



**CNA**

 HPSO®

Counselor Professional  
Liability Exposure  
Claim Report: 3rd Edition

The American Counseling Association (ACA) leads the counseling profession by supporting counselors in their role within the mental healthcare community for the support, protection and well-being of clients. ACA does this through advocacy, education, practice tools, and resources for counselors to engage and learn from each other.

ACA is proud to contribute and support the *Counselor Professional Liability Exposure Claim Report: 3rd Edition*. We thank the CNA insurance companies (CNA) and Healthcare Providers Service Organization (HPSO) for their work. ACA believes this report will assist our members in enhancing their client safety practices that advance the profession and helps counselors deliver the highest quality client-centered care.

Shawn Boynes

Chief Executive Officer, American Counseling Association



# Key Findings of the Counselor Professional Liability Exposure Claim Report

40%

The average total incurred for professional liability claims has **increased** almost **40 percent** from \$113,642 to **\$157,492**. ([Page 8](#))



There was a significant increase in the number of **claims with paid indemnity greater than or equal to \$500,000** which **increased from 1.4 percent** of the 2019 dataset to **7.0 percent** of the 2024 dataset. ([Page 9](#))

21.9%

The percentage of **private practice-related claims** increased from **10.1 percent** in the 2019 dataset to **21.9 percent** of the closed claim distribution in the 2024 dataset. ([Page 11](#))



A notable change from the prior report has been an **increase in the number of claims** that occurred outside of the “traditional” office setting using virtual technology. **3.9 percent of claims** in the 2024 dataset involved instances in which counseling was rendered via **telebehavioral health**. ([Page 13](#))

\$317,516

Claims involving the **telebehavioral health** location demonstrated the potential for **high severity loss exposures** in the 2024 dataset with an **average total incurred of \$317,516**. ([Page 14](#))



Claims asserting violations of **The counseling relationship** (ACA Code of Ethics, section A) **remained the top allegation category** in the 2019 and 2024 datasets. ([Page 16](#))

A notable change from the prior report is the **rise of claims** involving allegations in the **Evaluation, assessment, and interpretation** category (ACA Code of Ethics, section E), which represents **9.4 percent** of the claim distribution in the 2024 dataset and an **average total incurred loss of \$460,671**. ([Page 17](#))



**Subpoena assistance** matters represent nearly **two-thirds (66 percent)** of the claims that closed with payment. ([Page 22](#))

66%

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. ([Page 24](#))



**Sexual misconduct, failure to maintain professional standards, and breach of confidentiality** most frequently led to licensing board complaints. ([Page 26](#))

64.6%

The **majority** of license protection matters (64.6 percent) **closed with no action taken by the Board**, representing a successful defense of the insured counselor. ([Page 30](#))



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# Introduction

In collaboration with our business partners at Healthcare Providers Service Organization (HPSO), and as part of our ongoing effort to provide informative and impactful educational resources to the healthcare community, CNA is pleased to present the 2024 Counselor Professional Liability Exposure Claim Report: 3rd Edition. The report presents a unique perspective of professional liability closed claims, subpoena assistance matters, and license protection matters involving state licensing board actions.

The COVID-19 pandemic has affected the healthcare industry in a number of ways. With court system and licensing board closures, as well as litigation delays, readers may contemplate the potential impact of the COVID-19 pandemic on the 2024 dataset and comparisons to past reports. A review of the 2019 and 2024 datasets revealed no significant impact in the 2020-2022 years compared to prior years. Notably, the majority of closed professional liability claims in the 2024 dataset occurred prior to 2020. The variation in claims closed and average total incurred by year during the pandemic was similar to non-pandemic years overall. This result may change in the upcoming months, or years, as additional claims from the pandemic period are asserted and closed.

Recognition and understanding of the types of risks that are specific to the profession of counseling will provide a foundation for enhancing risk assessment and risk mitigation strategies that apply broadly to all types of counseling settings. Throughout the report we will be referring to the [2014 ACA Code of Ethics](#) for categorization of allegations and as a source of professional and risk control guidance. Our goal is to help counselors enhance their practice and minimize professional liability exposures by identifying loss patterns and trends. We believe that the summary of exposures and resources, included and referred to in this report, will benefit our insureds and the profession at large. We hope you find this resource to be a useful tool for improving counseling practices and mitigating risk exposures.

## Terms

For the purposes of this report only, please refer to the following terms and explanations.

- **2019 dataset** – A reference to the prior CNA report, entitled “*Counselor Liability Claim Report: 2nd Edition*” which included claims that closed from 2013-2017.
- **2024 dataset** – A reference to this CNA report, entitled “*Counselor Professional Liability Exposure Claim Report: 3rd Edition*” which includes claims that closed from 2018-2023.
- **Distribution** – Refers to a specific group of closed claims with categories expressed as a percentage of the total.
- **Expense payment** – Monies paid in the investigation, management or defense of a claim, including, but not limited to, expert witness expenses, attorney fees, court costs and record duplication expenditures.
- **Total paid indemnity** – Monies paid on behalf of an insured counselor in the settlement or judgment of a claim.
- **Total incurred** – The sum of total paid indemnity and expense payments.
- **Average total incurred** – The costs of total paid indemnity and expense payments, divided by the total number of claims with payment.



# Part 1: Overview

## Dataset and Methodology

Within this report are two datasets that are used to illustrate changes in the distribution and severity of claims between reports. Since the prior report published in 2019, there have been a total of 7,770 adverse incidents and claims affecting counselors.

The 2024 dataset includes professional liability, subpoena assistance and license protection closed claims that met the following criteria:

- Involved a CNA-insured counselor, counseling student or business/corporate entity;
- Closed between January 1, 2018, and December 31, 2023, regardless of when the claim was first reported or initiated; and
- Resulted in a payment or expense of at least one dollar.

The 2019 dataset followed similar criteria, with claims closed between January 1, 2013, and December 31, 2017.

## Limitations and Considerations

- Indemnity and expense payments include only monies paid by CNA on behalf of its insureds.
- Other possible sources of payment, such as payments by co-defendants in response to the claim, are not considered.
- The data reflects the “per claim” policy limits, which are typically \$1,000,000 for CNA primary professional liability insurance and applicable \$25,000 sub-limits for sexual misconduct-related claims.
- All incurred cost and expense amounts are attributed to the year in which the claim closed, regardless of when the claim was first reported or when the alleged injury occurred.
- Because of the uniqueness of each individual claim, the average total incurred amounts displayed within this report may not necessarily be indicative of the severity attributed to any single claim.
- As some elements of the inclusion criteria in each dataset and in this report overall may differ from that of the previous CNA/HPSO counselor claim analyses and claim reports from other organizations, readers should exercise caution about comparing these findings with other reviews.

### Spotlights on Risk Management

To supplement the *Counselor Professional Liability Exposure Claim Report: 3rd Edition*, CNA

and HPSO will publish seven Spotlight documents, which will highlight specific topics and provide greater detail on key risk management strategies and client safety practices.

The following Counselor Spotlights include resources such as case studies, risk control considerations, and self-assessment checklists designed to help counselors evaluate and mitigate risk exposures associated with current practice:

- [Defending Your License](#)
- [Non-Sexual Boundaries](#)
- [Telebehavioral Health](#)
- [Liability Risks for Business Owners and Supervisors](#)
- [Managing Clients in Crisis](#)
- [Well-being and Provider Mental Health](#)
- [Documentation](#)



Our goal is to **help counselors** enhance their practice and **minimize professional liability exposures** by identifying loss patterns and trends.

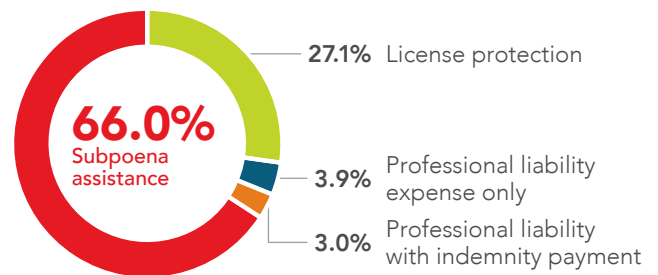
# Distribution and Average Total Incurred by Coverage Category

There are three categories of closed claims included in this report: Professional Liability (PL), Subpoena Assistance and License Protection. **Figure 1** reveals the overall distribution of claims with payment for these coverage categories, with an additional breakdown of the PL claims that closed with indemnity and those that were categorized as expense only.

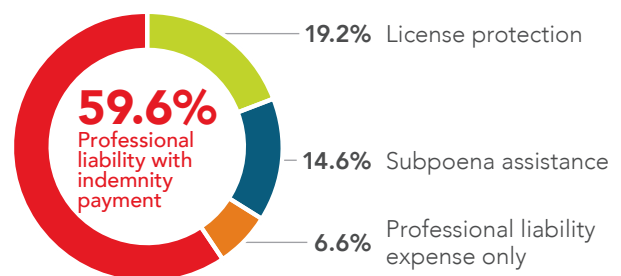
- Although PL claims represent only 6.9 percent of the overall claims in this report, their total incurred severity is significantly higher than other types of incidents, as highlighted in **Figure 2**.
- Furthermore, while representing only 3.0 percent of the claims in the overall dataset, PL claims with indemnity payment represent 59.6 percent of the total incurred losses discussed in this report.
- Subpoena assistance claims have continued to increase as a portion of the total distribution but have not seen any change in their average incurred severity compared to prior datasets.

Professional liability claims with indemnity payment represent **59.6 percent** of the total incurred losses.

## 1 Distribution of Claim Counts by Coverage Category



## 2 Distribution of Total Incurred by Coverage Category



### Coverage Category Definitions

Coverage	Definition
<b>Professional Liability</b>	Provides coverage for defense costs and legally obligated payments to third parties as a result of a claim arising out of a covered medical incident.
<b>Subpoena Assistance</b>	Provides coverage for attorney's fees and other administrative costs to respond to a subpoena to produce counseling records and/or prepare you for a deposition or court testimony related to a lawsuit in which you are not named.
<b>License Protection</b>	Reimburses you up to the applicable limit for your defense of disciplinary charges arising out of a covered incident, covering expenses such as legal representation, lost wages and travel.

While this section of the report focuses on PL claims with indemnity payments, it is important to note that more than half of the total PL matters resulted in expense payments only. Overall, these claims resulted in an average payment of \$13,125 that includes attorney fees, investigation and expert witness fees, record duplication expenditures, court filing costs, and other administrative matters. Some reasons why claims may incur expenses without an indemnity payment include:

- 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 was opened; however, the counselor was never named in the lawsuit, resulting in the claim being closed.

In addition to the higher costs incurred for PL claims with indemnity payments, the complexity of these claims resulted in a longer resolution time, with the average time from occurrence to closure in this dataset being 3.5 years and the longest being more than 12 years.

The time from when an incident occurs to when a claim or lawsuit is closed varies depending upon multiple factors including, but not limited to, the applicable statute of limitations, court calendars and the complexity of the matter. The fact that a PL claim with indemnity payment may take, on average, 3.5 years to close underscores the importance of comprehensive documentation to preserve relevant client information. Documentation of the counselor’s assessment and treatment plan along with the client’s response may be utilized to demonstrate that the standard of care was met by the counselor. Concise and thorough documentation is also critical in defending license protection matters and preparing the counselor for a deposition.

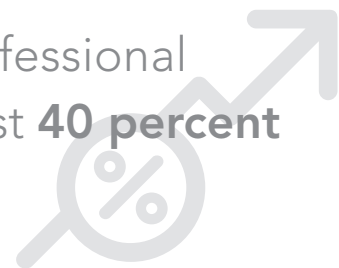
### 3 Average Total Incurred by Coverage Category

Professional liability with indemnity payment	\$157,492	
Professional liability expense only	\$13,125	
License protection	\$5,524	
Subpoena assistance	\$1,725	

### 4 Average Time to Close by Coverage Category

Professional liability with indemnity payment	3.5 yrs	
Professional liability expense only	2.7 yrs	
License protection	2.1 yrs	
Subpoena assistance	0.4 yrs	

The average total incurred for professional liability claims has **increased** almost **40 percent** from \$113,642 to **\$157,492**.



#### How Courts Define Malpractice

Four elements must exist for an incident to be considered malpractice:

**1**  
**Duty**  
A counselor-client relationship must exist.

**2**  
**Breach**  
Standard of care was not met.

**3**  
**Causation**  
Injury was caused by the counselor’s error.

**4**  
**Harm**  
Injury resulted in damages.



# Part 2: Counselor Professional Liability Exposures and Data Analysis

Part 2 of the report provides selected findings of Professional Liability (PL) closed claims from the 2024 dataset, including comparisons to the 2019 dataset. All PL claims included in this section resulted from an allegation of professional malpractice in which an insured is named and there is a demand for compensation. The demand may be asserted by a client, a surviving family member or estate, or by an attorney representing the plaintiff. Part 2 also includes case studies highlighting potential risks and associated liability exposures experienced by counselors, as well as risk management considerations to identify opportunities and methods to mitigate these exposures.

Our goal is to help counselors enhance their practice and minimize PL exposures by identifying loss patterns and trends in the following categories:

- Distribution of indemnity payments
- Practice/coverage type
- Specialty
- Location
- Allegation
- Injury

## Comparison of Average Total Incurred and Claim Count Distributions

- Since the prior report, the average total incurred for professional liability claims has increased almost 40 percent from \$113,642 to \$157,492 as reflected in **Figure 5**.
- This change in severity corresponds with a significant increase in the number of claims with paid indemnity greater than or equal to \$500,000, which increased from 1.4 percent of the 2019 dataset to 7.0 percent of the 2024 dataset as depicted in **Figure 6**.

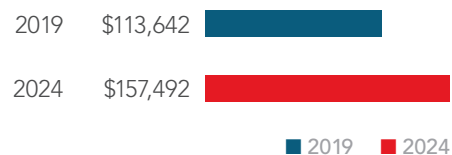
The 2024 dataset included several high severity claims that accounted for the increase in overall claim severity as compared to the 2019 dataset. While the increase in claim severity is multifactorial and largely dependent upon the individual facts and circumstances of each case, it is important to consider industry trends, such as social inflation, in the analysis of claim severity.

There was a significant increase in the number of **claims with paid indemnity greater than or equal to \$500,000** which **increased from 1.4 percent** of the 2019 dataset to **7.0 percent** of the 2024 dataset.



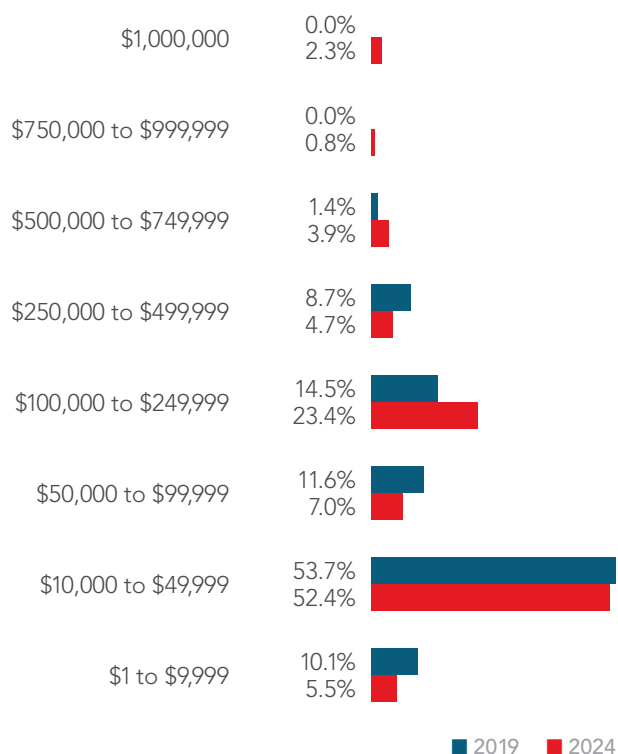
## 5 Comparison of Average Total Incurred

Closed Claims with Paid Indemnity of ≥ \$1



## 6 Comparison of Closed Claim Count Distributions

Closed Claims with Paid Indemnity of ≥ \$1

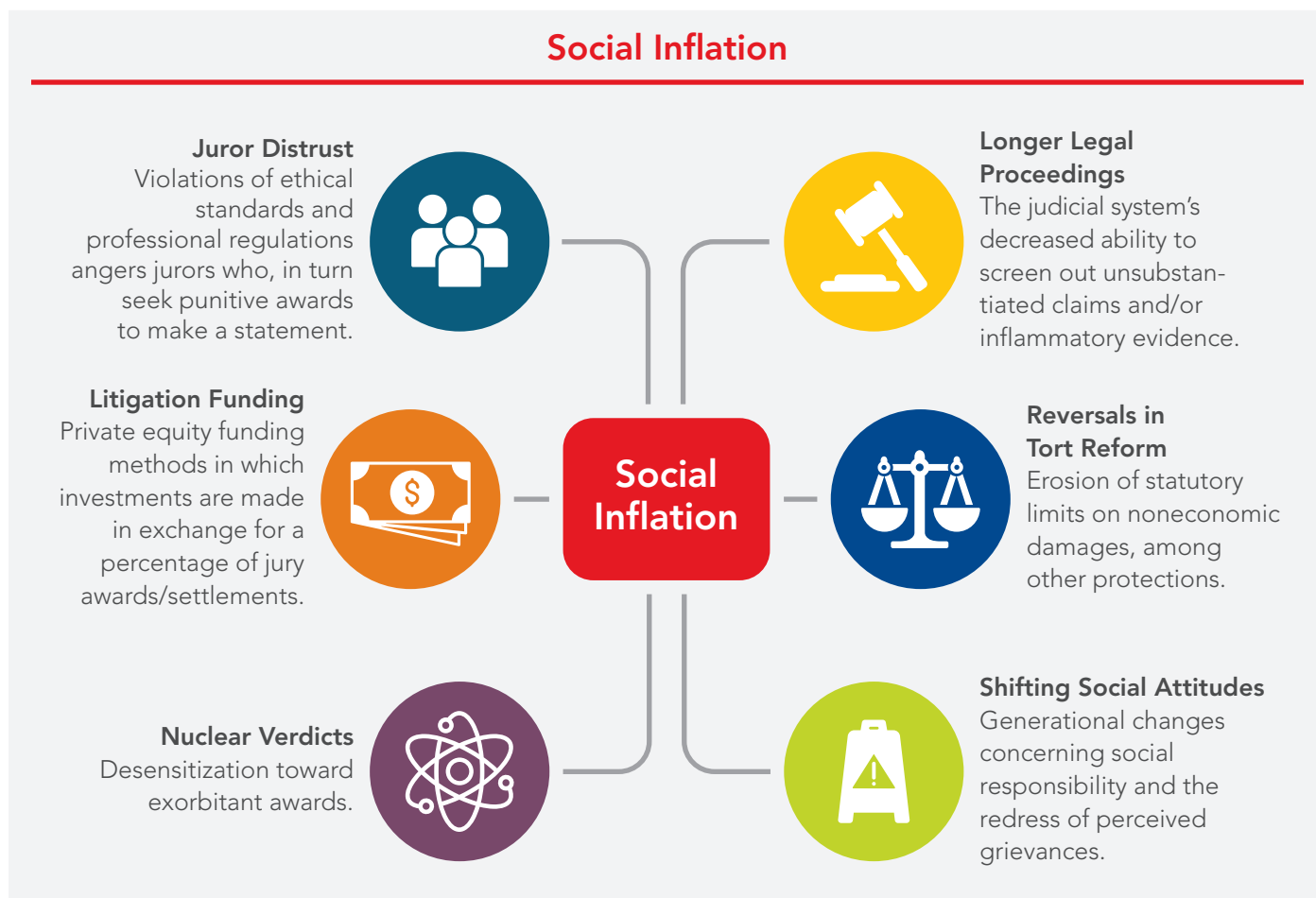


## Social Inflation

An industry-wide emerging risk affecting claim severity is referred to as “social inflation,” also known as “tort inflation.” Social inflation occurs when the overall rate of increasing claim severity is greater than the general inflationary rate. It stems from political, legal and cultural factors that impact societal views toward jury awards and claim settlement values. The counseling profession is not immune to the factors that contribute to social inflation. Professional liability risks, such as violations of counseling standards, sexual misconduct and boundary violations, among others, are factors that may create societal distrust and instill sympathy in potential jurors, thereby escalating claim-related indemnity and expense costs.

Another factor fueling social inflation is the legal landscape in which plaintiff attorneys leverage behavioral science concepts and strategies such as the reptile theory to influence jurors. This strategy involves plaintiff attorneys portraying the assertion made against defendants as a global threat to society in an effort to instill fear as a method of altering jurors’ decision-making process.

Social inflation is a complex, multifaceted problem, requiring concerted legislative action at the state and federal level. However, counselors may engage in measures to minimize their own exposure to litigation, such as those described in the American Counseling Association (ACA) Code of Ethics.



## Closed Claims by the Type of Insured

In a change from prior claim reports, counselors receiving coverage through a CNA-insured private practice have been separated into the two following categories:

- Private practice, single-member firm: Coverage is provided to the practice and the individual counselor who owns the practice.
- Private practice, multi-member firm: Coverage is provided to the practice and practice owner, as well as employees of the practice.

Practice ownership offers many benefits to counselors, such as greater autonomy regarding scheduling, client population and business management. However, private practice ownership also requires business acumen related to marketing, billing, and other administrative functions, including the development of clinical policies and on-call coverage procedures. Policies should be instituted that require counselors to proactively seek out collaboration and supervision, when appropriate. Liability exposures for owners of private practices are discussed separately within this report in the section entitled “Vicarious Liability.”

As indicated in **Figure 7**, there has been a notable increase in the percentage of claims involving private practices. The percentage of private practice-related claims increased from 10.1 percent in the 2019 dataset to 21.9 percent of the closed claim distribution in the 2024 dataset. This was driven by an increase in the number of closed claims against private practice single-member firms (from 2.9 percent in the 2019 dataset to 12.5 percent in the 2024 dataset).

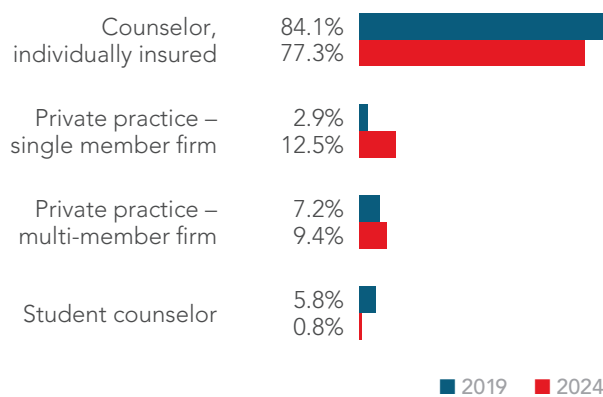
In addition to an increased portion of claims, claims related to both single and multi-member private practices experienced the largest change in severity with a combined severity increasing from under \$60k in the 2019 dataset to over \$190k in the 2024 dataset.

**Figure 8** reveals that claims involving single-member and multi-member private practices have similar severities in the 2024 dataset. However, it is important to understand that the types of liability exposures may vary significantly.

The percentage of **private practice-related claims** increased from **10.1 percent** in the 2019 dataset to **21.9 percent** of the closed claim distribution in the 2024 dataset.

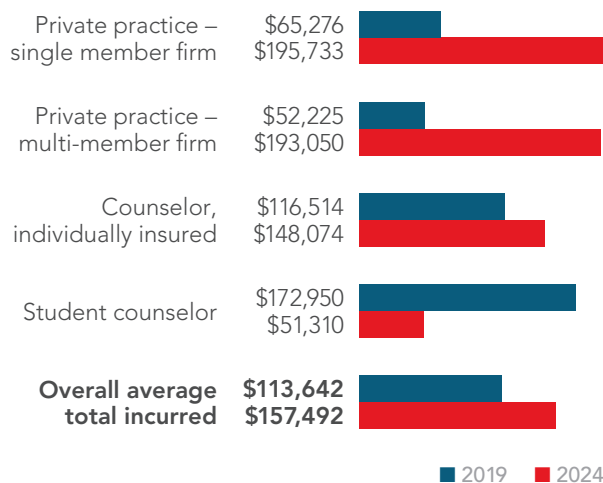
### 7 Distribution of Closed Claims by Type of Insured

Closed Claims with Paid Indemnity of ≥ \$1



### 8 Average Total Incurred of Closed Claims by Type of Insured

Closed Claims with Paid Indemnity of ≥ \$1



## Vicarious Liability

Private practice owners who employ or contract with counselors, interns, students, social workers and other licensed professionals, i.e. multi-member private practices, have professional liability exposures based upon the inherent duties related to ownership, including hiring, screening, supervision and policy management, as well as vicarious liability for treatment and care on behalf of the corporate entity. Vicarious liability is the exposure that a counseling practice owner assumes for the negligent actions of employees and supervisees. In section F.1.a., the [ACA Code of Ethics](#) describes the responsibilities of counselors who are in a supervisory role. The expectation is that counselor supervisors are engaged in the oversight process, conduct ongoing one-on-one meetings and ensure that supervisees follow the ACA Code of Ethics and the entity's policies and procedures. In addition, single-member private practice owners who are incorporated may be named individually and as the practice owner if the practice is also named in a lawsuit.

There were multiple claims in the 2024 dataset involving assertions against the practice and counselor owner of the practice that an intern or employee engaged in non-sexual boundary violations or sexual misconduct with clients. The assertion was that the private practice owner should have proactively managed the situation to prevent harm to the client. The private practice owner in these claims was held vicariously liable for the acts of the employees, interns or independent contractors providing services on behalf of the corporate entity.

The following claim examples provide additional perspectives on the concept of vicarious liability:

- A counseling practice owner was named in a lawsuit in which the client's family asserted that an intern failed to diagnose and treat the client's bipolar disorder, resulting in death by suicide. An employed counselor of the practice was responsible for supervising the intern. The family asserted that the practice owner was vicariously liable for failing to monitor the supervising counselor's actions and to ensure appropriate oversight of the intern. In addition, the practice did not have adequate policies related to oversight, supervision and client assignments which further challenged the defense of this claim. Based upon the client's clinical condition and history of psychotic episodes, experts opined that the intern lacked experience to manage this client and that a licensed counselor should have been assigned, rather than an intern. The total incurred was more than \$200,000.
- A practice owner was supervising an intern who engaged in negligent and unethical counseling practices and boundary violations. The intern failed to obtain informed consent for counseling and accepted large monetary donations from the client to support a program owned by the practice owner/supervising counselor of the intern. The practice owner was unaware of the unethical behavior until there was an altercation between the client and the intern, whereby the client requested a refund of the money and filed a claim. Because the supervisor's engagement with the intern was limited to "signing off" on counseling notes and did not include face-to-face discussions regarding the client's progress, the violations were not identified. The total incurred to resolve this claim was greater than \$600,000.

# Analysis of Professional Liability Claims

The following section summarizes professional liability claim distribution and average total incurred claim costs across various categories, including specialty, location and allegations.


## Analysis of Counselors by Specialty

Although delineated in **Figure 9**, Mental health, LPC and LPCC licensure all represent counselors who may independently diagnose, assess and treat mental health disorders. However, developing specific comparisons of these categories is difficult as the licensure varies by state.

## Analysis of Location

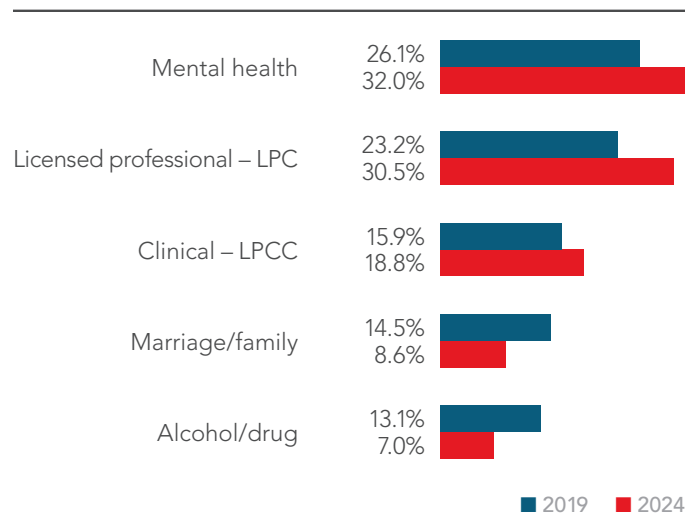
- A notable change from the prior report has been an increase in the number of claims that occurred outside of the “traditional” office setting using virtual technology. Claims in which counseling was rendered via telebehavioral health increased from 0 percent in the 2019 dataset to 3.9 percent in the 2024 dataset as displayed in **Figure 10**. Going forward, it is anticipated that a continued increase in exposures in this area will be realized. This trend will be closely monitored and resources will be provided to assist in risk prevention and risk mitigation.
- Furthermore, claims involving the telebehavioral health location demonstrated the potential for high severity loss exposures in the 2024 dataset with an average total incurred of \$317,516 as indicated in **Figure 11**.
- The percentage of claims involving group practice settings not only increased from 15.9 percent in the 2019 dataset to 28.9 percent in the 2024 dataset, but also increased in severity by 122.8 percent from \$78,963 in the 2019 dataset to \$175,940 in the 2024 dataset, as shown in **Figure 11**.

**3.9 percent** of claims in the 2024 dataset involved instances in which counseling was rendered via telebehavioral health.



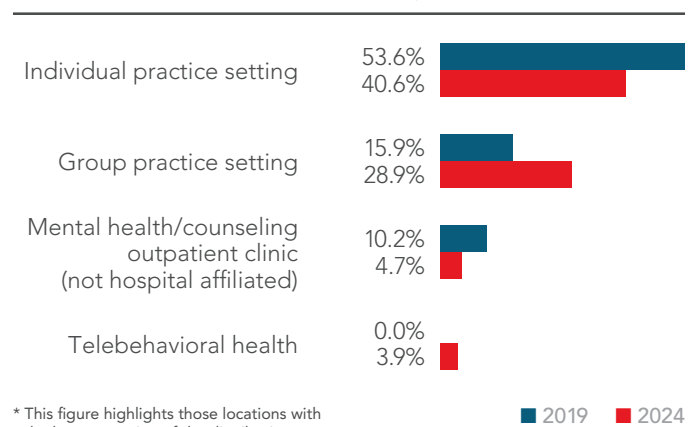
## 9 Distribution of Closed Claims by Top Specialties

Closed Claims with Paid Indemnity of ≥ \$1



## 10 Distribution of Closed Claims by Top Locations

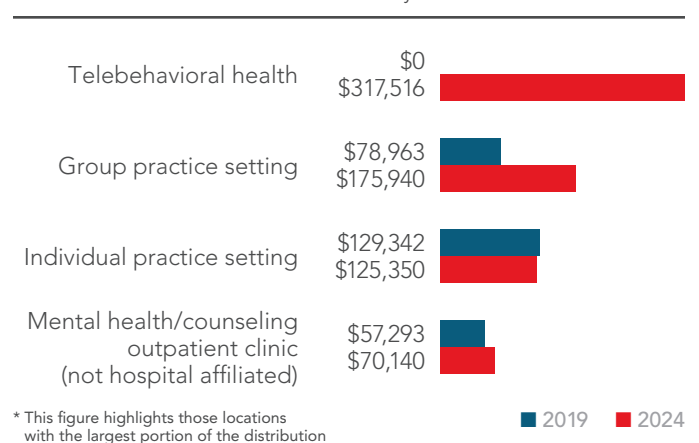
Closed Claims with Paid Indemnity of ≥ \$1



\* This figure highlights those locations with the largest portion of the distribution

## 11 Average Total Incurred by Top Locations

Closed Claims with Paid Indemnity of ≥ \$1



\* This figure highlights those locations with the largest portion of the distribution

Telebehavioral health or “distance” counseling can be synchronous (telephone, chat or via teleconferencing) or it can be asynchronous (email or texting) and not in real time. During the pandemic, telebehavioral health became a vital means for clients to maintain continuity of behavioral health services, and this mode of practice continues to be leveraged as a useful tool for ensuring access to counseling.

Notwithstanding the benefits of telebehavioral health, there are professional liability risk exposures specific to this mode of practice. From a client perspective, there may be challenges such as speech/hearing impairments and lack of available technology. Risk exposures from a counselor’s perspective include managing emergencies, privacy breaches, technological challenges, informed consent and adherence to state licensing laws, among others. As the pandemic has abated, understanding and complying with state-specific laws and regulations regarding interstate counseling and telebehavioral health remains imperative.

Section I.1.a of the ACA Code of Ethics requires that counselors align counseling practices to the ethical codes, professional organizations or certification and licensure bodies of which they are members. “Lack of knowledge or misunderstanding of an ethical responsibility is not a defense against a charge of unethical conduct.” Similarly, lack of knowledge and/or nonadherence regarding laws, standards and regulations also impedes the ability to defend a professional liability claim. Counselors should be mindful of the fact that telebehavioral health is merely a mode for providing services and that they are held to the same ethical, professional and legal standards that apply to in-person counseling. The promulgation of the Counseling Compact will be beneficial in mitigating risk exposures related to interstate counseling. The Compact will afford counselors greater flexibility to provide services across state lines and enhance access to behavioral health services for clients residing in rural areas and for underserved populations.

Since telebehavioral health encounters are not face-to-face, boundaries may become blurred, and there may be a propensity to become complacent regarding standards, laws and regulations. Claims involving the telebehavioral health location in the 2024 dataset were related to non-sexual boundary violations, sexual misconduct, and state licensing matters. Closed claims included scenarios in which counselors circumvented state licensing requirements applicable to telebehavioral health by presenting themselves as life coaches or case managers, for which the state requirements may be less stringent.

Claims involving the **telebehavioral health** location demonstrated the potential for **high severity loss exposures** in the 2024 dataset with an **average total incurred of \$317,516**.





The following cases exemplify claims involving telebehavioral health:

- A client who was receiving counseling for a substance use disorder, depression and anxiety relocated to a state in which the counselor was not licensed. The counselor offered to provide telebehavioral health services, under the guise of a life coach, in order to circumvent the interstate licensing laws. During the counseling period, the counselor sent numerous text and email messages to the client, as well as posted photographs on social media depicting inappropriate sexual content after “friending” the client. The counselor also billed the client for personal telephone calls, texts and social media chats, unrelated to the client’s behavioral health conditions. The client filed a lawsuit asserting that the sexual misconduct and boundary violations exacerbated the underlying behavioral health conditions for which counseling was sought. It was determined during litigation that the counselor violated state licensing laws, as well as the ACA Code of Ethics, section A.5.b. This case was settled in mediation resulting in a total incurred of more than \$490,000.
- An online counseling company contracted with a counselor to provide distance counseling services via texting and videoconferencing. During a counseling “chat” session, the contracted counselor was multi-tasking and sending personal texts in another chat room. The counselor inadvertently sent the client a text containing sexually explicit content that was intended for his personal chat communications. The client filed a lawsuit alleging sexual misconduct resulting in emotional distress, lack of trust with health professionals and the need for extensive future mental health treatment. The ACA Code of Ethics outlines this topic in section H, and offers recommendations for distance counseling, technology and social media. This case settled for the policy limit for sexual misconduct.

## Telebehavioral Health Liability Self-Assessment and Resources

**In addition to the technological and clinical concerns that counselors should consider before engaging in telebehavioral health services, they should also weigh the liability risks associated with extending telebehavioral health services to new and established clients, including:**

- Evaluate whether telebehavioral health services should be utilized for all clients, only for clients who have certain kinds of concerns, or only for those clients who initiated treatment during an in-person session.
- Establish a process for verifying the client’s identity.
- Discuss and document the informed consent process including issues unique to the use of telebehavioral health.
- Know your state’s legal requirements for informed consent.
- Comply with technological/data security requirements under applicable state and federal laws and regulations.
- Understand billing/payment guidelines.
- Ensure contingencies are in place in the client’s geographic location in the event of an emergent or urgent situation.

**For more information on telebehavioral health, we recommend consulting the following resources:**

- [American Counseling Association \(ACA\): Telehealth Apps](#)
- [U.S. Department of Health and Human Services \(HHS\): Telehealth for Providers](#)
- [U.S. Department of Health and Human Services \(HHS\): HIPAA for Professionals](#)
- [HealthIT.gov: Health IT Privacy and Security Resources for Providers](#)
- [American Psychiatric Association: App Advisor Initiative](#)
- [HPSO: Counselor Spotlight: Telebehavioral Health](#)

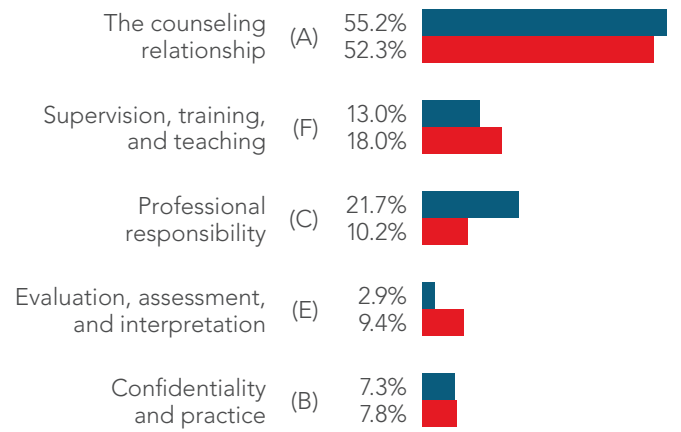
## Analysis of Allegations

The 2019 dataset and the 2024 dataset of professional liability allegations were organized utilizing the ACA Code of Ethics.

- Claims asserting violations of **The counseling relationship** (ACA Code of Ethics, section A) remained the top allegation category in the 2019 and 2024 datasets, as depicted in **Figure 12**. Included in the claims asserting counseling relationship violations are two of the top allegation sub-categories of prohibited sexual and/or romantic relationships and other non-professional interactions as illustrated in **Figure 14**.
- The category of claims regarding **Supervision, training, and teaching** (ACA Code of Ethics, section F) have increased from 13.0 percent of the distribution in the 2019 dataset to 18.0 percent in the 2024 dataset. The average total incurred for this category more than doubled from \$80,749 in the 2019 dataset to \$161,510 in the 2024 dataset as highlighted in **Figure 13**.
- **Figure 12** demonstrates that a notable change from the prior report is the rise of claims involving allegations in the **Evaluation, assessment, and interpretation** category (ACA Code of Ethics, section E), which represents 9.4 percent of the claim distribution in the 2024 dataset and an average total incurred loss of \$460,671, as compared to 2.9 percent of the claim distribution with an average total incurred of \$24,933 as noted in **Figure 13**.

## 12 Distribution of Closed Claims by Top 5 ACA Code of Ethics Sections

Closed Claims with Paid Indemnity of ≥ \$1

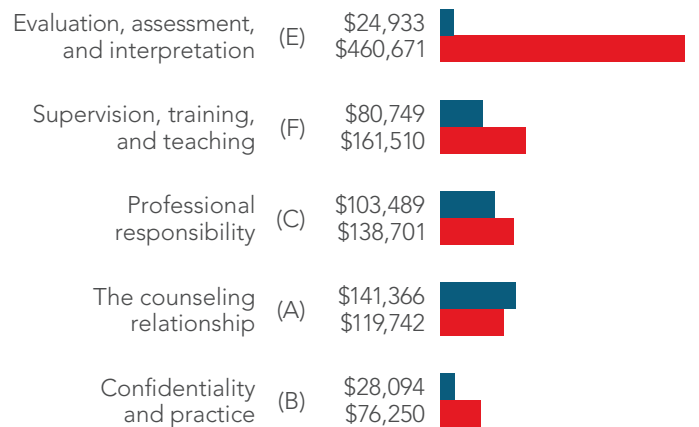


\* This figure highlights those allegation categories with the largest portion of the distribution

■ 2019 ■ 2024

## 13 Average Total Incurred by Top 5 ACA Code of Ethics Sections

Closed Claims with Paid Indemnity of ≥ \$1



\* This figure highlights those allegation categories with the largest portion of the distribution

■ 2019 ■ 2024



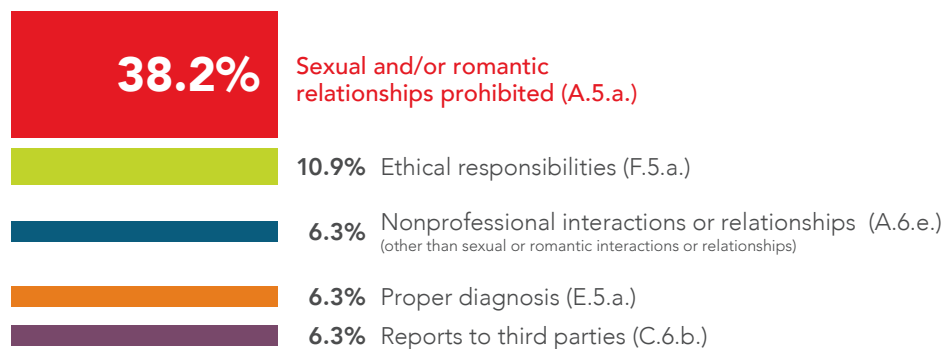
Claims asserting violations of **The counseling relationship** (ACA Code of Ethics, section A) remained the top allegation category in the 2019 and 2024 datasets.

## Evaluation, Assessment and Interpretation

Although less common than other top allegations, allegations involving “**Evaluation, assessment and interpretation**” were related to multiple high severity claims in the 2024 dataset. The sub-section of proper diagnosis (ACA Code of Ethics, section E.5.a) had an average total incurred of \$456,536, as noted in **Figure 15**, and primarily involved the failure to diagnose mental disorders and identify suicide risk. Professional counselors are expected to evaluate and assess clients using evidence-based risk assessment tools.

### 14 Distribution by ACA Code of Ethics Sub-Sections

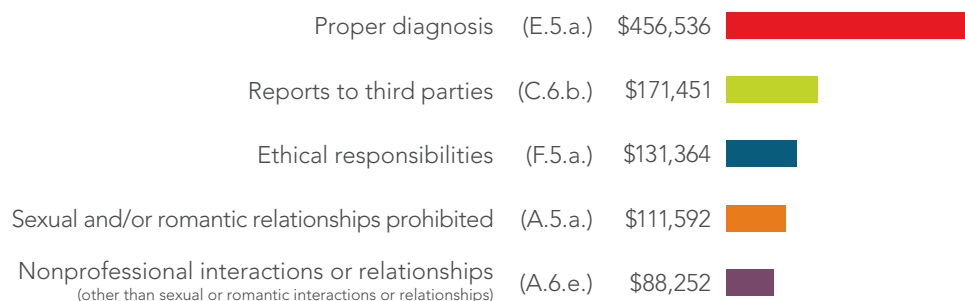
Closed Claims with Paid Indemnity of ≥ \$1



\* This figure highlights those sub-sections with the largest portion of the distribution

### 15 Average Total Incurred by ACA Code of Ethics Sub-Sections

Closed Claims with Paid Indemnity of ≥ \$1



A notable change from the prior report is the **rise of claims** involving allegations in the **Evaluation, assessment, and interpretation** category (ACA Code of Ethics, section E), which represents **9.4 percent** of the claim distribution in the 2024 dataset and an **average total incurred loss of \$460,671**.

The following cases involve assessment-related professional liability exposures:

- A 50-year-old client was experiencing anxiety and depression related to an impending divorce. His employer had mandated that he take medical leave following outbursts of anger in the workplace, as well as verbalized threats to harm his spouse in front of coworkers. The client's employer contracted with a counseling agency as part of its employee wellness program and required the client to undergo counseling before being allowed to return to work. Over a three-week period, two counseling sessions were conducted by a marriage/family counselor. The client disclosed to the counselor that there were weapons in the home and admitted to having past thoughts of "hurting his spouse." However, at the time of the assessments, the client denied suicidal/homicidal ideation. The assessments included questions pertaining to the client's coping mechanisms and support systems, to which the client responded that he had supportive friends and siblings. Based upon the client's statements, the counselor deemed that the client was not a danger to himself or others and determined that there was no "duty to warn." The counselor advised the employer that the client was cleared to return to work with no restrictions. The following week, the client sent threatening text messages to his spouse, and, later that day, fatally shot his spouse and then himself. A lawsuit was filed by the spouse's family asserting that the counselor failed to perform an adequate mental health assessment to rule out the presence of an imminent threat of "danger to self or others." During litigation, experts were critical of the counselor's assessment and opined that she had a "duty to warn" the client's spouse. They testified that a comprehensive suicidal/homicidal risk assessment was not performed and that a safety plan should have been instituted, that included no access to weapons, based upon the client's recent threats to harm his spouse. The defense team was unable to demonstrate that a well-documented assessment was performed or that appropriate follow-up actions were delineated. As part of a multi-defendant settlement, CNA contributed more than \$950,000 on behalf of the insured counselor.
- In another high severity claim involving assessment, the counselor was the director of a private foster care agency that was responsible for supervising the placement of foster children and the training of foster parents. The foster parents' license had been recently revoked due to noncompliance with the foster program requirements. Subsequently, the foster parents made an informal appeal to the counselor to have their license reinstated. The counselor reinstated the license after a cursory review of the application based upon a high volume of foster children in need of placement and the fact that the counselor had familiarity with the family. However, the counselor did not conduct an assessment of the home environment prior to the reinstatement and failed to identify that the biological son of the foster parents had a history of sexual molestation of a minor. A foster child was placed with the foster parents following the reinstatement.

Two weeks after the license was reinstated, the foster child was severely abused and required hospitalization. The foster parents were criminally charged with child abuse. A professional liability lawsuit was filed by the child's guardian alleging that the counselor failed to adequately assess the home prior to the reinstatement of the foster home license and failed to implement and document a follow-up plan for supervising the foster parents. The total incurred for the insured counselor was in excess of \$1 million.

## Reporting to Third Parties

According to the ACA Code of Ethics, section C.6.b., counselors are advised to be “accurate, honest and objective in reporting their professional activities and judgments to appropriate third parties including courts, health insurance companies, those who are recipients of evaluation reports and others.”

The 2024 dataset includes several claims involving reports to third parties related to court testimony in custody matters. Case examples include the following:

- The insured counselor was hired as court guardian ad litem to provide counseling to a child during an ongoing contested divorce and custody dispute. The counselor voluntarily wrote a letter to the court to support that custody be awarded to the custodial parent, based on circumstantial inferences regarding abuse made after only one session with the minor, resulting in the other parent losing custody. The non-custodial parent filed a claim asserting that the counselor reported inaccurate information to the court which caused emotional distress and loss of custody. The total incurred was more than \$30,000. This case demonstrates the potential exposure for counselors for falsely accusing parents of child abuse and for reporting false information to third parties.
- A counselor was contracted by the state department for child services (DCS) to provide therapy for siblings whose parents were under investigation for potential child abuse. The counselor assumed that the parents were abusing the children and made an emotional testimony to the court in support of discontinuing parental rights, referring to the children as victims. The parents lost custody of their children for an extended period of time based upon the counselor’s court testimony. They were eventually cleared of any wrongdoing. The parents filed a lawsuit asserting that the counselor failed to perform an appropriate assessment and falsely accused them of child abuse, based upon hearsay rather than a factual investigation. Of note, the litigation of this case occurred during the pandemic which resulted in significant court delays spanning several years until a resolution was achieved. Plaintiff’s experts were critical of the counselor for testifying and accusing the parents of abuse without a comprehensive assessment, especially since the children were already in DCS custody and in no imminent danger. This claim was settled in mediation with a total incurred of more than \$50,000.
- A 10-year-old child in foster care was receiving counseling services after being abandoned by his natural mother. While in the foster home, he was sexually assaulted by the foster parents. A lawsuit was filed by the appointed guardian asserting that the counselor had knowledge of the abuse and failed to conduct mandatory reporting. The insured counselor denied that she was privy to information that would have caused her to suspect child abuse; however, she did not have documentation to support this defense. There were multiple email messages to the counselor from the child’s natural mother communicating concerns about potential child abuse in the foster home. In discovery, it was determined that the counselor had also received similar complaints from another minor in the same home for whom she was counseling. The counselor testified that these concerns were discussed with the client who denied that there were any problems in the home. This claim was resolved in mediation with a total incurred of more than \$900,000.

## Sexual/Romantic Relationships and Non-professional Interactions or Relationships

Claims asserting allegations of prohibited sexual/romantic relationships and non-professional interactions or relationships remain the top allegations against counselors and represent a combined 44.5 percent of the professional liability claims in the 2024 dataset. Allegations in this category include failure to manage boundaries between counselors and clients, or client family members. The ACA Code of Ethics, section A.5. states that such relationships are never acceptable with current clients, even if the client attempts to initiate or consents to sexual/romantic interactions or other extensions of the counselor-client relationship. Counselors are required to maintain professional boundaries as defined by the above-mentioned ACA Code of Ethics, state-specific practice acts and state licensing boards.

Counselors assume a position of trust and authority with their clients, frequently becoming familiar with personal aspects of their lives which may lead to boundary extensions. Non-sexual boundary extensions are often precursors to sexual/romantic relationships. In several claims in the 2024 dataset, the initial boundary extensions were altruistic – i.e. visiting a client in the hospital or offering to drive the client to an appointment. However, “favors” or “acts of kindness” have the potential to be misinterpreted by the client through transference or countertransference resulting in the development of emotional attachments or romantic relationships. In claims involving boundary extensions, clients often assert that the counselor was “grooming” them for a future romantic relationship. Below is a case example.

- A 25-year-old client was in counseling for a history of trauma and anxiety. After several weeks of counseling, the counselor began sharing personal information during the sessions and calling the client in the evenings to discuss her own personal issues. Upon seeking advice from a third party, the client terminated the relationship and filed a claim asserting that the counselor had been “grooming” her for a romantic relationship. The total incurred for this claim was more than \$120,000.

### A Common Pathway to Sexual Misconduct and Abuse

#### Boundary Crossings

A deviation from professional behavior that seems harmless in nature and is presented as meeting the special needs of the client.

##### Examples:

- **Accommodating the client** with a convenient appointment time not available to other clients.
- **Taking on tasks beyond the job description**, such as delivering prescriptions or providing transportation to appointments.
- **Sharing personal information**, such as a home address or personal cell phone number, to facilitate contact with the client.
- **Reducing fees** or refraining from billing the client.

#### Boundary Violations

An action that furthers the provider’s agenda rather than the client’s interest.

##### Examples:

- **Connecting on social media** for non-clinical purposes.
- **Socializing** outside of the clinical setting.
- **Entering into business or financial relationships** with the client.
- **Prolonging clinical relationships** when a referral is indicated.
- **Keeping secrets** with the client.

#### Sexual Misconduct and Abuse

Any behavior that is overtly sexual in nature or may reasonably be interpreted by the client as sexual.

##### Examples:

- **Flirting** or undue touching.
- **Non-consensual contact**, especially with the breasts, buttocks or perineal area.
- **Providing treatment in exchange for sexual favors.**
- **Making and distributing sexually explicit images** or recordings of the client.
- **Assaulting the client**, i.e., committing rape, sodomy or any other form of sexual violence.



## Analysis of Resulting Injury

The most frequent injuries in the 2024 dataset were “emotional/psychological harm or distress” and “exacerbation of a pre-existing diagnosis.” These injuries are often difficult to value and assess due to their subjective nature, making it challenging to quantify the harm related to the claim from the underlying behavioral health condition. Emotional/psychological harm or distress is frequently cited as an injury in claims involving sexual misconduct or boundary violations.

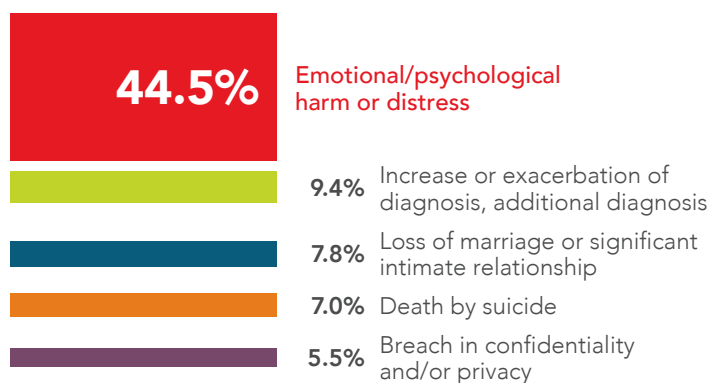
Professional liability closed claims resulting in death by suicide of a client represent an average total incurred that is greater than the overall average total incurred as reflected in **Figure 17**. In these claims, the high severity is often related to the tragic outcome and the claim for loss of consortium by family members.

Examples of closed claims in the 2024 dataset involving the death of a client included the following:

- The counselor engaged in a romantic/sexual relationship while treating a client for a substance use disorder. The counselor abruptly terminated the relationship, and, shortly thereafter, the client relapsed, overdosed and expired. The client’s family filed a lawsuit asserting that the counselor violated the ACA Code of Ethics, which resulted in the client experiencing severe emotional distress, leading to a relapse and death. This case resolved for more than \$200,000.
- A 30-year-old client was undergoing counseling for a longstanding history of depression. The counselor was in private practice and managed after-hour calls by allowing clients to send text messages to a personal cell phone. The client had a habit of texting the counselor when a life event would trigger anxiety, and, on occasion, the texts would include statements containing suicidal ideations. The counselor discussed this with the client who explained that she used the texting capability to vent anger and that she had no plan or intent on harming herself. On the date of the incident, the client sent a text to the counselor stating that she wanted to die. The counselor interpreted this text, as she had other similar ones in the past, as the client’s expression of anger and dissatisfaction with her life circumstances. The counselor did not respond to this text, as she was at a social event and knew that the client had an upcoming appointment. Two days later, when the client did not keep the scheduled appointment, the counselor contacted the client’s family who reported that the client died by suicide on the day that the text had been sent. Experts were critical of the counselor’s failure to recognize the gravity of the expressed suicidal ideation and to notify law enforcement of the threat of self-harm immediately upon receiving the text. The total incurred for this claim was more than \$200,000. This claim highlights the importance of setting reasonable expectations for communication during the initial informed consent process. Coverage for after-hours emergencies should be formalized to ensure that emergencies are managed expeditiously.

## 16 Distribution of Closed Claims by Top 5 Injuries

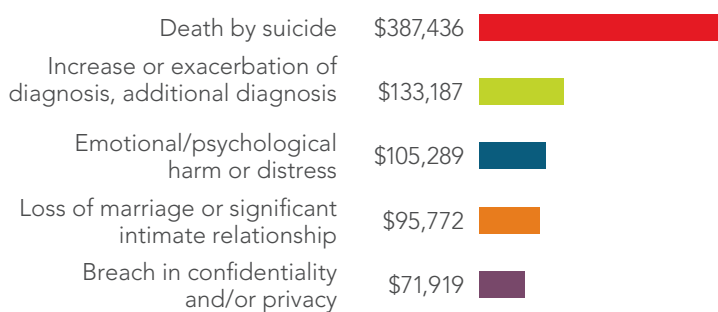
Closed Claims with Paid Indemnity of ≥ \$1



\* This figure highlights those injuries with the largest portion of the distribution

## 17 Average Total Incurred by Top 5 Injuries

Closed Claims with Paid Indemnity of ≥ \$1



\* This figure highlights those injuries with the largest portion of the distribution

# Part 3: Analysis of Subpoena Assistance Matters

Part 3 of this report will address matters where counselors were subpoenaed to provide a deposition or court testimony and/or subpoenaed to produce counseling records. In these matters, the counselors were not a defendant in an action; however, they were involved in the assessment and/or treatment of a client who was a party to a legal action. Claim expenses represented within these matters include attorney's fees and other administrative costs. In contrast to professional liability claims, there is a high frequency of subpoena assistance matters, making it more likely that counselors will receive requests of this type during their careers.

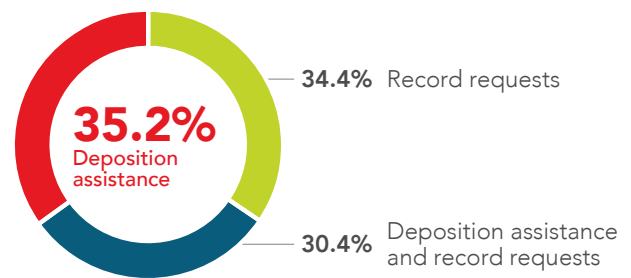
Since the prior report, the total number of subpoena assistance matters has more than doubled, increasing from 2,535 to 5,935, or 134 percent. Despite this increase in the number of incidents, there has been relatively no change in the overall average total incurred, which has remained at approximately \$1,725.

- **Figure 18** represents the distribution of closed claims by subpoena assistance matters, including deposition assistance, record requests, and deposition assistance and records requests.
- Expenses relating to non-party depositions are more costly than record requests, which reflects the time required for an attorney to prepare a counselor for deposition, while also appearing at the deposition to support the counselor.
- While most matters incur expenses of less than \$2,500, it should be noted that factors such as the case complexity and court-related matters may result in expenses that are significantly higher, as indicated in **Figure 19**.
- **Figure 20** provides the most common underlying matters that resulted in deposition assistance and/or record requests. Child custody remains the most common, representing 48.6 percent of all underlying matters.

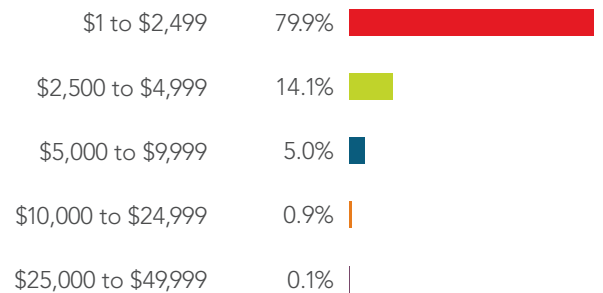
Subpoena assistance matters represent nearly **two-thirds (66 percent)** of the claims that closed with payment.



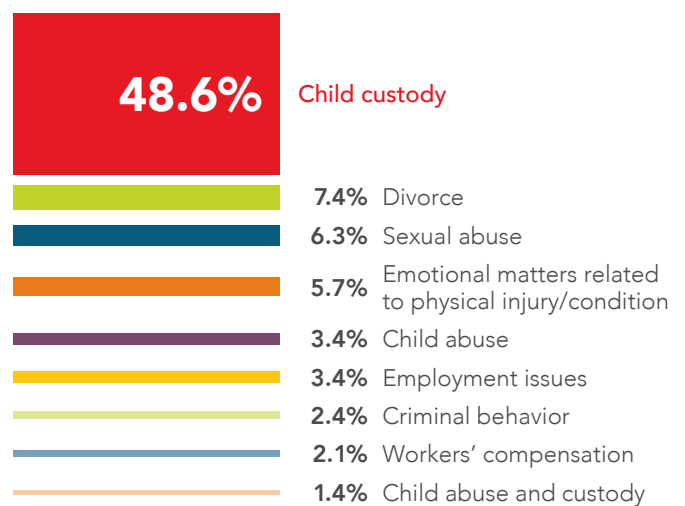
## 18 Distribution of Subpoena Assistance Matters



## 19 Distribution of Subpoena Assistance by Amount of Expense



## 20 Distribution of Subpoena Assistance by Top Underlying Matters



\* This figure highlights those underlying matters with the largest portion of the distribution.

Child custody matters are the most frequent reason that counselors are subpoenaed to testify in court. These matters have the potential to be complicated and volatile given the emotional factors associated with child custody. In addition to civil custody actions, there may be concurrent criminal proceedings relative to allegations of abuse, as exemplified in the following case:

- A minor child was undergoing counseling for emotional issues related to ongoing altercations between her divorced parents. The child informed the counselor that she was being abused by her stepfather and that she was having suicidal thoughts. The counselor appropriately reported the abuse to authorities, which prompted a criminal investigation. Subsequently, the biological father demanded full custody of the minor, prompting a custody dispute. The counselor received a subpoena to testify at a deposition focusing on the custody matter. Legal counsel was assigned to prepare the counselor for her deposition and to assist her in responding to numerous requests for protected healthcare information. Although the counselor was not a party to the custody case, questions arose during the deposition regarding the timeline of when she became aware of the child abuse and when it was reported. The attorney assigned to represent the counselor was present and able to advise the counselor on how to respond to questions, which was instrumental in ensuring that the counselor's treatment was not brought into question. The expenses incurred were more than \$7,300.

**Child custody matters** are the **most frequent reason** that counselors are **subpoenaed to testify** in court.

### When a Counselor Receives a Subpoena

- Never ignore a subpoena**, whether it involves releasing clinical records, appearing for a deposition, or testifying in court.
- Thoroughly read the entire subpoena** to produce all relevant requested information.
- 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.
- When issued a subpoena, be cautious** before releasing client health information that might be protected from disclosure. Client records cannot be shared without written authorization, except as mandated and permitted by law.



# Part 4: Analysis of License Protection Matters with Defense Expense Payment

## Introduction

A regulatory board complaint may be filed against a counselor by a client, colleague, employer, and/or a regulatory agency, such as the State Department of Children and Family Services. Complaints are subsequently investigated by the Board of Professional Counselors (“the Board”) to ensure that licensed/certified counselors are practicing safely, professionally, and ethically. Board investigations may lead to outcomes ranging from no action against the counselor to revocation of the counselor’s license to practice.


Board investigations are serious matters, often requiring legal assistance as well as significant investment of time and effort by the counselor before resolution. Expenses associated with license protection matters include reimbursement for the cost of legal representation to defend the CNA/HPSO insured counselor during the investigation, rather than indemnity or settlement payments to a plaintiff, or fines imposed by a regulatory agency. Therefore, the average defense expense referenced within this section of the report is limited to license protection matters and is not necessarily indicative of the severity of the underlying allegation that is the subject of the Board investigation. In addition, regulatory or Board actions against a counselor’s license to practice differ from professional liability claims as they may or may not involve allegations directly related to client care and treatment. For example, Board matters may include allegations such as unprofessional conduct, substance use, fraudulent billing, or failure to comply with counseling regulations. This section highlights the most common types of license protection matters. It is intended to assist counselors in identifying potential vulnerabilities and instituting focused, proactive actions to prevent or minimize risk exposures. For more information on license protection and Board matters, see the [Counselor Spotlight: Defending Your License](#).

## Database and Methodology

As noted in the introduction to Part 1, three datasets are referenced in this report. The 2024 claim report dataset discussed in this section is comprised of license protection matters that met the following criteria:

- Involved an insured counselor, student, or counselor working for an insured counseling business/corporate entity;
- Closed between January 1, 2018, and December 31, 2023, regardless of when the matter was first reported or filed; and
- Resulted in a defense expense/payment of at least one dollar on behalf of the counselor.

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.



## Data Analysis

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. This increase is attributable to several likely causes, including an increase in the number of counselors insured through the CNA/HPSO program, as well as an increase in the number of clients seeking mental health treatment since the 2019 edition of this report.

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.

## Analysis of Matters by Allegation Class

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 gave rise 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 22** displays the top 10 allegation classes by distribution, representing approximately 70 percent of the total Board complaints where payment was made for the legal defense of the counselor. Allegations related to sexual misconduct (14.3 percent), failure to maintain professional standards (11.7 percent), and breach of confidentiality (8.6 percent) most frequently led to Board complaints.

## 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

## 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
<b>Average total expense</b>			<b>\$5,524</b>

Whenever something interferes with the implementation of a treatment plan or with the process of a client attaining therapeutic goals, counselors should work to identify and address those interferences, whatever they may be. This includes addressing transference and/or countertransference as well as maintaining ethical, professional boundaries with clients. When counselors identify sexual or romantic compulsions they may feel towards a current or former client, a client's partner, or a client's family member, feelings of shame, guilt, anxiety, or fear by the counselor may naturally arise. This in turn may cause some counselors to try to rationalize or ignore these impulses. Yet attempting to ignore sexual and/or romantic compulsions makes it difficult to process them in an ethical and professional manner, which can result in counselors engaging in **sexual misconduct**. Comprising 14.3 percent of all license protection closed matters in the 2024 dataset, sexual misconduct allegations continue to represent the most frequent class of allegation 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.

Counselors assume a position of trust and credibility with their clients. The inherent power imbalance between the counselor and client is one reason why sexual contact and other professional boundary violations are unethical, and likely damaging and exploitative to the client. As licensed professionals, counselors are responsible for identifying sexual/romantic feelings, considering the implications of their feelings, and finding safe outlets to process them, such as obtaining clinical supervision or consultation, participating in continuing education, and engaging in personal therapy. If these feelings cannot be managed, counselors have an ethical obligation to terminate the counseling relationship and refer the client to another counselor. Early warning signs of potential boundary violations include:

- Thinking of the client outside of the context of therapy;
- Disclosing personal information to the client;
- Recurrent impulses to satisfy personal desires to turn to the client for support, gratification, or solace rather than focusing on therapeutic goals; and
- Communicating with clients outside of professional channels, such as via social media, about subjects unrelated to therapy or treatment goals.



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



An example of a license protection matter involving an allegation of sexual misconduct is highlighted in the following case study:

- A little over two years after their professional relationship ended, a former client sent the licensed professional counselor (LPC) a text message saying she wanted to “check in” with the LPC. As the text conversation unfolded, the client suggested that they meet at a restaurant later in the week. The LPC advised the client that it had been “a couple of years” since he had served as the client’s counselor, so he thought that he was ethically able to befriend the client.

The LPC and client continued to exchange text messages over the next several weeks, during which time they began occasionally engaging in sexual role play via text. The LPC repeatedly encouraged the client to send him sexually explicit photos of herself, which she consistently refused, and, on one occasion, sent her a picture of his genitals. The client then filed a complaint against the LPC with the Board, alleging that the LPC acted inappropriately towards her.

In response to the allegations, the LPC submitted a written statement to the Board, arguing that he believed he was acting within the ethical boundaries of the National Board of Certified Counselors Code of Ethics, which provides that counselors are prohibited from engaging in romantic intimacy with former clients for a two-year period after counseling services are terminated. However, the Board cited the state code of ethics for counselors, which provides that counselors are prohibited from engaging in sexual or romantic interactions or relationships with former clients for a five-year period following the last professional contact. Therefore, the Board concluded that the LPC had violated state statutes governing the practice of professional counseling and suspended his license for 180 days. At the conclusion of the suspension period, the LPC’s license was placed on probation for two years. The total incurred to defend the LPC in this matter exceeded \$17,500.

This case study, along with the matters in the 2024 dataset involving allegations related to a failure to maintain professional standards, demonstrate that Boards hold counselors accountable to know, meet, and comply with the professional standards set forth in their respective state practice acts and national professional ethical guidelines. Whenever national, state, and/or local guidelines and statutes differ on a particular topic, it is best practice to adhere to the strictest or most conservative rule.

## References and Further Reading – Professional Boundary Violations



Counselors must evaluate their risk for crossing professional boundaries with their clients. The following resources can help counselors learn how to prevent and detect this kind of misconduct:

- Capawana, M. R. (2016). [Intimate attractions and sexual misconduct in the therapeutic relationship: Implications for socially just practice.](#) *Cogent Psychology*, 3(1), 1194176.
- Gleeson, S. (2023). [How to manage sexualized transference.](#) *Counseling Today*.
- Norris, D. M., Gutheil, T. G., & Strasburger, L. H. (2003). [This couldn't happen to me: boundary problems and sexual misconduct in the psychotherapy relationship.](#) *Psychiatric Services*, 54(4), 517-522.
- Notaras Murphy, S. (2013). [Attending to countertransference.](#) *Counseling Today*.
- Shelton, M. (2023). [Reducing the occupational hazard of sexual boundary violations.](#) *Counseling Today*.

In return for the privileges associated with professional licensure, counselors are expected to conduct themselves in accordance with the ethical standards, guidelines, and statutes that govern their profession. Allegations related to counselors' professional conduct, that involve the alleged **failure to maintain professional standards**, comprise the second highest distribution of all license protection closed matters in the 2024 dataset, at 11.7 percent. This broad allegation category includes assertions that the counselor was not acting in a manner expected of a licensed professional, or in circumstances that may or may not have been directly related to the counselor's clinical responsibilities. This category includes matters such as those where the counselor allegedly engaged in unprofessional conduct towards clients and/or colleagues, or failed to comply with counseling regulations, as in the following examples:

- During a counseling session, a client began yelling abusive statements at the insured counselor. In response, the counselor stood up, "got into [the client's] face", and yelled back at the client. After investigating the client's complaint, the Board asked the counselor to submit a response to the client's allegations. The counselor consulted with her attorney to respond to the Board, writing a letter expressing her regret for her behavior during this tense moment with a client. The counselor also advised the Board that she has since sought continuing education of her own accord so that she may respond appropriately to any similar situations with clients in the future. The Board concluded that the counselor's actions constituted unprofessional conduct per state statute, which would allow the Board to take disciplinary action against the counselor's license up to and including suspending or revoking her license. However, given the fact that this was the counselor's first offense, as well as her expression of sincere regret, the Board ultimately issued a letter of warning to the counselor. The total incurred to defend the counselor in this matter exceeded \$13,700.
- A licensed marriage and family therapist (LMFT), who was licensed to practice in two neighboring states, applied to renew her license in one of the states. One of the questions on the license renewal application asked if a complaint or lawsuit had been filed against her license since her last renewal, to which the LMFT responded truthfully, "Yes." Board staff then requested a copy of the dismissal letter regarding the complaint that had been filed against the LMFT, and the LMFT provided a copy of the consent agreement she entered into with the neighboring state's Board. The consent agreement was dated over one year prior to the date she completed her license renewal application. Therefore, the Board concluded that the LMFT failed to notify the Board within a reasonable time regarding the disciplinary action taken by the neighboring state, thereby violating state statute. The Board chose to publicly reprimand the LMFT. The total incurred to defend the LMFT in this matter exceeded \$5,800.

**Counselors** are expected to **conduct themselves** in accordance with the **ethical standards, guidelines and statutes** that govern their profession.

Counselors bear the responsibility to facilitate client growth and development in ways that foster the interest and welfare of clients and promote the formation of healthy relationships (ACA Code of Ethics, section A). Therefore, a counselor should aspire to earn the trust of a client by creating an ongoing partnership, establishing, and upholding boundaries, and maintaining confidentiality. Allegations related to **breach of confidentiality**, which comprise 8.6 percent of license protection matters, on average incur \$5,929, which is 7.3 percent higher than the overall average total expense for all license protection claims of \$5,524. Some matters involved counselors improperly accessing clients' records without appropriate clinical justification, or failing to exercise proper caution to maintain the security and confidentiality of their clients' information, as in the following examples:

- The insured mental health counselor was providing couples counseling to a client and her significant other. The counselor then began to also counsel the client individually, obtaining information from her regarding how she felt scared of her significant other due to his physical and mental abuse, and her plans to leave him. The counselor would then share details gleaned during the client's individual sessions during the couples counseling sessions with the client and her significant other. On one occasion, this included the location of temporary housing that the client had secured, which she later alleged placed her at significant risk of harm. The significant other was eventually convicted of domestic violence. The counselor failed to obtain written consent before disclosing personal information from one client to the other, and he was untruthful in his initial statements to the Board investigators regarding his knowledge of the significant other's abuse. This resulted in the counselor with no practical option but to voluntarily surrender his license in lieu of it being revoked by the Board. The total incurred to defend the counselor in this matter was \$3,000.
- The insured counselor's office was closed for several months due to public health restrictions related to the onset of the COVID-19 pandemic. One of the counselor's clients was uncomfortable with the idea of counseling via telehealth, so the counselor suggested that they meet in public places to conduct their sessions. However, the counselor would often suggest rather busy public places, where other people were often within earshot of the counselor and client as they engaged in therapy sessions. The Board issued a public reprimand against the counselor for failing to maintain the security of confidential client information. The total incurred to defend the counselor in this matter exceeded \$12,000.

## License Protection vs. Professional Liability. What's the difference?

License Protection	Professional Liability
<p><b>Inquiry by the State Board of Professional Counselors</b> arising from a complaint.</p> <p><b>Allegation can be directly related to a counselor's clinical responsibilities and professional services, and/or they may be of a nonclinical nature (i.e., substance abuse, unprofessional conduct or billing fraud).</b></p> <p><b>The State Board of Professional Counselors is authorized to suspend or revoke a license.</b> Its primary mission is to protect the public from unsafe practice of the professional.</p>	<p><b>Civil lawsuit</b> arising from a client's malpractice claim.</p> <p><b>Allegations are related to clinical practice</b> and professional responsibilities.</p> <p><b>The civil justice system cannot suspend or revoke your license to practice.</b> Rather, professional liability lawsuits serve to fairly compensate clients who assert that they have suffered injury or damage as the result of professional negligence.</p>

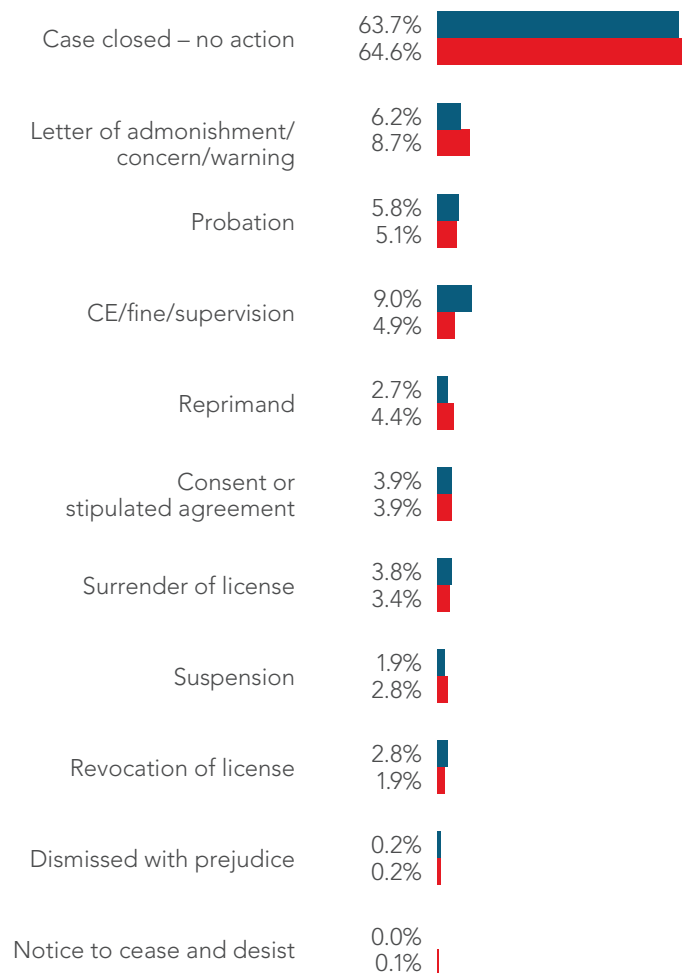
## Licensing Board Actions

**Figure 23** displays the distribution of licensing board actions, reflecting that the majority of paid license protection matters (64.6 percent) closed with no action taken by the Board. A Board decision not to impose discipline represents a successful defense of the insured 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 a 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; however, they can effectively end the counselor's career.

Complaints resulting in less serious decisions by the Board, such as reprimands, probation, consent agreements, fines, or mandated continuing education (CE), 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.

The **majority** of license protection matters (64.6 percent) **closed with no action taken by the Board**, representing a successful defense of the insured counselor.

## 23 Distribution of State Board of Counseling Actions



■ 2019 ■ 2024

### Key Risk Management Principles

- Appropriate communication
- Thorough documentation
- Well-documented informed consent
- Detailed client assessment
- Adherence to state licensing regulations and laws
- Compliance with the ACA Code of Ethics





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In addition to this publication, CNA and Healthcare Providers Service Organization (HPSO) have produced numerous studies and articles that provide useful risk control information on topics relevant to counselors, as well as information relating to counselor insurance, at [www.hpso.com](http://www.hpso.com). These publications are also available by contacting CNA at 1-866-262-0540 or at [www.cna.com](http://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.

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