

CASE STUDY WITH RISK MANAGEMENT STRATEGIES

Presented by HPSO and CNA

Medical malpractice claims can be asserted against any healthcare provider, including counselors. Although there may be a perception that physicians are held responsible for the majority of lawsuits, the reality is that counselors are more frequently finding themselves defending the care they provide. This case study involves a marriage and family counselor in private practice who was the co-owner of the counseling center.

Case Study: Alleged incorrect diagnosis, breach of confidentiality and improper recommendation to the client's wife that she seek family protective services

Indemnity Payment: \$0.00**Legal Expenses:** in excess of \$80,000

The defendant counselor provided marriage counseling to a couple in both joint and individual sessions over the course of one month. During the course of therapy, it was revealed that the husband believed his wife was in an adulterous affair and required her to wear an electronic monitoring device when she was out of his sight. He also had installed surveillance cameras throughout their home. It was additionally stated that the husband had held a weapon during some of the couple's private discussions and had a past history of self abuse.

The defendant counselor deemed the husband to be at risk for injuring himself and further believed he was at significant risk for injuring his wife and his children. The defendant counselor recommended that the wife obtain assistance from family protective services and the wife did so. Upon the advice of the

family protective services counselor, the wife moved with the children to a location several hundred miles away from the husband and subsequently filed for divorce.

The defendant counselor was ordered by the judge to testify in family court proceedings. The court agreed with the defendant counselor's diagnosis that the husband was a danger to himself, his wife and children. Sole custody of the children was awarded to the wife.

The husband alleged the defendant counselor lied about him to his wife and to the court and that the defendant counselor's diagnosis of a mental disorder was incorrect. He also alleged that the defendant counselor had breached a confidentiality agreement between the husband, wife and counselor and demanded a settlement of \$1,700,000.

Resolution

Defense experts and the family court judge deemed the defendant counselor's actions to be appropriate. The confidentiality agreement, which had been signed by the defendant counselor and both spouses, contained an express provision that permitted the defendant counselor to report any evidence that either spouse was a danger to themselves or others.

The defendant counselor had maintained complete and contemporaneous session notes which included the defendant counselor's observations, the thoughts and actions chronicled by both spouses and the defendant counselor's clinical decision making process. The documentation fully supported the defendant counselor's diagnosis, recommendations and actions taken. It was clear that the husband lacked insight into the severity of his problems.

Based upon the defendant counselor's notes, family court transcripts and expert opinions, a motion for summary judgment was filed on behalf of the defendant counselor. Following arguments by both attorneys, the judge granted the motion for summary judgment and a motion to dismiss the action.

Risk Management Comments

- ◆ The defendant counselor's adherence to the standard of care and compliance with the identified duty to warn the wife of potential danger to her and their children were appropriate. The defendant counselor's actions resulted in the safe removal of the wife and children from harm. Moreover, meticulous session documentation and the signed confidentiality agreement that complied with *duty to warn* regulations made it possible to achieve a successful outcome for the defendant counselor.

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Risk Management Recommendations

- Practice within the counselor's scope of practice and incompliance with the standard of care.
- Observe all local, state and federal regulations governing confidentiality as well as the duty to warn.
- Ensure that clients are fully informed of the behaviors or actions that constitute a perceived danger to self or others and explain that such behaviors and actions will be reported to individuals deemed to be at risk from the client.
- Maintain complete client treatment records, including:
 - Original signed agreements, behavioral contracts, legal documents or written communication regarding the client
 - Client intake forms including physical, mental and medication history and history of prior treatment (when appropriate)
 - Counselor initial and periodic client assessments and diagnoses, with documentation of the counselor's clinical decision making process
 - Copies of any emails or regular mail to and/or from the client and summary of the content of any telephone interactions
 - Complete and contemporaneous session notes, including specific client actions and behaviors
 - Assessment of the client's level of insight into their problems/illness
 - Identification of any indication that the client may be a risk to oneself or to others
 - All actions taken to warn others of a risk of injury from the client (include name and contact information for all parties warned)
 - All actions taken to protect the client from self injury
 - Description of the counselor's clinical decision make process for any recommended client actions
 - Description of the client's response to therapy

Guide to Sample Risk Management Plan

Risk Management is an integral part of a healthcare professional's standard business practice. Risk management activities include identifying and evaluating risks, followed by implementing the most advantageous methods of reducing or eliminating these risks— A good Risk Management Plan will help you perform these steps quickly and easily!

Visit www.hpso.com/risktemplate to access the Risk Management plan created by HPSO and CNA. We encourage you to use this as a guide to develop your own risk management plan to meet the specific needs of your healthcare practice.



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