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Liability When Treating Children and Adolescents

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As I'm polishing my talk for the American Society for Adolescent Psychiatry's Annual Meeting in New York later this week, I thought I'd share some thoughts on liability risk related to treating children and adolescents.

Greatest Professional Liability Exposure

In terms of frequency, your greatest exposure areas treating children and adolescents are the same as for treating adults – psychopharmacology followed by suicide / attempted suicide. Other causes of loss when treating minor patients can be found on our Program's cause of loss chart that I discussed in a prior post!

In terms of severity, your exposure is again the same as that of adult psychiatrists – cases involving significant permanent neurological or physical injuries resulting in the need for life long care.

Administrative Actions

Administrative actions, such as licensing board complaints, occur more frequently when treating minors than when treating adults, due at least in part to the number of people who may want to complain – parents, grandparents, etc. While the vast majority of administrative actions brought against our insureds involving minor patients are dismissed, the following predominant, often overlapping, themes are worth noting:

First theme: THE MINOR PATIENT'S PARENTS ARE DIVORCED

- Many, many board complaints involve divorced parents
- One parent blames MD for loss of custody
- One parent is unhappy with the medication prescribed

Second theme: PRESCRIBING ISSUES

- Many parents complain about the physician's insistence on having the patient be seen before prescribing, rather than just prescribing over the telephone
- Many allege failure to communicate – specifically that calls about medication side effects are not returned

Third theme: ABUSE WAS REPORTED

- Many of our board complaints are filed by parents after the psychiatrist has reported child abuse

Fourth theme: TERMINATION ISSUES

- Consistent with treating adults, many board complaints allege abandonment by the psychiatrist
- Be sure to follow the termination process to avoid allegations of abandonment – give notice of the termination, make clinical recommendations, provide referral resources, cover for typically 30 days, and forward medical records upon request and authorization

Additional Risks

There are additional risks associated with treating minor patients – based on uniqueness of this patient population:

- Most prescribing for minors is off-label, which can lead to heightened scrutiny of prescribing decisions. However, these generally are not high severity cases as minor patients may have fewer medical conditions and fewer economic losses
- Minor patients generally do not have the ability to consent to treatment
- There are multiple parties involved who can bring actions on behalf of minor patients, and each party, with perhaps a different agenda, can have different expectations from treatment
- The statute of limitations (time limit on filing a lawsuit) is extended for minors – they can generally bring suit once they turn 18 for treatment years prior
- Allegations of child abuse can arise when treating minors – which can lead to actions filed by unhappy (accused) parents
- Minor patients are a particularly vulnerable patient population – most minors depend on parents for adherence to the treatment plan, and you generally cannot blame these minor patients when something goes wrong

Payouts in Cases Involving Minor Patients

Cases involving minor patients have a very high sympathy factor, which may result in more payouts as compared to cases involving all-aged patients. This can be due to:

- Sympathy for the patients (such as the teen in a facility that was molested by a staff member or another patient) – juries will feel that kids shouldn't have to deal with these issues
- Sympathy for the parents

HOWEVER, the payouts in minors' cases tend to be lower than in other cases:

- Economic losses (those you can put a dollar amount on), such as future lost wages, are speculative
- Minor patients generally have no dependents

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i <https://www.linkedin.com/pulse/new-cause-loss-data-from-psychiatrists-program-vanderpool-mba-jd?trk=mp-reader-card>

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