

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: Inappropriate Behavior and Sexual Misconduct by Counselor

Settlement Payment: \$150,000 **Legal Expenses:** \$11,780

The defendant was a licensed mental health counselor in solo practice who treated the client (a 51-year-old married woman) for multiple issues over approximately a two-year period. The client's intake form stated she was seeking treatment for problems in her marriage, symptoms related to being an adult child of an alcoholic, co-dependency and difficulties with communication. The defendant treated the client both separately and in couples' therapy sessions with her husband.

After two years of treatment, the client sought services from another counselor. During the initial session the second counselor learned the client had a sexual relationship with the defendant while she was under his care. The treating counselor urged the client to report the defendant to authorities. The counselor was subsequently reported to the State Department of Health and to law enforcement.

The client accused the defendant of committing multiple boundary violations of a sexual and non-sexual nature. She alleged that she and the defendant had a personal relationship outside of treatment sessions and engaged in sexual relations. It was also alleged that the defendant mishandled the transference phenomenon and failed to provide proper care. The client further alleged that she suffered severe mental and emotional pain and suffering, guilt, shame and depression. She was treated by the second counselor for a year to learn how to manage the emotional distress related to the alleged inappropriate relationship with the defendant.

In the ensuing lawsuit, specific allegations against the defendant included malpractice, negligence, breach of fiduciary duty, sexual misconduct, infliction of emotional pain and suffering by extreme and outrageous conduct, and failure to protect a person in a special relationship with the defendant. The client sought damages for emotional distress, future therapy and lost income. A complaint was made to the State Department of Health and at the time the claim was resolved

the defendant was under criminal investigation for additional criminal charges.

The defense attorney had several challenges. The defendant was reluctant to speak about the facts of the case and declined discussing the nature of his relationship with the client. He would not confirm or deny having sexual relations with the client but indicated that her history included prior abuse and that he believed she suffered from a dissociative disorder and may also have multiple personality disorder. No client-related documentation was provided by the defendant but e-mail communications that were not deemed confidential were introduced by the plaintiff's attorney.

The plaintiff's counsel mounted a formidable attack. E-mail communications provided by the plaintiff's attorney and records from the second counselor supported, at a minimum, allegations of unprofessional conduct and inappropriate treatment. The plaintiff's expert witness stated that the counselor breached the standard of care by:

- revealing personal information about himself to the client that had no therapeutic value
- encouraging the client to meet him socially outside his office
- engaging in sexual intimacy with the client during her therapy sessions
- failing to assist her in obtaining another counselor when she decided to discontinue therapy

The plaintiff's expert stated the defendant exacerbated the problems and stress the client had when she initiated treatment, created new psychological problems, contributed to the demise of her marriage, and prolonged her emotional suffering by his ongoing attempts to contact her after she terminated her therapy and relationship with him.

Resolution

The plaintiff's attorney initially sought \$500,000. Ultimately, the case was settled out of court for \$150,000 with an additional \$11,780 paid in legal expenses.

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Risk Management Comments

- ◆ While state statutes and regulations regarding scope of practice may differ, there is never an instance when it is ethical, appropriate or acceptable for a counselor to enter into an intimate personal, physical and/or sexual relationship with a client.
- ◆ The counselor breached clinical, ethical and legal boundaries and standards of care by engaging in a personal and sexual relationship with his client. By including the client's husband in her treatment, the counselor further breached his duty to the husband.
- ◆ Clients in need of counseling and therapy may have impaired ability to judge the appropriateness of their own or others' actions. If the counselor fails to properly treat the client and fails to protect the client from engaging in inappropriate actions there may be grounds for criminal charges including rape, assault and accepting financial payment under false pretenses.
- ◆ If the client made initial overtures toward the counselor or he identified inappropriate personal feelings for the client that he was unable to resolve, he should have made arrangements for his client to be timely and seamlessly transferred to another counselor rather than continuing treatment and engaging in an inappropriate relationship.

Risk Management Recommendations

- Never engage in a personal, physical or sexual relationship or any other form of unprofessional conduct with a client.
- Know and understand the scope of practice for your specific professional designation, certification and/or licensure in your state and understand the standard of care to which you will be held.
- Provide patients with written rights and responsibilities including expectations for treatment, as well as acceptable behaviors by both the counselor and the client prior to initiating treatment. Include a statement that any inappropriate behavior on the part of the client will result in termination from counseling/treatment with facilitated transfer to another counselor/therapist.
- Maintain confidential client session documentation in a protected manner as part of the client's clinical record at least for the duration of the client's course of therapy/treatment or until the statute of limitations for litigation has expired. The use of e-mail or other public forms of communication related to client care is not confidential and, as in this case, may be discoverable in the case of litigation.
- Terminate any client who requests or initiates inappropriate touching, discussion and/or behaviors and facilitate the transfer of the client to another counselor/therapist.
- In the event of inappropriate feelings toward a client, immediately obtain professional supervision and guidance and if the feelings cannot be properly and timely managed, terminate the client from treatment and facilitate the transfer of the client to another counselor/therapist.

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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