# RESIDENT OWLERY

WELCOME TO "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 navigate 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:



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# 10 THINGS ABOUT: DOCUMENTATION

1. Your medical record has three essential purposes: 1) to support good clinical care; 2) to use in your defense in the event of a claim or lawsuit; and 3) to substantiate your billing and demonstrate adherence to payer guidelines.
2. There is no such thing as a perfect record. As with most aspects of psychiatric practice, documentation remains a lifelong learning process, a perpetual skill-in-progress that must continually be reassessed in order to respond to changing demands and considerations.
3. A good record accomplishes several things: it substantiates your clinical judgment and choices, demonstrates the knowledge and skill you exercised during treatment, provides a contemporaneous assessment of the patient's needs and behaviors, and documents significant events, revisions of the treatment plan, and explanations of your decisions.
4. State regulations and third party payers with whom you contract may have medical standard with which you must comply. Failure to follow state regulations may be a breach of the standard of care and failure to follow payer requirements may impact reimbursements.
5. Even if your records are less than desirable, an experienced defense attorney can work well with a cooperative clinician and a "good enough" record. But an altered/falsified record will be indefensible if discovered (and they almost always are).
6. Documenting what you didn't do and why may be just as important as documenting what you did do and why. This is particularly true if you are rejecting or deviating from a standard course of treatment.
7. Patients may at some point want to see their records (and you will likely be required to allow this). While still documenting to appropriately capture the situation clinically, consider whether you can use words that might be less upsetting to a patient who does read his or her chart.
8. It may at some point be necessary for your patient to allow the release of their records to someone with adverse interests (e.g., the opposing side in a lawsuit) thus you should document discreetly whenever possible. Consider whether the information you've been provided is clinically relevant and just how much detail is needed.
9. Electronic health records present unique documentation concerns. Documentation short-cuts such as box checking, templates, autopopulation, and note cloning may actually increase a physician's liability exposure.
10. When using AI scribe tools to generate documentation, physicians should keep in mind that AI is subject to significant errors. Physicians should thoroughly review and proof any AI-generated documentation before incorporating it into the final medical record.

# THE STANDARD OF CARE: FIVE FAQS

## Q1: What exactly is the standard of care?

**A:**

The standard of care is commonly understood by physicians to be what is appropriate treatment for a particular patient depending upon his or her particular condition. Although it applies to medicine, the standard of care is in fact a legal term. While the precise definition varies from state to state, most are similar to that found in Connecticut Code §52-184c: "...that level of care, skill and treatment which, in light of all relevant surrounding circumstances, is recognized as acceptable and appropriate by reasonably prudent similar health care providers."

While at one time the standard of care was dependent upon a physician's location (a physician in the tiny town of Pittsburg, Kansas for example, was not expected to meet the same standards as a physician in the large city of Pittsburgh, Pennsylvania), very few states have retained the locality standard. Given today's easy access to research via the Internet and consultations via telehealth, the majority of states follow a national standard, and it would be our risk management advice that psychiatrists follow this standard as well.

It's important to remember that the standard of care does not mean optimal care. It is a continuum, with barely acceptable care at one end, and the ultimate in care at the other end. Of course, physicians should always aim in the direction of the ultimate in care, but from a malpractice liability perspective, as long as they make it onto the continuum, they should be able to avoid exposure.

To demonstrate that their care was appropriate – particularly if an unanticipated outcome later suggests that care was substandard - physicians should document their clinical judgment and decision-making process so that their treatment can be understood, whether by expert witnesses in litigation or subsequent treaters.

## Q2: What is the relevance of the standard of care to psychiatrists?

**A:**

The standard of care is relevant in medical malpractice lawsuits. To prevail in a malpractice case, the plaintiff must prove all four of the following elements:

Duty: The physician owed a duty to meet the standard of care to the plaintiff patient.

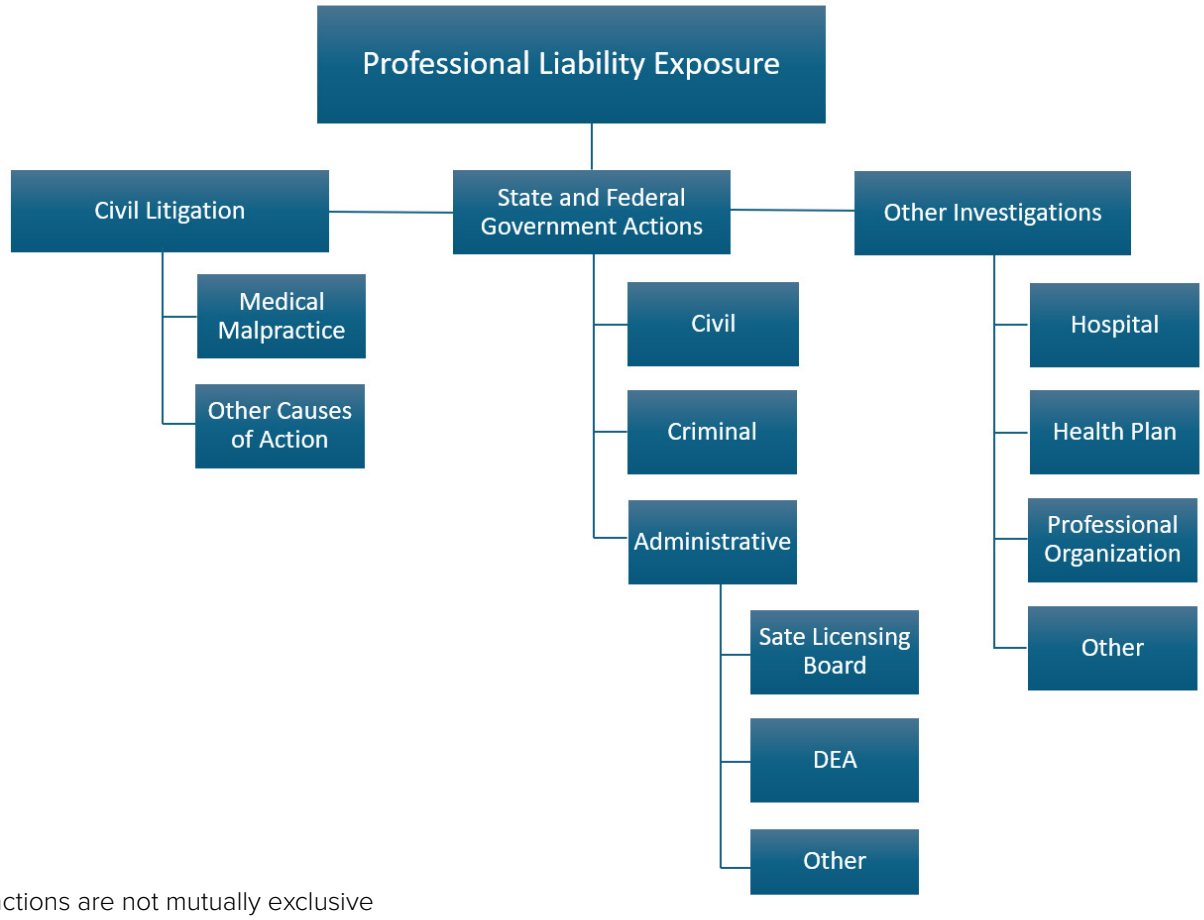
Negligence: Breach - the physician did not meet the standard of care.

Harm: The plaintiff suffered some type of harm – physical, emotional, and/or financial.

Causation: The plaintiff's harm was directly caused by the defendant physician's failure to meet the standard of care.

In order to prove all four of these elements, the plaintiff must be able to demonstrate what the standard of care was in a particular instance and how the defendant physician failed to meet it.

But the standard of care is not relevant in all liability actions that can be brought against psychiatrists. As can be seen on the chart on the following page, medical malpractice, where the standard of care is relevant, is only one of the many different types of actions that can be brought against psychiatrists.




Notes:
* These actions are not mutually exclusive
* Professional liability insurance policies do not cover all these act

The standard of care – what reasonably prudent similar health care providers are doing in similar circumstances – is not relevant in government investigations. In those cases, what other psychiatrists are doing is irrelevant; the sole question is whether the psychiatrist under investigation followed the law.

## Q3: How is the standard of care determined?

**A:**

There are a variety of factors that can evidence the applicable standard of care in any clinical situation. In descending order of relevance, these factors are:

- Statutes – federal and state, such as prescribing laws.
- Regulations – federal and state, such as confidentiality regulations.
- Court opinions – such as duty to warn case decisions.
- Other regulatory statements – federal and state, such as guidelines from licensing boards.
- Authoritative clinical guidelines – in and of themselves, guidelines are not the standard of care, but are a factor that will be sued to determine the standard of care. Just as following guidelines does not preclude negligence, not following guidelines does not equal negligence. If authoritative clinical guidelines (not utilization review guidelines) are not followed, the reason and clinical judgment should be documented.
- Policies and guidelines from professional organizations, such as from the APA, AACAP, etc.
- Journal / research articles
- Accreditation standards
- Facility policies and procedures
- Etc.

In litigation, each side's expert witnesses will testify as to the applicable standard of care, based on the factors listed above, in addition to their own clinical experience. Contemporaneous documentation of your decision making (what you did and why, as well as what you considered but rejected and why) will enable an expert witness in litigation to understand your treatment decisions. The fact finder, the jury (or the judge in a case without a jury), will decide which side's expert is determinative.

**Q4: Does the standard of care change during disasters to some type of emergency standard of care?**

**A:**

No, as discussed in the first question above, the standard of care is basically what a reasonably prudent similar health care provider would do in similar circumstances. In light of this, there is flexibility for the standard of care to be tailored to the specific circumstances, so there is no need for an emergency or disaster modified standard of care.

**Q5: Does the standard of care change when doing telepsychiatry?**

**A:**

No. States agree that the standard of care for telemedicine is the same as if seeing the patient in person. States that have answered this question have done so by statute, regulation, or licensing board guidance.

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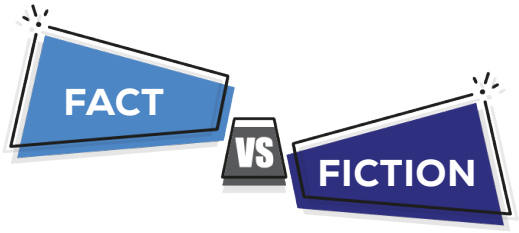


# WHAT DO YOU THINK - FACT OR FICTION?

## FACT OR FICTION?

A psychiatrist's former patient has posted a scathing online review of the psychiatrist, his practice, and his treatment. The patient didn't include a name, but he is positive he knows the author of the post. The psychiatrist feels he must respond to the post given the ridiculous lies, but knows he is limited in exactly what he can say due to confidentiality. However, since the patient shared in the post that she was in treatment with him and the fact of treatment is no longer confidential, the psychiatrist believes he can address the patient's false statements by posting his response.

**What do you think - fact or fiction?**

**Fiction!**

Even though a patient tells the world of your treatment, you cannot acknowledge that the reviewer was treated by you. For more information, click here to access "10 Things to Know about Online Reviews."

# HAPPY HOLIDAYS

This holiday season, PRMS is proud to support organizations working to support wellbeing and mental health in our local community and across the country. Join us in supporting: **Arlington Food Assistance Center,** which provides dignified access to free groceries and allows families to devote their limited financial resources to obligations such as housing, utilities, medication, and other basic needs in the Northern Virginia area; **Trevor Project**, whose mission is to end suicide in LGBTQ+ young people through research, advocacy and support programs; **World Central Kitchen**, a global organization developing a new model for disaster relief by providing meals to humanitarian, climate, and community crises.

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MORE THAN AN **INSURANCE POLICY**

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