A benefit of participation in

The Psychiatrists’ Program
Medical Professional Liability Insurance
Designed for Psychiatrists

RISK MANAGEMENT AND MEDICATION PRESCRIBING/ADMINISTERING

Since the early 1980’s, psychiatrists have increasingly come to rely on psychoactive medications in the treatment of both adults and children. Drug therapy is now regarded as one of the most useful and important forms of treatment available for mental illness. Nonetheless, the undesirable side effects which medications occasionally produce and preventable adverse medication events have generated a number of lawsuits against psychiatrists. Actions involving drug therapy usually allege negligence either in the prescribing, administering and/or monitoring of the medication, and/or in failing to obtain an “informed” consent for the treatment by disclosing its risks.

As in other areas of malpractice, liability for improper prescription or administration of medication will be predicated on the psychiatrist’s deviation from accepted medical practice (the standard of care). Bad outcomes alone do not necessarily result in malpractice judgments. However, liability will result if the psychiatrist is found to have deviated from the accepted use of the medication. Examples of such deviation include prescribing medication when it is not indicated, prescribing it when there are contraindications (e.g., signs of dangerous side effects or of the patient's concurrent use or abuse of other medications/substances), prescribing an inappropriate dosage, and failing to prescribe when indicated.

It is important to realize that the law itself generally does not provide an answer to questions such as whether it is appropriate to prescribe a particular medication in a particular situation. There are court decisions involving whether the use of a drug under a given set of circumstances was negligent; if circumstances are similar in a subsequent risk management situation, those decisions will provide guidance. Much more frequently, however, there is no ruling directly on point. In general, the legal question of whether the doctor was negligent will be answered with regard to the standard of care. Courts will decide whether, in light of the facts (including the availability of other methods of treatment), the care provided was appropriate. In making this decision, the testimony of other physicians, articles in medical journals, medical treatises, drug manufacturers’ recommendations, the guidelines of the Physician’s Desk Reference, guidelines from professional organizations, etc., will be used.

Aside from ensuring that medications are not prescribed negligently, there are a number of steps that psychiatrists can take to lessen their malpractice risks. Psychiatrists should ensure that patients understand their instructions about medications. Patients, in general, are poorly informed about the nature of the medications they take: studies show that an astonishing number of patients do not even know the correct dosages of their medications or the intervals at which they are to take them. Obviously, these facts must be made clear to all patients, in addition to the necessary information about potential side effects. Likewise, the psychiatrist should try to ensure that the patient has informed him/her of all medications the patient is currently taking. The psychiatrist should also exact the patient’s promise that he/she will inform the psychiatrist of any changes in medications or any new medications prescribed by another physician while under the psychiatrist's care. Additionally, psychiatrists should regularly discuss with patients their compliance with the given instructions.

Legibility and documentation are also vitally important. Psychiatrists should ensure that the writing on prescriptions and drug orders is legible. A prescription that is impossible to decipher or difficult to read poses a danger to the patient and a hurdle to the psychiatrist, should his/her decision ever be questioned.

Careful documentation of prescriptions and refills is necessary for quality patient care and is also helpful in the event of a malpractice claim. Good documentation supports the assertion that proper care was given. Among the items that should be documented are the name of the medication prescribed; the size and duration of the prescription; the dosage; details of the informed consent process; instructions given to the patient (including the instruction that the patient inform the psychiatrist of possible side effects); known medication allergies or sensitivities; refills; and follow-ups on effectiveness and side effects.

Certain medications have proven to be controversial even after they have been approved by the FDA and been on the market for years. Although these medications have been proven repeatedly to be relatively safe when used as directed, misconceptions about them may continue. Naturally, psychiatrists should try to avoid allowing societal attitudes to influence their clinical judgment. If a certain drug is indicated, and it is clinically appropriate to
prescribe it, then the psychiatrist should, by all means, prescribe it and document his/her decision-making process appropriately.

Psychiatrists write millions of prescriptions a year. In fact, writing prescriptions is such a routine and commonplace activity, that it is easy to become complacent and lose sight of basic risk management strategies that can help improve patient care and minimize professional liability risk. Below are some practical risk management pointers for prescribing medications.

**DO** prescribe medications only in the context of a physician-patient relationship.  
*Comment:* If you write a prescription, you have created a physician-patient relationship and have assumed all the attendant obligations and liabilities.

**DO** document the clinical basis for medication recommendations to patients.

**DO NOT** prescribe medications for individuals for whom you are a consultant.  
*Comment:* Consulting psychiatrists make recommendations only; they do not prescribe. If you prescribe medication for individuals for whom you are a consultant, you will have moved beyond a consultative relationship and into a treatment relationship, with all of the attendant obligations and liabilities.

**DO** stay current with new information and research about medications that are being prescribed, both new and old.  
*Comment:* Take part in continuing education programs and educate yourself through discussion with colleagues and by keeping-current with the relevant literature.

**DO** document prescriptions and refills.  
*Comment:* Careful documentation supports quality patient care. In addition, good documentation is helpful in the event of a malpractice claim, because it supports the assertion that proper care was provided. Among the items that should be documented are the name of the medication prescribed; the dosage and size of the prescription; the informed consent process; instructions given to the patient; known medication allergies or sensitivities; and notations of refills and follow-ups on effectiveness and side effects of the drug.

**DO** document that appropriate baseline laboratory testing, a comprehensive patient history, and any necessary physical examinations were completed before medications were prescribed.

**DO** document all ongoing laboratory testing and other patient monitoring actions that are taken.

**DO** obtain the patient's informed consent and document the consent, as always.  
*Comment:* The documentation should reflect that the patient was informed about and understood (1) the nature of the proposed treatment, (2) the risks, benefits, and potential side-effects of the proposed treatment, (3) any alternatives to the proposed treatment, (4) the risks and benefits of the alternatives, and (5) the risks and benefits of doing nothing.

**DO** remember that informed consent is a continuous process.  
*Comment:* Record your discussions with the patient about the medication, his/her response to the drug, any subsequent actions taken, and the reasoning behind your clinical decision-making process. Place a copy in the patient's record of any informational materials given to the patient about the medication.

**DO** realize that the informed consent process is part of the overall, on-going communication between the patient and psychiatrist.  
*Comment:* Be sure to inquire about the use of other prescription medications, over-the-counter medications, herbal remedies, and any other treatments the patient uses. Clarify dietary and/or activity restrictions. Discuss potential allergic reactions, ways to identify them, and what to do if the patient experiences a reaction. Make sure that the patient knows whom to call if he/she has any questions or concerns when there is a split treatment relationship. Confirm that instructions about medications are understood by patients - particularly the correct dosages of the medications and the intervals at which the medications are to be taken. It is also important to confirm patients' compliance regularly.

**DO** place a copy of any informational materials given to the patient about the medication in the patient’s record.

**DO** discuss with the patient the importance of seeing only one psychiatrist, of having prescriptions filled at only one pharmacy, of keeping track of medications, of getting prescriptions only during office hours, and of destroying all old or unused medications.
DO communicate with other individuals involved with the patient's care about all medications that are being prescribed and about signs, symptoms, and responses to the medications.

*Comment:* Obtain consent from patients allowing you to communicate freely with other necessary individuals. If a patient will not allow you to talk freely with these other individuals, then the patient is compromising your ability to treat him/her effectively, and you need to seriously consider whether or not you can continue working with the patient. Remember that it may be necessary to communicate with individuals beyond the circle of traditional healthcare professionals. For example, when prescribing for children, it may be necessary to communicate with teachers, babysitters, and/or other caretakers.

DO consider a professional consultation or a referral to another physician with appropriate training and expertise, when appropriate.

DO remain aware of the potential for misuse or abuse of medications by the patient or those who may have access to the medication.

*Comment:* It is important to make appropriate treatment assessments and referrals for addiction and dependence as well as identify patients who might be altering prescriptions or "doctor shopping." Be especially wary of new patients who possess an extraordinary knowledge of medications, insist on an immediate prescription without interest in a diagnosis or referral, and who refuse treatment with alternate medications.

DO make sure that all writing on prescriptions and drug orders is legible.

*Comment:* Consider writing in numerals and in longhand, as on a check, any numbers written on prescriptions in order to convey amounts and dosages.

DO consider using tamper-resistant prescription pads with security devices to thwart attempts to alter or copy the prescription.

DO comply scrupulously with prescription record keeping and prescribing regulations.

DO NOT allow societal attitudes to control clinical judgment.

*Comment:* If a controversial or high-profile drug is indicated, and it is clinically appropriate to prescribe it, then, by all means, prescribe it. Document the treatment plan and prescription at least as rigorously as for any other medication.

DO contact your professional organization(s) regarding the prescribing of medications for off-label use.

*Comment:* Practice Guidelines developed by the APA address the off-label use of medications where appropriate.

DO use caution when "stacking" medications/engaging in polypharmacy.

*Comment:* Obviously, the greater the number of medications prescribed, the greater the potential for adverse interactions.

DO remember that prescribing a drug for *any* use other than that *specifically* approved by the FDA constitutes an *off-label* use.

*Comment:* The off-label use of an approved medication is different than the use of non-FDA approved medications.

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![The Psychiatrists' Program](image)

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