

Back to the Basics: Mid-Year Risk Management Reset

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*This ongoing column is dedicated to providing information to our readers on managing legal risks associated with medical practice. We invite questions from our readers. The answers are provided by PRMS (www.prms.com), a manager of medical professional liability insurance programs with services that include risk management consultation and other resources offered to health care providers to help improve patient outcomes and reduce professional liability risk. The answers published in this column represent those of only one risk management consulting company. Other risk management consulting companies or insurance carriers might provide different advice, and readers should take this into consideration. The information in this column does not constitute legal advice. For legal advice, contact your personal attorney. **Note:** The information and recommendations in this article are applicable to physicians and other healthcare professionals so “clinician” is used to indicate all treatment team members.*

QUESTION

I am about 6 months into my solo practice, which includes both virtual and in-person mental health treatment. I have found private practice to be professionally rewarding, but I worry about staying out of legal trouble with limited resources and staff support. I read your recent articles on medical errors and the litigation process—what are some simple things I can do to protect my practice?

ANSWER

Your question is timely, not only because you are 6 months into your launch, but also because the third quarter is the time of year when many practices reconcile budgets and plan for the remainder of the year. This is a great opportunity to revisit the major tenets of risk management, the most important of which is to provide good patient care and ensure safety. Here are some practical risk management tips to protect the practice you are working so hard to build:

PATIENT SAFETY

- When treating patients via telehealth, consider asking for and documenting the patient’s current address at the start of every telehealth encounter. In the event the patient goes into crisis during the telehealth visit, you will know where to send emergency services.
- Consider checking the prescription monitoring program (PMP) prior to prescribing every time—even if not legally required to do so. This can be onerous, but the PMP may yield clinically relevant safety information you would not have otherwise known. Don’t forget to check other states that are available through your PMP.
- If you are treating a patient with suicidal ideation, consider obtaining past treatment records. While having the past records

might not change your course of treatment, it may give you a more nuanced picture of your patient. If you cannot obtain them, document your attempts.

- Review and update emergency contact information with your active patients.

TECHNOLOGY

- Do not enter patient information into a generative artificial intelligence (AI) system, such as ChatGPT, without obtaining a Business Associate Agreement (BAA) from the AI platform vendor. Under a BAA, the vendor must promise to maintain the confidentiality and security of your patients’ information.
- If you are treating patients via telehealth, ensure you meet licensure requirements in the patient’s state (in addition to your state). While pandemic-related waivers of state licensure are no longer in effect, some states have exceptions to licensure that may be relevant.
- Utilize AI, but do not rely upon it. AI can fabricate or hallucinate—it has frequently been found to make things up. AI should only supplement the clinician’s decision-making, not replace it.
- Privacy controls are not an absolute guarantee that social media posts will not be viewed by those other than you had intended. Search yourself online using all potential variations of your name to determine what information may be seen by others. Clean up your social media pages and remove anything that you would not want a patient, colleague, employer, or licensing board to see.

COMMUNICATION

- Consider incorporating the United States (US) Food and Drug Administration’s Patient Medication Guides into your informed consent discussions. These guides exist for most psychiatric medications and are written in patient-appropriate language in

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large font. They also exist in various languages. These guides have the most important information that patients should know at the top of treatment. You can document in the record that the medication guide was reviewed with the patient and that the patient was provided a copy. You may even include a copy of the guide in the record.

- When prescribing to female patients of childbearing years, remember that half of pregnancies in the US are unplanned, so patients could unknowingly consume psychiatric medications during the critical early period of pregnancy. Consider discussing this with the patient and advising what to do upon learning of a pregnancy.
- Ask a colleague for an informal “curbside” consult when faced with a tough clinical situation. In the event of a bad outcome and subsequent litigation, the fact that you thought of seeking the assistance of a trusted colleague will be useful in your defense. Never hesitate to consult with colleagues, even if it is to confirm how right you are.
- For patients at risk of outpatient suicide, discuss with them the importance of open communication with family and significant others, then ask for authorization to reach out to them. Consider contacting family members even without authorization if 1) the risk is significant, 2) the family can help keep the patient safe, and 3) family is unaware of the risk.
- If you are supervising or collaborating with other healthcare professionals, be

sure to adhere to the availability and communication rules set forth by your state.

DOCUMENTATION

- Periodically print out a medical record and evaluate it for adequacy. A good medical record is one in which a subsequent provider or an expert witness would be able to discern what you did in treatment and why, as well as what you considered but rejected and why.
- Remember to document not only your initial evaluation, but your ongoing assessments.
- Remember to document clinically relevant information gleaned from telephone calls, text messages, and emails.
- Ensure documentation has been completed as close to the treatment session as possible.
- When using electronic health records (EHRs), documentation shortcuts such as copy and paste often result in a record filled with many identical notes, calling into question whether the clinician truly conducted a thorough evaluation. Try to use free-form text to individualize each treatment note and distinguish one visit from another.

TERMINATING TREATING RELATIONSHIPS

- To determine any state-specific termination requirements, consider contacting your licensing board or reviewing their website.

- If possible, directly discuss the need to terminate with patients.
- Provide written notice—many states require at least 30 days of coverage to allow the patient to find a new provider.
- Review treatment recommendations and educate the patient on clinical issues, such as any risks of stopping medications abruptly.
- You are not required to place the patient with a new clinician, but you do need to provide referral resources.
- Forward records to the patient’s new treatment provider upon request.
- If you are a contracted provider with any health plans, review and be familiar with any termination provisions in your provider contracts. Some health plans require their contracted providers to provide a specific amount of notice to patients prior to terminating.
- Periodically review your patient roster to identify patients who have fallen out of treatment. For those patients who have been recently lost to follow-up, try to clarify whether they want to continue in treatment.

CONCLUSION

Consider reviewing your risk management practices at the start and midpoint of the year. Remember that your state licensing board, professional organizations, and even government entities offer a wealth of resources and information that provide helpful practice guidance at no additional cost to you. It never hurts to get back to basics! **ICNS**