

Presented by  
HPSO and CNA

## Counselors Medical Malpractice Case Study with Risk Management Strategies

### Case Study: Negligent treatment of eating disorder; premature discharge

Indemnity Payment: \$150,000

Legal Expenses: \$11,780

Medical malpractice claims can be asserted against any healthcare provider, including counselors. 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.\*

#### Summary

Note: There were multiple co-defendants in this claim who are not discussed in this scenario. Any amounts paid on behalf of the co-defendants is not available. While there may have been errors/negligent acts on the part of other defendants, the case, comments, and recommendations are limited to the actions of the defendant; the counselor. Further, there were additional charges against the defendant counselor that were outside the coverage of the professional liability insurance policy that are not discussed in this case scenario.

The defendant counselor was a licensed chemical dependency and mental health counselor. He also owned (with his co-defendant spouse) the facility where the plaintiff was admitted for treatment of her eating disorder.

The plaintiff was a 23-year-old female admitted to the defendant counselor's facility for treatment of depression and the eating disorder, anorexia. She was treated as an inpatient for her disorders until she was no longer able to pay for care. The defendant counselor then transferred the plaintiff to his (unlicensed) transitional housing facility where she was appointed as "house monitor", but her condition worsened. She was terminated from her position and discharged from the facility.

The plaintiff alleged that she was discharged prematurely, causing her symptoms to intensify and resulting in the loss of the ability to enjoy life, and emotional distress and pain and suffering from delayed proper treatment. She also asserted multiple allegations related to the financial arrangements for her treatment that are not covered under the defendant counselor's professional liability insurance policy.

A review of the medical records revealed multiple breaches of the standard of care, including lack of medical oversight of the plaintiff's treatment, lack of documentation describing the treatment decision-making process, failure to record medications administered and failure to record the plaintiff's weight despite her admission for anorexia.



#### Resolution

The medical record offered no basis for defense of the care provided to the plaintiff, and the defendant counselor's request to settle the plaintiff's professional liability claim as expeditiously as possible was honored. Ultimately, the case settled for a low five figure settlement amount with an additional \$14,817 paid in legal expenses.

#### Risk Management Comments

The defendant counselor believed he and facility staff met the standard of care in their treatment of the plaintiff, yet sought early settlement of the claim. He initially withheld the plaintiff's medical records. When the plaintiff's records were eventually released, expert review was negative due to the absence of medical oversight in the facility and lack of documentation describing the plaintiff's treatment or response to care. Discharge for inability to pay, as well as subsequent employment in monitoring other patients with the same eating disorder diagnosis, raise ethical concerns.

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## ▶ Risk Management Recommendations

- **Behavioral health inpatient facilities must provide medical, psychiatric and psychological care** specific to the needs of each patient. They must comply with prevailing standards of care, in addition to providing for physical and emotional needs in a safe environment.
- **Inpatient behavioral health patients must be examined, assessed and monitored by a licensed physician.** In the presence of a known eating disorder, and the prescribing and monitoring of medication for the treatment of depression and other conditions or symptoms, the services of a physician are required.
- **Patient records must contain documentation of the clinical decision-making process of all care providers** and the associated treatment provided, as well as a description of the patient's response to treatment.
- **Appropriate services must be provided by qualified personnel** and may not be provided by other patients acting as employees in lieu of payment.
- **Cessation of care for lack of payment without facilitated referral and/or transfer to an appropriate alternative treatment program is deemed abandonment.**

### 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](http://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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