

CASE STUDY WITH RISK MANAGEMENT STRATEGIES

Presented by HPSO and CNA

Medical malpractice claims can be asserted against any healthcare provider, including physical therapists. Although there may be a perception that physicians are held responsible for the majority of lawsuits, the reality is that physical therapists are more frequently finding themselves defending the care they provide to patients. In fact, over \$44 million was paid for malpractice claims involving physical therapists, according to the most recent CNA HealthPro 10-year study*

Case Study: Failure to properly Monitor or Supervise

Settlement Payment: in excess of \$500,000

Legal Expenses: in excess of \$60,000

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 / plaintiff was a 45-year-old male with a history of traumatic brain injury, limited use of his extremities and contractures of his left elbow and shoulder. He had been receiving aquatic therapy twice a week for over six months to increase his range of motion and improve his ability to perform activities of daily living. The patient was noted to have greatly improved. During his therapy the defendant physical therapist would typically work with him individually in the pool and then permit him to walk on his own along the pool wall holding the handrail.

At the time of the incident the patient was unattended and the defendant physical therapist was assisting another client. A lifeguard was on duty and the patient was wearing a life vest flotation device. A physical therapy aide noticed that the

patient was fully submerged. How the patient became submerged while wearing a life vest and why he was not observed by the life guard have never been determined. The length of time he had been submerged was unclear, but the defendant physical therapist had been working with the other client for approximately five minutes. The aide pulled the patient from the water and the aide and lifeguard initiated cardiopulmonary resuscitation (CPR). The patient breathed independently after several minutes of CPR and was transported by emergency services to the hospital.

The patient remained in the hospital for approximately one month and was treated for adult respiratory distress syndrome and aspiration pneumonia. He required oxygen therapy and an extensive subsequent stay at a rehabilitation facility. He was determined to have lost 50 percent of his normal lung capacity as a result of the near drowning incident. Following rehabilitation he was transferred to an assisted living facility where he now resides.

The patient and his wife sued the defendant physical therapist and the pool owners, alleging negligence and failing to monitor and supervise a dependent adult during treatment.

Resolution

Experts deemed that the defendant physical therapist was negligent in the following areas

- Failure to directly supervise the patient's independent ambulation in the pool
- Failure to specifically assign the physical therapy aide to directly monitor the patient's independent ambulation in the pool
- Use of a life vest flotation device was not an alternative to appropriate patient supervision

Based on the findings of negligence, the decision was made to settle the claim on behalf of the defendant physical therapist.

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Risk Management Comments

- Simply having the physical therapist near the patient, having a physical therapy aide and lifeguard in the pool area and use of a patient flotation device are not adequate supervision or monitoring of a therapy patient while in the pool.

Risk Management Recommendations

- Evaluate the patient's needs before each aquatic therapy session.
- Maintain visual and/or physical contact with every patient at all times during aquatic therapy. Patients with impaired cognitive function or severe physical disability may warrant 1:1 direct physical contact during the entire aquatic therapy session.
- Require all patients to wear properly tested and secured life vests and additional flotation devices as needed at all times when in the therapy pool. Use of a life vest or any other flotation device does not replace the need for supervision and monitoring of every patient during aquatic therapy.
- Educate patients of the need to remain in the area of the pool assigned by the physical therapist even if they believe they are able to function safely in deeper water.
- Place secured, highly visible floating pool barriers to identify the portion of the pool where therapy will take place and verify that the patient can easily touch the pool floor with their feet when standing before initiating aquatic therapy exercises.
- Utilize a life line between the patient and the physical therapy staff member if the patient will be further than one arm's reach away from the staff member at any time while in the pool area.
- Ensure adequate numbers of physical therapy staff to monitor and supervise every patient in the therapy pool and verify that every staff member is fully aware of each patient they are assigned to monitor during while they remain in the pool. Even patients who are approved for independent exercise while in the pool must be directly monitored at all times they are in the pool and when entering and exiting the pool.
- Clarify the specific role of the lifeguard regarding aquatic physical therapy patients with the understanding that the life guard is not responsible for individual patient supervision.

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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