

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 to clients. In fact, over \$14 million was paid in indemnity and expenses for malpractice claims involving counselors, according to the most recent CNA HealthPro 10-year study.* This case study involves a mental health counselor.

Case Study: Engaging in sexual relations with the client, rape, engaging in multiple boundary violations of a sexual and nonsexual nature outside the counseling setting, improper treatment of the client's transference phenomenon and incorrect diagnosis

Indemnity Payment: Low six-figure range

Legal Expenses: Low five-figure range

The plaintiff client (wife) and her husband sought treatment for marital difficulties and the client also suffered from trauma and codependency issues related to having been raised in an alcoholic home. The defendant counselor treated both the husband wife together and as individuals.

The defendant counselor believed the wife suffered from post traumatic stress disorder and dissociative disorder resulting from childhood abuse and utilized a specific therapy, Eye Movement Desensitizing and Reprocessing (EMDR) as a technique to assist the client in recalling and processing her traumatic experiences. The defendant counselor encouraged the client to "recall" sexual abuse and rape despite the client's belief that such abuse did not occur. While comforting the client, the defendant counselor initiated a sexual relationship after which the defendant counselor and client either began or ended nearly every session with sexual relations. The defendant counselor encouraged her to meet with him outside of the treatment environment for personal and social activities and led her to believe that they were in a "special" relationship.

The client's marriage ended during this period and the husband (who was not aware of the relationship) no longer sought treatment with the defendant counselor. After approximately two years the

defendant counselor abruptly terminated the client from treatment without giving her any reason. Despite terminating her from care, the defendant counselor continued to contact the client and request that she see him personally which she found very troubling. The client maintained several intimate emails that she and the defendant counselor had exchanged during this time that supported her allegations.

The client subsequently learned that she was not the only female client with whom the defendant counselor had been sexually involved. She was experiencing severe anxiety, guilt and shame regarding the relationship and suffered physical and emotional symptoms far worse than when she had originally entered treatment. She began treatment with a new counselor who encouraged her to report the defendant counselor to the Department of Health which she did.

The defendant counselor refused to provide any specific information regarding his relationship with the client and session notes were inadequate or absent for most of the client's treatment. Without specifically admitting to sexual relations with the client, he offered to surrender his license to settle the matter with the Department of Health.

Resolution

The defense expert met with the client and administered psychological testing that determined that the client suffered from an anxiety disorder related to the relationship with the counselor. The expert noted that the counselor was solely responsible for maintaining proper boundaries in a therapeutic relationship and the client's consent to sexual and personal intimacy did not relieve the counselor of that responsibility. It was determined that the counselor had fallen below the standard of care by:

- encouraging the client to believe she was in a state of "denial" and had repressed memories of paternal sexual abuse as a child The counselor further encouraged the client to believe she had "recovered" memories of that abuse which is outside the standard of care. (The client's siblings were interviewed and there was no evidence or corroboration of sexual abuse within the family.)
- leading the client to believe they were in a "special" relationship as well as arranging and engaging in meetings with the client outside the treatment setting for personal and social activities
- physically comforting the client during her expressions of sadness and using that process to initiate and engage in sexual activity with the client
- abruptly terminating the client's treatment without an explanation or appropriate referral or assistance in obtaining continuing counseling elsewhere
- pursuing a continued personal and sexual relationship with the client after termination of treatment

Given the expert's findings of counselor negligence, the client's credibility including Email evidence and the counselor's refusal to actively participate in his defense it became necessary to settle the professional liability allegations within the claim. (Illegal and/or criminal acts are not covered under the policy and were not part of the settlement discussions.) The parties entered into mediation and a settlement of the professional liability claim with dismissal was achieved.

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Risk Management Comments

- ◆ The counselor breached professional, clinical and ethical boundaries both in terms of sexual behaviors and in engaging in multiple relationships with the client throughout her treatment. Additionally the counselor's clinical treatment did not meet acceptable standards of care.

Risk Management Recommendations

Law, ethics, scope of practice and established standards of care all govern the practice of licensed counselors. A full understanding of and adherence to all these requirements is essential to preventing client injury and litigation.

- **Know and practice within the counselor's state-specific scope of practice and in compliance with the standard of care and state licensing/certifying board requirements.** If more than one standard, law or regulation is involved, the counselor is required to adhere to the strictest of all that apply.
- **Utilize proven therapeutic techniques that are appropriate to the client's clinical needs, are within the counselor's competence and applied within the accepted standard of care.**
- **Maintain appropriate boundaries with clients and know and comply with the American Counseling Association's Code of Ethics** (www.counseling.org), state-specific laws and regulations related to appropriate conduct, applicable ethics codes from state and/or local professional organizations and requirements of the relevant licensure/certification board.
- **Understand that the counselor is solely responsible for maintaining appropriate boundaries in the counseling relationship and that client consent for sexual, personal and/or social relationships does not relieve the counselor of that professional duty.**
- **Prohibit sexual intimacies of any kind with a client.**
- **Manage client transference and/or counter-transference with appropriate counseling techniques and obtain clinical supervision or assistance as needed.**
- **If transference and/or counter-transference cannot be appropriately managed within the counseling relationship and becomes problematic in achieving the client's treatment goals, it is important to cease treatment and encourage the client to seek counseling with another counselor.**
- **Document all client discussions related to transference and boundary issues, the counselor's clinical decision making process, the counselor's actions to obtain clinical supervision or assistance and counselor assistance provided to the client in obtaining alternative treatment.**
- **Refrain from contact with clients who are no longer in treatment and if contact does occur, maintain all professional boundaries**

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.



*CNA HealthPro Understanding Counselor Liability Risks, CNA Insurance Company, March 2014. To read the complete study along with risk management recommendations, visit <http://www.hpso.com/counselorclaimreport>

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