



### When can nonclients sue counselors?

**Question:** A client’s husband called and left a message for me stating that he’d sue me if I didn’t stop putting ideas in the client’s head that their marriage is in trouble. I’ve already sought colleague consultation on how to handle the clinical situation, but can you tell me whether this nonclient spouse could actually sue me?

**Answer:** The spouse might try to sue, but whether he’d be successful is another matter. You would be judged according to the standard of what a “reasonable” counselor would have done in similar circumstances. Typically, a health care provider, including a counselor, owes only a legal “duty of care” directly to a patient or client. However, there are some instances in which this duty has been extended to third parties.

One extension of the duty owed may occur when a client expresses to the counselor an imminent threat or intent to harm a third party. The well-known case of *Tarasoff v. Regents of the University of California* (1976) opened the floodgates to similar litigation in other states and to statutes imposing duties on mental health professionals to take action when clients or patients threaten other persons in the context of mental health therapy. The public policy underlying these “duty to warn and/or protect” cases involves the protection of human life. This duty expansion does not apply to your situation, absent information that your client poses an imminent risk of harm to a third party.

Some courts have recognized another extension of duty in cases alleging that mental health therapists have induced or created false memories of abuse. For example, the New Hampshire Supreme Court decided that therapists owe “an accused parent a duty of care in the diagnosis and treatment of an adult patient for sexual abuse where the therapist or the patient, acting on the encouragement, recommendation or instruction of the therapist,” publicizes accusations of sexual abuse against the parents (*Hungerford v. Jones*, 1998). Again, though, this duty expansion does not appear relevant to your stated situation.

One theory the spouse *might* use to sue you, in your specified counseling role, is based on “alienation of affection,” a common law tort. This legal cause of action has been abolished in the overwhelming majority of states. In states where this cause of action has *not* been abolished (for example, North Carolina, Illinois, New Mexico, South Dakota and Utah), the lawsuit is typically brought by the abandoned spouse against a third party who is allegedly responsible for the breakup of the marriage (see *family-law.lawyers.com/divorce/whats-alienation-of-affection.html*). The defendant in this type of lawsuit is usually an unfaithful spouse’s lover. However, plaintiff spouses in alienation of affection lawsuits have occasionally been successful in suing counselors, other therapists and clergy who have recommended that a client seek a divorce.

In your specific situation, if the husband takes any other action, or if you

receive a request for records or summons and complaint, you should immediately notify your malpractice insurance carrier and request that a local attorney be assigned to you. Your attorney can advise you whether alienation of affection lawsuits are viable in your state and what can be done to defend against this and other claims.



The question addressed in this column was developed from a de-identified composite of calls made to the Risk Management Helpline sponsored by the American Counseling Association. This information is presented solely for educational purposes. For specific legal advice, please consult your own local attorney. ♦

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