

# Counselor Claims and Complaints: By the Numbers

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**A**s a program director for an insurance agency specializing in providing professional liability coverage to a range of mental health and behavioral health professionals, I am often asked about the type of claims brought against counselors and what limits of coverage we would recommend to best protect insureds against claims and complaints. Most professional liability policies have a range of limits to choose from. As insurance agents, we do not recommend limits. We can, however, help counselors decide what limits of coverage to choose by discussing the types of exposures they face, their appetite for risk, and whether they have contractual or verbal requirements to carry certain minimum limits. It is also help if counselors know the types of claims that are brought, a

breakdown of payments made by types of claims and complaints that are brought, and other costs the insurance company pays on behalf of insureds.

Here are the major exposures covered under a typical professional liability policy:

- Payments resulting from court judgments or out-of-court settlements arising from lawsuits alleging professional malpractice;
- Defense Expenses incurred from defending covered claims;
- Defense cost reimbursements arising from licensing board and other regulatory hearings;
- Costs incurred due to responding to subpoenas, record requests, and depositions;



- Defense cost reimbursement and other expenses arising from suits and penalties sought by regulators due to alleged HIPAA and state privacy law violations; and
- Bodily Injury to third parties due to premises liability and other bodily injuries arising from professional services rendered.

To come up with a representative loss analysis, I chose to narrow the total claim history of our agency to annual policies in force over the last ten-year period covering mental health and addiction counselors. Most counselors held a Master's degree and were licensed/certified counselors. Life coaches and interns working under supervision were also included. Social workers, marriage and family therapists, psychologists, psychiatrists, and allied health professionals were not. Most policies were carried by insureds that continuously renewed their policies during this ten year period.

The data contained in the loss analysis was sorted by:

- Types of Claims and Complaints
- Dollar Costs of Claim Awards and Settlements by types of claims and complaints that have been settled
- Defense Expenses by types of claims and complaints that have been settled. Expenses also include those claims that are still under reserve.
- Reserve Amounts for claims and complaints that have not yet been settled (open claims have an expected claim and defense expense cost allocation)
- The Total of Claims, Defense Expense, and Reserves

## Type of Claims and Complaints

There were 997 claims and complaints submitted to our agency during the period studied. **Claims** are lawsuits (a demand for money) that are usually brought by clients or others on the behalf of clients. **Complaints** are not a demand for money; they are requests to a state licensing board or regulatory authority for disciplinary action against a counselor when a client feels the counselor has breached ethical standards. A claim or complaint can also be brought by a state or federal regulator from alleged privacy law violations (i.e., HIPAA).

In addition, there were 469 requests to insurance companies for assistance in responding to subpoenas, deposition hearings, and record requests not related to a current claim or complaint against a counselor.

| Type of Claim/Complaint             | No. | Type of Claim/Complaint            | No. | Type of Claim/Complaint               | No.  |
|-------------------------------------|-----|------------------------------------|-----|---------------------------------------|------|
| Abandonment                         | 1   | Miscellaneous                      | 4   | Dual relationship (non sexual)        | 12   |
| Improper referral/child placement   | 1   | Failure to report abuse            | 4   | Suicide of patient                    | 23   |
| Misrepresentation of credentials    | 1   | Defamation-libel/slander           | 5   | Sexual impropriety                    | 28   |
| Alleged false memory                | 1   | Improper death of patient/others   | 7   | Loss from evaluation                  | 34   |
| Failure to diagnose                 | 2   | Premises liability                 | 7   | Breach of confidentiality             | 36   |
| Wrongful detainment/hospitalization | 2   | Bodily injury (not premises)       | 7   | Incorrect treatment                   | 118  |
| Violation of Civil Rights           | 2   | Violation of legal regulations     | 9   | Board complaints                      | 666  |
| Breach of contract                  | 3   | Counter suit-due to fee collection | 9   | <b>Total Claims &amp; Complaints:</b> | 997  |
| Failure to warn                     | 4   | Reporting abuse to authorities     | 11  | Subpoena-record requests-depositions  | 469  |
|                                     |     |                                    |     | <b>TOTAL:</b>                         | 1466 |

## Dollar Costs of Claim Awards and Settlements

Of 331 lawsuits brought, 285 were closed and settled with payments made to plaintiffs. Only 46 lawsuits were closed without payments made to plaintiffs.

| Type of Claim/Complaint             | Total of Claims/Settlements | Number of Claims | % of Paid Claims |
|-------------------------------------|-----------------------------|------------------|------------------|
| Reporting of abuse to authorities   | \$ 6,000                    | 11               | 5%               |
| Loss from evaluations               | \$ 22,803                   | 34               | 5%               |
| Premises liability                  | \$ 103,495                  | 7                | 2%               |
| Bodily injury (other than premises) | \$ 118,500                  | 7                | 3%               |
| Dual relationship (non-sexual)      | \$ 139,999                  | 12               | 3%               |
| Board complaints                    | \$ 155,000                  | 2                | 4%               |
| Breach of confidentiality           | \$ 305,500                  | 36               | 7%               |
| Sexual impropriety                  | \$ 466,250                  | 28               | 11%              |
| Suicide of patient                  | \$ 700,000                  | 23               | 17%              |
| Incorrect treatment                 | \$ 891,599                  | 118              | 21%              |
| Improper death of patient/others    | \$ 1,245,000                | 7                | 30%              |
| <b>Total:</b>                       | <b>\$ 4,154,146</b>         | <b>285</b>       | <b>100%</b>      |

## Defense Expenses

Defense expenses include cost to provide lawyers to defend lawsuits brought against insureds and other costs associated with the investigation and/or defense of lawsuits, subpoenas, record requests, and depositions. With board complaints, most expenses are incurred as reimbursements to insureds for their cost to hire lawyers to help defend them against licensing board complaints.

| Type of Claim/Complaint              | Defense Costs and Expenses | % of Total Defense Costs |
|--------------------------------------|----------------------------|--------------------------|
| Allege false memory                  | \$ 688                     | 2%                       |
| Premises liability                   | \$ 9,076                   | (included)               |
| Violation of civil rights            | \$ 12,060                  | (included)               |
| Failure to report abuse              | \$ 12,618                  | (included)               |
| Counter suit                         | \$ 17,097                  | (included)               |
| Bodily injury-other than premises    | \$ 19,791                  | (included)               |
| Violation of legal regulations       | \$ 23,746                  | (included)               |
| Failure to diagnose                  | \$ 29,855                  | (included)               |
| Reporting of abuse to authorities    | \$ 76,911                  | (included)               |
| Improper referral/child placement    | \$ 134,892                 | 2%                       |
| Wrongful detainment/hospitalization  | \$ 137,331                 | 2%                       |
| Defamation-libel/slander             | \$ 195,879                 | 3%                       |
| Breach of confidentiality            | \$ 305,777                 | 4%                       |
| Suicide of patient                   | \$ 312,088                 | 4%                       |
| Dual relationship (non-sexual)       | \$ 341,523                 | 5%                       |
| Improper death of patient/others     | \$ 346,694                 | 5%                       |
| Loss from evaluation                 | \$ 402,824                 | 5%                       |
| Subpoena-record requests-depositions | \$ 599,893                 | 8%                       |
| Sexual impropriety                   | \$ 664,793                 | 9%                       |
| Board complaints                     | \$ 1,878,930               | 25%                      |
| Incorrect treatment                  | \$ 1,947,673               | 26%                      |
| <b>Total:</b>                        | <b>\$7,470,138</b>         | <b>100%</b>              |

## Reserve Amounts

This lists the dollar amounts of the anticipated costs (reserves) that the insurance company expects to pay on claims that are still open.

| Type of Claim/Complaint              | Reserves           | % of Total Reserves |
|--------------------------------------|--------------------|---------------------|
| Violation of legal regulations       | \$ 3,090           | 3%                  |
| Premises liability                   | \$ 20,000          | (included)          |
| Suicide of patient                   | \$ 25,000          | (included)          |
| Dual relationship (non-sexual)       | \$ 26,555          | (Included)          |
| Defamation-libel/slander             | \$ 37,891          | 2%                  |
| Failure to diagnose                  | \$ 45,145          | 2%                  |
| Breach of confidentiality            | \$ 59,384          | 3%                  |
| Improper referral/child placement    | \$ 70,108          | 3%                  |
| Sexual impropriety                   | \$ 95,705          | 4%                  |
| Reporting of abuse to authorities    | \$ 176,116         | 8%                  |
| Subpoena-record requests-depositions | \$ 207,344         | 9%                  |
| Loss from evaluation                 | \$ 209,341         | 10%                 |
| Board complaint                      | \$ 537,568         | 24%                 |
| Incorrect treatment                  | \$ 689,400         | 31%                 |
| <b>Total:</b>                        | <b>\$2,202,748</b> |                     |

## Conclusion

The numbers presented in these charts are interesting as they show that:

- Reported licensing board complaints are double the number of reported lawsuits with 666 board complaints vs. 331 lawsuits.
- 32% of all reports to insurance companies are a request for assistance with subpoenas, record requests, and depositions.
- The cost to defend lawsuits and complaints are almost twice the settlement amounts.
- Though suits related to the death of patients/others account for 10% of the number of all settled claims, they represent 47% of the total cost of paid claims.
- The total cost to **defend** claims and complaints (\$7,470,138) is higher than the total of all paid claims and reserves (\$6,356,894).
- In any given year, 1 of every 100 insureds reports a claim or complaint.

At our agency, when we are asked what liability limits a counselor should carry, we explain that the industry standard limits for Professional Liability are \$1,000,000/\$3,000,000. By this, we mean that these are the limits most required of counselors by third parties and they are also the most frequently chosen limits. For 99% of insureds that had \$1,000,000/\$3,000,000 limits, the limits they chose were enough to settle their claims without extra cost to them. Of the 285 claims that settled, one insured had claim and expense payments that fell between \$1,000,000 and \$1,500,000. Four had claim and expense payments that fell between \$500,000 and \$999,999. A couple more claims may exceed \$500,000 once claims still under reserve are settled. The numbers of insureds who came close to or exceeded policy limits of \$1,000,000/\$3,000,000 represent less than 1% of insureds with claims.

When considering which limits to purchase for Licensing Board Defense coverage, policies usually offer a choice of limits. In our office, insureds can choose limits ranging from \$5,000 to \$150,000 per hearing. Once again, policy limits for this coverage will reimburse an insured for legal



costs they incur if a client brings a complaint to a state licensing board or regulatory authority. The chart below shows the range of payments made by the insurance companies for this coverage:

| Licensing Board Defense Payments | # of Complaints | % of Total Complaints |
|----------------------------------|-----------------|-----------------------|
| \$ 0 - \$ 4,999                  | 462             | 69%                   |
| \$ 5,000 - \$24,999              | 184             | 27%                   |
| \$25,000 - \$49,000              | 12              | 2%                    |
| \$50,000 - \$74,999              | 6               | 1%                    |
| Over \$75,000                    | 2               | 1%                    |
| <b>Total:</b>                    | <b>666</b>      |                       |

Most of the insureds in this study purchased \$5,000 limits for Defense Reimbursement for Licensing Board coverage. For 69% of insureds who reported a board complaint, their \$5,000 limit was enough. But 18% had total defense costs that exceeded the policy limits they purchased. These 119 insureds paid the difference of what their lawyers charged for services and what their policy paid. If the thought of digging into one's own pocket to contribute to defense costs for licensing board hearings will cause sleepless nights, then higher limits should be considered.

Take into consideration that over time, claim awards trend higher as do lawyer fees. If you had a professional liability insurance policy for many years without giving much thought to policy limits, make this the year you review your coverage limits with your insurance provider.



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