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## Counselors License Defense Case Study with Risk Management Strategies

**Case Study:** Violation of confidentiality;  
failure to maintain appropriate boundaries with  
a client or former client; failure to follow the  
standard of care

**Defense Expenses:** \$10,000

### Summary

The insured mental health counselor had been practicing for 16 years and was employed by a mental health center. The counselor was assigned to screen patients for mental health needs and assist them to get other needed services. In this particular case, the counselor treated a client over a 7-month period who was referred by her physician for depression related to her cancer diagnosis.

The counselor determined that the client should be in hospice, though the client's physician did not agree and did not make such a referral directly. Even though the client refused hospice care at that point in time, the counselor contacted a local hospice independently and spoke about the client and her medical and mental health conditions.

There was not a signed release of information in the client's record and the client indicated she did not give permission for such contact with the hospice. The counselor was soon dismissed from employment at the mental health center.

After the counselor was dismissed from employment, the counselor allegedly visited the client at her home uninvited, blamed the client for loss of employment, and demanded the client sign a letter saying the counselor had permission to contact the hospice on her behalf.

The director of the mental health center reported the counselor to the State Board for alleged violation of confidentiality.

Any complaint filed against a healthcare provider's license can have career-altering consequences.

An action taken against a counselor's license to practice differs from a professional liability claim in that it may or may not involve allegations related to patient care and treatment. Also, the amounts paid pursuant to license protection claims represent the cost of providing legal representation to the counselor in defending such actions, rather than indemnity or settlement payments to a plaintiff.



### Risk Management Comments

An investigation by the Board found that the counselor contacted the hospice without an authorization and release and without a recommendation from the physician.

The allegations were corroborated by other staff, to whom the counselor had revealed some of this information. The client had also told her physician about the counselor visiting her home unannounced. Additionally, there were complaints about the counselor by other clients and other allied agency personnel.

The counselor eventually admitted to the Board to having an unscheduled meeting at the client's home.

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## Resolution

The Board issued a Letter of Admonishment against the counselor, and required the counselor to complete 40 hours of continuing education within 12 months of the decision on boundaries, record-keeping and confidentiality. The counselor was required to obtain prior approval for the courses and submit completion certificates to the Board. These hours were in addition to the required Continuing Professional Development hours the counselor was required to complete in order to maintain an active license.

The case took over two years to resolve and cost \$10,000 in legal expenses to defend.

## Risk Management Recommendations

- **Maintain appropriate boundaries with clients and know and comply with the ACA Code of Ethics** (visit [www.counseling.org](http://www.counseling.org)).

- **Understand state-specific laws and regulations related to professional conduct**, applicable ethics codes of state and/or local professional organizations, and requirements of the relevant licensure/certification/disciplinary board.
- **Obtain the client's written and dated authorization for the release of information to named parties**, i.e., those with whom the counselor may communicate about treatment-related matters or share client information.
- **Perform only those actions included within the state scope of practice act**, adhere to the standard of care, reflect professional ethical guidelines and comply with employer policies/procedures/protocols.

### Guide to Sample Risk Management Plan

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## Counselors License Defense Case Study with Risk Management Strategies

**Case Study:** Alleged improper disclosure of confidential and privileged health information; Failing to provide appropriate care and treatment.

**Indemnity Settlement and  
Legal Expense Payment:** Greater than \$35,000

### Summary

This case involves an insured counselor who served as a clinical director for a community-based residential program that provided services and support for troubled youth. These services are designed to help young people transition out of the care of the Department of Children and Family Services and achieve permanency, independence, and integration into society. One service provided was a residential program for adolescent males (16-20 years-old) with an array of sexualized behaviors. Typically, these adolescents had been in detention centers for various offenses.

The insured's responsibilities included supervision of care to new and/or current clients. These responsibilities involved assessing clients prior to entering the program, assigning the clients to group and individual therapy sessions, and coordinating with psychiatrists for medication needs for clients.

The client in this case was a 19-year-old male who had been in the residential program for approximately two years, but was transitioning to a semi-independent living program (SLP) due to his age.

The first night the client was at the SLP he was allowed to use his roommate's television and computer while the roommate was at work. The next morning, the roommate saw that child pornography was on his computer and he was afraid that he would be blamed for going to those websites. The roommate contacted our insured and told him of what he found.

After confirming the roommate's report, the insured contacted the local police department. The client was interviewed by the police and admitted to downloading videos and pictures on the computer. The client testified to watching a movie and

then browsing the internet for child pornography (despite being illegal, this was a violation of his parole).



then browsing the internet for child pornography (despite being illegal, this was a violation of his parole).

The police arrested the client for violating his parole and for possessing child pornography. The client was detained for several days before he was released back to the residential home.

Upon return to the SLP, the client spoke to the insured about the events surrounding his arrest. The client felt that the insured had divulged private, confidential information about his juvenile and mental health history. The client left the residential home several weeks later and never returned.

The insured heard the client had gotten into trouble after he left the residential home, but didn't have any further contact with the client until two years later when he was served with a professional liability lawsuit.

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The client claimed that the insured violated State and Federal confidentiality laws when he reported the computer incident to the police. The client claimed that the only reason he was arrested was because the insured had divulged information about his juvenile and mental health history. The client's damages included:

- Compensation for the thirty days he spent in detention following his arrest for violating bail;
- \$25,000 in attorney's fees in connection with the defense of his criminal case; and
- Noneconomic damages due to his "humiliation" he felt when his arrest was published in the newspaper.

### ➤ Risk Management Comments

The insured denied divulging any information to law enforcement about the client's mental health, however he let the police know about the client's parole obligations and past arrests. The defense expert felt the case was defensible and was supportive of the insured's actions of reporting the client to law enforcement. The expert felt that the insured counselor was required by law to report child pornography to law enforcement, but was concerned that there was no documentation to support the events.

Defense counsel felt the case was very defensible, but was concerned that the plaintiff's counsel could present the insured and the program in an unprofessional light due to the overall lack of formal documentation and policies and procedures.

The plaintiff's attorney was pressuring for a settlement prior to all discovery. Defense counsel felt our insured operated within the standard of care and refused to discuss settlement until all discovery had been completed. It was

later discovered that the client had been arrested a second time due to violating his probation.

### ➤ Resolution

Defense counsel filed a motion for summary judgment and the case was later dismissed against our insured.

### ➤ Risk Management Recommendations

- **Conduct and document a discussion with the client regarding information that may not be protected from release**, including that relating to child endangerment/neglect/abuse, danger to self and others, and court-ordered disclosures. Obtain signed statements that the client understands these exceptions to privacy and confidentiality.
- **Understand all laws or regulations that govern client interactions**. Ignorance of the law, employer policy or professional ethics does not absolve the counselor of the responsibility to act within established clinical, ethical and regulatory guidelines.
- **Maintain a complete and accurate documentation in the client's clinical record** regarding the clinical decision-making process, the client's response to treatment, discussions with clients about confidentiality/privacy regulations and exceptions, and any client-related correspondence.
- **Understand and comply with the ACA Code of Ethics** and other relevant ethics codes from other professional organizations or licensure/certification boards related to client confidentiality and privacy.

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## Counselors License Defense Case Study with Risk Management Strategies

**Case Study:** Failure to practice within professional boundaries; failure to establish a proper diagnosis of a mental disorder; imposing personal values on a client; abandonment.

**Total Incurred:** Greater than \$765,000

(Monetary amounts represent only the indemnity settlement payment and/or legal expenses incurred on behalf of the insured counselor)

### Summary

This case involves an insured licensed professional clinical counselor (LPCC) with over 20-years of experience in counseling, who specialized in counseling clients with depression, anxiety-disorders, attention-deficit hyperactivity disorders, sexual addiction, eating-disorders and post-traumatic stress disorders (PTSD). For five years the insured worked as an independent contractor at a facility that provided individual and family therapy.

The insured began counseling a client with a history of depression and alcohol abuse due to mistreatment she suffered as a child by her mother and father. The client reported being physically abused by her mother and father since the age of 10-11 years old. The client explained that she struggled with depression all through adolescence and early adulthood, but it seemed to improve when she met her husband in college.

The client reported that her depression resurfaced after the birth of her first child one year prior. Since the birth of her son, she reported that she had been self-treating her depression with alcohol to the point of having black-outs on a regular basis.

At the first session, the client appeared mad, sad, feeling alone and having relationship struggles. She was working full-time as a marketing executive, but reported having difficulty at work due to her depression. She also confessed to feeling overwhelmed with guilt most of the time because she had what some would believe to be a "picture-perfect life".

Over the next few weeks of treatment, the client began to improve. However, she had a setback when her mother contacted her. Her parents lived several hundred miles away and she had minimal contact with them and had not seen them in a few years. However, her mother reached out to her in hopes of seeing her grandchild.

This contact sent the client into a deep depression and she attempted suicide by ingesting an excessive amount of old pain pills. The client reported that the "attempt" was more of a cry for help and not a serious attempt to harm herself. Her husband took her to the emergency department, but they released her after she agreed not to harm herself and follow-up with her counselor.

At the next session with the insured, the client appeared confused and in despair. The insured stated that the client was "in and out" of memories during most of the session.

The counselor believed that the client was suffering from post-traumatic stress disorder (PTSD) and dissociative identity disorder (DID) from childhood sexual abuse, even though the client denied any sexual abuse ever occurred. The insured attempted eye movement desensitizing and reprocessing in an attempt to get the client to "recall" past episodes of sexual abuse. It was during this therapy session that the insured suggested that the client had undergone some type of "satanic ritualist" abuse by her father and that her mother allowed this to happen. Soon after this session the insured diagnosed the client with DID and PTSD.

The insured would perform/attempt desensitizing and reprocessing at most of the subsequent therapy sessions. When the client would struggle with childhood memories, the insured would suggest that the client was likely repressing memories due to being sexually abused. The insured kept insisting that the only reason for repressing such childhood memories was due to being sexually abused or some other very traumatic event that occurred early in life.

Medical malpractice claims alleging breach of privacy may be asserted against any healthcare provider, including counselors. The following case study involves an insured licensed professional clinical counselor.



Over the next four years, the insured worked with the client to "recover" memories from her childhood. The insured also had prior/current clients, with a history of being abused, attend the client's therapy sessions to help "recover" childhood memories of abuse.

The insured pressured the client to attend her church on several occasions, but the client didn't think her husband would approve. After many invitations by the insured, the client began attending a ladies' Bible study and church with the insured and they began to establish a friendship. They would exchange emails and telephone calls several times a day, especially if the client was feeling overwhelmed and depressed.

Late one evening, the client telephoned the insured and stated that she and her husband had a big argument. During the telephone call, the client was very emotional and stated she wanted to die. After the call, the insured went to the client's home afraid the client was going to commit suicide. When the insured arrived at the home, the client was crying and disoriented. The client refused to leave the home and promised to see the insured in the morning.

For the next several weeks, the insured encouraged the client to leave her husband as she felt the client's safety was in danger. However, the client refused to leave her husband as she was worried that he would not let her leave with their child.

The insured informed the client that she would likely not get any better until she came to terms with her past childhood sexual abuse. The insured impressed upon the client that she should not have any relationship with her parents if they would not own up to the abuse they inflicted on her. Because of this, the client did not see her parents for several years.

After a few months, the client's emotional outbursts and threats of harm became emotionally overwhelming for the insured. At one of the last sessions, the insured told the client that she could no longer participate in the client's treatment and care and could not be her friend. The insured informed the client that she had already referred her to a colleague to take over counseling. The client was extremely angry with the insured as she felt the insured had abandoned her. The client never met with the counselor the insured recommended, but instead sought treatment from another counselor.

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One year later, the client and her husband filed a lawsuit against the insured. The client claimed that the insured:

- failed to practice within professional boundaries;
- failed to establish a proper diagnosis of a mental disorder;
- imposed personal values on a client; and
- abandoned the client.

The client claimed that the insured caused her to lose her job as a marketing executive, which caused her family to lose their home in foreclosure. The client's husband also claimed a loss of consortium because he and his wife separated for six-months due to her bizarre and emotional behavior they alleged was brought on by the insured.

### Risk Management Comments

The client's expert stated that our insured became concerned that the client had been sexually abused and suggested to the client that the abuse must have happened during "satanic ritual." The client's expert noted that the insured used desensitizing and reprocessing and that client felt pressure to "believe it all." The client testified that she felt pressured to believe in the diagnosis of DID and the childhood sexual abuse but "deep down she knew better."

The defense expert felt the case would be difficult to defend due to:

- At least 75 visits were the insured failed to keep any notes of their sessions. This missing documentation gives the impression that the insured behaved unprofessionally.
- The insured's potential breach of professional, clinical and ethical boundaries by engaging in multiple relationships with the client throughout her treatment.
- The insured's clinical treatment not meeting the acceptable standards of care because she was not appropriately trained in eye movement desensitizing and reprocessing.

Due to the defense expert's findings, mediation was attempted on several occasions, with the client ultimately agreeing to a settlement.

### Resolution

In the midst of the lawsuit, the client also made a formal complaint to the state licensing board. The compliant claimed that the client was never informed of the benefits and risks of desensitizing and reprocessing and if she had been told, she would have never agreed to the therapy. The client further claimed that she lost her job, home and time with her family due to the inappropriate treatment by the insured.

During the Board's investigation, the insured's license was suspended and she was required to complete several hours of continuing education on ethics, client assessment, evaluation and interpretation prior to returning to practice.

At the conclusion of the Board's investigation, the Board found that the insured's conduct was sanctionable and issued the following:

- A public reprimand.
- Supervision by a Licensed Professional Counselor Supervisor for one hour monthly for one year.

- An order to complete an approved training course with six additional hours of training to be completed within thirty days of the issuance of the Consent Order by the Board.

The cost to defend the insured's licensing board complaint alone exceeded \$3,800.

### Risk Management Recommendations

- **Know and practice within the counselor's state-specific scope of practice**, and in compliance with standard of care and state licensing/certifying board requirements. If more than one standard of care, law or regulation is involved, the counselor should adhere to the most stringent applicable standard.
- **Utilize proven therapeutic techniques that are appropriate to the client's needs**, within the counselor's competence and representative of accepted standards of care.
- **Utilize evidence-based clinical practice guidelines or protocols when establishing a diagnosis and providing treatment**, document both the clinical decision-making process and the clinical justification for deviations from protocols.
- **Retain client clinical records in accordance with relevant state and federal laws**, consult state-specific recommendations issued by professional associations.
- **Provide accurate, complete and current documentation**, in order to enhance continuity of client treatment by another authorized counselor or healthcare provider. Documentation should support the treatment plan and satisfy third-party billing requirements. A complete and accurate clinical record presents the strongest defense against legal and licensing actions.
- **When transferring the client's care to another professional, obtain client authorization and practice sound handoff communication methods**. Always inform other professionals of necessary precautions and concerns regarding the client's health status.
- **Remember that the counselor is solely responsible for maintaining appropriate boundaries in the counseling relationship**, and that client consent for sexual, personal and/or social relationships does not exempt the counselor from this professional duty.
- **Maintain appropriate boundaries with clients and know and comply with the ACA Code of Ethics**. In addition, follow state-specific laws and regulations related to professional conduct, as well as applicable ethics codes of state and/or local professional organizations. And requirements of the relevant licensure/certification/disciplinary board.

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## Counselors License Defense Case Study with Risk Management Strategies

### Case Study: Failure to monitor/supervise clinical performance of supervisees

**Total Incurred:** Greater than \$95,000

*(Monetary amount represents only the payments made on behalf of the insured counselor business owner and do not include any payments that may have been made from any co-defendants.)*

#### Summary

This case involves an insured counselor business owner who specialized in the treatment of substance abuse, compulsivity, depression, codependency, anxiety, eating disorders, and trauma resolution. The insured employed support staff, but did not directly employ any counselors. All counselors who worked in his practice were independent contractors. The insured had a business contract with a local school system to provide employee assistance counseling. Under the agreement, the school system paid the insured for services, and the insured would “assign” a counselor to treat employees who were referred to the practice.

The client in this case was mandated to complete counseling sessions after she was suspended from her job as a high school teacher due to substance abuse issues. As a stipulation of her suspension, the client was required to complete 12 sessions of substance abuse counseling in order to return to work. Due to childcare issues, the client was only able to schedule her sessions in the late afternoons. The insured assigned one of the independent contractor counselors to treat the client.

At the first session, the client reported being dedicated to her recovery as she feared her ex-husband would “take their daughter away from her if she didn’t sober up”.

Because the sessions were scheduled in the late afternoons, most of the support staff would leave soon after the counselor and client’s sessions would begin.

Late one evening, an employee returned to the office and found the counselor and client still meeting, long after their session was supposed to have ended. She did not disturb them, but would later state that she felt it was strange for the counselor and client to be meeting this long and late into the evening.

The following morning, the employee informed the insured business owner about the late session. The insured was hesitant to confront the counselor, hoping the issue would soon resolve itself since the client only had a few mandatory sessions remaining.

A few weeks later, a second employee voiced his concerns to the insured about the counselor’s and client’s long sessions. He expressed to the insured that he felt it was inappropriate for their sessions to last that long, especially since they were typically the alone in the office at that time.

Medical malpractice claims alleging breach of privacy may be asserted against any healthcare provider, including counselors. The following case study involves an insured counselor business owner.



The insured confronted the counselor, but the counselor denied any inappropriate behavior between him and the client. The counselor reported that the client was at the end of her mandatory sessions and did not need/want any additional treatment. This was the last the insured heard of the situation until two years later when he received a letter from an attorney representing the client.

The letter alleged that the insured failed to take reasonable steps to stop a nonprofessional interaction and sexual relationship between a counselor he supervised and a client, and that his failure ultimately led to an unplanned pregnancy. The letter further alleged that the treating counselor was instructed by the insured to abruptly terminate the client from treatment without giving any reason or referral for additional treatment.

#### Risk Management Comments

During discovery, the client testified that she pursued a physical relationship with the treating counselor. The client even admitted to following him home and to various other places so she could see him. She claimed that she became pregnant while she was under the treating counselor’s care. The client testified that once she found out she was pregnant, she wanted to terminate the pregnancy, but the counselor begged her to have the baby and promised to provide financial support to her and his child.

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The insured felt that he should not be included in the lawsuit because he only employed support staff, and the counselor in this case was an independent contractor. Furthermore, the insured did not have any contact with the client and did not provide her with any counseling services.

The defense expert had a positive opinion of the insured in general but was concerned that two staff members reported the inappropriate relationship before the insured approached the treating counselor. Additionally, because the insured's business had the contract with the school system and he "assigned" clients to counselors for treatment, the defense expert felt it would be difficult to prove that he did not have a supervisory role.

## Resolution

Due to the defense expert's concerns, the decision was made to settle the case on behalf of the insured counselor business owner. The cost of the settlement plus the costs associated with defending the claim ultimately totaled more than \$95,000.

## Risk Management Recommendations

### For Counseling Business Owners:

- **Monitor clinical performance and professional development of supervisees.**
- **Evaluate and certify current performance** and potential of supervisees for academic, screening, selection, placement, employment and credentialing purpose.
- **Inform supervisees of professional and ethical standards** and legal responsibilities of the counseling/therapy profession.
- **Establish a policy that prohibits any sexual or inappropriate activity with a client.** The policy should address avoiding multiple relationships with clients, their significant others and/or their family members.
- **Review actual work samples via session notes, audio and/or video tape or live observation** in addition to case notes should be reviewed as a regular part of the ongoing supervisor process.
- **Provide ongoing feedback regarding performance.** Feedback should take a variety of forms, both formal and informal,

and should include verbal and written evaluations. It should be formative during the supervisory experience and summative at the conclusion of the experience.

- **Review all counselor agreements at least annually**, and revise with the assistance of legal counsel, if necessary.
- **Ensure that all parties understand each party's role under the agreement**, and communicate openly and often about any questions or concerns that may arise.

### For Counselors:

- **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.
- **Manage transference and/or counter-transference with appropriate clinical techniques**, obtaining clinical supervision and/or consultation as needed.
- **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.
- **Terminating the client, or ending the counselor-client relationship, does not cancel the prohibition against a sexual/romantic relationship.** The ACA Code of Ethics (Section A.5.c) states that such relationships "with former clients, their romantic partners, or their family members are prohibited for a period of 5 years following the last professional contact". If it is necessary to terminate the counselor-client relationship, record all supportive actions taken to assess the client in understanding the reasons for termination and obtaining alternative treatment.

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