

Letters to the Editor

Dear Editors,

I am writing in regard to the article in the latest NZAC Journal (15, 1&2) by Bob Manthei regarding Professional Liability Insurance.

As a counsellor working at the coal face of counselling in private practice, I have not made time to locate lots of references and reinforce my point of view by the latest research. However, I want to comment on the implications and practicalities that these insurance schemes have for counsellors and the practice of counselling which have been raised by Bob, from my experience.

I acknowledge the importance of having second thoughts, and the need for there to be an open debate about issues which affect the counselling profession, especially from a variety of points of view. If there had been a discussion paper on this issue prior to the introduction of this offer to members, it may have enabled greater consideration of the wider issues involved. However, I doubt that it would have changed the situation significantly as it appears that counsellors have been reluctant to be involved in debating issues, and have accepted changes in policies or practices with little consideration. I agree that this practice is dangerous and unhealthy for the profession.

If those counsellors buying this cover (professional indemnity insurance), are doing so in response to the 'fear' of being sued even if the likelihood is minimal, then it may not be a sensible basis for making a decision. However even though a claim may be unsuccessful, a counsellor could incur considerable expenses in defending such an action and therefore professional indemnity insurance to cover such costs may be advisable [Bond T. (1994) *Standards and Ethics for Counselling in Action*, p.50, Sage Publications]. Although the complaints procedure for NZAC is not as legally based as the NZ Psychological Society, there are still bound to be costs incurred in going through the complaints process.

While the risk of vulnerability in the areas of public liability, legal costs, and loss of documents that might constitute a breach of the Privacy Act may be minimal in New Zealand, those who have faced complaints through the NZ Psychological Society have found the costs can be as great as \$50,000. It would seem logical that on this basis, it is better to be safe than sorry. Especially as most counsellors lack the financial resources to meet claims for legal fees and insurance is a valuable safety net to have in place. This was reinforced at a recent Family Court Counsellors' meeting in Christchurch, where Ralph Unger said that all people in this field can experience being complained about, no matter how careful they are.

I do not believe the premiums will escalate to an unreasonable level and the current cost of approximately \$130 a year is a very reasonable fee, especially in relation to other professionals (e.g. lawyers, accountants) and is a wise investment for me, as it provides me with a sense of safety. Hence I am not spending unnecessary energy being concerned about the possibility of malpractice suits. If the premiums do rise unreasonably, I have the choice of other companies. This is especially important with regard to those clients who have the potential to react litigiously to boundary setting and their needs not being met by the counsellor, no matter how closely I follow the suggestions Bob has included as alternative to professional liability insurance. Those borderline clients, or parents who do not gain custody or access to their children and want someone to vent their anger on, can choose the counsellor as an easy target. Ideally, the counsellor needs to be aware of these risks in talking to clients and responding to the feelings clients show during sessions, as well as being aware of the potential severity of disturbance clients can present. Unfortunately this is not an ideal world and I believe it is important to safeguard myself against these risks.

Whilst the control exerted by funding agents

over the practices of the helping professions e.g. insurance companies and ACC, could have a negative impact on counsellors if these controls were unreasonable and detrimental to the practice of counselling, I believe there is greater likelihood that these controls will have a helpful impact. I believe the fact that ACC require a practitioner to reach certain standards of professional practice and belong to a professional association, to be a positive move in that it was possible for anyone to call themselves a "counsellor" and the clear criteria established by NZAC give an objective measure of establishing the safety of a person's work. I acknowledge those who have non-traditional, non-formal training maybe disadvantaged by ACC, however within the current criteria for membership of NZAC it is possible for a person to become a member with this form of training.

The competition between associations can have a negative and positive consequence. With the former there are dangers that one body may make it easier to belong by not having clear criteria or standards expected of applicants, in order to improve their membership numbers. It is also possible for one professional association to be critical of others in order that only their members are accepted by funding providers. My experience is that funding providers are requiring professional bodies to submit information on complaints procedures and membership criteria in order to insure the safety of the worker and the client. The positive consequence of competition between associations is that it would hopefully make these bodies be more responsible about maintaining their standards in order to retain their members. It is interesting to note that the NZASW (Social Workers) have this insurance automatically built into their membership fees.

I believe counselling in New Zealand is moving from a "service-ideal model" to a "fee-for-service" model, especially with the rapid growth in the number of counsellors working in private practice, who are making a living from working in this way. In some cases counsellors are taking on very disturbed clients because of the gaps in the mental health provisions in the

community. Hence, I agree with Bob that because of this growth there may be an increase in the risk of being sued, and therefore enforcing the argument for prudent self protection through insurance.

Whilst I acknowledge that there is a need to balance the worrying consequences of an insured profession I am more aware of the feelings of security and peace of mind that I experience in having purchased this form of protection. It is possible to respond to those consequences in a number of ways, as outlined above, and I do not believe that the consequences are insurmountable.

Finally, it is interesting to note that one of the suggestions for protection from malpractice suits is to have adequate professional liability insurance, and that Bob has put this in brackets!

I am hoping that there will be further discussion about this and other issues in the future through this publication.

Irene E.M. Paton

Dear Editors,

As the Executive Member who negotiated the professional indemnity policy for NZAC Members, I have been asked to respond to the article by Bob Manthei in the last issue of the Journal.

The most likely cause of expense to counsellors in practice is not being sued, but the legal expenses involved in investigating or defending against a complaint. The policy the NZAC has negotiated with Marsh and McLennan provides cover against this sort of expense, and this is why we decided to recommend it to Members.

Bill Grant