American Professional Agency

RISK MANAGEMENT

CONSIDER THIS...

Risk Management Considerations When Treating Suicidal Patients

IN THIS ARTICLE

Throughout your career, you will likely treat patients with suicidal ideation and/or who have attempted or may attempt suicide. In 2015, the CDC identified suicide as the 10th leading cause of death in the United States, including a substantial increase in rates of suicide among teens.[1,2] It can be a difficult issue for psychiatrists to encounter and, despite best efforts, patients may still attempt or complete suicide. It is also one of the most common claims against psychiatrists.

Standard of Care

To determine whether the psychiatrist breached the standard of care in a case involving a patient suicide, courts generally focus on two issues: foreseeability and causation.[3] Specifically, courts may consider whether the psychiatrist:

- could have predicted the suicide;
- whether there was sufficient evidence for an identifiable risk of harm;
- whether the psychiatrist did enough to protect the patient (was there something the psychiatrist did or did not do that caused the harm that resulted);
- could the psychiatrist in any reasonable way foresee that the patient might commit suicide?

COMMON CLAIMS INVOLVING PATIENT SUICIDES

Psychiatrists may still get sued despite adhering to the standard of care. The following are the most common allegations in a complaint for medical malpractice following a patient's suicide:

- failure to predict or diagnose suicide;
- failure to control, supervise, or restrain;
- failure to take proper tests and evaluations of the patient to establish suicide intent;
- failure to medicate properly;
- failure to observe the patient continuously or on a frequent enough basis;
- failure to take an adequate history;
- inadequate supervision and failure to remove belt or other dangerous objects; and
- failure to place the patient in a secure room.

Please contact American Professional Agency at psychiatry@americanprofessional.com or 877.740.1777 to learn more about our comprehensive professional liability coverage and risk management programs.

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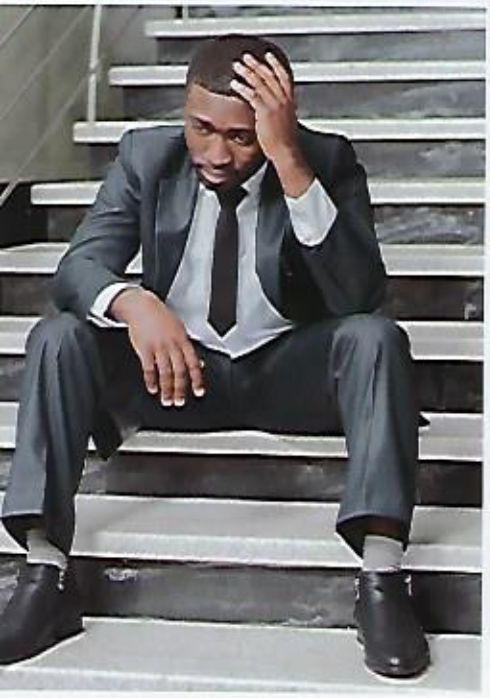
The Importance of Documentation

Even with a comprehensive assessment, a patient may nevertheless commit suicide and a lawsuit may be brought against a psychiatrist. Medical records can be vital in avoiding a lawsuit and defending lawsuits. Critical aspects of treatment that should be documented include: suicide risk assessments, the decision-making process, a second opinion, confidentiality and informed consent.

SUICIDE RISK ASSESSMENTS

A risk assessment is used to develop a treatment plan detailing interventions and precautions used to decrease/eliminate a patient's suicidal risk. Whether the psychiatrist "did enough" may hinge upon the documented treatment plan developed as a result of the assessment, including consideration of:

- inpatient hospitalization;
- consideration of medication; and
- consultation/obtaining a second opinion.



Assessments should be recorded in the medical record at the time of the assessment. Each time an assessment is performed it should be documented. When a lawyer initially reviews a potential case, he reviews the medical records. If the suicide assessment is carefully documented, he may consider not pursuing a case.

The assessment should include: the patient's history, including likelihood of suicide risk; present suicide risk factors; specific questions and follow up questions asked by the psychiatrist. A patient may not be a reliable source of information regarding their suicidal thoughts and intentions. When possible psychiatrists should indicate in the record that he did not solely rely upon the patient's statements or promises not to harm himself. "Suicide contracts" should not take the place of formal suicide risk assessments, and are not considered legal documents that will prevent a lawsuit if a patient commits suicide.

THE DECISION-MAKING PROCESS

Documenting the decision-making processes underlying treatment decisions are important aspects to minimizing litigation. Psychiatrists should document the actions they took and why, as well as actions that were considered but disregarded and why. This type of documentation may help demonstrate reasonable clinical judgment to a jury.

CONSULTATIONS

Consultations are important to include as they may support the psychiatrist's treatment decisions for the patient. The treating psychiatrist and the consultant should both document in the record, and the documentation should also reflect the consultant relationship.

CONFIDENTIALITY

The patient's right to confidentiality is not absolute. It is important to be aware of HIPAA and state privacy regulations regarding when confidentiality can be breached. At the outset of treatment, it is important to discuss your office policy with the patient. Also, discuss the exceptions to the confidentiality doctrine. These discussions should be documented in the patient's record.

INFORMED CONSENT

Informed consent is an ongoing, interactive process, which provides both the psychiatrist and the patient the opportunity to ask questions. This process should be reflected in the medical record. Psychiatrists should provide as much information as possible regarding:

- the proposed treatment;
- the risks and anticipated benefits;
- available alternative procedures (including risks and benefits); and
- the expected outcome with and without the treatment.

Conclusion: Tips When Treating Suicidal Patients

It is important to remain aware of the recurring issues in these types of cases and utilize risk management strategies in order to reduce the risk of litigation. The following are some tips when treating suicidal patients:

- complete timely and thorough risk assessments;
- document reasons for taking actions;
- document reasons for not taking actions; and
- understand your state's laws regarding breaching confidentiality.

[1] Center for Disease Control. (2015). Facts at a glance: suicide. https://www.cdc.gov/violenceprevention/pdf/suicide-datasheet-a.pdf.

[2] Center for Disease Control. (Aug. 4, 2017). 66(30): 816. https://www.cdc.gov/mmwr/volumes/66/wr/mm6630a6.htm.

[3] Simpson, S., Stacy, M. Avoiding the Malpractice Snare: Documenting Suicide Risk Assessment, J. Psychatric Practice, 10:3:185-189 (2004).