

Presented by
HPSO and CNA

Counselors Medical Malpractice Case Study with Risk Management Strategies

Case Study: Failure to properly monitor and supervise services treating counselor who continually failed to establish professional boundaries and who developed a personal relationship with the client

Indemnity Payment: Greater than \$20,000

Legal Expenses: Less than \$15,000

Summary

Note: There were multiple co-defendants in this claim who are not discussed in this scenario. Monetary amounts represent only the payments made on behalf of the supervising counselor. Any amounts paid on behalf of the co-defendants are 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 supervising counselor.

The supervising counselor (defendant) was a Clinical Mental Health Counselor (LPCC) and Art Therapist employed at a university as a behavioral therapy consultant. The defendant counselor also maintained a private psychotherapy practice, which included both adult and child psychotherapy. As an experienced LPCC, the defendant counselor occasionally provided clinical supervision of Licensed Mental Health Counselors (LHMC) and met with them on fairly limited bases for purposes of counselor supervision.

The client (plaintiff) a writer and lawyer underwent three years of counseling due to the breakup of her marriage and past childhood traumas. During the course of her three year treatment, the treating counselor developed a pattern of unethical and unprofessional conduct with the plaintiff that included overnight counseling sessions where both would sleep in the same bed.

The defendant counselor became aware of the inappropriate relationship between the treating counselor and the client during a infrequent supervisory meeting. She voiced concern over the treating counselor's conduct and encouraged her to prepare a contract that both treating counselor and client would sign confirming the boundaries of their therapeutic relationship. The defendant counselor also recommended the treating counselor terminate the relationship and refer the client to another counselor for treatment. The defendant counselor never followed-up on the contract and the treating counselor never provided the defendant counselor with a signed contract.

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.*

This case study involves a counselor in a supervisory role.



The client eventually terminated counseling, but the treating counselor encouraged a personal and exploitive relationship with the client until the client terminated the personal relationship. When the client began treatment with a new counselor, she requested prior treatment and fee records, but instead was only provided with a summary of treatment which contained misrepresentations and defamatory statements about the client. After hearing the client's detail of the events with her prior treating counselor, the current treating counselor encouraged the client to report the unethical and unprofessional conduct of the previous counselor to the state licensure board.

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► Resolution

Plaintiff's experts were critical of the defendant counselor's failure to review treatment notes and meet regularly with the supervising counselor.

The possibility of a defense verdict was deemed to be less than 20 percent.

Experts assessed the potential exposure/claim value of the case for all defendants (including statutory prejudgment interest) as being between \$1,000,000 and \$3,000,000 with the defendant counselor identified as having the least percentage of liability

► Risk Management Comments

The defendant counselor supervised the treating counselor for 15 years. During the first 10 years the defendant counselor reviewed all written treatment notes by the treating counselor, but during the last five years of the supervisory agreement the treating counselor changed from written to voice treatment records and the defendant counselor stopped reviewing the counselor's performance.

When the defendant counselor was named in the lawsuit she denied knowing the intimate details of the counselor's relationship with the plaintiff even though several lengthy emails from the treating counselor to the defendant counselor were produced during the discovery phase of the claim.

► Risk Management Recommendations

- **Monitor the client welfare.**
- **Encourage compliance with relevant legal, ethical and professional standards for clinical practice**

- **Monitor clinical performance and professional development of supervisees.**
- **Evaluate and certify current performance** and potential of supervisees for academic, screening, selection, placement, employment and credentialing purpose.
- **Inform supervisees of professional and ethical standards** and legal responsibilities of the counseling/therapy profession.
- **Review actual work samples via session notes, audio and/or video tape or live observation** in addition to case notes should be reviewed as a regular part of the ongoing supervisor process.
- **Meet regularly in face-to-face sessions with supervisees.**
- **Provide ongoing feedback regarding performance.** Feedback should take a variety of forms, both formal and informal, and should include verbal and written evaluations. It should be formative during the supervisory experience and summative at the conclusion of the experience.
- **Recommend remedial assistance to the supervisee** and of screening from the training program, applied counseling setting, or state licensure those supervisees who are unable to provide competent professional services. These recommendations should be clearly and professionally explained in writing to the supervisees.
- **Ensure that all parties understand each party's role under the agreement,** and communicate openly and often about any question or concerns that may arise.
- **Review all counselor agreements at least annually,** and revise with the assistance of legal counsel, if necessary.

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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