

Presented by
HPSO and CNA

Counselors Medical Malpractice Case Study with Risk Management Strategies

Case Study: Failure to ensure that patient was evaluated and monitored by a medical doctor, failure to adequately monitor patient for signs of any deterioration the a patient's mental health, failure to confiscate all items that could cause a patient injury and failure to identify and prevent a patient's suicidal manifestations

Indemnity Payment: Greater than \$600,000

Legal Expenses: Less than \$31,000

Summary

(Monetary amounts represent only the payments made on behalf of the counselor and as his role of the administrator/owner of the alcohol and drug rehabilitation facility.)

A 17 year-old female (patient) had a history of suicidal ideation, depression/anxiety and suffering from Post-Traumatic Stress Disorder ("PTSD") due to sexual and emotional abuse by one of her mother's boyfriends beginning at age 10. As a result of the abuse, the patient turned to alcohol and drugs. At the age of 12, the patient began smoking marijuana and drinking on a regular basis and by her mid-teens she was abusing cocaine, ecstasy, acid, mushrooms, oxycodone, Xanax® and inhalants. At the age of 15, she began cutting herself with razors, paper clips and house keys. It was at this time her mother (plaintiff) decided her daughter needed counseling.

During one of the counseling session, the patient revealed the on-going emotional and sexual abuse by the mother's boyfriend. She stated that she didn't report the abuse because she was scared of the abuser. She recalled a time where the boyfriend stated that if she ever reported the abuse, she would face "dire consequences." The abuser was not arrested and after he became aware of the patient reporting the abuse he fled the area and was "on the run." Having the abuser on the run made the patient's emotional state worsen and she attempted suicide by ingesting "white powder" from a light bulb because she was told it was lethal. The patient was admitted in the hospital for overnight observation and in the health record, the consulting psychiatrist stated that suicide attempt was more of attention seeking and her suicide risk was "weak." A few months later, the patient was found nonresponsive and was again admitted to the hospital following what appeared to be an accidental drug overdose. The mother was insistent that the hospital admit the patient into drug rehabilitation program once she was discharged from the hospital. However, due to the patient's age she would only qualified for youth rehabilitation facilities.

Upon discharge from the hospital and months shy of her 18th birthday, she was admitted to a youth alcohol and drug rehabilitation several states away. The patient and mother were unhappy with the facility as the other youth in the facility would "prank" her. The patient expressed displeasure of the facility in her journal and the immature youth with whom she resided. During her 45-day residency, she tested positive for marijuana twice, was found with inhalants and attempted to run away. These issues persuaded her mother that her child needed to be transferred to a more mature environment.

The mother found an adult drug and alcohol program that was closer to home and inquired about having her daughter transferred. In the course of these discussions, our insured counselor (defendant) informed the mother that his facility (as he was the owner and administrator) was only licensed to treat adults and not adolescence. However, the mother assured that the child was mature for her age and would be turning 18-years old in a few weeks. She stated that her child would do better in a more mature adult environment rather the youth program she was currently. The insured counselor reluctantly agreed to the admission due to his low census. He

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 drug and alcohol counselor working in an adult alcohol and drug rehabilitation facility.



promised the mother that if the patient were transferred to his facility, that immediately upon her admission, the patient would have a full evaluation conducted by a medical doctor and a psychological evaluation. The youth rehabilitation facility's health records indicated the patient was discharged against medical advice due to the facility's concern that the patient would not receive adequate care in an adult program.

Two days later, the patient was admitted to a 20-bed drug rehabilitation facility certified and capable to care for only adults. The facility offered a 30-day detoxification program followed by an additional 60-day group home admission, which allowed the patients to participate in normal everyday activities while under supervision. The mother agreed to the initial 30-day detoxification admission and told the patient if she maintained sobriety and successfully followed the path to recover, she would take her home after the 30-day program.

On admission, the mother requested her daughter receive a medical review and be placed on an anti-depressant. The mother further requested the facility provide extra supervision for her daughter due to her age. The insured assured the mother that the patient would receive a medical examination by a physician and needed medications as well as be monitored closely. However, due to the patient being admitted over a holiday weekend, the medical review was not performed until two weeks after admission at which time the patient was placed on Zoloft.

At the admission psychological exam, the insured found the patient to be distant, depressed and anxious. He diagnosed the patient with depression

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and anxiety with attention seeking behavior, but felt that she was not a harm to herself or others.

During the first three weeks, the patient participated in all group and individual activities, which was led by our insured counselor. The staff made several notes in the health record that the patient appeared to be doing well and to be making positive future life decisions. She would comment about her plans to go home, begin working for her father and potentially marrying her boyfriend. Her focus seemed to be on discharge and pursuing a healthy lifestyle. However, one week before her completion of 30-day program she had an argument with her mother. The mother informed the patient over telephone call that she could not come home after the 30-day program. Instead, she would have to stay until her 18th birthday, which meant that the patient would have to finish the 60-day group home program. Several staff members and patients overheard the patient yelling and crying while on the telephone with her mother and made attempts to calm her.

The following day, the patient was not feeling well and following the afternoon group meeting told the staff that she was going to her room to lie down. Thirty minutes later, the patient's roommate came in and found that the patient had hung herself in the closet by using shoestrings. Resuscitation efforts were made and 911 called, but unfortunately the patient was pronounced dead at the hospital. The mother filed a lawsuit not only against our insured counselor, but the facility. She alleged that the patient did not receive proper treatment, including needed medications and supervision for her conditions and age.

➤ Risk Management Comments

The mother claims that despite the patient's known history of suicidal attempts, the counselor and facility did not properly monitor the patient and did not prevent her from having access to items such as belts or shoelaces or anything that she might be able to use to harm herself. Her second claim was that defendants did not properly monitor her daughter for signs of any deterioration in her mental health. Her final claim was that the counselor and the facility should never have admitted the patient into his facility as it was not an adolescent facility.

Our defense is that the patient was properly monitored by a competent and well trained staff even if the facility was strictly for adults. The patient was doing well until the mother backed out of an agreement she had with her child for her early release from the facility. Our experts felt that the mother's actions were the major contributory factor to the patient's suicide because the mother knew her child was emotional unstable and when she broke the agreement the child would be very distraught.

➤ Resolution

The percentage chance of a defense verdict was 25 percent - 35 percent with the primary issue being the fact that the facility was not licensed or certified to house adolescents. The delay in the medical examination and in starting the patient on anti-anxiety medication was also a concern. The defense experts commented that the staff's knowledge of the mother's discussion should have heightened even more the observation of the patient, which may have prevented suicide.

Experts assessed the potential exposure/claim value of the case for all defendants (including statutory prejudgment interest) as being between \$750,000 and \$1 million with our insured identified as having all of the liability.

➤ Risk Management Recommendations with regards to treating Counselors:

- **Work in areas that are consistent with licensure, specialty certification, training and experience.**
- **Know and practice within the state-specific scope of practice**, and in compliance with the standard of care and state licensing/certifying board requirements.
- **Consider the findings of the client's assessment, history and psychological examination**, as well as the client's expressed concerns, in establishing the diagnosis.
- **Decline to perform requested actions/services if they are outside the legal scope of practice.**
- **Document all patient and family interactions.** Documentation includes telephone encounters, session notes, client's informed consent for proposed treatment and noncompliance.

➤ Risk Management Recommendations with regards to Counseling Firm Owners:

- **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.
- **Maintain a safe environment**, to enhance the clinical experience and protect clients and others.

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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