

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.

Case Study: Alleged Slanderous Statements by the Defendant Regarding the Plaintiff and Alleged Improper Reporting of Privileged Health Information to the Plaintiff's Employer

Settlement Payment: No payment was made due to the successful defense motion for summary judgment

Legal Expenses: \$51,552

The plaintiff was a 52 year old practicing physician when he was court-ordered via the state's professional resource network (PRN) to see the defendant counselor for assessment following an arrest for suspected driving under the influence (DUI). The defendant determined that the plaintiff had both a substance abuse history and was engaging in active substance use, recommending that he enter substance abuse treatment. The plaintiff denied the diagnosis and refused to enter treatment.

In compliance with state statutes, the defendant counselor reported his assessment findings and the plaintiff's refusal of recommended treatment to the state's professional resource network (PRN) for ultimate reporting to the court. Since the plaintiff stated he was a physician in active clinical practice, the defendant counselor appropriately also reported his findings to the state's impaired physician network (IPN). The plaintiff accused the defendant counselor of also reporting his assessment findings to the plaintiff's employer. The defendant counselor denied this allegation, and there was no evidence that he had done so.

The plaintiff's personal psychiatrist disputed the defendant counselor's assessment findings stating that the plaintiff did not have a substance abuse history, that there were no objective tests proving active substance abuse nor were there any records to that effect. To resolve the disputed findings for the court, the state's professional resource network required that the plaintiff undergo a second evaluation by a psychiatrist who was a substance abuse specialist. The psychiatric substance abuse specialist diagnosed the plaintiff with "opiate

dependence" and recommended "aggressive outpatient treatment". The plaintiff again rejected these findings and treatment recommendations.

The plaintiff returned to his personal psychiatrist who stated that the patient was not a substance abuser. Rather, his psychiatrist related that as a result of emotional trauma related to the court-ordered assessments, he would require several months of continued private treatment and medication before returning to his medical practice.

The plaintiff never returned to his practice and initiated litigation against the defendant counselor, alleging slander, reporting false information to the state's professional resource and impaired physician networks and to his employer, resulting in damage to his reputation and loss of income. The plaintiff also sought damages for medical expenses, pain and suffering and irreparable harm to his professional reputation.

The plaintiff asserted that his income was \$700,000 per year, which was not confirmed by tax records and it was determined that the plaintiff had ceased working several months prior to the DUI event. Investigation revealed that the plaintiff did not enjoy the positive professional reputation he contended and that he incurred significant psychiatric treatment expenses. However, those expenses began accruing prior to both the DUI and contact with the defendant counselor.

A contentious and protracted discovery process resulted in defense counsel making several motions to compel the release of discovery materials.

Resolution

Defense counsel filed a motion for summary judgment which was granted by the court. The plaintiff did not appeal.

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Risk Management Comments

- ◆ The defendant counselor acted appropriately within the authority granted by the court order, within the state scope of practice for his profession and within professional standards of care. In compliance with state statutes, he reported his findings to the plaintiff, the PRN, which provided the findings to the court, and the state agency (IPN) governing the practice of impaired physicians. Given the findings of the defendant counselor and their confirmation by a psychiatrist specializing in substance abuse, it is likely that the plaintiff's employer also may have independently observed symptoms of behavioral illness and/or substance abuse.

Risk Management Recommendations

- **Understand and safeguard the privacy rights of each patient (including the patient who is an active health care practitioner), as well as the rights of the community to be protected from an impaired practitioner** and obtain legal guidance if needed in order to take appropriate actions in compliance with state law.
- **Understand and comply with your own state scope of practice, current standards of care and the specific court-ordered authority** when assessing patients for substance abuse and/or behavioral or mental illness as part of a court-ordered intervention.
- **Report patient assessment and treatment findings ONLY to those parties or entities authorized by the patient or with statutory, legal or regulatory authority to compel disclosure of the otherwise protected information** such as the courts, an agency authorized to represent the court and regulatory or licensing bodies; in this case, the state agency for the management of impaired practitioners.
- **Document findings appropriately** in the patient's record to reflect:
 - clinical findings and recommendations
 - the patient's response to the diagnosis and recommendations
 - the agencies/parties to which the findings were reported
 - the statutory/regulatory authority for release of findings to each party to whom they were provided

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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