATMENT RELATIONSHIP

TERMINATION

1. Give reasonable notice/time to find alternative treatment
   - Modal time: 30 days (15 days in California)
2. Educate on treatment recommendations
   - Might include: caution against abrupt discontinuation of medication, reminder of driving restrictions, urge patient to find a new psychiatrists 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 <u>or</u>
   - Delivery confirmation

TERMINATION

Compare:

- Your licensing board
- Facility/group policies & procedures
- Provider contracts

Patient in crisis?

Termination by:

	No	Yes
Psychiatrist	Standard Process	Very Risky
Patient	Modified Process	Assess

RESOURCES

www.prms.com/RMTalks

www.prms.com/faq

QUESTIONS?