HOOT WHAT WHERE

WELCOME TO THE INAUGURAL EDITION OF "HOOT WHAT WHERE" a newsletter developed by Professional Risk Management Services® for the behavioral healthcare network of psychiatrists and mental health professionals. From risk management and claims advice to risk alerts, PRMS news, and events, 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.

WHAT YOU'LL FIND INSIDE:

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RISK MANAGEMENT RESOLUTIONS FOR 2023

If you're like most busy psychiatrists, you may not yet have had a chance to think about making resolutions for 2023 or even implement last year's risk management resolutions. Don't worry – we're not here to make you feel bad. In fact, this year we're recommending a slightly different approach. Rather than looking at ways to improve your practice, we think this year's resolutions should center around your most important risk management resource – you. And to make it as stress-free as possible, we're suggesting 12 resolutions so you can aim to do just one each month rather than try to implement them all at once.

1. Plan some time away from your practice. Planning ahead is important as it not only helps to ensure that you will actually get away, but it also gives you time to obtain any necessary coverage and prepare patients for your absence. For suggestions on how to make time away pleasurable instead of problematic see our article, "Practical Pointers While on Vacation."

2. Consider whether it's time to get some help. Particularly if you are an early career psychiatrist who has not yet established a full practice, you may be trying to go it alone, taking on the additional duties of billing, scheduling, administrative support, HIPAA privacy officer, etc., all in addition to seeing patients. Perhaps you have more patients than you can comfortably handle and would benefit from employing a nurse practitioner or a PA. When adding someone new to your practice in either an administrative or clinical capacity, you will want to take time to thoroughly vet your candidates so don't wait until you are so overwhelmed that you feel compelled to hire someone who is less than ideal for the position. For an overview of risks and how to avoid them see our article, "Supervision of Nurse Practitioners."

3. Get familiar with your professional liability insurance company. You already know that your carrier is there to protect you in the event of a claim or a lawsuit, but are there other things they can help you with? It's good to know ahead of time what additional services they offer so you know who to turn to when a problem arises. Even if your carrier cannot assist you with a particular issue, they may be able suggest other resources. Make sure you have contact information for your carrier's underwriting, claims, and risk management departments.

4. Develop a contingency plan. We frequently receive calls from family members, office staff, and even estate attorneys trying to figure out how to close down a psychiatrist's practice and find care for patients following the provider's sudden incapacity or death. It's a tragic situation made more so by the fact that the psychiatrist oftentimes has not provided any instructions, thus leaving it to the office staff or family members (who are dealing with their own worry and grief) to determine what the psychiatrist would have wanted and how best to manage patients. Create at least a basic written plan to ensure this doesn't happen to you, your staff, your family, and your patients. Think of it as an "advance directive" for your medical practice and let someone - be it your spouse, office manager, or another physician covering for you - know of its existence and where to find it. For additional information, see our article "Failing to Plan" and our Initiating My Contingency Plan tool.

5. Learn that it's okay to say no to patients. While it's understandable that you want to accommodate your patients whenever possible, remember you are the doctor and you are the one in charge. You get to choose the prescription, how long you're willing to prescribe between visits, what you are going to document in the patient's chart, you are no longer able to meet a patient's clinical needs, and when it's time to refer them to a higher level of care. For additional information see our article, "It's Nice to be Nice, But..."

6. Take steps to keep drug seekers and other problem patients out of your practice. Take a look at how you market your practice to see if your advertised areas of expertise are drawing patients you would prefer not to treat. For example, a stated expertise in ADHD may attract patients not interested in actual treatment and simply seeking stimulants. Consider telling prospective patients that you will not prescribe controlled substances at the first appointment and that you check the PMP before prescribing. Consider also letting them know that the first appointment does not necessarily mean they will be accepted as patients, that treatment will not begin until you have determined you can help the patient, and that there is at least an initial agreement to the treatment plan. For information on avoiding risk when marketing your practice, see our article, "Risk Management Reminders for Online Marketing."

7. Make sure you're receiving your information from reliable sources. When you hear of changes to state and federal laws that impact your practice, make sure you are getting all the facts. Rather than risk taking the wrong steps or worrying unnecessarily, reach out to your malpractice carrier or your professional organizations for their guidance.

8. Learn to ignore physician rating sites. While the vast majority of online reviews about healthcare professionals are positive, it can be very frustrating to see false, negative, and/or unfair comments posted about your professionalism and/or your or your clinic's treatment practices. Keep in mind that there are very few options in terms of response some responses will very likely generate more attention to the accusations in the post or may cause the poster to write additional bad reviews. For additional information, see our article, "10 Things About Online Reviews," and the APA's resource document on Responding to Negative Online Reviews.

9. Connect with colleagues. Over the last couple of years, many psychiatrists have decided to make changes to their practices, including moving to another location or retiring completely. This may mean that the doctors you've always relied upon for a curbside consult or to cover you when you are out of town are no longer available. Think about getting involved with your local district branch, regional organization, or other professional groups.

10. Take a look at your active patient load. Are there certain patients whose demands are beginning to affect your enjoyment with your work? Do you have other patients whose conditions have become too complicated for one person to manage? Consider whether it would be in everyone's best interest to transition these patients to another psychiatrist, or as necessary, terminate them from your practice. For tips on terminating treatment without abandoning the patient, see our article, "Termination of the Physician-Patient Relationship."

11. Make those doctor's appointments you've been putting off. In order to be your best for your patients, you have to take care of yourself first.

12. Avoid getting involved in your patients' legal matters. Psychiatrists are quite frequently asked to write letters, complete forms, or speak to attorneys in conjunction with their patient's legal matters. In granting these requests, you may find that you have inadvertently taken on a dual role, acting as both the treating and forensic psychiatrist. Although your intent is to help your patient, this may have a negative impact upon your treatment relationship if the patient's legal goals are not achieved or if you find yourself overextended by having to spend time on matters that are not directly related to treatment. For additional information on dual roles, see our article, "Myths and Misconceptions: the Treating vs the Forensic Role."

COMPLIMENTARY!

TELEPSYCHIATRY RESOURCES

PRMS® is pleased to share our telepsychiatry expertise with the greater mental healthcare community. Visit **PRMS.com/Telepsych** to access complimentary risk management resources, including:

- Educational content, including our new “Let’s Talk! Telepsych Updates” video
- COVID-related state licensure waivers
- Telepsychiatry Checklist
- And more!

PRMS clients: use this link to log in to My Program for additional resources

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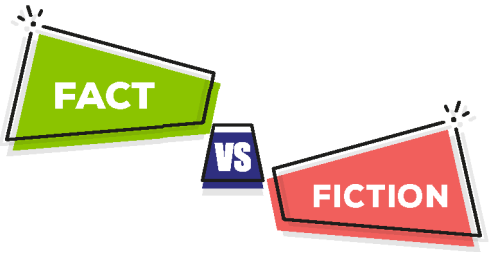

WHAT DO YOU THINK - FACT OR FICTION?

FACT OR FICTION?

I will be retiring from practice soon and have decided to give my paper charts to the patients. I've researched record storage options; when I mentioned to a colleague the outrageous cost, they shared their plan to eliminate that cost by giving the record to the patient. I really like this solution because in addition to saving money, I will not have to deal with requests for records. Upon researching further, quite a few retiring psychiatrists are doing this, so I feel this is an appropriate plan.

What do you think - fact or fiction?

Fiction!

Regardless of how many of your colleagues are doing this, it is inappropriate for at least the following reasons:

- Failure to retain records may violate state law.

  For example, as noted by the Florida Medical Board:

  > According to Rule 64B8-10.002(3), FAC : A licensed physician shall keep adequate written medical records, as required by Section 458.331(1)(m), Florida Statutes, for a period of at least five years from the last patient contact; however, medical malpractice law requires records to be kept for at least seven years.

- Failure to retain records may constitute unprofessional conduct.

  For example, New York law includes the following within the definition of professional misconduct:

  > Failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient.... Unless otherwise provided by law, all patient records must be retained for at least six years. Obstetrical records and records of minor patients must be retained for at least six years, and until one year after the minor patient reaches the age of eighteen years;

- Failure to retain records may violate your professional liability insurance policy.

  While coverage issues are handled on a case-by-case basis depending on the specific circumstances, most policies exclude coverage for "...error or violation of law committed by an insured or any person for whose acts an Insured is legally responsible." So, for example, if a state law mandates that physicians retain medical records for up to six years, and a physician fails to do so, coverage for any claim that is related to this could be denied by virtue of this policy exclusion.

  Also, policies may have a cooperation clause precluding an insured from taking any actions that could limit the insurance company's ability to defend the case. Not retaining the record could be such an action.

  But even if coverage is intact, by giving up control of the original records to the person who is most likely to make a claim regarding the care documented in them, a physician could be very severely jeopardizing their defense. The record could be altered, or there could be chain of custody issues resulting in the record being inadmissible.

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: _____

TO COLLECT OR NOT TO COLLECT?

OVERDUE BILLS AND RESULTING MALPRACTICE CLAIMS

A question that is frequently posed to PRMS risk management and claims staff is whether a psychiatrist should pursue an outstanding balance on a patient's account. The fear, of course, being that the patient may retaliate with a lawsuit or other type of action. Given the current practice environment, the options available to a healthcare provider - to collect or not to collect - can be equally uninviting.

It should be clear from the outset that anyone who provides a service for fees has the legal right to pursue payment according to the agreement made between the provider and the client. That being said, it is an oversimplification to suggest that one must exercise every available legal right that one possesses. This article will briefly explore potential negative outcomes that can occur when seeking collection on a patient's overdue bill.

One of the most common concerns of psychiatrists is that the patient will file a malpractice lawsuit in retaliation. Indeed, many an angry patient or patient's family member has made this very threat. Although the more likely scenario is a counter-claim made by the patient asserting that the services were not provided at all or that the services were so dissatisfactory that no payment should be required, patients do often make allegations of negligence in order to put more pressure on the physician to resolve the matter before a lawsuit is filed.

Patients are even more likely to file a complaint with the medical board or a healthcare organization because doing so is much easier and less costly than filing a malpractice lawsuit. Furthermore, these organizations have a greater goal of serving patients and the public at large. As a result, they are likely to have complaint forms readily available for patients to fill out and procedures in place for reviewing a member's standing with the entity.

The state board of medicine sets certain ethical and professional conduct standards. Professional organizations, workers compensation commissions, hospitals, HMOs and MCOs may also have standards for admission and continued membership as well as a mechanism in place to enforce those standards. In addition, such organizations/agencies may have specific rules and procedures with regard to collection proceedings.

Complaints made to such organizations can be difficult for the psychiatrist to defend because, unlike a lawsuit, the patient does not have to prove negligence and damages. Rather, a few select individuals affiliated with the entity will determine whether or not the psychiatrist has violated the entity's standards. This process takes place with few - if any - mechanisms to ensure fairness and objectivity; the extensive checks and balances present in the litigation process do not exist in these systems.

At this point in the article, one may have the impression that the best thing to do is simply write off the bill and forget about it. However, one obvious downside to doing that is lost revenue from the non-paying patient and from the paying patient who could have been seen. Another downside is that treating a non-paying patient can ultimately impact care which could give rise to a malpractice claim.

When faced with a non-paying patient, taking the following actions may minimize the possibility of an undesirable outcome. Provide patients with a financial policy at the outset of treatment and address

non-payment of fees promptly. If a situation arises where use of a collection agency is being considered, the psychiatrist, as opposed to a staff member, should always make that determination. The psychiatrist has the training, experience, and personal knowledge of the patient necessary to determine whether or not collection is appropriate for a specific situation. Psychiatrists should be familiar with and adhere to state and federal laws, as well as the standards and requirements of the state medical board, professional organizations, and all relevant third-party payors concerning collections. Disclose only the minimum information necessary to the collection agency to avoid breaching the patient's confidentiality. Under HIPAA's Privacy Rule, covered providers must have a business associate agreement in place with the collection agency; non-covered providers should consider such agreements, as well.

In conclusion, as unfair as it may seem, a malpractice lawsuit or complaint to a licensing board or healthcare organization can arise simply because a provider chooses to collect on a patient's overdue bill. To minimize these risks, make your financial policy known to patients, address unpaid bills promptly, and approach the decision to pursue collection thoughtfully and professionally.

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MORE THAN AN **INSURANCE POLICY**