



Counselor Liability Claim Report: 2nd Edition

Minimizing Risk, Achieving Excellence

The American Counseling Association (ACA) is proud to support the *Counselor Liability Claim Report: 2nd Edition*. ACA's contribution to the Report exhibits our commitment to the counseling profession and recognizes how essential collaboration within the healthcare community is for the protection and well-being of clients and counselors alike. We thank CNA and Healthcare Providers Service Organization (HPSO) for their work, and believe this report will assist our members in enhancing their risk management practices.

Richard Yep, CAE, FASAE
Chief Executive Officer, American Counseling Association



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Top 10 Findings from the Counselor Report



Total incurred costs for all coverage types is **\$14.7 million** and has nearly doubled since the 2014 claim report. (See [page 5.](#))



Marriage/family and **mental health counselors** have the highest average total incurred of all counselor specialties. (See [page 8.](#))



Sexual misconduct and allegations of **multiple relationships with clients despite the potential for client harm**, increased in severity. (See [page 5.](#))



While **telebehavioral health** technologies are increasingly utilized among all healthcare professionals, the 2019 dataset does not reflect any telebehavioral health claims. (See [page 8.](#))



Deposition assistance and **record request matters** increased **456 percent** since the 2014 claim report. (See [page 12.](#))



Deposition assistance expenses average **\$2,150**. (See [page 12.](#))



Child custody matters comprise **37.8 percent** of all underlying matters for deposition and record request assistance expenses. (See [page 12.](#))



63.7 percent of license protection claims **closed with no action** taken by the board, representing a successful defense of the insured counselor. (See [page 14.](#))



The average payment of a license protection claim is **\$5,454**, a **46.3 percent** increase since the 2014 report. (See [page 14.](#))



Failure to maintain minimal professional standards, sexual misconduct, breach of confidentiality, and reporting to third parties have the highest distribution of license protection paid claims. (See [page 14.](#))

PART 1: OVERVIEW

Introduction

In collaboration with our business partners at Healthcare Providers Service Organization (HPSO), CNA insures more than 96,000 counselors, practicing in various settings. In 2014, CNA and HPSO first published a report reviewing the claims encountered by CNA/HPSO on behalf of insured counselors. Today, CNA and HPSO are proud to offer an updated and comprehensive analysis of professional liability risks encountered by counselors. Our goal is to help counselors enhance their practice and minimize professional liability exposure by identifying loss patterns and trends. This report also analyzes expenses related to several additional benefits provided to insured counselors, such as assistance with managing subpoenas for deposition and record requests, and license protection matters.

Database and Methodology

For comparative purposes, two datasets are utilized in this report. The 2019 claim dataset (with five years of data) consists of **5,626** reported total adverse incidents and claims affecting counselors. The 2014 claim dataset (with 10 years of data) comprised **1,043** reported adverse incidents and claims affecting counselors.

For the 2019 dataset, professional liability closed claims were included in the final dataset only if they:

- Involved a counselor.
- Closed between January 1, 2013 and December 31, 2017, regardless of when the claim was initiated or first reported.
- Resulted in a payment or expense of at least one dollar on behalf of the counselor.

The 2014 dataset followed similar criteria, with claims closed between January 1, 2003 and December 31, 2012, regardless of when the claim was initiated or first reported.

Within the context of this report, the term **average total incurred** means the costs or financial obligations, including indemnity and expenses, resulting from the resolution of a claim, divided by the total number of closed claims.

As some elements of the inclusion criteria in this report may differ from that of the 2014 CNA/HPSO counselor claim analysis, and claim studies from other organizations, we ask readers to exercise caution about comparing these findings with other reviews. Similarly, due to the fundamental uniqueness of individual claims, the average total incurred amounts referenced within this report may not necessarily be indicative of the severity attributed to any single claim.

It is also important to note that the 2014 dataset contained three large professional liability losses that resolved for \$500,000 or greater. These three losses directly affected the higher average total incurred amount for the 2014 report of \$176,712. In contrast, while the 2019 dataset contains similar professional liability allegations, this dataset did not contain multiple high severity closed claims. Therefore, the average total incurred for the 2019 dataset is **\$113,642**.

Key Findings

- The 2019 claim dataset (with five years of data) consists of 5,626 reported total adverse incidents and claims affecting counselors. The 2014 claim dataset (with 10 years of data) comprised 1,043 reported adverse incidents and claims affecting counselors.

- **In the 2019 dataset (a five-year period), the total incurred cost of closed claims for all coverages was \$14.7 million. In the 2014 dataset (a ten-year period), the total incurred cost of closed claims for all coverages was \$16 million.**

TOP FINDING



- The average total incurred for professional liability closed claims in the 2019 dataset has decreased by \$63,000. This decrease is directly related to three large professional liability losses in the 2014 dataset that resolved for \$500,000 or greater.

- **Professional liability closed claims involving allegations of sexual misconduct, and allegations of multiple relationships with clients despite the potential for client harm, have increased in both severity and distribution.**

TOP FINDING



- Professional liability closed claims involving allegations of failure to practice within boundaries of competency increased in distribution since the 2014 report.

Total Payments by Coverage Category

Figure 1 demonstrates the total distribution for professional liability closed claims with indemnity payment, professional liability closed claims with expense only, deposition assistance and record request, license protection claims and claims that closed with no payment.

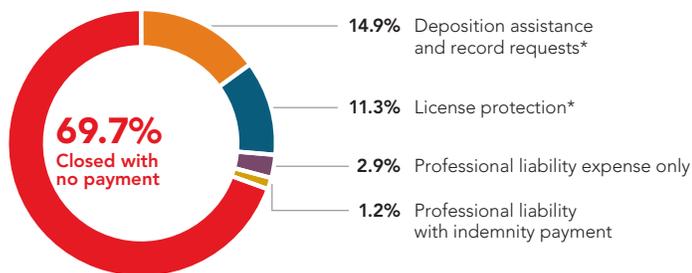
Figure 2 reflects the average incurred total costs by coverage category. While professional liability claims with indemnity constitute a relatively small percentage of the total number of claims, they have a significantly higher average incurred.

As illustrated in **Figure 2**, the most severe (i.e., most costly) actions were professional liability closed claims with an average total incurred of \$113,642. Total incurred for professional liability closed claims, in the 2019 report (a five year period), is in excess of \$7.8 million. In the 2013 report (a ten year period), the professional liability closed claims was in excess of \$8 million.

Please note that professional liability claims typically resolve over a period of several years. For the purposes of this report, all incurred cost and expense amounts are attributed to the year the claim closed, regardless of when the claim was first reported or initiated.

1 Distribution of Closed Claims by Coverage Category

* These coverage types are discussed in Parts 2 and 3 of this report.



2 Severity of Closed Claims by Coverage Category

* These coverage types are discussed in Parts 2 and 3 of this report.



Claims with Expense Payment but No Indemnity

The average total incurred of professional liability, expense only, closed claims is **\$12,251** and represents **2.9 percent** of all closed claims. Expense payments include attorney fees, investigation and expert witness fees, as well as record copying, court filing costs, and other administrative matters. There are many reasons that a claim may incur expenses without an indemnity payment, including the following scenarios:

- The claim was successfully defended on behalf of the counselor.
- The claim may have been abandoned by the complainant and/or the statute of limitations period expired.
- The court may have determined that the named counselor should be removed or dismissed from the lawsuit.
- The adverse event was investigated and a claim file opened, but the counselor was never named in the lawsuit and the claim was closed.

The average total incurred of professional liability, expense only, closed claims is **\$12,251**.

Many of the top findings from this report are discussed in greater detail within subsequent topic-driven publications, entitled **Counselor Spotlights**. The **Counselor Spotlights** include resources such as case scenarios, risk control recommendations, and self-assessment checklists designed to help counselors evaluate risk exposures associated with current practice. See [page 18](#) for additional information on **Counselor Spotlights**.



PART 2: ANALYSIS OF PROFESSIONAL LIABILITY CLAIMS

Analysis of Claims by Insurance Source and Licensure Type

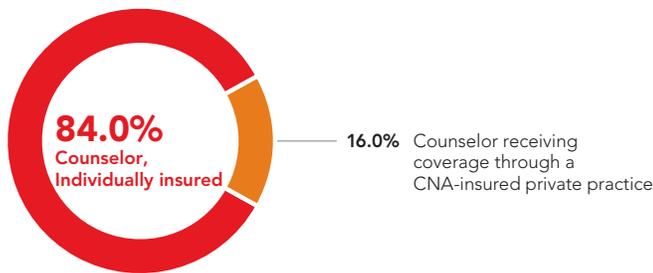
- The 2019 claim dataset includes closed claims, which involve individual counselors insured by CNA and counselors employed by a corporate entity insured by CNA. The average total incurred for all closed claims in the 2019 dataset is \$113,642.
- As noted in **Figure 3**, the majority (84.0 percent) of closed claims arise from individually insured counselors.
- **Figure 4** displays counselors receiving coverage through a CNA-insured private practice had a lower than average total incurred at \$98,218. Many of these claims involved a counselor in a supervising, training or teaching role.

Distribution of Closed Claims

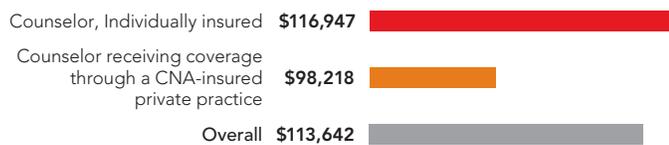
- As noted in **Figure 5**, claims that closed with an average total incurred between the \$1 and \$100,000 ranges collectively represent 89.9 percent of all professional liability claims.
- The largest subset of claims in the 2019 dataset (53.7 percent) closed with an average total incurred between \$10,000 and \$49,999.
- There are 7.4 percent fewer claims closing with an average total incurred in the \$1 to \$9,999 range in 2019 compared to 2014.
- In the 2019 dataset, there has been a shift to more claims closing in the \$10,000 and \$100,000 ranges when compared to 2014.

In the 2019 dataset, there is a shift to more claims closing in the \$10,000 and \$100,000 ranges.

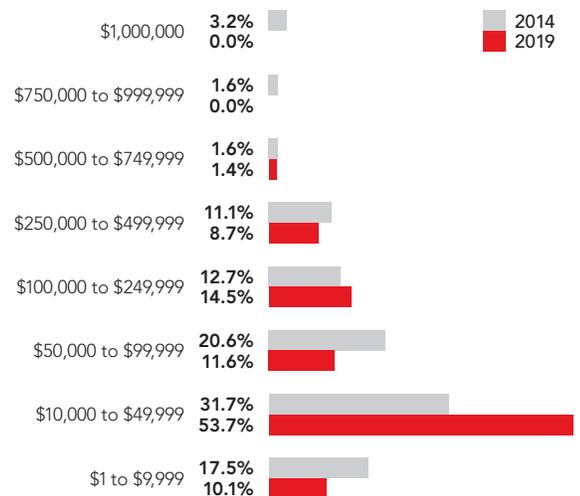
3 Distribution of Closed Claims by Insurance Type



4 Severity of Closed Claims by Insurance Type



5 Distribution of Severity of Closed Claims by Average Total Incurred, 2014 and 2019



Counselor Specialty

- Two specialties experienced an average total incurred higher than the overall average total incurred of \$113,642: **marriage/family counselor** at \$176,194, and **mental health counselor** at \$137,737, as noted in **Figure 6**.

TOP FINDING



- Figure 7** demonstrates the distribution of closed claims by specialty. There are five counselor specialties that represent 92.9 percent of all professional liability closed claims: **mental health counselor, licensed professional counselor, licensed professional clinical counselor, marriage/family counselor, and alcohol/drug counselor.**

53.7 percent of all professional liability closed claims occurred in a counselor-based office location.

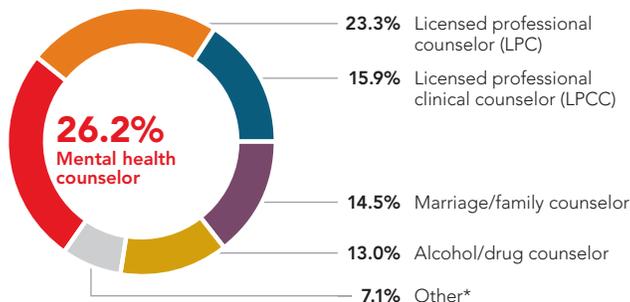
6 Severity by Counselor Specialty

This figure highlights only those counselor specialties with an average total incurred higher than overall average total incurred of \$113,642.



7 Distribution of Closed Claims by Counselor Specialty

* Other includes Life coach, pastoral counselor, school counselor, and career counselor.



Counselor Location

- Figure 8** highlights those locations with an average total incurred higher than the overall average total incurred. With the exception of **counselor office-based**, the distribution of closed claims occurring at a **religious institution, facility, or event** and **school** location are infrequent.
- Figure 9** demonstrates counseling locations, of which the top four comprise 88.5 percent of all professional liability closed claims: **counselor office-based, counselor private group practice, mental health/counseling outpatient clinic (not affiliated with a hospital), and alcohol/drug treatment center.**

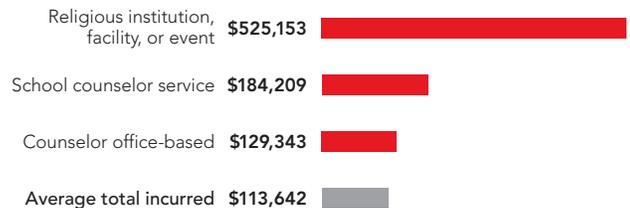
TOP FINDING



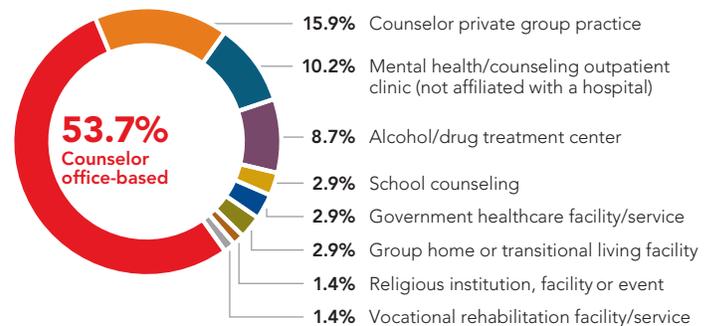
- In the 2014 dataset, one location involved telebehavioral health (i.e., remote counseling). While the 2019 dataset did not have any **telebehavioral health claims**, this practice is increasingly utilized among healthcare professionals. CNA/HPSO recognize this growth opportunity and have resources that can assist with strategies to enhance clinical, operational and technical processes related to telecounseling. The **Counselor Spotlight: Telebehavioral Health** is available at hpso.com/counselor_claimreport_telebehavioralhealth.

8 Severity of Work Location

This figure highlights only those locations with an average total incurred higher than overall average total incurred of \$113,642.



9 Distribution by Work Location



Professional Liability Allegations

The 2014 dataset and the 2019 dataset of professional liability allegations were organized utilizing the *ACA Code of Ethics*. Notably, the 2014 dataset was organized using the 2005 Edition of the *ACA Code of Ethics*. The 2019 dataset was organized using the 2014 Edition of the *ACA Code of Ethics*. Due to the revisions in the code, comparisons of the 2014 and 2019 datasets will be at a high level and any detailed comparisons will not be performed.

- As shown in **Figure 10**, allegations involving **The Counseling relationship (Section A)** experienced an average total incurred more than \$27,724 higher than the overall average total incurred. An example of a closed claim involving counseling relationships includes a client in an alcohol/drug inpatient facility. The client appeared to be progressing well with her treatment. A few weeks prior to discharge, the client had an argument with her family during their discharge planning meeting. Following the meeting, the counselor saw the client and noted obvious signs of major depression. The counselor failed to update the client’s counseling plan to include depression, based upon the client’s temperament and circumstances. A few days later, the client committed suicide. The total incurred was greater than \$340,000.
- Allegations involving **The Counseling relationship (Section A)** encompass 55.2 percent in the 2019 dataset and also had the highest distribution of claims in the 2014 dataset at 58.7 percent.

- **Professional responsibility (Section C)** allegations encompass 21.7 percent in the 2019 dataset and had a distribution of claims similar to the 2014 dataset at 20.6 percent. An example of this allegation includes a counselor who inappropriately expressed concern that a minor was being abused by a family member. The counselor sent multiple letters to the local magistrate court, and to the minor’s court appointed *Guardian Ad Litem* without confirming the proper recipient of the child’s assessment. In one letter, the counselor used inflammatory language in referring to the accused family member. The family member was later found innocent of all abuse charges and instituted litigation against the counselor for unprofessional conduct. The total incurred was greater than \$110,000.



10 Severity of Allegations, using the 2014 Edition of the ACA Code of Ethics Section Code

Allegation	ACA Code of Ethics Section	Percentage of closed claims	Average total incurred
The counseling relationship	A	55.2%	\$141,366
Professional responsibility	C	21.7%	\$103,489
Supervision, training and teaching	F	13.0%	\$80,749
Confidentiality, privileged communication and privacy	B	7.2%	\$28,094
Evaluation, assessment, and interpretation	E	2.9%	\$24,933
Overall		100.0%	\$113,642

Primary Allegations

As shown in **Figure 11**, eight primary allegations demonstrated an average total incurred higher than the overall average total incurred of \$113,642.

- With the exception of allegations involving sexual/romantic relationships, these allegations occur infrequently, but result in higher severity due to the adverse effect or harm the insured caused a client. Typically, these claims have little to no defense that can be asserted on behalf of the insured counselor and often involve injuries including death or permanent disability.
- Sexual/romantic interactions/relationships with current clients, client's partners or family members is discussed in greater detail in the **Counselor Spotlight: Boundaries**, available at hpso.com/counselorclaimreport_boundaries.

The primary responsibility of counselors is to respect the dignity and promote the welfare of clients.

- 2014 ACA Code of Ethics, Section A.1.a. Primary Responsibility

TOP 5 RISK MANAGEMENT RECOMMENDATIONS

1	Know and comply with the relevant state practice act.
2	Understand all laws or regulations that govern client interactions.
3	Develop, maintain and practice professional written and spoken communication skills.
4	Retain client clinical health records in accordance with relevant state and federal laws.
5	Avoid multiple relationships with clients, their significant others and their family members.

11 Severity of Primary Allegations using the 2014 Edition of the ACA Code of Ethics Section Code

This figure highlights only those allegations with an average total incurred higher than overall average total incurred of \$113,642.

Allegation	ACA Code of Ethics section	Average total incurred
Failure to respect the dignity and failure to promote the welfare of the client	A	\$434,568
Failure to assist client in employment that is consistent with physical, temperament, interests and general qualifications.	A	\$389,113
Counseling plan was inconsistent with client's abilities and circumstances	A	\$352,568
Counseling plan failed to provide reasonable expectations of success	A	\$215,917
Failure to monitor services provided by other counselors/counselors-in-training	F	\$190,320
Failure to obtain client's consent for the change from individual to family or couple counseling or vice versa	A	\$178,882
Failure to truthfully present their qualifications and those of their colleagues and/or failure to clearly disclose volunteer vs. paid work	C	\$124,134
Sexual/romantic interactions/relationships with current clients, client's partners, or family members	A	\$122,581

As shown in **Figure 12**, six primary allegations experienced the highest distribution of closed claims, comprising **71.7** percent of all professional liability closed claims in the 2019 report. Of those six allegations, 43.9 percent involve inappropriate sexual/romantic relationships either by the insured counselor or by the supervisee of the insured counselor.

- Engaging in a sexual/romantic relationship with a client, or with a client’s family member, accounts for 36.4 percent of all closed claims.
- Improper sexual/romantic interaction or relationship with current supervisees accounts for 7.5 percent of all closed claims.
- Allegations related to the failure to practice within boundaries of competency (17.5 percent) have increased in distribution since the 2014 claim report (15.8 percent). An example of this closed claim allegation includes an insured counselor who treated four minors, who were members of the same family. The mother and father were involved in a high conflict divorce and both shared custody of the children. The father reported the children had been abused by the mother, despite the children stating otherwise. The mother attempted to contact the counselor regarding the abuse allegations, but the counselor refused to speak with her. The counselor then provided

an unsupported letter to the court stating the children were in danger while with the mother. The court disagreed with the insured, concluding that the insured counselor did not utilize any type of group process with the minors, and did not conduct a social or developmental history on each of the minors. The mother asserted that the counselor violated professional boundaries of competency by acting in an unprofessional and unethical manner. The total incurred was greater than \$345,000.

- Improper sharing of confidential/private client information without client consent or legal justification represents 4.4 percent of the closed claims. This distribution decreased since the 2014 report (12.7 percent).

COUNSELOR SPOTLIGHT

For risk control strategies related to:

- [Informed Consent](#)
- [Identifying Your Client](#)
- [Reporting to Third Parties](#)
- [Boundaries](#)
- [Supervision](#)

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12 Distribution of Top Six Primary Allegations using the 2014 Edition of the ACA Code of Ethics Section Code

Allegation	ACA Code of Ethics section	Percentage of closed claims
Sexual/romantic interactions/relationships with current clients, client's partners or family members	A	32.0%
Failure to practice within boundaries of competency	C	17.5%
Improper sexual/romantic interaction or relationship with current supervisees	F	7.5%
Multiple relationships with client despite potential for client harm	A	5.9%
Sexual relationships with former clients, their partners or family members prior to end of five-year waiting period	A	4.4%
Improper sharing of confidential information without client consent or legal justification	B	4.4%

PART 3: ANALYSES OF DEPOSITION ASSISTANCE AND RECORD REQUEST MATTERS

Introduction

Counselors may be subpoenaed to provide a deposition or court testimony in matters where they are not a defendant, but are or were involved in the assessment and/or treatment of a client who is involved in a legal action. Similarly, they may receive subpoenas or requests for clinical records.

Review of the 2019 dataset demonstrated that requests for subpoena and record request matters increased 456 percent since the 2014 report. While the increase in distribution is multifactorial, more than half of these matters involved litigious matters, such as child custody and divorce. This section of the report analyzes underlying matters precipitating such requests, as well as the distribution and average paid expense.

There are many reasons a counselor may receive a nonparty deposition and/or record request subpoena, but most in the 2019 dataset were related to underlying matters of **child custody** or **support, divorce actions, or client employment issues**.

Key Findings

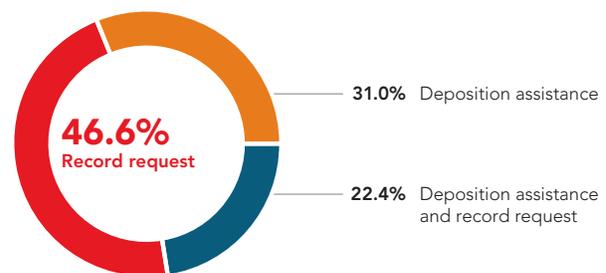
- TOP FINDING**
- Requests for **deposition assistance and record request matters** have increased **456 percent** since the 2014 claim report. 
- While distribution has increased, the average incurred expense has remained relatively stable.
- TOP FINDING**
- Average expenses to provide nonparty **deposition assistance** are **\$2,150**, as noted in **Figure 14**. 
- The highest distribution involves record requests at **46.6 percent**.
- TOP FINDING**
- **Child custody** matters comprise **37.8 percent** of all underlying matters for deposition assistance and record request expenses. 

Subpoenas for Counselor Clinical Records and/or Counselor Depositions under Oath

In the analysis, expenses related to nonparty deposition are more costly than record requests. This increased cost is directly related to the time necessary to prepare a counselor for deposition, as well as having an attorney present with the counselor during the deposition. Experience with CNA/HPSO insureds has demonstrated the importance of scrupulous preparation for a deposition under oath. For example, a claimant's attorney may use complex or aggressive questioning techniques, and the counselor must be able to answer all questions truthfully, without divulging extraneous information.

Figure 13 represents the distribution of closed claims by coverage types: deposition assistance, record requests and deposition assistance and records requests together. Claim expenses represented within these coverages include attorney fees and other administrative costs.

13 Distribution of Deposition Assistance and Record Request



14 Severity of Deposition Assistance and Record Request

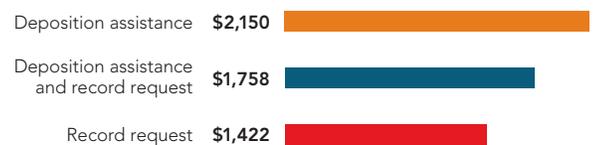


Figure 15 is an analysis of deposition assistance requests that occurred most frequently in the 2019 dataset and had an average cost of \$2,150.

- Counselors who work with clients involved in **child custody** matters were more likely to receive a subpoena for deposition.
- **Emotional matters related to physical injury/condition** represented the second highest percentage of deposition requests. These matters frequently involved treatment of depression and/or anxiety a client suffered related to prior medical incidents or motor vehicle accidents.

Figure 16 is an analysis of record requests that occurred most frequently in the 2019 dataset. Counselors who work with clients involved in **child custody** matters were more likely to receive a subpoena for a record request. The average cost is **\$1,422**.

Figure 17 is an analysis of subpoena assistance expenses that involved counselors required to provide depositions and record requests. As with Figures 15 and 16, **child custody** matters have the highest distribution of deposition and record requests. The average cost is **\$1,758**.

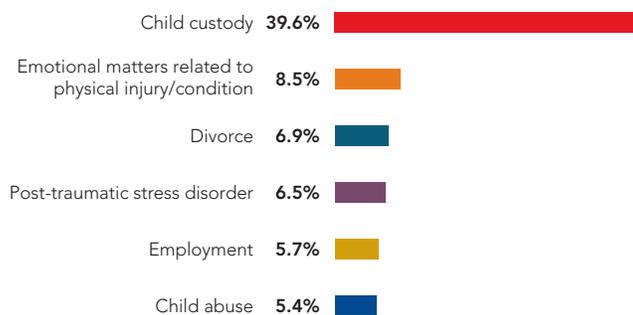
During depositions, the claimant’s attorney may use complex or aggressive questioning techniques, and the counselor must be able to answer all questions truthfully, without divulging additional or extraneous information.

WHEN A COUNSELOR RECEIVES A SUBPOENA

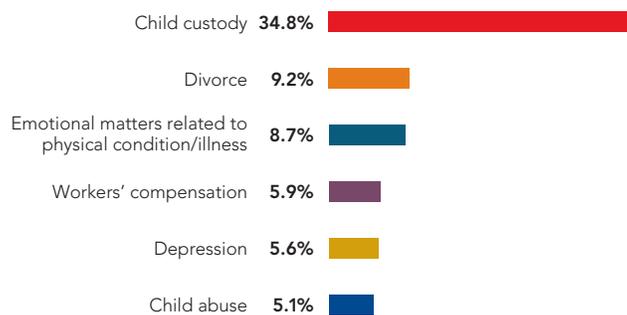
- **Never ignore a subpoena**, whether it involves releasing clinical records, appearing for a deposition or testifying in court.
- **Consult with an attorney** knowledgeable about health law and request guidance about potential conflicts between legal mandates and client privacy rights when responding to a subpoena.
- **Maintain complete and accurate documentation** in the client’s clinical record.



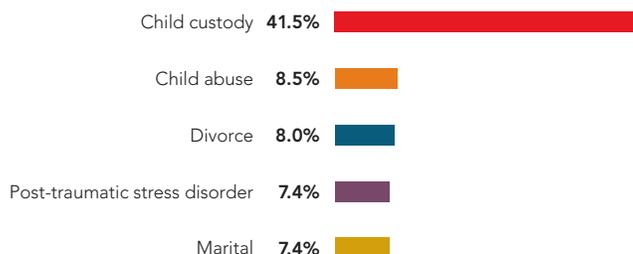
15 Top Six Deposition Request by Underlying Matters



16 Top Six Distribution of Record Request by Underlying Matters



17 Top Five Distribution of Deposition Request and Record Request by Underlying Matters



PART 4: ANALYSIS OF LICENSE PROTECTION DEFENSE PAID CLAIMS

Introduction

An action taken against a counselor's license or certification to practice differs from a professional liability claim as it may extend beyond matters of professional negligence to include allegations of a personal, nonclinical nature, such as fraudulent billing, substance abuse, or improper behavior on social media. Another key difference relates to the amounts paid for license protection defense claims. These amounts represent only the legal fees and other costs involved in defending the counselor against the complaint, rather than fines, or indemnity or settlement payments to a plaintiff.

A license 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, up to and including license revocation.

Database and Methodology

As noted in the introduction, two datasets are used in this report. The 2019 dataset used in this section of the report draws upon a five-year period of 2,082 reported incidents or claims involving license protection defense for counselors insured through the CNA/HPSO insurance program. The final dataset includes claims closed between January 1, 2013 and December 31, 2017, and resulted in a license protection defense expense payment. These criteria, applied to the total number of reported counselor license protection defense claims, create a 2019 dataset consisting of 633 closed claims. Similar criteria produced a 2014 dataset comprised of 395 closed claims.

18 License Defense Claim Data Comparison, 2014 and 2019

	2014 Report	2019 Report
Number of years included in dataset	10	5
Total incidents	1223	2082
Average number of incidents per year	122	416
Paid claims	395	633
Paid claims as a percentage of incidents	32.3%	30.4%
Average payment	\$3,727	\$5,454

Key Findings

- In the 2019 dataset, the average number of license protection incidents was 416 per year over a five-year period.

- **The average paid expense for a license protection claim was \$5,454 in the 2019 dataset.**

TOP FINDING



- **Sexual misconduct, failure to maintain minimal professional standards, breach of confidentiality, and reporting to third parties most frequently led to licensing board complaints.**

TOP FINDING



- **The majority of paid license protection defense claims (63.7 percent) closed with no action taken by the board, representing a successful defense of the insured counselor.**

TOP FINDING



Claim Data Analysis

As shown in **Figure 18**, the average number of incidents per year rose from an average of 122 per year over a ten-year period in the 2014 dataset to 416 per year over a five-year period in the 2019 dataset. The average payment per paid claim also increased, from \$3,727 in the 2014 report to \$5,454 in the 2019 report, a 46 percent increase. Payments for license protection claims reflect legal expenses and associated travel, food, lodging and wage loss costs reimbursable under the policy. The reasons for the rise of license board defense claims include the escalating costs of defense counsel, as well as the individual nature of each state licensing and disciplinary board.

Allegations

The primary allegation categories identified in this report extend beyond the classification system of many state and regulatory bodies that oversee counselors. Often, these classification systems do not provide sufficient insight into the specific circumstances that led to the allegations and complaint. Therefore, while complaints against a counselor’s license or certification to practice often involve multiple allegations, this analysis classified claims based upon the primary reason for the complaint.

Figure 19 displays the top 10 allegations by distribution, representing more than 80 percent of the total complaints where payment was made for legal defense of the counselor. **Sexual misconduct** (13.6 percent), **failure to maintain professional standards** (12.3 percent), **breach of confidentiality** (11.2 percent), and **reporting to third parties** (7.3 percent) most frequently led to board complaints.

Counselors are required to know, meet and comply with the professional standards set forth in their respective state practice acts and professional ethical guidelines.

Counselors are required to know, meet and comply with the **professional standards** set forth in their respective state practice acts and professional ethical guidelines. An example of an allegation includes:

A client complained about the insured counselor’s treatment to the state board. During the board investigation, it was discovered that the counselor failed to provide the client with adequate information about his credentials, fee and payment structure, and other state-mandated disclosures prior to initiating treatment. The board concluded that the counselor failed to maintain a current written agreement with the client and also failed to maintain adequate treatment records. The counselor was placed on probation for two years and required to pay a fine of \$3,000. The total cost to provide a legal defense of the insured counselor in this case exceeded \$21,500.

COUNSELOR SPOTLIGHT

For risk control strategies related to:

- [Release of Records](#)
- [Telebehavioral Health](#)
- [Documentation](#)
- [Preparing for a Deposition](#)
- [What to Do if you Receive a Subpoena](#)

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19 Top Ten License Defense Allegations by Distribution

Allegation Class	ACA Code of Ethics	Distribution of Claims	Average Expense
Sexual misconduct	A	13.6%	\$7,592
Failure to maintain professional standards	C	12.3%	\$5,836
Breach of confidentiality	B	11.2%	\$4,542
Reporting to third parties	C	7.3%	\$5,109
Failure to practice within boundaries of competence	C	7.1%	\$5,483
Failure to accurately present qualifications or credentials	C	6.5%	\$5,297
Billing	A	6.2%	\$5,666
Failure to observe parental or familial rights to make decisions on behalf of minor client	A	4.7%	\$5,117
Documentation	A	4.7%	\$4,712
Abandonment	A	3.2%	\$3,898
Average total expense			\$5,454

As part of their professional responsibilities, counselors are also required to complete timely, accurate, and complete **reports to third parties**, according to state and federal requirements. An example of such responsibilities includes reporting known or suspected child abuse, as well as duty to warn if clients are a danger to themselves or others. Failure to report to third parties according to professional requirements can result in an adverse action against a counselor's license, as in the following case:

A 14-year-old male disclosed to the insured counselor that he had been sexually abused by a family member. The counselor never reported the client's disclosure and continued to treat the client for about a year, until the counselor then transferred the client to another therapist. After the subsequent therapist learned of and reported the abuse to the department of social services, it was discovered the insured counselor knew of the alleged abuse. This discovery led the state board of counseling to open an investigation into the counselor's conduct. The counselor's license was revoked for violating state statutes requiring reporting of suspected instances of child abuse. The total cost to defend the counselor was over \$4,000.

Licensing Board Actions

Figure 20 displays the distribution of licensing board actions, reflecting that the majority of paid license protection defense claims (63.7 percent) closed with no action taken by the board. A board decision not to impose discipline represents a successful defense of the insured counselor. Other board decisions, such as **surrender of license** (3.8 percent), **revocation** (2.5 percent) and **suspension** (1.9 percent), are less common, but can effectively end the counselor's career. The distribution of licensing board claims that resulted in revocation and suspension decreased in the 2019 report from the 2014 report. However, surrender of license increased from 2.3 percent of claims in the 2014 report to 3.8 percent of claims in the 2019 report.

Even complaints resulting in less serious decisions by the licensing board, such as probation, consent agreements, fines, or mandated continuing education, may pose significant emotional and professional impact on the counselor. Board investigations are serious matters, requiring legal assistance and a significant investment of time and effort on the counselor's part.

LICENSE PROTECTION VS. PROFESSIONAL LIABILITY WHAT'S THE DIFFERENCE?

License Protection

Inquiry by the State Professional Counselor Licensure Board, arising from a complaint.

Allegation can be directly related to a counselor's clinical practice and professional services and responsibilities, and/or they may be of a nonclinical nature (i.e., substance abuse, unprofessional behavior, or billing fraud).

The State Professional Counselor Licensure Board can suspend or revoke a license. Its primary mission is to protect the public from unsafe practice of the professional.

Professional Liability

Civil lawsuit arising from a client's malpractice claim.

Allegations are related to clinical practice and professional responsibilities.

The civil justice system cannot suspend or revoke your license to practice. Rather, professional liability lawsuits serve to fairly compensate clients/patients who assert that they have suffered injury or damage as the result of professional negligence.

20 Analysis of Board Outcomes for Paid Claims, 2014 and 2019



CLAIM GUIDANCE

Recognizing Incidents

Recognizing and reporting incidents are essential first steps in the medical claims process. But how do you know when you've experienced an incident?

Clinical concerns such as adverse treatment results would be considered incidents. Incidents also include signs of patient displeasure, such as a letter of complaint, a heated disagreement, or repeated failure to keep appointments without adequate explanation.

The incidents should be documented for quality improvement purposes using a facility/employer approved reporting process. For HPSO's incident reporting form visit hpso.com/support/incident-report.

What Exactly is a Claim?

A claim means a demand for money or services. Claim also means filing of a suit or the starting of arbitration proceedings naming you and alleging injury or damage.

That means a claim could be any one of the following:

- A summons or complaint alleging an act or omission in the rendering of professional services.
- A letter, or any other document, or demand for services or money from you because of acts or omissions arising from professional services you provide.
- An oral threat or complaint indicating that a party is holding you responsible for damages arising from professional services rendered.
- Notice of arbitration filed against you for damages alleged from your professional services.

Your Role and Responsibility in Managing a Professional Liability Claim

The following strategies can significantly reduce professional liability risks. Also included are steps to take if you believe that you may be involved in a legal matter related to your practice:

- If you carry your own professional liability insurance, immediately contact your carrier if you become aware of a filed or potential liability claim against you, receive a subpoena to testify in a deposition or trial, or have any reason to believe that your license to practice may be threatened.
- If you carry your own professional liability insurance, report possible claims-related actions to your insurance carrier, even if your employer advises you that the organization will provide you with an attorney and/or cover you for a professional liability settlement or verdict amount.
- Refrain from discussing the matter with anyone other than your defense attorney or the claim professionals managing your claim.
- Promptly return calls from your defense attorney and the claim professionals assigned by your insurance carrier.
- Contact your attorney or claim professional before responding to calls, email messages or requests for documentation from any other party.
- When reporting a possible claim, provide your insurance carrier with as much information as you can, including contact information for the risk manager at your organization and the attorney assigned to the case by your employer.
- Never testify in a deposition without first consulting your insurance carrier or, if you do not carry individual professional liability insurance, your organization's risk manager or legal counsel.
- Copy and retain the summons and complaint, subpoena and attorney letter(s) for your records.
- Maintain signed and dated copies of all employment contracts.

COUNSELOR SPOTLIGHTS

Many of the top findings from this report are discussed in greater detail within subsequent topic-driven publications, entitled **Counselor Spotlights**. The Counselor Spotlights include resources such as case scenarios, risk control recommendations, and self-assessment checklists designed to help counselors evaluate risk exposures associated with current practice on the following topics:

Informed Consent

Informed consent is a legal and ethical concept involving the right of clients to be informed about the proposed treatment and alternative treatments in order to make educated decisions. Counselors have an obligation to inform clients in writing and verbally of the risks, benefits, and expected outcome of therapy, as well as alternative treatments, and the risk of no treatment. Informed consent is an ongoing part of the counseling process – from the start of counseling to termination/referral process. Counselors should appropriately document informed consent discussions throughout the counseling relationship. In this issue, we examine: components of the informed consent discussion, ability to give consent, informed refusal and confidentiality.

Identifying Your Client

When multiple parties are involved, whether that be through couples or family counseling, counselors are expected to clearly define who is considered the “client.” In this issue, we examine: discussing expectations and limitations of confidentiality, strategies for documenting agreement among all parties involved, and confidentiality.

Reporting to Third Parties

Counselors are expected to be accurate, honest, and objective in reporting their professional judgments to appropriate third parties, including courts, recipients of evaluation reports, and others. While counselors have a duty of confidentiality, it is their obligation to inform clients, prior to commencement of treatment, regarding exceptions to confidentiality, such as when information will be shared with a third party. In this issue, we examine: disclosures of otherwise confidential client information for mandated clients, circumstances where disclosures are permitted, and a counselor’s legal obligation to warn others if clients pose a threat to themselves or others.

Boundaries

Inevitably, counselors form relationships with clients they see regularly. Counselors must maintain appropriate boundaries in those relationships for the well-being of both the client and the practice, as well as to conform to ethical requirements of their profession. Boundary transgressions may result from actions by the client or the provider – and have serious consequences for both. In this issue, we examine: how to define and recognize problematic behavior by providers or clients, understand professional guidelines for responding appropriately to improper behavior, develop sufficient risk management strategies, and evaluate policies and procedures for your practice.

Supervision

Counseling supervisors monitor client welfare and supervisee performance and professional development. Counseling supervisors work with supervisees to assist them in becoming prepared to serve a range of diverse clients. Supervisors help supervisees cope with issues that clients may present by making suggestions with specific interventions. In this issue, we examine: professional and ethical standards applied to supervisors, using technology in supervision, and termination of the supervisory relationship.

Release of Records

Client healthcare record requests often present a range of legal and ethical challenges. Failure to respond to a subpoena could result in the imposition of sanctions, including issuance of a warrant from the court for the counselor’s arrest. Knowing the various types of record requests and how to respond to such requests can minimize the risks of legal actions taken against a counselor. In this issue, we examine: claims involving record requests, and underlying matters, types of record requests, and risk management strategies to provide competent treatment in a confidential manner.

The Counselor Spotlights
are designed to serve as
starting points for counselors
seeking to **assess and enhance**
their **risk control** practices.

Telebehavioral Health

Telebehavioral Health is the practice of electronically connecting geographically discrete clients and providers. Telebehavioral health is a tool that enables counselors to provide cost-effective health care to underserved populations and to work collaboratively with the community to improve access to quality care. While it encompasses numerous methods and technologies, it can also create liability exposure for counselors. In this issue, we examine: strategies designed to enhance clinical and operational processes, client confidentiality, and informed consent.

Documentation

Counselors are expected to create, safeguard, and maintain documentation necessary for the rendering of professional services. Accurate documentation is a critical component of client care. Inaccurate or inadequate documentation can lead to claims of negligence and malpractice. In this issue, we examine: components of a complete and accurate clinical record, client access, and record retention.

Preparing for a Deposition

Sitting for a deposition in a professional liability lawsuit is potentially one of the most stressful events a counselor can encounter. Depending upon the facts and information revealed, deposition testimony can directly influence the outcome of a case. This spotlight provides an overview of the legal process relating to depositions and imparts helpful tips on how to prepare for and provide deposition testimony. In this issue, we examine: objectives of the pre-deposition meeting with your attorney, what a witness can expect during deposition questioning, and essential tips for conveying confident responses.

What to Do if You Receive a Subpoena

If you are sued and/or are a party to a dispute in court, you may receive a subpoena. A subpoena is a notice stating that you are required to appear for a court proceeding, such as to answer questions at a deposition, or to supply certain documents. Counselors should not ignore a subpoena or attend a deposition in the absence of legal representation. Contact your professional liability insurer when you receive a subpoena. In this issue, we examine: types of subpoenas, the questions to ask your attorney, and the implications of failing respond.



151 North Franklin
Chicago, IL 60606
1.866.262.0540
www.cna.com



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