

Presented by
HPSO and CNA

Physical Therapists Medical Malpractice Case Study with Risk Management Strategies

Case Study: Failure to maintain equipment, inappropriate treatment

Indemnity Payment: \$0
Legal Expenses: \$47,381

Summary

(Monetary amounts represent only the payments made on behalf of the physical therapist. There were multiple co-defendants, but amounts paid on their behalf are not available.)

The patient, a 49-year-old male, was receiving physical therapy from the insured physical therapist for neck and shoulder pain that had been the result of a motor vehicle accident 2 months prior. During his seventh therapy session, the patient was using a dip machine which he had used on multiple prior occasions. After completing multiple repetitions, he told the PT that “something about the machine didn’t feel right”. The PT could not observe anything visibly wrong so he got on the machine and did 10 repetitions. He noticed no problems and told the patient that the machine was fine. The patient completed 5-7 repetitions when the machine malfunctioned. The bar on which his feet were resting went into freefall and dropped a couple feet. The patient was able to catch himself by holding on the handlebars. The PT checked on the patient who advised “I’m alright, it just scared me”. Nevertheless, the PT did an immediate evaluation but could find no injury to the patient. The patient returned to his exercise regime and later returned to work at his hair salon. The patient returned for eleven therapy sessions and showed good signs of improvement.

At the time of the incident, the PT’s private practice performed daily cleaning of every machine and maintained weekly inspection logs on all equipment. Logs were retained for a year and discarded. Although the dip machine was 15-18 years old, no problems had been previously reported. After the incident, the machine was marked off-limits. A national repair company completed repairs the following week. Repair personnel determined that the pin holding the pulley had broken causing the pulley assembly to “shear off”. No other problems were identified and the machine went back into service.

The patient saw his primary physician two months after this incident and complained of increased pain that was work related. Thirteen months after the incident, the patient continued having pain and ultimately referred to

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 physical therapist and owner of the private practice.



an orthopedic surgeon. An arthrogram was ordered which indicated a SLAP (superior labral tear from anterior to posterior). An arthroscopic open repair of the rotator cuff was performed.

The patient filed suit demanding \$300,000 in damages and alleging the PT failed to keep equipment in proper functioning order and to “inspect and discover possible dangerous conditions.” He also alleged the dip machine was not appropriate given his condition and that the incident caused the tear of his right rotator cuff. During his deposition, the patient made multiple exaggerated claims about his on-going pain that he attributed solely to the equipment malfunction. Additionally, he exaggerated statements about the annual income generated by his hair salon. His income statements were later contradicted by information obtained from tax records. Finally, the patient acknowledged that his doctor had not placed restrictions on him as a result of this incident. In consideration of facts weighing in favor of the PT, the case went to trial.

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▶ Resolution

A six-day trial ensued. Witnesses included the PT, several of the clinic's staff who had been on-site and in view of the incident on that day. Several expert witnesses were called by both sides including the patient's primary care and orthopedic physicians. Defense counsel was able to successfully argue that the patient had chronic shoulder pain prior to the incident. This was corroborated by medical records obtained from the patient's primary physician. Additionally, under cross examination, the patient's orthopedic physician did not fully support the patient's version of events. Finally, the patient made a poor witness on his own behalf by making exaggerated statements and becoming quite angry and emotional.

The jury deliberated for two hours. Among the documents they called to review during deliberation were the PT's medical records and the patient's feedback form which had been completed on his last visit. The feedback indicated the patient as being "very satisfied with care provided at the clinic". The jury ultimately found in favor of the PT and the case was closed.

▶ Risk Management Recommendations

- **Factually and thoroughly document any unusual occurrences that arise during the patient's treatment of care.** Refrain from documenting inappropriate subjective opinions, conclusions or derogatory statements about the patient.

- **Complete an incident/occurrence report** according to your organizational policies and procedures.
- **Report possible claim and provide your insurance carrier with as much information as you can**, being sure to include contact information for the risk manager at your organization and the attorney assigned to the case by your employer.
- **Sequester all equipment and records involved in any patient related incident** according to your organizational policies and procedures.
- **Promptly return calls from your defense attorney and the claim professional assigned by your insurance carrier.** Contact your attorney or claim professional before responding to calls, emails or requests for documents from any other party.
- **Never testify in a deposition without first consulting your insurance carrier** or, if do not carry individual professional liability insurance, your organization's risk manager or legal counsel.

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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