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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: Greater than \$700,000

Legal Expenses: Greater than \$150,000

Summary

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

A 32-year-old man was prescribed therapy after undergoing an arterial bypass procedure on his right leg for a popliteal artery entrapment. On evaluation, the patient had a complex medical history that included morbid obesity, diabetes and chronic leg pain. His social history revealed that he had a sedentary occupation, smoked a pack of cigarettes a day and occasionally used alcohol. Due to the patient's size and post-surgical pain and numbness, he had difficulty bearing weight on his right leg and used crutches to ambulate. He was on several pain medications which included hydromorphone, non-steroidal anti-inflammatory and Lyrica®.

The patient's surgeon prescribed physical therapy for three months to assist with mobility and strengthen his lower extremities. The patient attended three sessions of therapy, and at the end of each session the insured PT would have the patient use a transcutaneous electrical nerve stimulation (TENS) unit for 12 minutes. The PT adjusted the voltage based on the patient's comfort level and told the patient to let her know if the unit caused him discomfort. The patient seemed to enjoy the nerve stimulation, reporting that the TENS unit was the only thing that really seemed to be bringing feeling back into his leg and making him feel better.

On the day of the incident, the patient completed a session with the TENS unit. When the PT took the pads off of his leg, she noticed two round red marks that appeared to be burns. Neither the patient nor the PT believed the burns were serious enough for him to go to the emergency department. Antibiotic ointment was applied to the burns, and the PT instructed the patient to follow up with his practitioner if needed. The TENS unit was checked and was in good working order. The only possible source for the burns appeared to be the pads, which looked a little worn.

The following day, the patient called the PT to let her know he needed to go to the doctor because the burns were looking worse. During a follow-up telephone call, the patient informed the insured PT that he had been diagnosed with third-degree burns and would need debridement and skin grafts, as the burns were serious. The patient continued his physical therapy as much as possible, but it was complicated due to the treatment of his

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 study involves a physical therapist working in PT office setting.



burn and subsequent pain. Two months after the incident, the patient was diagnosed with reflex sympathetic dystrophy (RSD), experiencing temperature intolerance, excessive sweating, stress and insomnia due to the pain. The RSD symptoms also prevented him from working. As a result, he and his family lost their health insurance benefits and suffered potential bankruptcy.

Risk Management Comments

The patient pursued a claim against the PT, as well as her employer. The claim was difficult to defend due to the absence of written policies and procedures, as well as the PT's lack of training on how to appropriately use the TENS unit. During the insured PT's deposition, she stated that she knew how to use a TENS unit from experience, but had never received any formal training from her employer relating to the manufacturer's guidelines. Based on her own experience with the unit, she believed that the amount of voltage used on the TENS unit is up to the patient and noted that if the stimulus was painful to the patient, she would certainly bring it down.

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▶ Resolution

It was the defense counsel's opinion that the care and treatment of this patient was within the standard of care and that specifically, the use of the TENS unit. However, the burns, which were serious and required several debridements, were noted immediately after the TENS unit was taken off this patient, which would make liability in this matter hard to defend.

The possibility of a defense verdict was deemed to be less than 20 percent.

Defense counsel assessed the potential exposure/claim value of the case as being between \$750,000 and \$1 million.

▶ Risk Management Recommendations with regards to treating Physical Therapists:

- **Be aware of the high risk of burns** from certain commonly used treatments and interventions, such as whirlpool, hot packs, paraffin, cold/ice packs and electrotherapy. Ensure that each of these treatments is clinically appropriate and that there are no clinical contraindications for their use.

- **Evaluate and document each patient's skin integrity**, neurological status, and ability to perceive pain or discomfort and convey problems to staff. Evaluation should be performed prior to the course of treatment and periodically thereafter.
- **Closely supervise and/or monitor patients** during treatment, including frequent skin checks.
- **Discuss any perceived alterations** in skin integrity with the referring practitioner and healthcare team.
- **Routinely test, monitor and log temperatures of whirlpool water, hot-pack warmers, paraffin tanks and other equipment** in accordance with facility policies.

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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