

Presented by
HPSO and CNA

Physical Therapists Medical Malpractice Case Study with Risk Management Strategies

Case Study: Failure to properly monitor the patient during therapy, failure to provide support in the event of a fall and failure to use the proper equipment for the exercise being performed

Indemnity Payment: \$175,000
Legal Expenses: \$17,023

Summary

Note: There were multiple co-defendants in this claim who are not discussed in this scenario. Monetary amounts represent only the payments made on behalf of the physical therapist. Any amounts paid on behalf of the co-defendants are not available. While there may have been errors/negligent acts on the part of other defendants, the case, comments, and recommendations are limited to the actions of the defendant; the physical therapist.

The patient was a 49 year-old female recovering from a hit-and-run motorcycle accident in which she sustained a fracture of the fourth cervical vertebrae, crushed spine, and a fractured right wrist. Following a 95-day in-patient hospitalization where she underwent multiple surgeries and was in a coma for several days, she was admitted to a rehabilitation facility to receive extensive physical and occupational therapy. On admission to the rehabilitation facility, she did not complain of any pain, but was only able to ambulate using a rolling walker due to muscle tightness, weakness, and sensory deficit to her lower extremities. The defendant physical therapist examined the patient upon admission and made note that the patient was morbidly obese and had a long history of both heavy smoking (two packs of cigarettes a day) and prednisone steroid use. He recommended a therapy plan based on the patient's limitations and goals.

Five months into her therapy, the patient was performing an exercise that she had performed many times during her therapy treatments. She held onto the bars from two machines, one with each hand, stood on her left leg and

Medical malpractice claims can be asserted against any healthcare provider, including physical therapists. In fact, \$44 million was paid for malpractice claims involving physical therapists, according to the most recent CNA HealthPro 10-year study.*

This case involves a self-employed contract physical therapist working at a rehabilitation facility.



had her right foot placed on a round exercise ball. With her right foot on the round exercise ball, she would move her foot back and forward in order to engage the muscle of her left hip and improve her strength and range of motion. The defendant physical therapist positioned a non-moving chair behind the patient in the event that she needed to sit down at any time and he sat on the floor in front of her to assist in ensuring the ball did not roll away. During the exercise, the patient felt weak on her right leg and moved to sit down; however, her weight was such that she transferred weight very heavily onto her standing leg and in doing so fractured metatarsal bones at the top of her left foot. She never fell to the ground, but she immediately sat down and complained of pain in her foot.

The patient continued to recover at the rehabilitation facility, participate in physical therapy and was discharged five weeks after the fall.

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▶ Risk Management Comments

The patient's experts made several claims against the defendant physical therapist which included the following:

- The equipment the physical therapist used to have the patient hold onto was at different heights which created a hazardous environment.
- The physical therapist was on the floor in front of the patient and not behind to stabilize with a patient who is weak and overweight.
- The parallel bars could have been used for the same exercise which would have created handholds of the same height which would have led to a more solid foundation and equal distribution of weight.
- The physical therapist should have been guarding the patient by standing behind her for guidance.
- A gait belt should have been used to prevent a fall. The defending attorney asked several experts to review this claim and received mixed opinions as far as support for the exercise the defendant physical therapist had the patient perform when she fell.

Based on the findings of causation and the mixed reviews, the decision was made to proceed to mediation.

▶ Additional Risk Management Concerns

The defendant physical therapist was evasive and also untruthful in his answers to some questions that the defense attorney posed to him during the discovery phase. We learned that while he claimed he did not have any "policies and procedures" manuals, he actually had three volumes in his

clinic. We also learned that the defendant physical therapist leaves his clinic open for patients to self-exercise when no licensed physical therapist is present, which is against regulations. The defendant physical therapist was also unable to meaningfully explain how the exercise was being performed; this may only be due to a language barrier. The initial demand was \$363,000 in damages. The case went into mediation; however, the settlement value determined at mediation was rejected by the patient. The case was set for trial. Eventually, both sides were able to negotiate settlement before trial. It was felt that if this case went to trial, the language barrier would have a negative impact on the jury.

▶ Risk Management Recommendations

- **Know and practice within your state-specific scope of practice and standard of care.**
- **Evaluate the safety of the physical environment in relation to the patient's condition and therapy needs prior to each treatment.**
- **Cease any treatment deemed to present a safety risk to the patient** and contact the supervising physical therapist and/or physician to make necessary adjustments to the treatment regimen.
- **Immediately report and document any patient fall, injury or adverse event and remain with the patient until medical assistance arrives** and transports the patient, provides direct treatment, or declares the patient is not injured.

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 Liability, 2001-2010, CNA Insurance Company, December 2011. To read the complete study along with risk management recommendations, visit www.hpso.com/ptclaimreport2011.

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