

CASE STUDY WITH RISK MANAGEMENT STRATEGIES

Presented by HPSO and CNA

Medical malpractice extends to every aspect of the medical field, including physical therapy. While common perception maybe that doctors bear the brunt of lawsuits, the reality is that physical therapists are increasingly finding themselves defending the very care they provide – and it can be costly. In fact, \$44 million was paid for malpractice claims involving physical therapists, according to the most recent CNA HealthPro 10-year study.*

Case Study: Improper Performance Using Therapeutic Exercise

Settlement: in excess of \$200,000**Legal Expenses:** in excess of \$90,000

The patient (plaintiff) was a nine year old child with cerebral palsy who had undergone extensive surgery for correction of bilateral ankle contractures. He was referred back to physical therapy following removal of the casts from both legs. In addition to his surgery, the patient had a history of balance problems, as well as pain and weakness on his right side. He was well known to the physical therapist (defendant) who had provided his strengthening and balance therapy prior to surgery.

The defendant physical therapist applied specialized orthotics as ordered by the surgeon and that were designed to maintain the patient's proper ankle position during therapy. The defendant physical therapist selected a therapeutic exercise that was well known to the patient and placed the patient in a seated position on a therapy ball which was stabilized against the wall behind him and with chairs on both sides of him. The

patient was directed by the defendant physical therapist to hold the therapy ball handle with his left hand, and with his right hand, to toss small beanbags into a basket in front of him. The defendant physical therapist remained with the patient continuously, standing on his left side during the exercise.

The patient suddenly slipped to his right and was momentarily unable to reach out to stabilize himself. The defendant physical therapist reached him and eased him to the floor. The patient immediately complained of pain in the back of his right knee and emergency services were called to take him to the hospital. At the hospital he was diagnosed with a non-displaced fracture of the right tibia and an over-the-knee cast was applied. The child remained in the cast for two months and the fracture healed without deformity.

The child's parents sued the physical therapist on behalf of their child for negligence resulting in a tibia fracture.

Resolution

Experts deemed that the orthotic acted as the fulcrum point of the fracture and that the fracture was a direct result of the fall. Experts agreed with the defendant physical therapist's application of the orthotics and the physical therapist's choice of the exercise for the patient's weakened right hand and side. However, experts were critical of the defendant physical therapist's choice to stand to the left of the patient during the exercise since it was his right side that was known to be weaker and the therapist could have anticipated that any fall would most likely happen to the right.

Given the facts of the case and the very sympathetic presentation of the child, the decision was made to settle the claim.

Risk Management Comments

- While the defendant physical therapist knew the patient well, this was the first therapy session after a long period of time and the therapist may have overestimated the patient's ability to safely perform exercises that he had performed prior to the surgery. Additionally, the orthotics were new to the patient and may have affected his ability to maintain his balance on the therapy ball.

continued...



Risk Management Recommendations

- Assess the patient's condition at the start of every therapy session and before initiating each therapeutic activity.
- Recognize that any injury, illness or change in their physical or emotional condition or a significant lapse of time since their prior treatments may cause the patient to respond very differently to an exercise than they have in the past.
- Consider using additional personnel to support and supervise the patient during their first several therapy sessions after they have been away from treatment or have had a change in condition since their last therapy treatment.
- Evaluate the effect that new patient equipment or devices such as orthotics, braces or splints, could have on the patient during exercises. While such devices may provide additional support to one part of the body, their effect on the patient's movement and potential risks to other body areas should be specifically evaluated.
- Provide support and supervision at the location where the patient's known disability, injury or pain is more likely to make them vulnerable to falls or injury during the performance of therapeutic exercises.

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.

This publication is for educational purposes. It is not legal, professional or medical advice. CNA makes no representations as to its correctness or completeness and accepts no liability for any injury or damage that may arise from its use. Specific legal or medical questions should be referred to a competent attorney or medical professional before applying this material in any particular factual situations. This material may address and discuss matters for which your policy does not provide coverage, and the material does not create or imply the existence of coverage. Please consult your insurance policy for the specific terms, coverages, amounts, conditions and exclusions of coverage. All products and services may not be available in all states and may be subject to change without notice. CNA policies are underwritten by the property/casualty companies of CNA, Chicago, IL. CNA is a registered trademark of CNA Financial Corporation. © 2013 Continental Casualty Company. 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.; (AR 244489); in CA, MN & OK, AIS Affinity Insurance Agency, Inc. (CA 0795465); in CA, Aon Affinity Insurance Services, Inc., (0G94493), Aon Direct Insurance Administrator and Berkely Insurance Agency and in NY and NH, AIS Affinity Insurance Agency. © 2013 Affinity Insurance Services, Inc.

x-10118-0113

