

Presented by
HPSO and CNA

Physical Therapists Medical Malpractice Case Study with Risk Management Strategies

Case Study: Improper performance using therapeutic exercise and failure to monitor patient during treatment

Indemnity Payment: \$0

Legal Expenses: Greater than \$160,000

Summary

(Monetary amounts represent only the payments made on behalf of the physical therapist)

A 10-year-old child and his mother were in a motor vehicle accident. The child was brought via ambulance to the nearest hospital and diagnosed with a fracture of the left femur. Later that same day, the child was placed in an immobilizer and transferred to the nearest children's hospital, which was 100 miles away. When the patient arrived at the hospital, his left leg was placed in a cast, and traction was applied for approximately 48 hours. Afterward, he underwent surgery for an external fixation of the left femur.

Approximately nine weeks after the accident, the orthopedic surgeon removed the external fixation device and referred the patient to physical therapy. The referral was written for therapy to the left leg involving range-of-motion exercises for the knee.

The patient was evaluated by the insured PT one week after removal of his external fixation device. The PT told the patient and his mother that the plan of care was to begin therapeutic exercises, and that the referring practitioner ordered him to bear weight as tolerated. The child seemed eager to start therapy and agreed to begin the follow day. On that same day, the PT had a telephone conversation with the referring practitioner confirming the patient's plan of care. The PT felt it was a little premature to begin therapy nine weeks after a child suffered a long bone fracture and was concerned about the child's ability to safely bear weight on his affected leg. The practitioner confirmed that it was fine for the child to bear weight as tolerated, because the radiology exams confirmed that the bone had healed.

At his first physical therapy session, the child was instructed to perform standing hip abduction to 25 or 30 degrees. The exercise was demonstrated, and then the child was instructed to go 30 degrees and no farther. The first repetition was fine. On the second repetition, the patient began to bend to the right. He was instructed to stand straight, go slower and not to go too high. According to PT's notes and testimony, the PT was standing right behind the patient while guarding him. On the third rep, the child lifted his left leg approximately 45 degrees and bent to the right. The PT immediately told the patient to stop and

Medical malpractice claims can be asserted against any healthcare provider, including physical therapists. In fact, \$42 million was paid for malpractice claims involving physical therapists, according to the newly published CNA HealthPro 5-year study.*

This case study involves a physical therapist working in a PT office setting.



bring his left leg down because he had gone to high. As he was bringing the leg down, a pop was heard. The patient screamed and dropped into the PT's arms and onto the mat. Although other PTs and PTAs were present, as was the mother, no one actually witnessed the accident. Eighteen months after the incident occurred, the patient's mother filed a claim against the insured PT, who owned his PT practice.

Risk Management Comments

The PT claimed that he was simply following the orders of the referring practitioner, who was also the co-defendant. The insured had verified the order via a telephone call to the practitioner, who told him that weight-bearing exercises for the child were fine as tolerated during physical therapy. Defense experts agreed that orders for physical therapy with weight-bearing as tolerated were premature, in that the fracture was not fully healed at the time of the referral. They also concluded that it is not the responsibility of the therapist to assess the weight-bearing capacity of the patient or the status of the patient's bone healing.

continued...

▶ Resolution

No indemnity payment was offered and the court issued a summary judgment dismissing the actions against the insured PT and the PT practice owner. Significant legal and related expenses were paid to successfully defend this claim. While settlement may have been less costly, the PT's telephone call to the referring practitioner and careful documentation led to an aggressive and successful defense. The cost to defend this claim exceeded \$160,000 and took more than six years.

▶ Risk Management Recommendations

- **Know and comply with state laws regarding scope of practice.**

PTs are responsible for knowing and understanding the regulations governing the practice of physical therapy in each state where they practice, as well as the policies and protocols of their employers and the facilities where they provide services.

- **Contact the referring practitioner** for clarification if referring protocol appears premature or beyond the patient's abilities.
- **Be vigilant about protecting patients from the most common types of injuries.**
- **Practice active listening skills** and teach back to ensure that my patients understand directions and instructions.
- **Refrain from documenting subjective opinions or conclusions**, as well as making any derogatory statement about patients or other providers in the record.

Guide to Sample Risk Management Plan

Risk Management is an integral part of a healthcare professional's standard business practice. Risk Management activities include identifying and evaluating risks, followed by implementing the most advantageous methods of reducing or eliminating these risks – a good Risk Management Plan will help you perform these steps quickly and easily!

Visit www.hpso.com/risktemplate to access the Risk Management Plan created by HPSO and CNA. We encourage you to use this as a guide to develop your own Risk Management Plan to meet the specific needs of your healthcare practice.



*CNA HealthPro Physical Therapy Professional Liability Exposure: 2016 Claim Report CNA Insurance Company, January 2016. To read the complete study along with risk management recommendations, visit www.hpso.com/PTclaimreport2016.

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. Please note that Internet hyperlinks cited herein are active as of the date of publication, but may be subject to change or discontinuation. 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. Use of the term "partnership" and/or "partner" should not be construed to represent a legally binding partnership. All products and services may not be available in all states and may be subject to change without notice. CNA is a registered trademark of CNA Financial Corporation. Copyright © 2016 CNA. All rights reserved.

This publication is intended to inform Affinity Insurance Services, Inc., customers of potential liability in their practice. It reflects general principles only. It is not intended to offer legal advice or to establish appropriate or acceptable standards of professional conduct. Readers should consult with a lawyer if they have specific concerns. Neither Affinity Insurance Services, Inc., HPSO, nor CNA assumes any liability for how this information is applied in practice or for the accuracy of this information. This publication is published by Affinity Insurance Services, Inc., with headquarters at 159 East County Line Road, Hatboro, PA 19040-1218. Phone: (215) 773-4600. All world rights reserved. Reproduction without permission is prohibited.

Healthcare Providers Service Organization is a registered trade name of Affinity Insurance Services, Inc. (TX 13695); (AR 100106022); in CA, MN, AIS Affinity Insurance Agency, Inc. (CA 0795465); in OK, AIS Affinity Insurance Services, Inc.; in CA, Aon Affinity Insurance Services, Inc. (CA 0G94493); Aon Direct Insurance Administrators and Berkely Insurance Agency; and in NY, AIS Affinity Insurance Agency.