



# RESIDENT OWLERY

**W**ELCOME TO THE INAUGURAL 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:

PROFESSIONAL LIABILITY  
EXPOSURE

ELEMENTS OF A MEDICAL  
MALPRACTICE LAWSUIT

THE STANDARD OF CARE

## PRMS IS SOCIAL!

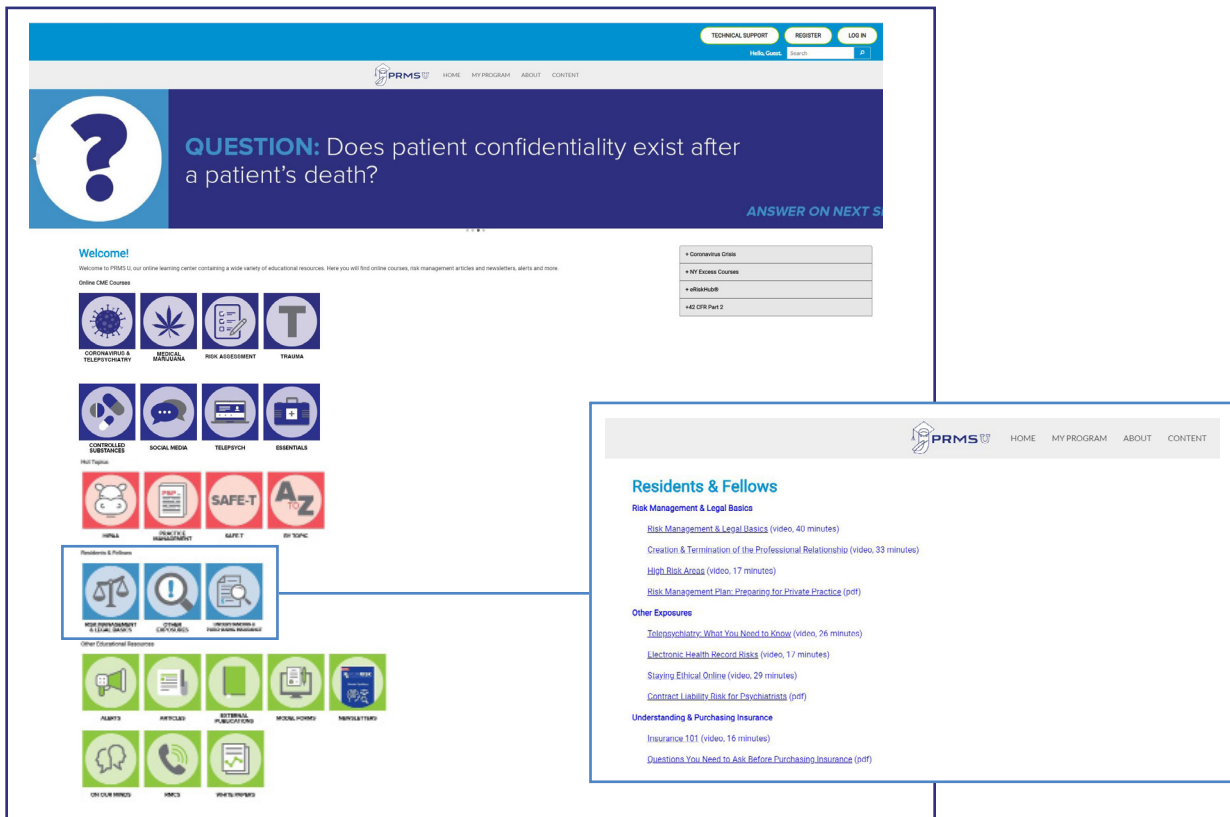
Click the social media icons below to follow PRMS and get an inside look at the company, follow along on our travels, and access timely risk management alerts and helpful resources from our team of experts.



# EXPLORE PRMS<sup>U</sup>

## YOUR ONLINE RISK MANAGEMENT LEARNING CENTER, FEATURING A WIDE VARIETY OF EDUCATIONAL RESOURCES

Psychiatric residents, fellows, and training directors – receive complimentary access to on-demand courses, risk management articles, newsletters, alerts, and much more!



The screenshot displays the PRMSU website interface. At the top, there is a navigation bar with links for TECHNICAL SUPPORT, REGISTER, and LOG IN. Below this is a search bar and a main navigation menu with links for HOME, MY PROGRAM, ABOUT, and CONTENT. A large banner features a question: "QUESTION: Does patient confidentiality exist after a patient's death?" with a "ANSWER ON NEXT S" link. Below the banner, there is a "Welcome!" section with a list of online CME courses categorized by topic: COVID-19 & TELEPSYCHIATRY, MEDICAL MALPRACTICE, RISK ASSESSMENT, TRAUMA, CONTROLLED SUBSTANCES, SOCIAL MEDIA, TELEPSYCH, and ESSENTIALS. There is also a "Hot Topics" section with icons for HIPAA, POLICY IMPLEMENTATION, SAFE-T, and A-Z. A "Residents & Fellows" section is highlighted, listing various educational resources:

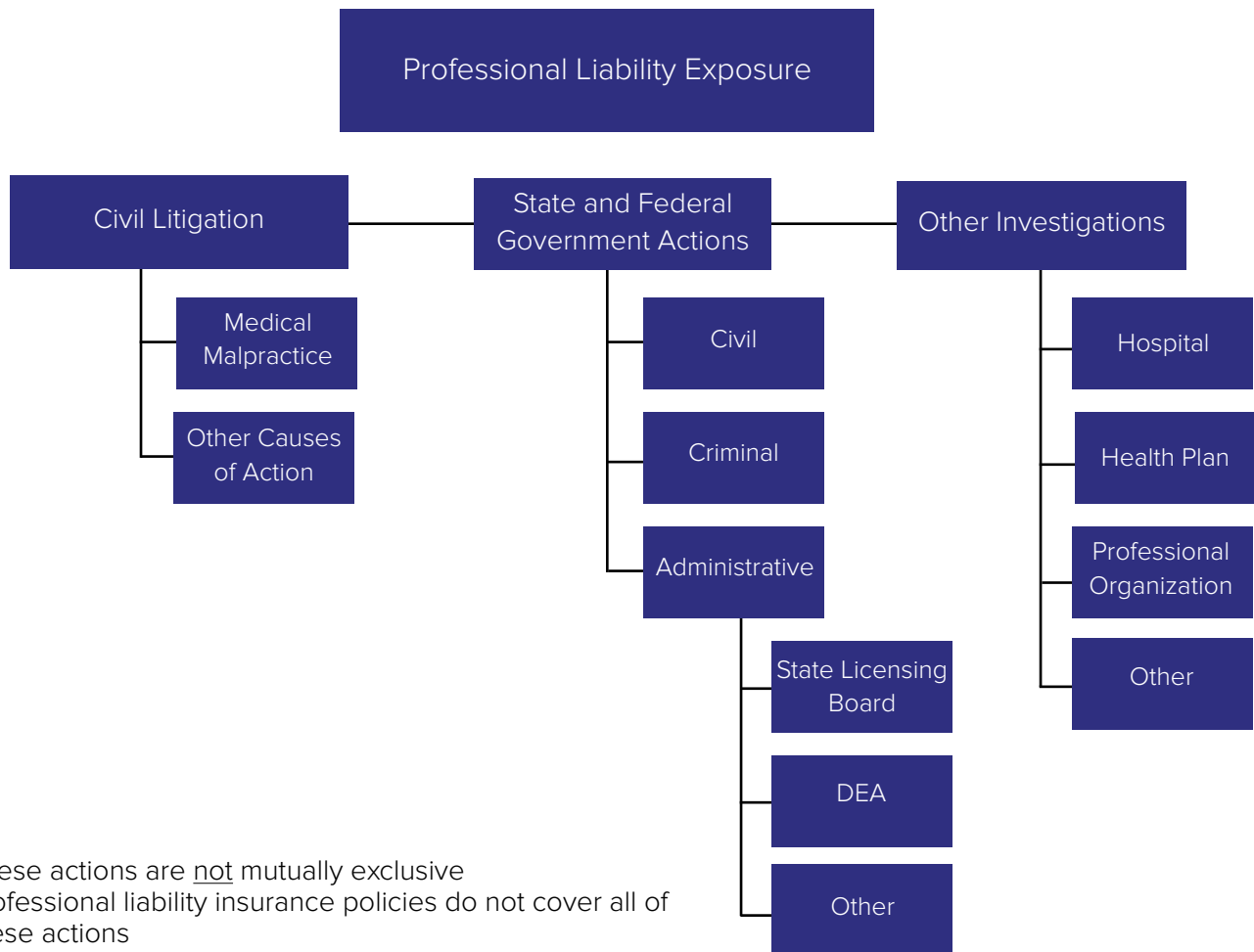
- Risk Management & Legal Basics**
  - Risk Management & Legal Basics (video, 40 minutes)
  - Creation & Termination of the Professional Relationship (video, 33 minutes)
  - High Risk Areas (video, 17 minutes)
  - Risk Management Plan: Preparing for Private Practice (pdf)
- Other Exposures**
  - Telepsychiatry: What You Need to Know (video, 26 minutes)
  - Electronic Health Record Risks (video, 17 minutes)
  - Staying Ethical Online (video, 29 minutes)
  - Contract Liability Risk for Psychiatrists (pdf)
- Understanding & Purchasing Insurance**
  - Insurance 101 (video, 16 minutes)
  - Questions You Need to Ask Before Purchasing Insurance (pdf)

### TO ACCESS:

1. Visit [www.PRMSU.com](http://www.PRMSU.com)
2. First time user? Click on “Register”
3. Enter your registration details and create a password.
4. Log in!

For questions, contact Donna Vanderpool, MBA, JD, Director of Risk Management, at [vanderpool@prms.com](mailto:vanderpool@prms.com)

# PROFESSIONAL LIABILITY EXPOSURE IN PSYCHIATRY



## Notes:

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

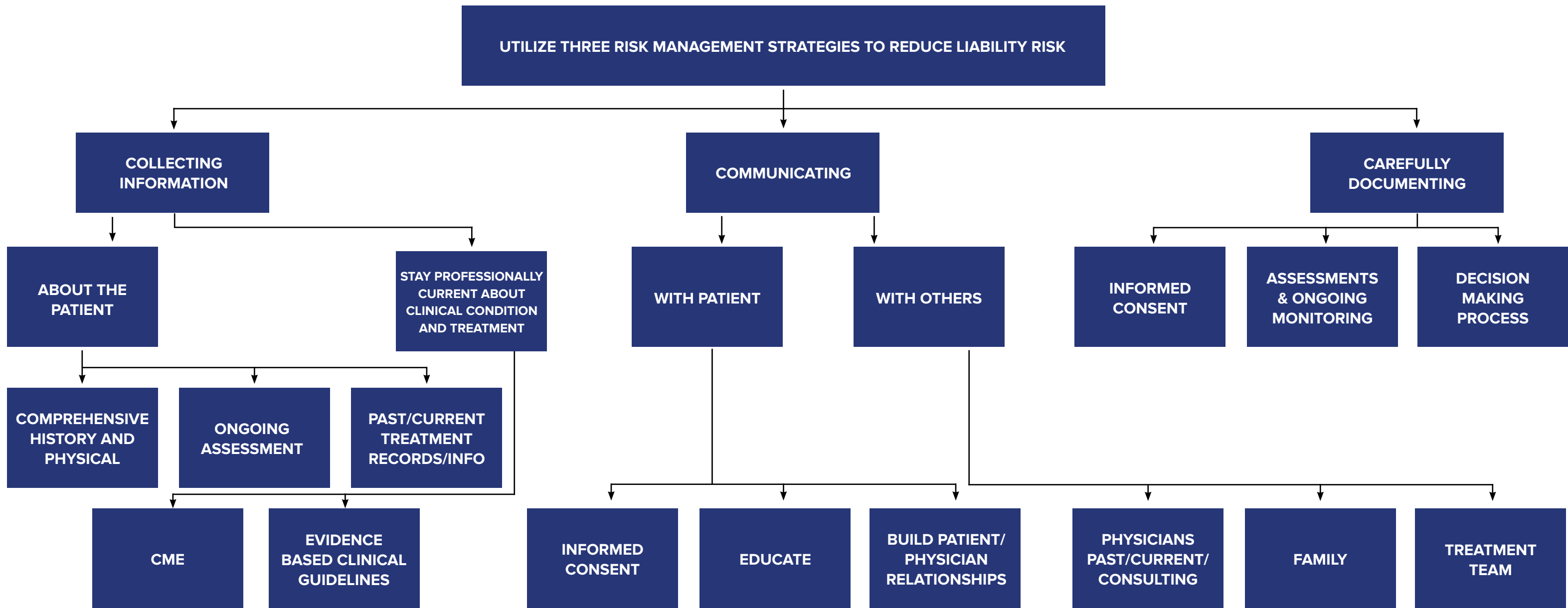
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## PSYCHIATRIC CARE IN PERSPECTIVE

- Adverse events happen in medicine, even in the best care
- Lawsuits are an occupational hazard for physicians
- Psychiatry is the 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>
- Physicians prevail in the vast majority of lawsuits
- Patient safety increases as professional liability decreases
- The best way to increase patient safety is good clinical care

# PROFESSIONAL LIABILITY EXPOSURE IN PSYCHIATRY

## 3 C'S OF RISK MANAGEMENT



# ELEMENTS OF A MEDICAL MALPRACTICE LAWSUIT

## The Four Elements of A Malpractice Lawsuit

Medical malpractice lawsuits are civil actions, as differentiated from criminal actions.

This means that one entity (the plaintiff) sues another entity (the defendant) in order to obtain relief (e.g., financial compensation of some kind).

There are four elements to a malpractice lawsuit, and the plaintiff must prove all four elements in order to prevail (in order for the defendant to be found liable). The elements are:

1. Duty of Care
  - the physician owed a duty of care to the patient (to meet the standard of care)
2. Breach of Duty
  - the physician was negligent (the care provided fell below the standard of care)
3. Damages
  - the patient suffered an adverse outcome (injury)
4. Proximate Cause
  - the patient's damages were a direct result of the physician's negligence



## The Elements of In More Depth

### Element 1: Duty of Care

The duty of care arises from the special, legally recognized relationship between the physician and the patient. The duty of care is not simply to care for patients in any way she sees fit - the psychiatrist must care for patients in accordance with the standard of care. The standard of care, like the duty of care, is a legal concept, not a clinical concept; however, the legal concept is based on the clinical care. See related article on the standard of care.

### Element 2: Breach of Duty/Negligence

The failure to meet a legal duty is called negligence. In a medical malpractice lawsuit, the plaintiff must show that the physician was negligent. Malpractice actions must contain allegations of negligence (e.g., negligent treatment, negligent prescribing).

Negligence:

- the failure to meet the standard of care; negligence is accidental as distinguished from intentional wrongdoing (e.g., assault)

It is important to understand that negligence in this context is accidental. It is an unintentional wrongdoing, as distinguished from an intentional wrongdoing (e.g., assault and battery).

### Element 3: Damages/Injury

Malpractice is more than simply negligence. There must be an injury, as well. Legal injuries can be physical, emotional, or financial.

Medical/Professional Malpractice:

- the act(s) or continuing conduct of a physician which does not meet the standard of professional care and results in injury/damage to the patient; such an error or omission may be through negligence or intentional wrongdoing but does not include the exercise of professional judgment even when the results are detrimental to the patient.

In other words, if a psychiatrist's actions fall below the standard of care, but there is no injury, then there is no malpractice. There is only negligence.

The failure to meet the standard of care can be a result of unintentional negligence or intentional wrongdoing (again, this discussion is concerned only with unintentional negligence), but it does not include the exercise of professional judgment. In other words, a psychiatrist can use proper professional judgment and there may still be a bad outcome (e.g., a bad reaction to a medication). A bad outcome is not itself evidence of malpractice, as exemplified in the adage "the operation was a success, but the patient died anyway."

#### Element 4: Proximate Cause

This element is the crux of a lawsuit. The plaintiff must show that his injuries were the result of the defendant's actions. The concept of proximate cause is grounded in foreseeability. If the patient's injury was a foreseeable consequence of the negligence, the psychiatrist will be held liable. If the patient's injury was not foreseeable, or if some intervening act was the catalyst for the injury, the psychiatrist will not be held liable. This is usually the most difficult element to prove.

#### Scenario

Here is a simplistic example to illustrate the elements: A patient was hospitalized after attempting suicide. Four days later, he was discharged from the hospital and committed suicide a few hours later. The representative of the estate is suing the psychiatrist who discharged the patient. The following demonstrate the argument that will be made by the plaintiff.

1. Duty of Care
  - that the psychiatrist had a duty to perform a suicide assessment on the patient prior to discharge
2. Breach of Duty
  - that the psychiatrist discharged the patient without performing a suicide assessment
3. Damages
  - that the patient died as a result of suicide after being discharged
4. Proximate Cause
  - that but for the psychiatrist's failure to conduct the suicide assessment prior to discharge, the patient would not have committed suicide (i.e., if the psychiatrist had done his job, this would not have happened)

# THE STANDARD OF CARE

The exact definition of standard of care varies by state, but generally, it is the degree of skill, care, and diligence exercised by members of the same profession or specialty practicing in light of the present state of medical science. It is important to keep in mind that the standard of care does not mean optimal care, but includes a range of acceptable treatment options.

There are many factors that could be used as evidence of the applicable standard of care for a particular patient care issue. These factors that determine the applicable standard of care include, but are not limited to, the following:

- federal and state statutes – such as federal and state prescribing laws
- federal and state regulations – such as regulations from your state medical board, the Food and Drug Administration, and the Drug Enforcement Agency
- case law – federal and state
- other statements from federal and state regulatory agencies – such as guidance documents or policy statements from your state medical board
  - **authoritative** clinical guidelines (health plan's utilization review guidelines)
- policies and guidelines from professional organizations
- treatises
- journal articles
- accreditation standards – such as Joint Commission standards
- a facility's own policies and procedures
- etc.

In psychiatric malpractice litigation, the standard of care is established primarily by psychiatrists in the role of the expert witness. The expert witness will base his/her opinions on the items mentioned above evidencing the applicable standard of care, his/her own clinical experience and education, and the clinical record. Accordingly, the psychiatrist's documentation should support the care that was given and should enable someone else – such as an expert witness – to read the record and know what happened and why. One way to accomplish this is to document not only what happened in treatment and why, but also what actions were considered but rejected and why.



Click here to access our  
**“Questions You Need to Ask  
Before Purchasing Medical  
Professional Liability  
Insurance”** resource.



## RESIDENT RESOURCE OF THE QUARTER:

This month's resource is a tip sheet on employment contracts – why they are needed and things to watch for.

[Click here to view this article >](#)

## RESIDENTS AND FELLOWS: ARE YOU MOONLIGHTING?

One of the most important decisions you will make in your career is choosing a professional liability insurance company you can rely on, from residency to retirement. With more than 35 years of psychiatry-specific experience, PRMS® provides moonlighting residents and fellows with the insurance coverage and risk management resources necessary to practice with peace of mind – so you can focus on developing your skills and taking care of patients.



**RICHARD STAGNATO, RPLU**  
SENIOR UNDERWRITER



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