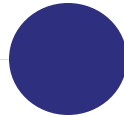


COLLATERAL DAMAGE: ADVERSE EVENTS, LAWSUITS, & PHYSICIAN WELL-BEING



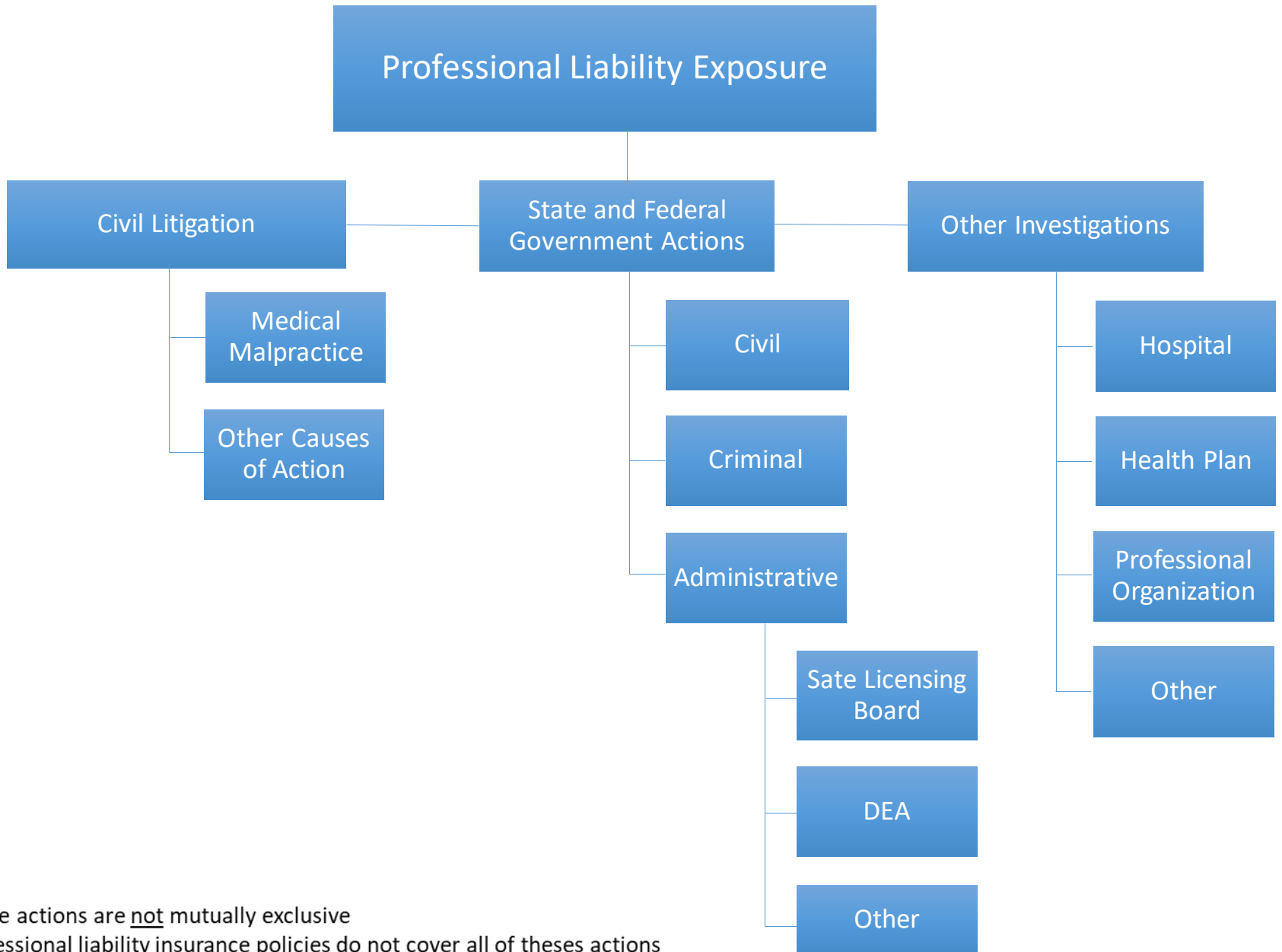
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Director of Risk Management
Professional Risk Management Services (PRMS)

AAPL Annual Meeting
October 24, 2020

PERSPECTIVE POINTS

- Adverse events happen in medicine, even with the best care
- Lawsuits are an occupational hazard for physicians
- Physicians prevail in the vast majority of lawsuits
- Psychiatry = least often sued medical specialty
 - › NEJM 2011: <https://www.nejm.org/doi/full/10.1056/nejmsa1012370>
 - › AMA 2017: <https://www.ama-assn.org/media/21976/download>
 - › JAMA 2017: <https://jamanetwork.com/journals/jamainternalmedicine/fullarticle/2612118>
- ↑ patient safety = ↓ professional liability
- Best way to ↓ professional liability = good clinical care
- Understanding what to expect = ↓ anxiety and ↑ well-being



Notes:

- * These actions are not mutually exclusive
- * Professional liability insurance policies do not cover all of these actions

Professional Risk Management Services (PRMS)
Cause of Loss – Administrative Actions, Claims, and Lawsuits

1986 - 2019

Primary Allegation	All States
Suicide / Attempted Suicide	27%
Incorrect Treatment	23%
Breach of Confidentiality	15%
Other	10%
Medication Issues	8%
Incorrect Diagnosis	5%
Hospital Commitment / Discharge	3%
Improper Supervision	3%
Boundary Violation	3%
Abandonment	1%
Duty to Warn / Protect	1%
Forensic	< 1%
Lack of Informed Consent	< 1%

Notes:

- “Primary allegation” is the main allegation by plaintiffs’ attorneys of what the psychiatrist did wrong
- “Incorrect treatment” will represent a high percentage of cases because plaintiffs’ attorneys often use a broad, general allegation initially; this category includes all types of cases, including suicide and psychopharmacology
- The category labeled “Improper Supervision” refers to supervision of patients as well as of other providers

Professional Risk Management Services (PRMS)
Cause of Loss – Claims and Lawsuits
2010 – 2019

Primary Allegation	All Aged Patients
Incorrect Treatment	31%
Medication Issues	21%
Suicide/Attempted Suicide	13%
Other	10%
Hospital Commitment / Discharge	7%
Breach of Confidentiality	5%
Improper Supervision	4%
Incorrect Diagnosis	4%
Boundary Violation	2%
Forensic (expert testimony, IMEs, etc.)	1%
Duty to Warn / Protect	1%
Abandonment	1%

Notes:

- “Primary allegation” is the main allegation by plaintiffs’ attorneys of what the psychiatrist did wrong
- “Incorrect treatment” will represent a high percentage of cases because plaintiffs’ attorneys often use a broad, general allegation initially; this category includes all types of cases, including suicide and psychopharmacology
- The category labeled “Improper Supervision” refers to supervision of patients as well as of other providers

PSYCHIATRISTS' GREATEST PROFESSIONAL LIABILITY RISK

Frequency:

- Patient suicide / attempted suicide
- Psychopharmacology

Severity:

- Cases involving significant permanent neurological or physical injuries resulting in need for life long care
 - › \$\$\$
 - › Loss of potential income
 - › Pain and suffering awards

UNFORTUNATE TRUTHS

- Non-negligent physicians are sued
- Plaintiffs will be able to find an expert to testify that you were negligent – even if you were not
- Expect significant emotional distress upon learning of an action against you
- You will be accused of doing terrible things
- You will fear the worst
- You will not feel in control
- Lawsuits can take years to resolve
- You will have to devote great time and energy to maintain your health and assist in your defense
- There are no “winners” – even if you prevail

FORTUNATE TRUTHS

- Physicians tend to overestimate risk of being sued
- Psychiatry is the least often sued medical specialty
- Being sued ≠ being found liable
- Verdict ≠ judgment
- You can protect yourself and mitigate risk before and after an event
- You can – and should – be very involved in your defense
- In the vast majority of cases that go to trial, the defendant physician prevails
- You are not alone

AFTER AN EVENT – DOS

- DO contact your liability insurer ASAP to report the event
- DO ensure the patient's clinical needs are met
- DO remember:
 - › Not all adverse outcomes are due to negligence
 - › Not all adverse outcomes will result in a professional liability action against you
- DO secure the clinical record
- DO get advice from your liability insurer for all requests for copies of the record
- DO remember that confidentiality survives a patient's death
- DO consider not sending a bill to patient/estate

AFTER AN EVENT – DO NOTS

- DO NOT change the record
 - › If you think something needs to be corrected, seek guidance from your attorney prior
- DO NOT apologize without guidance from your liability insurer
- DO NOT discuss case with anyone other than your liability insurer and your attorney, unless approved by your attorney
- DO NOT participate in any review of the patient's care (peer / incident / QI / etc.) without getting guidance from your attorney prior
- DO NOT become over-involved with the patient's family – let them direct the amount of interaction

AFTER NOTICE OF AN ACTION / INVESTIGATION – *ADDITIONAL DOS*

- DO notify your liability insurer ASAP
- DO limit your discussions about the action / incident
 - › Discussions about the case may be discoverable and used against you
- DO collaborate and cooperate with your attorney
- DO understand potential stressors to best manage them – professional and personal
- DO put your energy to good use – be involved:
 - › Educate your attorney on the medicine
 - › Be available for your attorney's questions
 - › Find and forward medical literature

AFTER NOTICE OF AN ACTION / INVESTIGATION – ADDITIONAL DO NOTS

- DO NOT respond yourself – no matter how meritless the allegations are – contact your liability insurer ASAP
- DO NOT ignore it – you risk a default judgment
- DO NOT contact the patient
- DO NOT contact the attorney / agency/ etc. that filed the case
- DO NOT talk to anyone about the specifics of case (other than your insurer and attorney) without approval of your attorney
- DO NOT hesitate to establish a confidential treatment relationship to deal with your own emotions
 - › DO NOT share confidential patient information