



# RESIDENT OWLERY

**W**ELCOME TO THE NEXT EDITION OF “RESIDENT OWLERY,” a newsletter developed by Professional Risk Management Services® to provide psychiatry residents in training with owl you need to help manage your risks as you prepare to start your psychiatric careers. Featuring risk management resources, educational articles, and the latest announcements and events from PRMS, 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, from residency to retirement.

## WHAT YOU’LL FIND INSIDE:

STARTING A PRIVATE PRACTICE:  
BUILDING GOOD RELATIONSHIPS

QUESTIONS TO ASK: ARE YOU  
LOOKING FOR PROFESSIONAL  
LIABILITY INSURANCE?

EMPLOYMENT CONTRACTS

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# BUILDING GOOD RELATIONSHIPS

**One of the first things to do when starting your private practice is to build good relationships with key individuals.**

For any psychiatrist entering into, or already in, private practice, there are a variety of professionals and entities with which it is advisable to forge and maintain relationships. There are multiple benefits to having these types of relationship, but primarily, they provide support that allows the psychiatrist to remain as focused as possible on meeting patients' clinical needs, which leads to the secondary benefit of helping to minimizing professional liability risk. They are:

- An experienced colleague
- An attorney
- An accountant
- Professional organizations
- Trusted insurance professionals

## **An experienced colleague**

Having a relationship with an experienced colleague who is willing to serve as mentor, consultant, advisor, and perhaps cover your practice occasionally, can go a long way toward helping you provide the best care for patients and, thus, reduce your professional liability risk.

In a malpractice lawsuit, the standard of care – the care that should have been delivered – largely is determined by other psychiatrists in the role of expert witnesses. The standard of review is reasonableness – what would a reasonable psychiatrist do under similar circumstances. Each time a second psychiatrist consults on or reviews a patient's clinical treatment,

the treatment course tends toward reasonableness.

When a complex case presents itself, or a case calls for difficult clinical judgments, or a patient does not seem to be progressing, the need for a “second set of eyes” to review the case becomes even more acute. Many psychiatrists who find themselves as defendants in a lawsuit might have benefited from either a formal or “curbside” consultation on a patient.



## **An attorney**

An attorney experienced in healthcare law, reimbursement matters, and organizing physician practices can be an invaluable resource throughout any career.

Spending an hour with an attorney so that he can get to know you and your practice may be well-worth the fee. After questions arise, it may be difficult to start searching for an experienced attorney. Knowing an attorney before a problem arises can help you sleep at night.

Ex: Laws inevitably change, and many attorneys will periodically update their clients on changes in the law that might affect their clients' practices.

**An accountant**

An accountant with experience in healthcare reimbursement and business management is extremely important for those entering private practice, especially for those without experience running a business.

**Professional organizations**

Join and participate in professional organizations. Psychiatry can be a lonely practice, especially for solo practitioners. Get out and rub elbows with colleagues. A major advantage to personally attending meetings is the opportunity to speak with colleagues and compare approaches. Talking about and comparing notes on cutting edge technologies, new treatment approaches, and the latest research can help you stay up-to-date with the latest medicine.

**Trusted Insurance professionals**

Finally, have good insurance. Most psychiatrists will need at least a general liability policy and a medical malpractice policy. No matter which carrier you choose, the insurance professionals you interact with should help you understand your insurance needs and answer your questions. Having a good general liability policy and a good medical malpractice policy will allow you to focus on providing good patient care with one less worry.

For the full 36-page resource on starting a private practice, [click HERE.](#)

**ARE YOU LOOKING INTO BUYING  
PROFESSIONAL LIABILITY INSURANCE?**

Do you know the difference between a claims-made and an occurrence policy? Do you know what a hammer clause is? These and many other relevant questions are answered in our “Questions to Ask Before Purchasing Medical Liability Insurance”

# EMPLOYMENT CONTRACTS

As young psychiatrists leave their residency and fellowship programs and experienced psychiatrists consider becoming employed by others, all must contemplate signing an employment contract. Certainly salary is a primary concern but there are other components that are equally important and often overlooked. The following is a non-exclusive/non-exhaustive list of things to keep in mind before you sign on the dotted line.

- **Have a written agreement.** While those who are becoming full-time employees typically have a formal contract, those who are independent contractors often do not. This can be especially problematic when the relationship ends.
- **Have a clear understanding of your duties.** Duties “as assigned” or “practice of psychiatry” leaves a lot of room for interpretation and for an employer to take advantage of you. Are you going to be expected to supervise others? What are your responsibilities for taking call? Will malpractice insurance cover these duties? (You would be surprised how often people engage in an activity that is not technically covered under their insurance policies.) Does your contract allow you to engage in outside activities that you may be interested in pursuing such as teaching or volunteering your services?
- **Avoid indemnification/hold harmless clauses.** Typically these clauses will look something like this:  
“Each party agrees to indemnify and hold harmless

the other party from any claims, liabilities, losses, damages, and expenses asserted against the other party and arising out of the indemnifying party’s negligence, willful, misconduct, and negligent performance of or failure to perform, any of its duties or obligations under this agreement.”

What this means in plain English is that in the event any of your actions - or inactions - cause the entity/individual for whom you are working to be sued, you will be obligated to pay any settlements or verdicts rendered against them. And even if they prevail, you will be required to pay their attorneys fees. This sort of provision is far more likely to appear in an independent contractor agreement than a regular employment contract. They are problematic because malpractice insurance typically won’t cover liability assumed under a contract with another and thus, any monies owed must come out of the physician’s own pocket. It is recommended that you have these provisions stricken from the agreement. Do not be fooled into thinking that you are in any way protected by a mutual indemnification clause whereby the other party agrees to indemnify you under the same circumstances. If you carry malpractice insurance, you are already protected.

- **Know the term of the agreement.** How long is the agreement for? How does it renew? Is renewal automatic? Do you have the ability to renegotiate after a certain period of time? You don’t want to find yourself a few years down the road seeing the bulk of the practices patients still receiving a starting salary.

- **Understand how the contract can be terminated.**

What notice must you give before leaving the practice? If you have a lengthy notice period, you may find it difficult to actually leave as your future employer may not be able to hold your position open for more than 60 days. Under what circumstances can your employer terminate the agreement? In many instances a contract will allow for immediate termination by your employer if you lose your license to practice medicine, your DEA certificate, or if you become permanently disabled. Can your employer terminate your employment without cause? If your employer can terminate your employment without cause upon 30, 60, or 90 days notice you do not have the one or two year contract you think you have. Your contract is merely as long as the length of the notice provision. What about termination for breach? Can each party terminate if the other fails to meet its obligations under the contract? Are there cure provisions, in other words, does each party have an opportunity to fix the problem once it has been identified to the other?

- **Understand what type of medical malpractice insurance you have.** If the practice covers you with a claims-made medical malpractice insurance policy (or switches to that type of policy in the future), tail coverage will need to be purchased. As this can be a fairly large expense, it is important that it be discussed and agreed to and documented in the contract.

- **Plan for continuity of care after treatment.** The general rule is that when a psychiatrist is employed by a practice, even though he or she may be the

only one seeing a particular patient, the patient is deemed to be a patient of the practice as opposed to the individual psychiatrist patient. Even so, there are often issues regarding continuity of care when a psychiatrist leaves a practice. For example, whose obligation is it to notify patients of the psychiatrist departure, and what will the patients be told? This can be a huge point of contention if the psychiatrist departure from the practice is contentious. Ideally, it is the practice that should be required to send notice but the departing psychiatrist should have input into the content of that notice. What about patients who wish to follow you to your new location? Will the practice allow you to have copies of their charts? Who will pay for the copies? Is there a non-compete clause that precludes you from seeing former patients at your new location? Non-compete clauses are often upheld by courts so long as they protect the employer's business interests, are not too broad in terms of time and geography, and are not harmful to the public.



- **Avoid leaving anything to chance.** Ask for clarification of vague or ambiguous language and

ask that it be clarified within the agreement. If your employer has agreed to terms that are not part of the contract, insist that they be written in. Somewhere within the agreement there will likely be a provision stating that the written contract represents the tire agreement between the parties which means that if it's not in the contract, it's not enforceable. Do not begin work, until your contract is signed by all parties.

- **Hire an attorney.** Your prospective employer will not be offended by this. But do involve the attorney early in the negotiation process

rather than agreeing to terms and then having the attorney make changes. Just as physicians specialize, so do attorneys so it is important that you hire an attorney with a background in physician contracts. Even if you completely understand the terms of the agreement, unless you have experience with employment contracts you may not recognize what language should be in the contract but is not. Remember, an employment contract can affect your professional and personal life for many years to come. You owe it to yourself, to make certain you have the best agreement possible.



## RESIDENT RESOURCE OF THE QUARTER:

This month's resource is a risk management plan on preparing for private practice.

[Click here to view this resource >](#)

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