



RESIDENT OWLERY

WELCOME TO THE NEXT 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.

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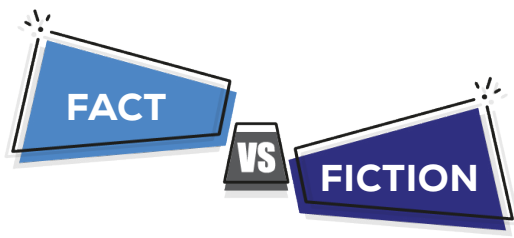


WHAT YOU’LL FIND INSIDE:

FACT VS FICTION

GOOGLING PATIENTS

**TEST YOUR
KNOWLEDGE!**



WHAT DO YOU THINK - FACT OR FICTION?

FACT OR FICTION?

I would like to speak with my patient's PCP to discuss medication issues. Since it is for treatment, I can communicate with his current treaters, even without his permission.

What do you think - fact or fiction?

Fact!

Federal and some state law explicitly permit the sharing of patient information for treatment purposes (except information related to substance abuse treatment).

Under HIPAA's Privacy Rule, covered entities have regulatory permission to share protected health information for treatment purposes (as well as for payment and healthcare operations). This is explained in greater detail in OCR's [FAQ](#). Covered entities should include this in their Notice of Privacy Practices. For an example, see OCR's [Model Notice of Privacy Practices](#).

Additionally, some states specifically allow all providers to share information for treatment purposes without patient permission. For example, under [California law](#):

(a) A provider of health care...shall not disclose medical information regarding a patient of the provider of health care without first obtaining an authorization, except as provided in subdivision (b) or (c)...

(c) A provider of health care... may disclose medical information as follows:

(1) The information may be disclosed to providers of health care, health care service plans, contractors, or other health care professionals or facilities for purposes of diagnosis or treatment of the patient.

Given the reluctance of various entities (notably hospitals and labs) to rely on this regulatory permission, you may want to have patients sign a consent to the sharing of treatment information with others involved in the patient's care. Obtaining such a consent is a good way to manage patient expectations and preserve trust within your treatment relationship.

This consent should be general and should not name specific providers. It could be as simple as this:

I consent to [clinician's name] obtaining and sharing my health information with other treating providers involved in my care for purposes of providing and coordinating my care.

Patient Signature: _____

Date _____

GOOGLING PATIENTS

In the Digital Age, AI-assisted web searches can provide more information on a topic than anyone could ever want. However, these tools pose a unique dilemma for physicians - especially psychiatrists – in deciding whether to use them to search their patients. What only a few years ago would have been considered confidential (and arguably off limits) is now available to the general public – much of it having been posted by the individuals themselves. If the whole world can access a patient's information, shouldn't their psychiatrist have it as well? Should a psychiatrist Google their patient?

Before performing a search on your patient, consider the following:

What is my purpose for this? If you have a legitimate treatment purpose, e.g., a third party has informed you that a patient has been posting thoughts of suicidal or homicidal ideation on his blog, proceed but with caution. If your purpose is more along the lines of curiosity, step away from the keyboard – fast!

What specific information am I looking for? Take care in defining your search terms to help ensure that you have a legitimate purpose for viewing the information returned.

Should I first obtain my patient's permission? Absent a safety issue that requires an urgent response, advising your patient of your desire to obtain information and asking their permission to do so helps to maintain the patient's trust.

Should I access the information only in the presence of my patient? This may depend upon the nature of the information. For example, if your patient was the victim of a heinous crime and you believe knowing more about the incident will better help you treat your patient, you should consider the impact revisiting this information would have upon the patient.

What if I find information I'm not prepared for? Before hitting "search" you have to be prepared for what you might find. Consider: What will I do if I find out information that is offensive to me and causes me to think less of my patient as a person? What if I learn that my patient has filed multiple lawsuits against previous physicians? What if I learn that my patient who won't pay my fees comes from a very wealthy family? What if I see that my patient is engaging in activities I may be required to report? What if I see my patient who is claiming disability engaging in extreme physical activity? Avoiding some of the information may be possible by using narrow search terms as discussed above and exercising extreme willpower, but you may still stumble across information that would make you uncomfortable, and you must consider how this would impact your treatment relationship.

How do I know the information I uncover is reliable? Does it appear to be from a credible source? Is it current information?

Will I need to print out the information and put it in the patient's chart? If it is information that was relied upon in

making treatment decisions, arguably yes. Remember that whatever is placed in the chart becomes a part of the patient's permanent record and must be released whenever records are requested. This supports the idea of gaining the patient's consent before accessing information.

Can accessing this information increase my liability exposure? For example, what if, with your patient's knowledge, you are reading his blog and after months of relatively benign entries, you decide to skip a few weeks and thus don't notice when your patient outlines a plan to commit suicide which they then implement? Have you imposed a greater duty upon yourself when you undertook monitoring your patient's web activities? Possibly so.

RISK MANAGEMENT TIP

Googling patients opens a Pandora's box of ethical and liability issues. As noted in the American Psychiatric Association's Resource Document on Ethical Considerations Regarding Internet Searches for Patient Information (2017), while Googling a patient isn't unethical, it should be done only for the purpose of promoting patient care. Accordingly, our conservative risk management advice is that, unless presented with a compelling and/or urgent need to obtain information for the purpose of treatment or safety of the patient or others, Googling patients is best avoided.

RESIDENTS AND FELLOWS: ARE YOU MOONLIGHTING?

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RICHARD STAGNATO, RPLU
SENIOR UNDERWRITER



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TEST YOUR KNOWLEDGE!

NONADHERENT PATIENTS:

WHICH OF THE FOLLOWING STATEMENT IS FALSE?

- A) If a patient is harmed due to his or her non-adherence to a recommended treatment regimen, a jury will look to see what efforts their physician made to affect adherence.
- B) Many non-adherent patients have prevailed against psychiatrists by convincing a jury that the physician did not adequately communicate the severity of their condition or give adequate instructions.
- C) Believing that a psychiatrist has a better understanding of the ramifications of a patient's failure to pursue treatment than does the patient, a jury may impose a greater burden upon the psychiatrist.
- D) As it relates to non-adherent patients, a competent adult will always be held accountable for their own actions or inactions.

Answer: D is false!

Non-adherent, competent adult patients are not always held accountable for their own actions or inactions during litigation. Juries will consider what efforts the psychiatrist made to affect adherence and may impose a greater burden upon the physician due to their knowledge, training, and expertise.



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CONTACT US

(800) 245-3333

TheProgram@prms.com

PRMS.com



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