



American Professional Agency



RISK MANAGEMENT



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Conversations and Support

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CONSIDER THIS ...

When Your Patient Dies

Generally, psychiatrists do not encounter death among their patients as frequently as other physician specialists do, which can make knowing how to respond challenging. Completed suicide is the most common death related to clinical psychiatry, and natural death may not be as common, depending on your patient population.

Following a patient death due to unnatural causes, it is natural to feel grief and loss, uncertainty, lack of control and issues with feeling you could have done more to assist the patient. You may also experience fear: the fear that you did not do enough, that this might happen to you again and that you will be sued. When a patient dies, psychiatrists may question themselves: should I have said something, or should I have not said that? Could I have done more or did I do too much? You may want to talk to another colleague, treatment provider or a close friend or family member about your feelings.

After hearing of a patient's unexpected death, several questions will arise regarding what to do next:

- Can I speak with others or the patient's therapist?
- Do I send a sympathy card?
- Do I or should I go to the funeral?
- Do I reach out or agree to meet with the family?
- Can I release records to family members?
- Do I need to contact my professional liability insurance carrier?
- Can I have conversations to obtain support?

Should I Speak with Others or The Patient's Therapist?

When contemplating "next steps," it is important not to lose sight of the patient's right to privacy and confidentiality. Keep in mind that the patient privacy protections under HIPAA do not expire with the patient's death. Thus, you may not discuss patient care details with a third party unless you obtained consent to communicate with them prior to the patient's death.

In addition, any conversation with other treatment providers, colleagues, friends or family may be discoverable at a later date. For example, you may be inclined to call a therapist who also treated the patient; however, before doing so, it is encouraged to talk with your risk management professional. It is important to keep in mind that in the event of a lawsuit or board matter, conversations may not be privileged and may be discoverable. This could affect the ability to defend your case.

Do I Send a Sympathy Card?

Although a letter or card of condolence can contribute to the family's healing and let them know you care, use caution if the patient had not wanted any family members involved or aware of their mental health illness and treatment.

Do I or Should I Attend Service?

There is no black and white answer to this question. If you had a close relationship with the family and longstanding relationship with the patient, it may be indicated to go. However, it is important to keep in mind that the family may be angry or they may not want you there. It is important to consider whether to go on a case-by-case basis and determine what would be best for the particular circumstance.

Should you attend the service, maintain patient confidentiality. This means not responding to questions about whether you "were the treating psychiatrist," "saw the suicide coming," "if the patient said anything at their last session," or "why you think the patient chose to end his/her life?" You may need to explain to the patient's family that you are at the wake, funeral, or memorial service to express your sympathy but may not discuss the patient's care and treatment due to state and federal privacy regulations. Attending the funeral is not an admission of responsibility for the suicide.

Do I Reach Out or Meet with Family Members?

Often following a patient suicide, the family may want to speak with you about the patient. Again, as much as you want to explain your interactions, you must maintain patient privacy and confidentiality. If the patient authorized you to speak with a family member as part of their consent to treat, you may communicate with them, but consult with your local attorney or risk management professional first. Any meetings with family members or significant others should be done in your office with time allotted for uninterrupted discussion. Be prepared for family members venting their anger and hostility. As you know, the grieving process is difficult, complex and painful when a loved one has committed suicide. Avoid divulging personal information that might burden the family, or slip into blaming or speculating about the patient's motivations for suicide. The primary purpose of meeting with the family is to show support.

Can I Release Records to Family Members?

The family may request a copy of the patient's medical record(s), directly, either through an attorney, or by subpoena or court order. Notify your professional liability insurer (for advice and assistance) if you receive a records request. Prior to releasing the records, reasonable steps must be taken to verify the identity of the person requesting the records as well as his/her authority to obtain the records. This translates in to requiring evidence of the individual's role in the patient's estate, such as a Fiduciary's Probate Certificate reflecting who has been appointed as executor or administrator. If an attorney requests a copy of the record, you need to inform them that they need to send a subpoena for the record. Even with this, there may be reasons why the records would not be released. Prior to releasing records in response to a subpoena, obtain legal advice. If the patient had previously authorized communication with the family, you need to ask them to sign your practice's authorization form for release of the record. When providing the record, provide a copy of the record, never the original record.

Depending on state law, often, when a patient commits suicide, law enforcement or a coroner investigating the patient's death may request a copy of the patient's medical record. As noted in the Spring 2017, In Session with Allied World article, "Release of

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Records After Suicide: Understanding Your Obligations," HIPAA allows disclosure of protected health information to a law enforcement official, without an authorization, provided that certain conditions are met.¹ Similarly, HIPAA allows disclosure to coroners and medical examiners for the purpose of identifying the decedent, determining a cause of death, or other duties as authorized by state law.² Under HIPAA, you can also disclose protected health information to funeral directors, without an authorization, as necessary to carry out their duties with respect to the decedent.³ Note that this disclosure is a bit more limited and requires a determination of what information is "necessary to carry out their duties" and this could be interpreted as something less than the entirety of the patient's record." With any disclosures, it is prudent practice to disclose only that information that is "minimally necessary" to meet the objectives for the request.

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Do I Contact My Professional Liability Carrier?

In the event you have an unexpected death, it is recommended that you contact your risk management professional to discuss next steps. In addition, there may be issues to consider such as notifying the carrier of a potential claim. It is important to obtain advice to navigate potentially difficult waters.

Conversations and Support

With respect to obtaining the needed support for yourself, be wary with whom you discuss the patient's death. You may talk about how you feel about the patient's death, but you should not discuss the patient's specific care and treatment. Doing so would not only be a violation of patient confidentiality, but would potentially involve those with whom you discussed the patient's care in potential litigation. As always, if you have concerns about whether or how to respond to the patient's death or whether and how to release the patient's medical record, consult with your local attorney or risk management professional.

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End Notes:

¹ 45 CFR 164.512(2)(f)

² 45 CFR 164.512(2)(g)(1)

³ 45 CFR .512(2)(g)(2)



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