



Counselor Spotlight: Defending Your License

Healthcare Providers Service Organization (HPSO), in collaboration with CNA, has published our *Counselor Professional Liability Exposure Claim Report: 3rd Edition*. The report includes statistical data and case scenarios from CNA claim files, along with information on where to access risk management resources designed to help counselors reduce their professional liability exposures and improve client safety.

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

This Counselor Spotlight focuses on analysis and risk recommendations for one of the most significant topics in the report: Defending Your License.

A counselor's license is one's livelihood, and its protection is paramount. A counselor's practice and conduct are expected to be safe, competent, ethical, and compliant with applicable laws and rules. Each State Board of Professional Counselors (the "Board") serves to protect the public by monitoring licensees and holding them accountable to professional practice requirements. When a complaint is asserted against a counselor to the Board, the counselor must be equipped with knowledge and resources to adequately defend themselves. Being unprepared may represent the difference between a counselor retaining or losing one's license. This Spotlight provides an overview of the Board's role in the legal and regulatory system, describes the disciplinary process, and offers helpful recommendations on defending yourself if you were to become the subject of a licensing board complaint.

21 License Protection Data Comparison

| | 2019 Dataset | 2024 Dataset |
|--|--------------|--------------|
| Number of years in dataset | 5 | 6 |
| Reported license protection adverse incidents and claims | 2,082 | 4,080 |
| Average defense payment | \$5,454 | \$5,524 |

License Defense Data Comparison of 2019 and 2024 Datasets

As shown in **Figure 21**, the total number of reported license protection adverse incidents and claims was 4,080 in the 2024 dataset, as compared to 2,082 in the 2019 dataset. This demonstrated a 96 percent increase in the total number of reported license protection adverse incidents and claims from the 2019 to 2024 dataset.

The average payment per paid license protection matter has remained relatively flat with an increase of 1.3 percent from \$5,454 in the 2019 dataset to \$5,524 in the 2024 dataset. Payments for license protection matters reflect legal expenses and associated travel, food, lodging and wage loss costs reimbursable under the policy.

Understanding the Legal System

There are three types of law, the third of which is relevant to licensing board complaints.

- Civil law protects the rights of citizens and offers legal remedies. Civil actions typically involve a plaintiff suing a defendant to collect money to compensate for an injury. One example of a civil action is a medical professional liability lawsuit. The outcome of civil cases is determined by the preponderance of evidence in favor of one party with respect to the burden of proof.
- Criminal law involves the statutes and regulations that define criminal conduct. Examples include driving under the influence, theft or assault. Criminal cases are determined by proving guilt beyond a reasonable doubt.
- Administrative law governs the rules and regulations promulgated and enforced by government agencies – *such as your State Board of Counselors*. Administrative cases are determined by the state providing ‘clear and convincing’ evidence of the allegations, although this standard may vary by state.

State Boards include in their mission to protect public health and act in accordance with the **highest standards of ethics**.

The State Professional Counselors Act

State legislatures pass laws or statutes that govern the practice of counseling, generally referred to as the Professional Counselors Act. Counselors should familiarize themselves with their state/regulatory board and with their scope of practice. Your state’s regulatory agency exercises control over the profession’s day-to-day functions. Therefore, understanding governing laws and regulations is a prudent course of action for all licensees. In addition, state/regulatory boards include in their mission to protect public health and act in accordance with the highest standards of ethics. They are also authorized to:

- Issue and regulate licenses
- Establish and promulgate rules in accordance with applicable state and federal laws
- Process and adjudicate complaints
- Educate their constituency, providing practice and information resources
- Enforce rules and regulations pertaining to counseling practice by conducting investigations and imposing disciplinary action against a counselor or counseling practice, when necessary, and with respect to reports of professional misconduct against a licensee.

Licensee Rights During the Disciplinary Process

If you are named in a licensing board complaint, the state will not provide nor recommend an attorney; however, it gives you the right to retain an attorney. The state also permits you the opportunity to present evidence to defend yourself during a hearing.

The Disciplinary Process

A board complaint can be filed against a counselor or counseling practice by various parties, such as a client, a client's family member, a colleague or an employer. You may or may not know the identity of your accuser, and the complaint can be filed anonymously. In addition, many states require self-reporting of certain violations, such as misdemeanors, felonies, and plea agreements. Involvement in an investigation to the point of resolution takes time. This process is illustrated by the graphic to the right.

Investigative Stage

While the procedures may vary by state, all complaint reports are reviewed, including anonymous submissions. Many, if not all, State Boards are required to review every complaint received to determine if the Board has the jurisdiction or authority to investigate and enforce laws and regulations related to the alleged conduct. If the Board decides to initiate an investigation into a licensee's conduct, the Board may not be permitted to reveal the complaint details or its source.

Most State Boards are comprised of practicing counselors, as well as other healthcare professionals and members of the public, who may or may not be healthcare professionals. State Boards often strive to include members from diverse practice settings in order to ensure fair representation and varied perspectives. The Board-appointed investigator will use fact-finding methods, such as participant and witness interviews, documentation and records review, perform drug screens (if impairment is asserted), and compile any pertinent information related to the events and circumstances surrounding the complaint.

During the investigation, the Board investigator may ask you to provide a written statement, explaining your version of the events and activities involving the reported incident. Or, the Board may require you to appear for an interview with the investigator and/or members of the Board at a specific date and time. Never ignore a request from the Board.

If you are contacted during the investigative stage, consult with an attorney before you respond to the Board. You must be cooperative, and respond within the deadline set by the Board, but be aware that anything you share constitutes evidence that may be used against you by a prosecuting attorney and/or the Board.

Counselors should not appear at proceedings without representation by legal counsel. Seek guidance from your legal counsel before answering questions from, or making statements to, the Board or the investigator. Your attorney may be able to speak to the investigator, learn more about your matter, and help you navigate the entire process in a constructive direction.



A board complaint can be filed against a counselor **by various parties**, such as a client, a client's family member, a colleague or an employer.

Prosecution Stage

Upon completion of the investigation, the prosecuting attorney or state agency will determine how to proceed. One option is an informal conference. Although less formal than a hearing, informal conferences are official proceedings. Your attorney should be present with you at all proceedings. During the conference:

- You will be interviewed by a member of the Board and possibly its attorney.
- You will have an opportunity to produce evidence supporting your case.
- A resolution may be offered or imposed, closing the matter.

If the Board concludes that it has significant evidence against you, the matter may proceed directly to a formal hearing where disciplinary action may be proposed. The hearing is similar to a civil trial. It may take place in a courtroom-like setting before an administrative law judge and hearing panel. The hearing panel may include several Board members, or the entire Board, depending upon the state. A court reporter records the entire proceeding, creating an official transcript. During the hearing, the following will occur:

- Information is exchanged, known as discovery, and you are entitled to review the documents possessed by the prosecutor.
- Witnesses for and against you may be called to testify.
- You may be questioned and cross-examined.
- When both sides have presented their cases, the hearing is concluded. The outcome of the formal hearing is a ruling by the administrative law judge and the Board. The process can take months or even years to fully resolve.

Allegations

Comprising 14.3 percent of all license defense closed matters with payment, sexual misconduct allegations are the most frequent allegations asserted against counselors. Sexual misconduct allegations include sexual/romantic interactions with current or former clients, their partners, or family members and on average incur \$5,695 per matter, which is higher than the overall average total expense for all license protection claims of \$5,524. **Figure 22** displays the top 10 allegation classes by distribution, representing nearly 70 percent of the total Board complaints where payment was made for legal defense of the counselor. Allegations related to failure to maintain professional standards (11.7 percent), and breach of confidentiality (8.6 percent) most frequently led to Board complaints.

22 Top Ten License Protection Primary Allegations by Distribution and Average Expense

| Allegation Class | ACA Code of Ethics Section | Distribution of Matters | Average Expense |
|--|----------------------------|-------------------------|-----------------|
| Sexual misconduct | A | 14.3% | \$5,695 |
| Failure to maintain professional standards | C | 11.7% | \$4,443 |
| Breach of confidentiality | B | 8.6% | \$5,929 |
| Reporting to third parties | C | 7.9% | \$5,097 |
| Failure to practice within boundaries of competence | C | 6.8% | \$5,207 |
| Failure to accurately present qualifications or credentials | C | 4.3% | \$6,288 |
| Abandonment | A | 4.1% | \$5,016 |
| Fraudulent billing | A | 3.9% | \$6,032 |
| Failure to observe parental or familial rights to make decisions on behalf of minor client | A | 3.8% | \$5,025 |
| Violation of professional boundaries/dual relationships (non-sexual boundary violation) | A | 3.7% | \$6,537 |
| Average total expense | | | \$5,524 |

State Board Outcomes

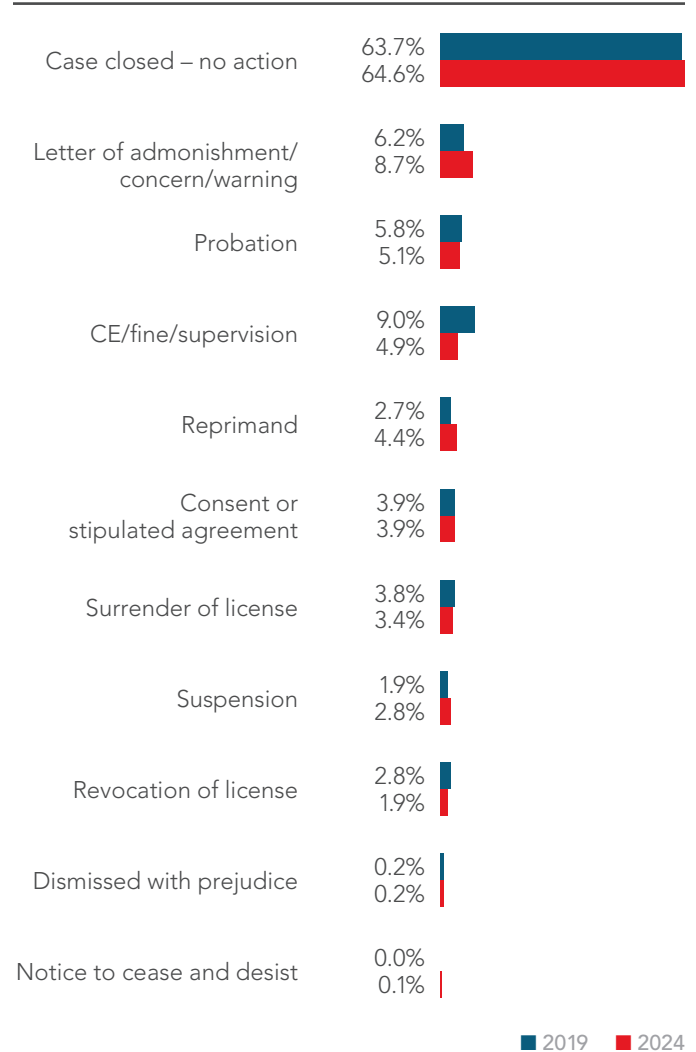
While the terminology used to describe the types of disciplinary actions Boards impose may differ between states and jurisdictions, disciplinary actions enforced by all Boards can affect a counselor's ability to practice. The Board's disciplinary actions can range from no action against the counselor, up to and including revocation of the counselor's license to practice.

While 64.6 percent of matters in the 2024 dataset resulted in the Board taking no disciplinary action against the counselor, 35.4 percent of matters resulted in the Board taking some action against the counselor. The distribution of Board matters that resulted in revocation and suspension remained relatively consistent compared to the 2019 dataset. However, matters that resulted in some kind of letter of admonishment, concern, or warning increased from 6.2 percent of matters in the 2019 dataset to 8.7 percent of matters in the 2024 dataset. Other Board decisions, such as surrender of license (3.4 percent), revocation (1.9 percent) and suspension (2.8 percent), are less common, but can effectively end the counselor's career. See **Figure 23** to the right for further detail.

In some cases, the Board may impose multiple disciplinary actions, such as issuing a reprimand coupled with a fine. Depending upon the state in which you practice, most disciplinary outcomes become a permanent matter of public record. Counselors who have experienced adverse disciplinary actions may appeal those decisions. Each state specifies the process and requirements for appealing a Board disciplinary action decision.

Even complaints resulting in less serious decisions by the Board, such as reprimands, 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.

23 Distribution of State Board of Counseling Actions



Risk Management Recommendations

Below are some proactive concepts and behaviors to help prevent a Board complaint, as well as steps to take if you are notified about a complaint related to your professional practice.

Everyday Practice

- Practice within the requirements of your state practice act, in compliance with organizational policies and procedures, and within your scope of practice and the standard of care. If regulatory requirements and organizational scope of practice differ, comply with the most stringent of the applicable regulations or policies. If in doubt, contact your state Board or professional association for clarification.
- Document your client observations, communications and actions in an objective, timely, accurate, and professional manner. Never alter a record for any reason. Never add to a record after the fact unless it is imperative for client care. If it becomes necessary to add information to the record, properly label the delayed entry. However, never add to a record for any reason after a complaint has been asserted. If additional information related to the client's care emerges after you become aware that a Board action has been initiated, discuss the need for additional documentation with your manager, your employer's risk manager, if applicable, and your legal counsel. If a complaint is asserted, preserve all records that might be associated with that complaint at least until the matter is closed.

- Respond promptly to client concerns. Every practice should have written policies and procedures for handling and responding to adverse outcomes. Counselors should regularly review your organization's policies and procedures and familiarize themselves with the specific guidance so that the process is clearly understood.
- Maintain files that may be helpful with respect to your character. Retain copies of letters of recommendation, performance evaluations, thank you letters from clients, awards, records of volunteer work and continuing education certificates.
- Immediately contact your professional liability insurer if you:
 - Become aware of a filed or potential professional liability matter against you.
 - Receive a subpoena to testify in a deposition or trial.
 - Have any reason to believe that there may be a potential threat to your license to practice.
- Refrain from discussing the matter with anyone other than your defense attorney or the claim professionals managing your matter.
- Promptly return calls from your defense attorney and insurance professionals. Contact your attorney or designated professional before responding to calls, email messages or requests for documents from any other party.
- Provide your insurer with as much information as possible when reporting such matters, including current contact information.
- Never testify in a deposition without first consulting your insurer or legal counsel.
- Copy and retain all legal documents for your records, including:
 - The summons and complaint
 - The subpoena
 - Attorney letter(s)
 - Any other legal documents pertaining to the matter



License Protection Coverage

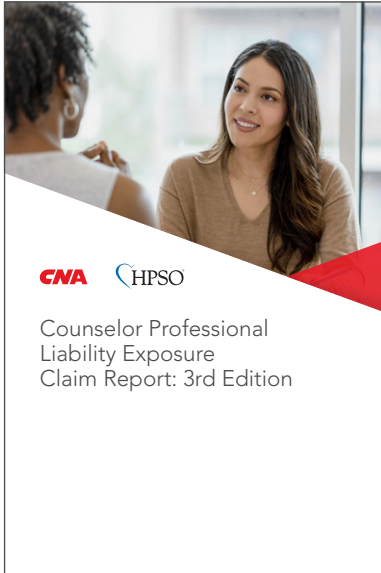
Professional liability insurance that includes coverage for license protection helps to insure Counselors against licensing board complaints by:

1
Reimbursing you up to the applicable limit for your defense of disciplinary charges arising out of a covered incident.

2
Covering costs associated with a disciplinary inquiry, up to \$25,000 annual aggregate.

3
Covering expenses such as legal representation, lost wages and travel.

Immediately **contact your professional liability insurer** if you become aware of a filed or potential **professional liability matter against you.**



A portion of this information was excerpted from HPSO and CNA's full report, *Counselor Professional Liability Exposure Claim Report: 3rd Edition*. www.hpso.com/counselorclaimreport



151 North Franklin Street
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. The information, examples and suggestions presented in this material have been developed from sources believed to be reliable, but they should not be construed as legal or other professional advice. CNA accepts no responsibility for the accuracy or completeness of this material and recommends the consultation with competent legal counsel and/or other professional advisors before applying this material in any particular factual situations. This material is for illustrative purposes and is not intended to constitute a contract. Please remember that only the relevant insurance policy can provide the actual terms, coverages, amounts, conditions and exclusions for an insured. All products and services may not be available in all states and may be subject to change without notice. Claims examples are based on actual matters, a combination of actual matters, or hypothetical situations. Settlement amounts are approximations. Certain facts and identifying characteristics were changed to protect confidentiality and privacy. "CNA" is a registered trademark of CNA Financial Corporation. Certain CNA Financial Corporation subsidiaries use the "CNA" trademark in connection with insurance underwriting and claims activities. Copyright © 2024 CNA. All rights reserved.

Healthcare Providers Service Organization is a registered trade name of Affinity Insurance Services, Inc.; (TX 13695); (AR 100106022); in CA, MN, AIS Affinity Insurance Agency, Inc. (CA 0795465); in OK, AIS Affinity Insurance Services, Inc.; in CA, Aon Affinity Insurance Services, Inc., (CA 0G94493), Aon Direct Insurance Administrators and Berkely Insurance Agency and in NY, AIS Affinity Insurance Agency. Healthcare Providers Service Organization is a registered trade name of Affinity Insurance Services, Inc., an affiliate of Aon Corporation. For more information about HPSO, or to inquire about professional liability insurance for counselors, please contact HPSO at 1-800-982-9491 or visit HPSO online at www.hpso.com.

Published 6/2024.