

Presented by  
HPSO and CNA

## Counselors Medical Malpractice Case Study with Risk Management Strategies

### **Case Study:** Failure to maintain appropriate boundaries with a patient or former patient; failure to follow the standard of care; failure to manage patient transference

**Indemnity Settlement Payment:** In excess of \$90,000  
(Monetary amounts represent only the payments made on behalf of the counselor.)

**Legal Expenses:** Less than \$7,000

#### Summary

The plaintiff was a woman who began seeing the defendant counselor when she and her husband sought treatment for marital difficulties, while the plaintiff also suffered from trauma and co-dependency issues related to having been raised in an alcoholic home. The counselor treated the husband and wife both together and as individuals.

The counselor believed that the plaintiff suffered from post-traumatic stress disorder and dissociative disorder resulting from childhood abuse. A specific therapy, known as eye movement desensitizing and reprocessing, was employed to assist the plaintiff in recalling and processing her traumatic experiences. The counselor encouraged the plaintiff to “recall” past episodes of sexual abuse and rape, notwithstanding the plaintiff’s belief that such abuse had never occurred.

While comforting the plaintiff, the counselor initiated a sexual relationship with her, after which the counselor and plaintiff either began or ended nearly every session with sexual relations. The counselor encouraged her to meet with him outside of the treatment environment for personal and social activities and led her to believe that they were in a “special” relationship.

The plaintiff’s marriage ended during this period, and the husband (who was not aware of the relationship between the counselor and his wife) no longer sought treatment with the counselor. After approximately two years, the counselor abruptly terminated the plaintiff from treatment without giving any reason, yet continued to request that she see him personally, which she found very troubling. The plaintiff retained several intimate email messages that she and the counselor had exchanged during this timeframe supporting her allegations.

Medical malpractice claims may be asserted against any healthcare practitioner, including counselors. This case study involves a licensed marriage and family therapist.



The plaintiff subsequently learned that she was not the only female patient with whom the counselor had been sexually involved. She experienced severe anxiety, guilt and shame regarding the relationship and suffered physical and emotional symptoms significantly more severe than when she had originally entered treatment.

Finally, she began treatment with a new counselor, who encouraged her to report the insured counselor to the Department of Health.

The insured counselor refused to provide any specific information regarding his relationship with the plaintiff. His session notes were inadequate or absent for most of the plaintiff’s treatment. Without specifically admitting to sexual relations with the plaintiff, he offered to surrender his license to settle the matter with the Department of Health. The offer was rejected, and his license to practice was revoked.

The plaintiff filed suit alleging multiple boundary violations of a sexual and non-sexual nature, as well as improper treatment of the plaintiff’s transference phenomenon and incorrect diagnosis.

*continued...*

## ▶ Risk Management Comments

The defense expert met with the plaintiff and administered psychological testing. The testing determined that the plaintiff suffered from an anxiety disorder related to the relationship with the counselor. The expert noted that the counselor was solely responsible for maintaining proper boundaries in a therapeutic relationship, and that the plaintiff's consent to sexual and personal intimacy did not absolve the counselor of that responsibility. It was determined that the counselor did not adhere to the standard of care through in the following conduct:

- **He encouraged the plaintiff to believe she was in a state of denial and had repressed memories of paternal sexual abuse as a child.** The counselor further encouraged the plaintiff to believe she had "recovered" memories of that abuse. (The plaintiff's siblings were interviewed and there was no evidence or corroboration of sexual abuse within the family.)
- **He led the plaintiff to believe they were in a "special" relationship,** as well as arranging and engaging in meetings with the plaintiff outside the treatment setting for personal and social activities.
- **He physically comforted the plaintiff in response to her expressions of sadness,** using that process to initiate and engage in sexual activity with the plaintiff.
- **He abruptly terminated the plaintiff's treatment,** without explanation, appropriate referral or assistance in obtaining continuing counseling elsewhere.
- **He attempted to continue his personal and sexual relationship with the plaintiff** after terminating treatment.

## ▶ Resolution

The counselor had breached professional, clinical and ethical boundaries in engaging in multiple relationships with the plaintiff throughout her treatment.

In addition, the counselor's clinical treatment did not meet acceptable standards of care. Due to the expert's findings of counselor negligence, the plaintiff's credibility (including email evidence) and the counselor's refusal to actively participate in

his defense, the professional liability aspects of the claim were settled. (Note that criminal acts are not covered under the professional liability insurance policy and were not part of the settlement discussions.)

The parties entered into mediation and eventually reached a settlement related to the professional liability claim with dismissal.

## ▶ Risk Management Recommendations

- **Maintain appropriate boundaries with patients** and know and comply with the ACA Code of Ethics (visit [www.counseling.org](http://www.counseling.org)). Also understand state-specific laws and regulations related to professional conduct, applicable ethics codes of state and/or local professional organizations, and requirements of the relevant licensure/certification/disciplinary board.
- **Refrain from contact with patients who are no longer in treatment.** If contact occurs, maintain professional boundaries.
- **Prohibit and prevent sexual intimacies of any kind with a patient** or a patient's relative or significant other.
- **Remember that the counselor is solely responsible for maintaining appropriate boundaries in the counseling relationship,** and that patient consent for sexual, personal and/or social relationships does not exempt the counselor from this professional duty.
- **Utilize proven therapeutic techniques** appropriate to the patient's clinical needs, within the counselor's competence, and represent the accepted standard of care.
- **Manage patient transference and/or counter-transference with appropriate counseling techniques, obtaining clinical supervision or assistance as needed.** If transference and/or counter-transference cannot be appropriately managed within the counseling relationship and becomes an obstacle to achieving treatment goals, cease treatment and encourage the patient to seek counseling with another professional.

### 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.



The information, examples and suggestions presented in this material have been developed from sources believed to be reliable, but they should not be construed as legal or other professional advice. CNA accepts no responsibility for the accuracy or completeness of this material and recommends the consultation with competent legal counsel and/or other professional advisors before applying this material in any particular factual situations. Please note that Internet hyperlinks cited herein are active as of the date of publication, but may be subject to change or discontinuation. This material is for illustrative purposes and is not intended to constitute a contract. Please remember that only the relevant insurance policy can provide the actual terms, coverages, amounts, conditions and exclusions for an insured. Use of the term "partnership" and/or "partner" should not be construed to represent a legally binding partnership. All products and services may not be available in all states and may be subject to change without notice. CNA is a registered trademark of CNA Financial Corporation. Copyright © 2017 CNA. All rights reserved.

This publication is intended to inform Affinity Insurance Services, Inc., customers of potential liability in their practice. It reflects general principles only. It is not intended to offer legal advice or to establish appropriate or acceptable standards of professional conduct. Readers should consult with a lawyer if they have specific concerns. Neither Affinity Insurance Services, Inc., HPSO, nor CNA assumes any liability for how this information is applied in practice or for the accuracy of this information. This publication is published by Affinity Insurance Services, Inc., with headquarters at 1100 Virginia Drive, Suite 250, Fort Washington, PA 19034-3278. Phone: (215) 773-4600. All world rights reserved. Reproduction without permission is prohibited.

Healthcare Providers Service Organization is a registered trade name of Affinity Insurance Services, Inc. (TX 13695), in CA, MN, AIS Affinity Insurance Agency, Inc. (CA 0795465); in OK, AIS Affinity Insurance Services, Inc.; in CA, Aon Affinity Insurance Services, Inc. (CA 094493); Aon Direct Insurance Administrators and Berkely Insurance Agency; and in NY, AIS Affinity Insurance Agency.