



Scope of Practice and Liability Concerns

Primary Care Provider (PCP)

The Primary Care Provider (PCP) oversees overall care of the patient and retains overall liability for care provided. This usually includes assessment, diagnosis and treatments provided (e.g., prescription of psychotropic medications by the PCP).

Use of a systematic integrated team care model, in which care managers support the PCP, using evidence-based tools to help facilitate assessment, providing systematic, measurement-based follow-up, and a consulting psychiatrist who can advise on diagnostic or treatment questions, should reduce the risk to the patient and, related to this, 'exposure' and liability concerns of the PCP.

Psychiatric consultant (team psychiatrist)

The consulting psychiatrist may:

1. Provide advice as part of a 'curbside consultation' that does not involve the patient directly (see article by Orlich, et al).
2. See patient for a direct consultation (either in-person or via telemedicine), in which case they are liable for the content of the assessment and treatment recommendations they provide as part of this consultation.

To access tools or request a consultation, please visit the IMPACT website at <http://impact-uw.org/>

Malpractice Liability for Informal Consultations

Robert S. Olick, JD, PhD; George R. Bergus, MD, MAEd
From the Center for Bioethics and Humanities, SUNY Upstate Medical University (Dr. Olick); and the Department of Family Medicine and the Department of Psychiatry, University of Iowa (Dr. Bergus).
(Family Medicine 2003;35(7):476-81.)

Background: Informal (“curbside”) consults are widely used by primary care physicians. These interactions occur in person, by telephone, or even by e-mail. Exposure to malpractice liability is a frequent concern of subspecialty physicians and influences their willingness to engage in this activity. To assess this risk, we reviewed reported judicial opinions involving informal consultation by physicians.

Methods: A search of the existing medical literature, and of the Westlaw® national database was undertaken to identify reported judicial opinions involving informal physician consults that address whether informal consultations create a legal relationship between consulting specialist physicians and patients that gives rise to a legal duty of care owed by the consulting specialist to the patient.

Conclusions: Courts have consistently ruled that no physician-patient relationship exists between a consultant and the patient who is the focus of the informal consultation. In the absence of such a relationship, the courts have found no grounds for a claim of malpractice. Malpractice risks associated with informal consultation appear to be minimal, regardless of the method of communication. While “informal consultation” is not a term used by the courts, the courts have applied a consistent set of criteria that help define the legal parameters of this activity.

To access tools or request a consultation, please visit the IMPACT website at <http://impact-uw.org/>