



Counselor Spotlight: Supervision

Healthcare Providers Service Organization (HPSO), in collaboration with CNA, has published the 2nd Edition of our *Counselor Claim Report*. It includes statistical data and legal case studies from CNA claim files, as well as risk management recommendations designed to help counselors and other behavioral health professionals reduce their malpractice exposures and improve client safety.

You may access the complete report, and additional Risk Control Spotlights, at: www.hpso.com/counselorclaimreport

This Counselor Spotlight focuses on risk recommendations regarding one of the top findings from the report: Supervision. According to the 2014 American Counseling Association (ACA) Code of Ethics (Section F), counseling supervisors monitor client welfare, as well as supervisee performance and professional development. Counseling supervisors work with supervisees to prepare them to serve a range of diverse clients. Supervisors help supervisees cope with issues that clients may present by making suggestions, including specific interventions. In this issue, we examine: professional and ethical standards applied to supervisors, using technology in supervision, and termination of the supervisory relationship.

Professional Standards

As counselors begin their careers, counseling supervisors have the unique opportunity to help their supervisees become better aware of the professional and ethical standards and legal responsibilities of counselors. The 2014 *ACA Code of Ethics* states that supervisors should foster meaningful, professional relationships with supervisees while maintaining appropriate boundaries in both face-to-face and electronic formats (*ACA Code of Ethics, Section F*).

The intervention of supervision, which is different from counseling, requires a counselor to monitor the services provided by the supervisee. This activity includes monitoring the welfare of a client and supervisee and the performance and continuing professional development of the supervisee. Supervisors are legally responsible for the supervisee's acts and omissions. The 2014 *ACA Code of Ethics* states that the supervising counselor is responsible for informing a client about the supervision process and obtaining consent from the client permitting supervisee participation. The informed consent process should include notifying the client as to the parties who will have access to their records and with respect to electronic records, how the records will be stored and transmitted. If using online remote supervising technology, the supervisor should be competent in the use of such technology as well as verify that the governing state and licensure board permits this type of supervision. If an emergency arises, or if the supervisor is not immediately available, the supervisor should have an on-call alternative supervisor available to assist the supervisee.

Supervisors have the right to terminate the supervisory relationship. However, reasons for termination should be discussed prior to beginning the supervision or training relationship. When termination is warranted, appropriate referrals to possible alternative supervisors should be provided.

If a supervisee is not appropriately monitored and an adverse event occurs, the supervising counselor may be exposed to a professional liability claim.



In the 2nd Edition of the HPSO/CNA *Counselor Claim Report*, malpractice allegations related to supervision, training and teaching have increased regarding distribution of claims since the prior counselor closed claim report (13.0 percent of claims in 2019 versus 3.2 percent in 2014). The two most frequent allegations related to supervision reported in the *Counselor Liability Claim Report: 2nd Edition* included:

- Failure to monitor services provided by other counselors/counselor-in-training.

Case Study: Failure to supervise monitor services provided by other counselors/counselors in training

The insured was a licensed professional (LPC) counselor with 30 years of experience and was the owner of a marriage/family private group practice for more than 20 years. The practice only employed administrative staff but had 15-20 full-time counselors as independent contractors. As part of the employment contract with the independent contractors, the owner required the independent contractors to purchase and maintain their own individual professional liability insurance coverage.

The owner also contracted with counseling interns as independent contractors (supervisees) and supervised them. The owner required the supervisees to carry their own professional liability insurance coverage. The owner was solely responsible for assigning clients to the supervisees and monitoring the services they provided to clients and the clients' welfare during therapy. Since many of the supervisees were completing their internship requirements and they were not permitted to bill insurance providers, the owner would have the administrative staff file for billing payment under their license and payer identification number. Once a supervisee obtained a license to practice independently, the owner would end the supervisory role.

A couple came to the practice seeking counseling for ongoing marital problems. The husband reported that he had anger problems and sought to be able to control his anger and improve his communication skills. The insured supervisor assigned the couple to a pre-licensed new professional who had just begun working under its supervision. The supervisee counselor provided joint and individual marriage counseling to the couple for one year, as well as some counseling to the couple's teenage children. After approximately six months, the supervisee met all her internship requirements, obtained her license, and was able to see her clients without supervision.

After one year of working at the practice, the counselor contacted the owner to inform him that she had "feelings" for the husband of a couple assigned to her. She stated that they were currently in a romantic relationship and living together. She also informed the insured owner that she had terminated her therapeutic relationship with the husband a few months prior to the start of the relationship but had continued to counsel the wife. The insured owner instructed the counselor to terminate the counseling relationship with the wife as soon as possible and informed her that she was in violation of the American Counseling Association's (ACA) Code of Ethics. The insured then urged the counselor to report her behavior to the LPC board. The counselor refused, stating that she did not believe she had done anything wrong as she had terminated the

- Improper sexual/romantic interaction or relationship with current supervisees.

In many of the claims involving failure to monitor services, the supervisor failed to meet with the supervisee on a regular basis to review the supervisee's work and monitor their clients' well-being. The following claim scenario involving a supervising counselor's failure to monitor a supervisee.

counseling relationship with the husband prior to initiating the romantic relationship.

Several weeks later, the insured owner terminated the counselor from the practice and filed a complaint with the LPC board. Once the insured terminated the counselor, the active clients were contacted and reassigned to other counselors in the practice. When the owner spoke to the wife about her and her children being reassigned, the wife responded that they had already transitioned to a counselor outside the practice. The wife knew about her husband's relationship with the counselor and was planning to file a lawsuit. This communication represented the last contact the owner had with the wife, her husband, their children, or the counselor until a lawsuit was filed against the owner and the practice. The lawsuit stated that the owner failed to supervise the counselor, who worked as an independent contractor for the practice and failed to monitor the welfare of the counselor's clients while under their supervision and employment.

Risk Management Comments

The insured owner was semi-retired and was only physically present at the practice one or two days per week. When they were not physically present, they used videoconferencing, via a messaging application, as a live supervision tool. However, the owner often had difficulty using the technology, for a variety of reasons, and would commonly miss scheduled supervisor-supervisee performance review meetings. Due to their schedules, it was common that the supervisees would not meet with the owner to review their work for several weeks.

When the lawsuit was filed, and the clients' healthcare information records were reviewed, there were no counseling entries in the chart for the husband after nine-months of counseling. Moreover, the records of the wife and children contained numerous inaccuracies. The claim against our insured was difficult to defend due to the responsibility as supervising counselor during the supervisee's first six months at the practice.

The insured recognized the failure to monitor the services of the supervisee, as well as the failure to monitor the welfare of the clients. However, the owner did not believe he should be held responsible as he never personally counseled the husband, wife or children.

Resolution

The costs to defend and resolve the claim against the insured were greater than \$350,000.

Risk Management Recommendations: Supervision

The following risk control recommendations are designed to help raise awareness of the responsibilities of supervising and employing counselors.

1. **Prior to supervising or hiring an independent contractor, review and verify all necessary documents** (i.e., agreements, certificate of insurance, resumes and background information).
2. **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.
3. **Review all counselor agreements at least annually,** and revise with the assistance of legal counsel, if necessary.
4. **Implement standardized processes for credentialing counselors** and establish a process for routine review of counselor clinical privileges.
5. **Group practice owners should provide direct supervision to subordinates and supervisee counselors,** including providing clinical and administrative supervision to interns, new professionals (graduate licensees) and fully licensed practitioners.
6. **Provide appropriate clinical support for counselors,** in compliance with supervisory or employment agreements.
7. In case of emergencies or when help or assistance is needed immediately, **establish a communicate plan or procedure for supervisees to use. The plan should also include an alternative on-call supervisor in the absence of the supervising counselor.**
8. **Know the current state scope of practice parameters for counselors and those authorized to provide the intervention of clinical supervision,** and do not ask staff members to provide professional services beyond their scope of practice.
9. **Ensure counselor competency through ongoing peer review and performance evaluation,** focusing on the counselor's clinical conduct, documentation practices, ethical awareness and rapport with colleagues.
10. **Prior to using an online live supervision tool or application,** the following high-risk area recommendations should be addressed:
 - Become conversant with local, state and federal requirements for online supervision tool or application, if applicable.
 - Use HIPAA-compliant tools and/or applications.
 - Mandate that supervisees have individualized passwords to access live tools and/or applications.
 - Use the informed consent process to inform the client of the live supervision via tablet or phone during sessions.
 - Ensure that all the communications with supervisees are erased.
11. If using an online supervision tool, **ensure that both supervisor and supervisees are trained** on how to successfully operate technology-assisted distance supervision (TADS) tools. Troubleshoot each TADS application to avoid 'system downtime' that may result in unsupervised client sessions or disconnected supervisor-supervisee performance review meetings.
12. **Avoid extending the counseling relationship beyond conventional boundaries.** Counselors must exercise professional judgment in all client interactions outside of a professional setting in order to avoid ambiguity in what is supposed to be a therapeutic, client-centered relationship.

COUNSELOR SPOTLIGHT

For more risk control resources and top findings from the 2nd Edition of the *Counselor Liability Claim Report*, please review additional Counselor Spotlights on the following topics:

- **Informed Consent**
- **Identifying Your Client**
- **Reporting to Third Parties**
- **Boundaries**
- **Release of Records**
- **Telebehavioral Health**
- **Preparing for a Deposition**
- **Documentation**
- **What to Do if you Receive a Subpoena**

Visit www.hpsso.com/counselorclaimreport



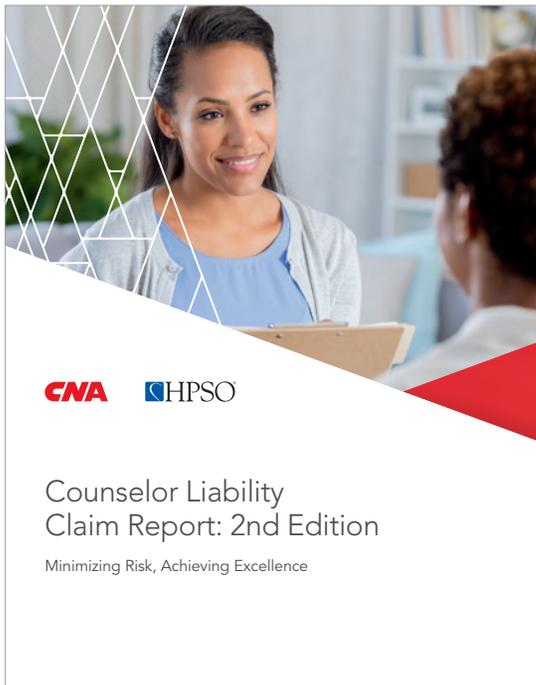
Self-assessment Checklist: Supervising Counselors and Employers of Counselors

This checklist is designed to assist counselors in evaluating risk control exposures associated with their current practice. For additional risk control tools or to download the *Counselor Liability Claim Report 2nd Edition*, visit Healthcare Providers Service Organization www.hpso.com or CNA Healthcare www.cna.com.

Self-assessment Topic

Supervision	Yes/No	Comments/Action Plans
I regularly pursue continuing education activities on counseling supervision topics and skills.		
I offer appropriate clinical support for supervisees in compliance with supervisory or employment agreements.		
I inform supervisees of professional and ethical standards and the legal responsibilities of the counseling/therapist profession.		
As a supervisor, I understand my responsibility to incorporate the principles of informed consent and participation.		
I know the current state scope of practice for counselors and do not ask staff members to provide professional services beyond their scope of practice.		
I review all counselor agreements and verify certificates of insurance at least annually.		
I implement standardized processes for credentialing counselors and establish a process for routine review of counselor clinical privileges.		
I ensure competency of the supervisee through ongoing peer review and performance evaluation , focusing on the counselor's clinical conduct, documentation practices, ethical awareness and rapport with colleagues.		
When supervising through electronic means, I am competent in the use of technology and take the necessary precautions to protect confidential information.		
Prior to terminating the supervisor-supervisee relationship, I work with the supervisee to resolve any issues and if an agreement cannot be reached, I discuss the reasons for terminating the relationship.		
When terminating the supervisor-supervisee relationship, I provide a termination notice to the supervisee and recommend appropriate referrals to possible alternative supervisors.		

This abbreviated checklist, selected to focus on supervision, is designed to assist counselors and other behavioral health professionals in evaluating and modifying their current customs and practices, in order to enhance their client-centered care practices and improve safety. It is not intended to represent a comprehensive listing of all actions needed to address the subject matter, but rather is a means of initiating internal discussion and self-examination. Your clinical procedures and risks may be different from those addressed herein, and you may wish to modify the tool to suit your individual practice and client/patient needs. The information contained herein is not intended to establish any standard of care, serve as professional advice or address the circumstances of any specific entity. These statements do not constitute a risk management directive from CNA. No organization or individual should act upon this information without appropriate professional advice, including advice of legal counsel, given after a thorough examination of the individual situation, encompassing a review of relevant facts, laws and regulations. CNA assumes no responsibility for the consequences of the use or nonuse of this information.



This information was excerpted from HPSO and CNA's full report, *Counselor Liability Claim Report: 2nd Edition*. www.hpso.com/counselorclaimreport



1100 Virginia Drive, Suite 250
Fort Washington, PA 19034
1.800.982.9491 www.hpso.com



333 South Wabash Avenue
Chicago, IL 60604
1.888.600.4776 www.cna.com

In addition to this publication, CNA and Healthcare Providers Service Organization (HPSO) have produced numerous studies and articles that provide useful risk control information on topics relevant to counselors, as well as information relating to counselor professional liability insurance, at www.hpso.com. These publications are also available by contacting CNA at 1.888.600.4776 or at www.cna.com.

The information, examples and suggestions 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 situation. 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 © 2019 CNA. All rights reserved.

Healthcare Providers Service Organization is a registered trade name of Affinity Insurance Services, Inc.; (TX 13695); (AR 100106022); 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 0G94493), Aon Direct Insurance Administrators and Berkely Insurance Agency and in NY, AIS Affinity Insurance Agency.

Healthcare Providers Service Organization (HPSO) is the nation's largest administrator of professional liability insurance coverage to counselors. Healthcare Providers Service Organization is a registered trade name of Affinity Insurance Services, Inc., an affiliate of Aon Corporation. For more information about HPSO, or to inquire about professional liability insurance for counselors, please contact HPSO at 1-800-982-9491 or visit HPSO online at www.hpso.com.

X-13992-1219 S