



Counselor Spotlight: Boundaries

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

You can find the full Report, and additional Risk Control Spotlights, at: www.hpso.com/counselorclaimreport.

This Counselor Spotlight focuses on risk recommendations regarding one of the most significant topics from the report: Boundaries. Counselors assume a position of trust and authority with their clients, frequently becoming familiar with the most intimate and sensitive aspects of their lives. These relationships may become personal and potentially lead to an erosion of boundaries, confusion of roles, and/or incidents of abusive or exploitive behavior.

Even if the client attempts to initiate or consents to sexual/romantic interactions, or other extensions of the counselor-client relationship, counselors are responsible for maintaining professional boundaries as defined by the American Counseling Association (ACA) 2014 edition of the *ACA Code of Ethics*, state-specific practice acts, state licensing/certification boards and applicable employer policies.

Professional Liability-Boundaries

Allegations involving failure to manage and maintain boundaries and professional relationships between counselors and clients, client partners, or client family members together represent the majority of professional liability claims (49.8 percent) in the 2nd Edition of the *Counselor Liability Claim Report*. Thirty-two percent of all professional liability claims examined in the report involve allegations of sexual/romantic interactions or relationships with current clients, their partners, or family members. The average total incurred of \$122,581 for these claims is 7.9 percent greater than the overall average total incurred of \$113,642.

1 Detailed View of Professional Liability Allegation Class – Boundaries

Primary allegation	ACA Code of Ethics section	Percentage of closed claims	Average total incurred
Sexual/romantic interactions/relationships with current clients, client's partners or family members	A	32.0%	\$122,581
Multiple relationships with client despite potential for client harm	A	5.9%	\$100,639
Improper sexual or romantic interaction or relationship with current supervisees	F	7.5%	\$56,720
Sexual relationships with former clients, their partners or family members prior to end of five-year waiting period	A	4.4%	\$36,035

Overall average total incurred for ALL professional liability closed claims

\$113,642

License Protection-Boundaries

A licensure board complaint can be filed against a counselor by a current or former client, member of a client's family or social circle, colleague, present or past employer, and/or regulatory agency. Complaints are subsequently investigated by the board, leading to results ranging from no action against the counselor to revocation of the counselor's license to practice.

Comprising 13.6 percent of license protection claims, sexual misconduct allegations are the most frequent allegations asserted in license protection matters. Sexual misconduct allegations include sexual/romantic interactions with current or former clients, their partners, or family members and include an average total incurred of \$7,592, which is \$2,000 higher than the overall average total expense for all license protection claims of \$5,454.

Allegations associated with imposing personal values on a client are infrequent, representing only 0.6 percent of the total distribution of license protection closed claims. However, these closed claims have an average total expense of \$8,566, which is \$3,112 greater than the average total expense. License protection claims alleging that counselors have imposed their personal beliefs/values upon a client typically involve allegations of counselors using their personal religious and/or spiritual beliefs to influence the client during treatment.

Despite comprising 15.9 percent of all license protection claims, claims involving boundary violations represent a majority of the most severe licensing board outcomes for counselors. Allegations involving boundary violations account for 50.0 percent of license protection claims that resulted in the revocation of the counselor's license or certification to practice, and 54.2 percent that resulted in the surrender of the counselor's license. These severe outcomes in all likelihood represent the end of the counselor's career, and they demonstrate how seriously state licensing boards take matters of boundary violations due to the potential for client harm.

Prudent judgment and vigilance must be exercised in the course of the counseling relationship. The counselor should recognize warning signs and expeditiously implement measures to establish appropriate boundaries with all current and former clients. Counselors are responsible for appropriately managing signs of transference and/or counter-transference, and utilizing sound clinical counseling techniques. In some cases, it may be necessary to terminate the counseling relationship and refer the client to another counselor in order avoid either the reality and/or appearance of a breach of professional ethics. For information on termination and referral see the *2014 ACA Code of Ethics* Section A: A11., *Termination and Referral*.

In the 2nd Edition of our
Counselor Liability Claim Report,
49.8 percent of all
professional liability closed claims
and 15.9 percent of all
license protection matters
involve boundary allegations.

2 Detailed View of License Protection Allegation Class – Boundaries

Primary allegation	ACA Code of Ethics section	Percentage of closed claims	Average total expense
Sexual misconduct	A	13.6%	\$7,592
Nonprofessional interactions or relationships (other than sexual or romantic interactions or relationships)	A	1.7%	\$5,212
Imposing personal values on a client	A	0.6%	\$8,566
Overall average total expense for ALL license protection closed claims			\$5,454

CASE STUDY: Failure to maintain appropriate boundaries; sexual misconduct

The following case study involves a licensed clinical alcohol and drug counselor who was the owner and executive director of a private counseling practice.

Summary

The client was a 40-year-old female who had recently been convicted of several criminal offenses, including drug possession. The client was on supervised probation for her criminal offenses and, as part of her sentencing, was ordered by the court to undergo an evaluation and treatment for substance abuse. The insured counselor was assigned to evaluate and treat the client. The counselor's plan of care included both individual and group therapy sessions three times a week. The weekly fee for the counseling sessions was \$50 and would be collected from the client at the end of her therapy each week.

After approximately two months of treatment, the client advised the counselor that she was unable to afford payment for the counselor's services. The counselor continued the weekly sessions for eight weeks, notwithstanding the client's previously stated inability to pay. When the client inquired about the amounts owed, the counselor responded they could "work something out" and further stated, "you do me a favor. I'll do you a favor." When the client asked the counselor to clarify, the counselor indicated the meaning should be obvious and also made an inappropriate sexual reference.

Starting with the next session, the client and counselor began having sex at the end of each session. The sexual relationship continued over the next few months until eventually the client and counselor would engage in a sexual encounter in lieu of scheduled individual therapy sessions.

The client ultimately reported the counselor's conduct to a case manager at her probation office, stating that she had been engaging in an intimate relationship with the counselor.

A senior agent with the state department of corrections filed a complaint with the state board of professional counselors (i.e., "the Board") asserting that the counselor had engaged in sexual misconduct with a client who was on probation for a drug-related offense. On the same date, the client also filed a complaint with the board alleging that she and the counselor had engaged in sexual contact after she was unable to pay for her counseling services.

Risk Management Comments

The Board's investigation included interviews with the counselor and client, a review of the client's parole and probation drug court treatment records, the counselor's billing and treatment records related to the client, and records of text messages exchanged between the counselor and client.

Defense counsel found the case difficult to defend because, prior to retaining an attorney and during the initial board interview, the counselor had admitted to engaging in a sexual relationship with the client. The counselor attempted to argue that his rights had been violated during the investigatory phase of the case when he was interviewed by the Board without having an attorney present. An administrative investigation does not adjudicate legal rights, and although respondents (i.e., counselors) are entitled to appear with counsel in a contested licensing board case, no statutes or regulations grant a right to legal counsel to individuals who are being interviewed during a Board investigation.

Resolution

The Board determined the potential range of sanctions it could impose upon the counselor ranged from a reprimand to license revocation, with a fine ranging from \$100 to \$5,000. The Board opined that the counselor's actions were "plainly immoral and unprofessional" and admonished the counselor for repeatedly exploiting the sacred trust that clients place in their therapist by engaging in sexual conduct with a client.

The Board ultimately deemed the counselor to be unfit to practice as a licensed alcohol and drug therapist, deciding to permanently revoke the counselor's license in the interest of protecting the public. The costs associated with defending the counselor in this case exceeded the policy limits for license protection matters.

Self-assessment Checklist: Provider-Client Boundaries

The 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](#) or [CNA Healthcare](#).

Counselors Risk Control Guidelines	Yes/No	Comments/Action Plans
I avoid any activities with clients that fall outside of accepted medical or mental health practices (e.g. agreeing to meet with a client at social events or communicating with them on social media outside of the parameters of a professional relationship).		
I avoid any high-risk client situations , such as extending counseling relationships beyond conventional parameters.		
I do not relate to clients in what may appear to be a self-serving manner (e.g. by charging excessive fees or exchanging services for personal favors).		
I conduct therapy in an open and straightforward manner , never communicating, meeting or working with clients in a secret or surreptitious manner.		
I understand organizational policies and procedures regarding professional boundaries and adhere to these policies consistently.		
I avoid multiple relationships with clients , their significant others and their family members.		
I read my state practice act at least once per year to ensure that I understand the legal and ethical scope of practice in my state.		
I know and comply with the ACA Code of Ethics , in addition to following state-specific laws and regulations related to professional conduct and requirements of the relevant licensure/certification/disciplinary board.		
I unilaterally terminate relationships with clients only if clinically indicated , and in such situations I always:		
<ul style="list-style-type: none"> - Notify the client and offer to discuss the reasons. - Draft and send a termination letter, retaining a copy in the client's file. - Note the client's response to the termination letter. 		

Counselor Business Owners Risk Control Guidelines	Yes/No	Comments/Action Plans
I offer appropriate clinical support for counselor supervisees in compliance with supervisory or employment agreements.		
I educate supervisees about boundary issues , alerting them to the following red flags:		
<ul style="list-style-type: none"> - Extending the counseling relationship beyond conventional boundaries. - Extracting inappropriate fees. - Engaging in inappropriate activities with a client. - Accepting gifts from or giving gifts to a client. - Becoming a business partner with a client. - Connecting inappropriately with a client on a social media site 		
I conduct ongoing peer review and performance evaluations of all supervisees' competencies , focusing on clinical conduct, ethical awareness, and rapport with colleagues and clients.		
I am familiar with the provisions of my state's practice act governing scope of practice and professional boundaries.		
I am familiar with the ACA Code of Ethics , in addition to state-specific laws and regulations related to professional conduct and requirements of the relevant licensure/certification/disciplinary board.		
I inform supervisees of professional and ethical standards and legal responsibilities of the counseling/therapy profession.		

This tool serves as a reference for counselors and counselor business owners to evaluate risk exposures associated with boundary issues. The content is not intended to be 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 patient/client 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. The statements expressed 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, as well as encompassing a review relevant laws and regulations. CNA assumes no responsibility for the consequences of the use or nonuse of this information.

Risk Management Recommendations: Boundaries

The following risk control recommendations are designed to help raise awareness of boundary-related offenses and promote a healthy, ethical client-counselor relationship.

Managing Professional Boundaries

- 1. Clarify roles and boundaries.** Document mutual expectations in the client care information record, clarifying the scope of the therapeutic relationship. Counselors should establish the limits of their availability at the outset of the client relationship.
- 2. Avoid extending the counseling relationship beyond conventional boundaries.** Counselors must exercise professional judgment in all client interactions outside of a professional setting, to avoid ambiguity in what is supposed to be a therapeutic, client-centered relationship. The *ACA Code of Ethics* (Section A.6.a) states that the counselor should consider the risks and benefits of extending current counseling relationships beyond conventional parameters (e.g., attending a client's formal ceremony, purchasing a service or product provided by the client, and visiting a client's ill family member in the hospital).
- 3. Utilize social media prudently.** Adopt conservative privacy settings for accounts and decline "friend" requests from current or former clients.
- 4. Limit self-disclosure.** Any self-disclosure should be related to the client's overall treatment goals, and the rationale for such disclosures should be documented.

Sexual/Romantic Involvement

- 1. Prohibit and prevent any sexual activity with a client.**
The *ACA Code of Ethics* (Section A.5.a) clearly states that such relationships are never ethically appropriate. Client consent to sexual relations or romantic relationships/activities of any kind does not waive the counselor's responsibility to prevent any such activity from occurring. The counselor will be deemed solely responsible and liable for any sexual or romantic relationships with a client, a client's significant other and/or a client's family member.
- 2. Manage transference and/or counter-transference with appropriate clinical techniques,** obtaining clinical supervision and/or consultation, as needed.
- 3. Document all instances of transference/counter-transference in the client's clinical record,** including the counselor's clinical decision-making process, any supervisory counseling obtained and client discussion.
- 4. Terminating the client does not waive or eliminate the prohibition against a sexual/romantic relationship.** If it is necessary to terminate the counselor-client relationship, record all supportive actions taken to assist the client in understanding the reasons for termination and obtaining alternative treatment.
- 5. Avoid extending the counseling relationship beyond conventional boundaries with clients, their significant others and their family members.** Avoiding such extensions of the counseling relationship may involve declining invitations from the client to participate in social/personal/family activities or others outside of the treatment setting. Document all such invitations in the client's clinical record, as well as the response given and subsequent communication. Occasionally, participation in such events may be beneficial to the client, and reference to the *ACA Code of Ethics* (Section A.6.b) offers guidance in this area. If the decision is made to participate, document the potential benefit to the client, the clinical decision-making process and the client's response.

COUNSELOR SPOTLIGHT

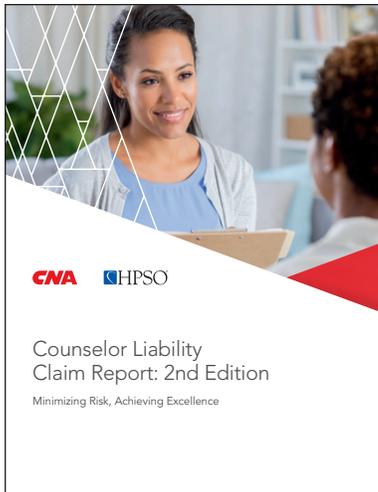
For more risk control resources and top findings from the 2nd Edition of the *Counselor Liability Claim Report*, please review additional Counselor Spotlights on the following topics:

- [Informed Consent](#)
- [Identifying Your Client](#)
- [Reporting to Third Parties](#)
- [Supervision](#)
- [Release of Records](#)
- [Telebehavioral Health](#)
- [Documentation](#)
- [Preparing for a Deposition](#)
- [What to Do if you Receive a Subpoena](#)

Visit www.hpsso.com/counselorclaimreport



Avoid any activities with clients that fall outside of accepted medical or mental health practices.



For more risk control resources and top findings from the 2nd Edition of HPSO and CNA's *Counselor Liability Claim Report*, please visit www.hpso.com/counselorclaimreport.



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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 insurance, at www.hpso.com. These publications are also available by contacting CNA at 1-866-262-0540 or at www.cna.com.

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