

How to Terminate the Noncompliant Client

Counseling is a collaborative relationship in which counselors work with clients to find solutions and achieve life goals—the client’s goals. Sometimes, though, problems aren’t getting solved, the client isn’t following the treatment plan, and the counselor is feeling frustrated. What then? Termination may be the best answer, but only if you end the relationship properly.

The Code of Ethics of the American Counseling Association (ACA), prohibits “abandonment” of a client.¹ But as long as continuation of treatment is arranged, you may end a counseling relationship when: You feel you can’t be of professional assistance to the client, or you believe the client is not likely to benefit from further counseling or is even being harmed. You may also terminate a client relationship if you feel endangered, or the client is not paying agreed-upon fees. Whatever the reason, avoid making the client feel you have abandoned him or her. A client who feels abandoned may become angry, which can lead to disciplinary complaints and lawsuits.



compliant,” he “is simply a client who, for his own reasons, doesn’t do what you want him to do.” This client, for example, may have scheduling problems that he has been reluctant to reveal. You can avoid such a situation, Kaplan suggested, by making your approach clear to prospective clients in the informed consent brochure you give them at your first encounter. Or, if the relationship has been established, you can offer an alternative approach—as long as you are qualified by training and experience to do so.

Other scenarios also can lead to termination—and referral to another therapist.

Suppose, for example, you find your personal or religious values standing in the way of professional objectivity in working with a pregnant teenager who is considering abortion and doesn’t want to tell her parents she’s pregnant. You may have an obligation to suggest a referral to a counselor who can be more objective.² Or suppose you simply find the client extremely unpleasant, which makes it impossible to help because your objectivity has been compromised.

Steps you’ll need to take

Once you make the decision to terminate the relationship, it’s important to take certain steps to ensure that the client doesn’t feel abandoned. Avoid initiating termination when the client is in a crisis. Also, be sure to give adequate notice of your intentions—at least 30 days and possibly more—so as to make sure the client’s care is successfully transferred to another provider.

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Take as many sessions as the client needs to process the end of the relationship, as long as treatment is not jeopardized. Explain to the client who won’t do his homework, for example, that your approach doesn’t seem to suit his needs and offer a referral. Make your views on abortion and parental notification clear to the pregnant teenager, and suggest that she talk to someone with a different outlook. Take the blame for the impasse with the client to whom you have an aversion.

Give the client a list of appropriate referrals, at least three—and more if possible. Make sure referrals are located within a reasonable distance and check that the counselors’ credentials and approach are suitable for the client’s needs. Facilitate the referral in any way you can, perhaps by offering to make the initial contact. Ask for the client’s consent to transfer records. Follow up the face-to-face termination sessions with a letter stating your intention to terminate and listing your referral recommendations.

When you do it the right way, termination won’t feel like abandonment because it won’t be abandonment. And, you’ll be ethically and legally in the clear.

REFERENCES

1. American Counseling Association. Code of Ethics, Section A.11. www.aca.org (Sept. 2, 2006).
2. Herlihy B, Corey G. *ACA Ethical Standards Casebook*, 6th ed. Alexandria, VA, ACA, 2006.

Did you know...

... keeping your coverage

current after you graduate is easy and important. When you start working, your new employer's policy may not cover you in all cases so it's important to continue your coverage after graduation in case you are named in a lawsuit or complaint from the licensing board or ethics committee.

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unchanged) to professional status once payment is received. This means that 24/7, on or off the job, you can rely on your policy to protect you against allegations of professional malpractice, as a licensed or certified professional.

... the most common areas of

liability concern for counselors are: confidentiality and privacy; attorney referrals for licensure board and other issues requiring counsel; liability related to counseling children; the duty to report child/elder abuse, crimes, and unprofessional conduct; and summons and complaint/litigation process, complaints to state boards, and criminal complaints.

The ACA's monthly newsletter, *Legal & Regulatory Compliance*, reports on existing and emerging laws and regulations, lawsuits, and new HIPAA rules and legal mandates and answers compliance questions. To subscribe or get a free brochure, go to www.counseling.org/publications or call 800-347-6647, x 222.

LESSONS FROM COURT

Did counselor cause divorce?

A former client sued a marriage counselor, alleging professional malpractice. He sought damages for willful and malicious conduct, emotional distress, mental anguish, the loss of his marriage, and damage to his relationship with his daughters. The couple were divorced six months after the termination of counseling, and the counselor subsequently hired the wife as a clerical worker. The plaintiff alleged the counselor failed to inform him about his wife's intentions during counseling. He also claimed to have evidence of phone calls and meetings between the counselor and his former wife, after counseling ended but before the divorce. The defendant contended he met the standard of care, played no role in the divorce, and had no improper relationship with the plaintiff's wife. The jury returned a verdict for the defense.

Staff. (2006) *Medical Malpractice Verdicts, Settlements & Experts*, 17(10), 53.

Advice from the expert:

Relevant standards here would include the American Association of Marriage and Family Therapists (AAMFT) Code of Ethics, state licensing regulations, and guidelines on conduct subject to disciplinary action by the counselor's professional organization, as well as expert testimony on whether the counselor's conduct deviated from the standard of care. While the AAMFT code of conduct urges marriage counselors to avoid personal or business relationships with clients, the plaintiff's ex-wife was not a client when the counselor hired her and therefore the defendant has not breached the standard of care. Nevertheless, from a risk reduction point of view, such hiring of a former client is probably ill-advised. (See page 4.)

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Send comments and questions c/o HPSO *Risk Advisor* at 159 East County Line Road, Hatboro, PA 19040-1218. Due to space limitations, all editorial sources and references may not be listed, but may be available on request.

SPECIAL THANKS TO:

Jonathan M. Cooperman, PT, JD • Larry Freeman • David Kaplan, PhD • Michael Liebowitz • Paul L. Nelson, CPCU • James Saxton, Esq. • Gayle H. Sullivan, RN, JD • Nancy Wheeler, JD

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Reducing your risk begins with hello

It should come as no surprise to know that patients and clients who perceive a provider as courteous, attentive, and having their best interests at heart are less likely to sue than patients and clients without these perceptions, especially if the outcome isn't exactly what they had hoped. Though the correlation between patient/client satisfaction and lawsuits is particularly well-documented for physicians, it can apply to all other healthcare professionals as well. With that in mind, you should consider the different ways you can improve your interactions with patients, noted James W. Saxton, a Lancaster, PA-based attorney and author of *The Satisfied Patient: A Guide to Preventing Malpractice Claims by Providing Excellent Customer Service*.

In healthcare, as in other fields, satisfaction begins with a first impression. "You need to invest in that first 10 seconds," Saxton said. Greet patients/clients by surname, unless they request otherwise. Look them in the eye, smile, "and treat them the way you

would want to be treated or the way you would want your parents to be treated." Before you begin working with a patient or client, take a few moments to explain what you are about to do and ask if he or she has any questions so you can assess the individual's comfort level and allay any concerns. Communicate clearly, using layman's terms, rather than clinical terminology. In addition, describe the treatment, any associated consequences, and how the patient can enhance its efficacy.

Throughout the visit, listen to concerns and expectations. Failed communication with patients or clients and their families is one of the most common causes of malpractice suits. "The importance of listening can't be overstated," Saxton said. He recommends that practitioners end the visit by asking, "Is there anything else I can do for you?" or "Can I answer any other questions?" Too often, he said, patients and clients feel that they were rushed. "Asking some type of open-ended question generally doesn't take more time and it sends patient satisfaction sky-high."

Wearing two hats: Are you covered?

The typical working American changes careers between five and seven times during his or her lifetime, according to the National Career Development Association. Healthcare workers are no exception. In fact, a large number of healthcare professionals not only change jobs, but often they practice in more than one area simultaneously, carrying two active licenses. For example, a physical therapist may also work as a personal trainer at a gym, while an exercise physiologist might also be a licensed dietitian. If you're dually-licensed, adequate insurance is essential.

HPSO cautions that, as a rule, if you have a license in one field but are working in another that requires less training, your professional liability insurance coverage must match your license, not your current



job. Michael Liebowitz, president of the Risk and Insurance Management Society, agrees: "You always insure at the highest level. It's really that simple." Fortunately, HPSO will cover you for both professions with a single policy; your premium is based on the license with the higher level of risk.

If you have more than one credential and have questions about your coverage, call HPSO at 800-982-9491.

Employed, self-employed, or LLC—Are you underinsured?

Theoretically, the difference between working for yourself and working for someone else is huge. In reality, many circumstances blur those lines. And being classified as employed, self-employed, or limited liability company (LLC) affects the kind of professional liability insurance you need.

If you draw a salary from an employer, your status is clear: You're an employee. If you practice on your own, your status also might seem obvious: You're self-employed. However, it's not as obvious if you perform professional services for one or several facilities as an independent contractor. What if you're employed during the day and provide services at another facility in the evening? Or, to add further confusion, if you incorporate yourself but are a single-person practice, are you still self-employed?

HPSO has a product to fit each of these classifications. If you work exclusively for a facility, a basic individual professional liability insurance policy for employed healthcare professionals suffices. If you perform professional services in a setting for 120 hours or more a year as a consultant, or you are an independent contractor, you need the comprehensive coverage of a self-employed policy. It protects all your professional services in the workplace, as well as services you offer to consulting clients.

But, let's say you establish a business, complete with a Federal Employer Identification Number. This can afford many privileges but may also open the door to risks for which you need to be protected. Even if you don't plan on hiring employees, you have created a new entity, and it's important to keep your assets and those of your business separate. If you are ever sued, you and your business can be named separately, so you need to make sure you are fully covered with a professional liability insurance policy for a small business.

If you are, or expect to be, practicing on your own, you may need to consider changing your HPSO policy. If you have any questions, e-mail us at service@hpso.com or call 800-982-9491.

How to Avoid Profess

Shield yourself from pitfalls

“Assessment and treatment errors are among the top causes of professional liability claims.”

Despite the best of intentions, every healthcare provider makes errors now and then. Fortunately, many prove harmless and go unnoticed by patients. Others, however, are not so innocuous and can trigger professional liability claims.

It's useful to know the errors that are most likely to prompt a professional liability claim so you can learn to avoid them. Here are some of the most common triggers, along with some advice on minimizing your risk.

Top errors in healthcare

Assessment and treatment errors are among the top causes of professional liability claims. According to a recent report by CNA, the underwriter of your professional liability insurance policy, failure to properly assess patients are among the most severe (expensive) claims against physical therapists.¹ Failure to assess or treat patients' problems plague counselors, too, said Paul L. Nelson, executive director of the American Counseling Association (ACA) Insurance Trust. He also noted that 14% of the claims from 1997-2003 cited those allegations.

For PTs, treatment errors involving therapeutic exercises trigger lawsuits more than a third of the time.² “A patient may claim the therapist gave him an inappropriate exercise or too much exercise,” said Jonathan M. Cooperman, PT, DPT, MS, JD, president of the Ohio Physical Therapy Association. Failure to use safety equipment, like opting not to use a gait belt, also can lead to malpractice allegations if a fall occurs. So can burns. This type of injury may reflect failure to properly monitor patients—the second most common reason for professional liability claims against PTs.

Medication-related errors, another major cause of claims, can affect pharmacists in particular. A pharmacist, often faced with time constraints, may feel rushed to fill many prescriptions quickly and may provide the wrong dosage. He or she could give the right medication to the wrong patient or could even administer the wrong medication because of all the “look-alike, sound-alike” agents on the market today. Such errors generally account for around half of medication-based professional liability claims.³

Pharmacists can also face risk from a prescriber's mis-

takes. “Pharmacists have to make sure the medication ordered is appropriate for the patient,” said Michael D. Alfano, RPh, JD, a Philadelphia-based attorney. “A physician may prescribe a medication the patient is allergic to or request a dose that is outside the usual range. It's the pharmacist's duty to check with the prescriber if there's any doubt about a prescription.”



Other causes of malpractice claims

Inappropriate relationships with patients can also land practitioners in court. And if there's proof that sexual misconduct was involved, chances are malpractice insurance won't come to the rescue. Most policies do not pay any damages connected to sexual misconduct and may not even provide for the client's defense. Counselors in particular should take heed, since sexual intimacy (real or perceived) is the top cause for claims against them, accounting for 17% of the claims reviewed by Paul Nelson of the ACA Insurance Trust. PTs, particularly those

ional Liability Claims

specializing in women's health, also must make sure they keep relationships with patients strictly professional, said Cooperman, given that necessary contact could be interpreted as inappropriate touching.

Violating patient privacy is another liability hot button for all practitioners. (For an overview of the requirements imposed by the Health Insurance Portability and Accountability Act of 1996, read "Patient Privacy and HIPAA Hype," on page 4 of the 2003 *Risk Advisor* at www.hpso.com/hipaa.) Here, too, counselors should take extra care; breaching confidentiality, whether real or perceived, is the third most common reason for claims reported to the ACA Insurance Trust. For an example of such a case, see the November 2003 "Case of the Month" on the HPSO Web site at www.hpso.com.

Many claims can also arise from inadequate communication with patients, in one form or another. For instance, failing to get informed consent is cited as a secondary claim in many professional liability actions. Dispensing medications to patients without offering to counsel them can put pharmacists at risk. And, as mentioned on page 3, if a patient is unhappy with your care, even seemingly small transgressions such as rushing the visit can increase the likelihood of a lawsuit.

Know your duty and your limits

Since liability can arise when a healthcare practitioner violates the defined scope of practice, your first line of defense is to make sure you understand what you can and can't do according to the law as well as your practice act and other written guidelines.

Review your employer's requirements, limits, and procedures, as well as any imposed by your state. Also, be familiar with the code of ethics outlined by the professional organization for your field of practice. It's important, too, to keep current with evolving patient care protocols. Take continuing education classes, attend lectures, and read professional journals to stay abreast of

changes in your field of practice.

In addition, look for ways to improve patient communication. Ask patients plenty of questions, listen carefully to the answers, and do your best to ensure that they understand what you've said to them. These actions can decrease the chances that a patient will file a professional liability claim or even a complaint with a professional board or state agency that oversees standards of care.

Gayle Sullivan, RN, JD, an attorney from North Haven, CT, noted that "You don't even have to harm a patient to face professional discipline. Say a pharmacist makes a few dosage errors that do not result in any patient injury. If the state board learns of them from patients, it may investigate and take disciplinary action." For minor transgressions you may only have to pay a fine or take a continuing education course, but serious violations can result in suspension or revocation of your license.

As always, thorough documentation of each patient encounter is critical. Record your observations about the patient's status before, during, and after care; your treatments and the reasoning behind them; any comments or concerns the patient expressed; how you responded to those comments or concerns; and how the patient received any overall guidance or specific care instructions you gave. Detailed notes can go a long way toward protecting you if you're named in a lawsuit. They're proof of your efforts to meet the appropriate standard of care.

What to expect if you're sued

You hope you will never find yourself at the center of a lawsuit, but if you do, you need to know how these suits typically unfold. First, the plaintiff's attorney files the complaint, and you're notified of the charges against you. Once this happens, you'll need to promptly notify your supervisor, your employer's risk manager, and HPSO. Never respond directly to the complaint or any other inquiries from the plaintiff's attorney; all communications should go

through the claims consultant and/or attorney assigned by CNA.

During the next stage, the discovery process, both sides collect information. You may have to answer questions in writing (interrogatories) or orally in an attorney's office (depositions) under oath and provide records or documents. The attorneys for both sides may subpoena witnesses to offer testimony or supply additional documents. They may also hire expert witnesses.

A pretrial hearing, which allows both sides to bring issues before the court, is next. The judge may set limits on the case or request clarification of certain points. Attempts to settle without a trial may follow, through court-ordered mediation or direct negotiations between the attorneys. If a settlement isn't reached, the case goes to trial, but it can sometimes take years for the case to be heard.

As you can imagine, a lawsuit is a grueling process, and the resulting damage to your reputation and personal assets can be devastating. Your best protection is to make sure you're adequately insured and to take steps to avoid the kinds of errors that invite claims in the first place.

REFERENCES

1. CNA. Physical Therapy Claims Study. Available at www.cna.com. (Nov. 10, 2006)
2. Claims at a glance. *HPSO Risk Advisor*, Physical Therapy Edition, Winter 2001.
3. Claims at a glance. *HPSO Risk Advisor*, Pharmacist Edition, Winter 2001.

To learn more about obtaining informed consent, a common secondary issue in professional liability complaints, see the Web Flash in the newsletter section of

www.hpso.com/webflash2007

Thinking about Retiring or Taking a Leave of Absence?

The current workforce is aging and more healthcare professionals are considering retirement, while others may decide to take a leave from their careers to care for young children or aging parents. Still others decide to pursue a different career path that does not require their license. Nonetheless, many healthcare professionals want to keep their license active, especially after all the hard work they did to acquire it.

If you are thinking about retirement or decide to take a temporary leave of absence from your profession while maintaining an active license, you should also consider retaining your professional liability insurance policy. That's because you can still be sued as a licensed professional if you do any side work, volunteer, or even give advice to a friend, neighbor, or acquaintance.

The good news is that you will be entitled to a premium discount of 50%. In addition, your coverage is reduced to professional liability, license protection, and assault protection.*

If you elect to take this option when renewing your policy, simply indicate "Retired/Leave of Absence Policy" on your premium invoice and return it with a check in the amount of your current premium minus a 50% discount to HPSO, 159 East County Line Road, Hatboro, PA 19040-1218. Or you can simply call HPSO at 800-982-9491; e-mail us at service@hpso.com; or fax your requested change to 800-739-8818.

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* Assault coverage is not available in Texas.

MOVING?

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Move Beyond That Mistake

Maybe you made a mistake that resulted in a patient's falling or receiving the wrong treatment. Even a lesser incident, such as giving a patient the wrong dosage of medication that caused no adverse effects, is still a mistake. Regardless of the severity, mistakes are stressful. They bring about concerns for patient well-being, as well as your own potential for liability.

If you make a mistake, your best option is to report it to your manager as soon as possible. Hiding the mistake will only increase your level of anxiety, as well as your chance of disciplinary action. It also can cause superiors and peers to think you are dishonest because you tried to hide something. Follow the procedures used by your facility and be prepared to answer questions about the incident clearly and concisely. It's also wise to inquire whether your institution has a confidential reporting system, or a no-blame policy, as recommended by the Institute of Medicine. Make

sure you comply with all state and federal requirements, as well as those of the Joint Commission on Accreditation of Healthcare Organizations (JCAHO). And notify HPSO at once, by filing an incident report online, by fax, or by mail, if you

think a claim may be brought against you. If the mistake resulted from a substandard setting within your facility, such as faulty equipment or short staffing, be proactive by taking steps to improve the situation. Start by notifying your supervisor, and continue moving up the chain of command, as necessary.

Making a mistake, even a minor one, can leave you doubting your abilities. Fortunately, you can take steps to regain your



confidence and help prevent future incidents. Stay up to date on your State Practice Act, take advantage of continuing education courses, read your professional journals, and make sure you're properly

trained on all new equipment and treatments, therapies, and medications. You can also reassure yourself by taking time to double-check your work.

If you find that you're still doubting yourself, consider jotting down a list of your positive qualities as a provider, and remember how often you help patients. Reporting mistakes can seem daunting but can ultimately improve patient care and reduce your risk of liability.

Do's and Don'ts of Group Therapy

Group therapy may sometimes be the best way to serve the needs of your clients. But, whether that therapy centers on marriage and family counseling or some other discipline, utilizing a group setting can leave you open to certain liability claims. Fortunately, you can protect yourself—and ensure good client care—with a few simple guidelines.

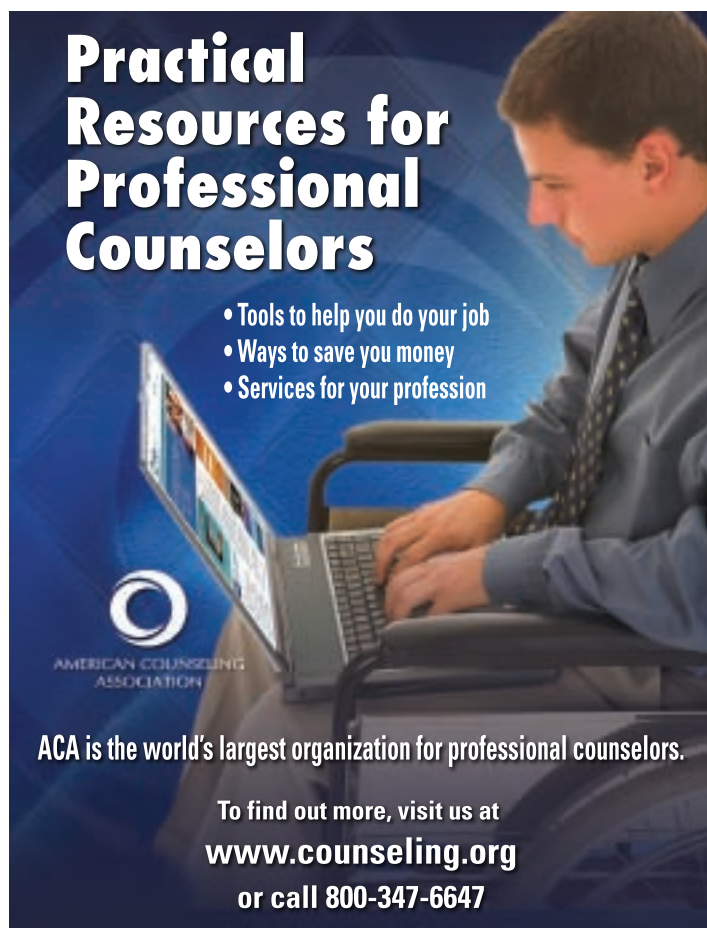
- **Discuss the group's responsibility for confidentiality, privacy, and privileged communication.** Explain that it is unacceptable to disclose the names of other group members or to repeat what was said during a session. Protect yourself further by having clients sign an agreement at the outset of treatment. That document will lay the groundwork for removing a group member for violating the conditions, should it become necessary. It also offers proof of the guidelines you set, which can help to reduce your liability if a problem arises.
- **Meet your own responsibilities for confi-**

dentiality. Stay up-to-date on your state law and disclose private information only under specific circumstances that are known to the client. In fact, it's best to have each legally competent client sign his or her own authorization to release information, clearly indicating the circumstances under which information can be disseminated. The waiver should be time limited and consistent with legal statutes.

- **Make record security a top priority.** Keep written records in a locked file drawer or cabinet. Protect computerized records with a password. Ask clients for permission to record group sessions, and keep tapes or videos locked in a cabinet or drawer in a room to which patients don't have access.
- **Stay on top of practice guidelines.** For example, family and marriage counselors must know exactly how far they can go in a group setting with such matters as terms of consent, pregnancy of a minor, and custody issues, such as restrictions on the parent's participation in treatment.


The American Counseling Association (ACA) is an excellent source for such information. You can access private practice pointers for group therapy as well as the ACA Code of Ethics and Standards of Practice at www.counseling.org. And, the Association for Specialists in Group Work (ASGW), a division of ACA, has developed Best Practice Guidelines to clarify the application of the ACA Code to the field of group work. These guidelines are available at www.asgw.org.

Though helping people share their views and experiences during group therapy may be gratifying for you and your clients, it also opens the door to liability related to confidentiality concerns. To protect yourself, follow your practice guidelines, keep accurate, current records, and be meticulous about their security. Finally, preserve your skills through continuing education. If, despite these precautions, you are accused of wrongdoing, notify HPSO immediately by calling 800-982-9491.



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▶ What are some of the best ways to avoid professional liability claims?
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▶ What are the special risks of group therapy?
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