Liability issues within this type of scenario may not be well-defined. Yet they frequently occur in all types of medical practice, including psychiatry. Physician liability may depend upon whether the physician engaged in a “formal” consultation rather than an informal conversation, often referred to as a “curbside” consultation. There are, however, gray areas since courts and juries look at many factors when determining liability. It is important to understand that liability may attach to a physician’s actions, especially when using their clinical expertise to advise a colleague on a recommended course of treatment.

Formal Consultation versus “Curbside” Consultation:
There are two main types of consultations: formal and informal (“curbside”).

Elements of a formal consultation may include:
• The treating physician directly requests a written or verbal opinion of a consulting physician.
• The consultant typically knows the patient’s identity, reviews the medical record and/or has direct patient contact.
• The consultant physician typically documents in the patient’s medical record.
• There is a resulting physician-patient relationship and legal duty to the patient.

Elements of a curbside consultation may include:
• The treating physician seeks informal advice from a colleague regarding a particular course of treatment for a patient.
• The consultant rarely knows the patient’s identity, reviews the medical record or has direct patient contact.
• The consultant typically does not document in the patient’s medical record.
• Most often, there is no physician-patient relationship created.

RISK MANAGEMENT TIPS

• Be cautious when an informal inquiry turns into actual patient diagnosis/treatment.
• Be aware of your employment contractual obligations.
• Know that if you provide a curbside consultation, you are not necessarily immune from being added as a defendant in a lawsuit.
• Define your role: true consultation or curbside consultation?
• Consider consulting an attorney/risk management professional when you have questions.
Physician-Patient Relationship Creates a Legal Duty:
Before a psychiatrist or another physician can be held liable for an act of medical malpractice, a physician-patient relationship must exist. The physician-patient relationship establishes a legal duty of care to the patient, and can be created when the psychiatrist takes an affirmative step, such as consenting to treat a patient.\(^1\)

Whether a physician-patient relationship exists is often difficult for both physicians and the courts to determine. Courts have created factors to determine whether a physician-patient relationship exists.

Some factors that courts may consider in deriving the existence of a physician-patient relationship include:

- The existence of a relationship between the consulting physician and the facility providing care that would require the consultant to provide advice.
- The degree to which the consultation given affected the course of treatment.
- The relative ability and independence of the immediate care provider to implement his or her own decision.\(^2,3\)

Conclusion
While all physicians need to be cautious, collaboration is an important part of practice. It increases knowledge between physicians and may be highly beneficial in the overall care and treatment of patients. Keep in mind that laws vary from state to state. Be aware of your jurisdiction’s laws on “curbside” consultation as well as the principles of medical ethics. Finally, should you have questions, please consider consulting with an attorney or risk management professional.

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\(^3\) Check with your own state to determine what the courts view as a physician-patient relationship as it may vary between states.