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## Physical Therapists Medical Malpractice Case Study with Risk Management Strategies

### Case Study: Failure to supervise patient during therapy, failure to maintain appropriate maintenance on equipment

**Indemnity Payment:** Greater than \$475,000

**Legal Expenses:** Less than \$300,000

#### Summary

Note: Monetary amounts represent only the payments made on behalf of the physical therapist and his private practice. 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 defendants; the physical therapist and his private practice.

A 40-year old man (plaintiff) was participating in a work-hardening program with our defendant physical therapist's facility following hip replacement surgery. The patient was scheduled to return to work as a commercial car painter the following week when he was on a 65 centimeter "classic" exercise ball with his head and shoulders supported by the ball. His feet were on the floor and his knees were bent so that his thighs were parallel to the ground. He was using a 65 pound dumbbell in each hand performing a bench press exercise when the exercise ball busted without any warning. The patient fell to the ground and since he still had the dumbbells in each hand, both of his hands hyperextended and both forearms were fractured, the left worse than the right (patient is left-handed).

The patient filed suit against our physical therapist and manufacturer of the ball. The manufacturer represented through the discovery process that they had no liability insurance. The patient has alleged that the ball was: unreasonably dangerous because the manufacturer:

1. Failed to warn of the risks associated with sudden deflation during the use of the "classic" exercise ball
2. Failure to prescribe appropriate maintenance, inspection and retirement procedures and criteria to ensure "classic" balls were removed from service before exposing users to the risk of a sudden deflation

The patient's complaint against our physical therapist alleged that the firm did not do what a reasonably careful physical therapy firm would have done because of their failure to do one or more of the following:

1. Failure to inspect, maintain and retire the equipment to avoid risk caused by equipment failure
2. Failure to be knowledgeable regarding the safety of its equipment (the fact that there was a burst-proof/resistant ball available)
3. Failure to adequately supervise the patient while using the ball

Three months after the incident, the patient's orthopedic physician documented that the patient had "reached maximum medical

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 therapy private practice.



improvement with his wrists, although he continued to demonstrate weakness in his left wrist and he continued to complain of pain and swelling. His thumb was worse than the wrist and he had lost 30 percent of motion in his thumb and 20 percent of motion in his left wrist, along with at least a 20 percent loss of strength in his left upper extremity." The physician released the patient to work, but on temporary, light-to-medium restrictions. He had a 20 to 40 pound lifting restriction and could not use tools making repetitive motions with his upper extremity for more than three hours.

One year following the incident, the orthopedic surgeon documented that the "patient continued to rate his pain as a 4 on a 10 point scale and now presents making new complaints on the left side more specifically, at the shoulder." The pain was radiating into his elbow which was suggestive of an irritability of the ulnar nerve at the elbow, along with the pain in the shoulder. The patient was diagnosed with left elbow cubital tunnel syndrome, left shoulder subacromial impingement in left thumb and hand pain.

On the last visit to the orthopedic, eighteen months after the incident, the patient made new complaints of pain in his right wrist which was attributed to an overuse in an attempt to compensate for the injuries to the left wrist. The patient was working as a short

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distance truck driver, but the surgeon related the new complaints to the wrist fractures he sustained at the defendant's physical therapy firm. The orthopedic placed the patient on permanent work restrictions of light-to-moderate level with 20 to 40 pound lifting restrictions and repetition of three hours with frequent breaks and no use of tools that vibrate, strike, twist, or rotate. The patient went through vocational rehabilitation and was only able to find a job driving a disabled relative around for \$8.50 per hour. Because of his fine motor control problems, he could not be trained in areas that require steady hand movement such as working on computers.

### › Risk Management Comments

Our physical therapist did not believe the practice was at fault because the ball was defective and the practice did not have any control over the manufacture of the ball. The patient assured our physical therapist that the practice was not the target, so the physical therapist was surprised to be named in the suit. The patient returned to the firm for physical therapy on his wrist after the incident. The physical therapist did preserve the defective ball, but has never had any other incident before or after this one relative to any other exercise ball exploding. However, our physical therapist was very concerned about the potential excess exposure and agreed that a reasonable settlement should be attempted.

Our defense counsel explained that one of the biggest problems in the case is the fact that the co-defendant manufacturer apparently did not have any applicable professional liability insurance. The patient would find it far easier to execute on a judgment against our physical therapy firm because they do have insurance and they are present here in the United States; whereas, the ball manufacture is an Italian corporation that apparently has no insurance and may have very little by way of assets in this country for the plaintiff to execute on.

### › Resolution

The defense expert's opinion was that our physical therapist failed to take appropriate action to prevent a puncture of the exercise ball and the puncture of the ball was the sole proximate cause of the injuries sustained by the patient.

The patient's expert inspected the ball and found a deformation imbedded in the fracture surface itself. His opinion of the ball in question was:

- That the ball was exposed to a sharp object and that there was no manufacturing defect
- That the ball exhibited signs of wear and tear as a result of use or abuse, including lacerations, abrasions and punctures
- That the condition of the ball as outlined above would have been apparent to a service provider, such as firm, had it been inspected, and, therefore, the ball should have been retired from use prior to the catastrophic failure, and the catastrophic failure was due to exposure to a sharp object before or at the time of the failure.

The possibility of a defense verdict was deemed to be less than 10 percent.

Defense counsel assessed the potential exposure/claim value of the case for all defendants as being between \$500,000 and \$750,000 with our physical therapist identified as having all of the liability.

### › Risk Management Recommendations

- **Monitor the environment to maximize patient safety, being careful to implement the following measures:**
  - Exercise and document preventive maintenance for all equipment, per manufacturer guidelines.
  - Inspect and/or test equipment prior to patient use, removing any equipment that appears to be broken, unreliable or unsafe.
  - Regularly replace equipment that is known to have a short life expectancy.
  - Ensure that equipment needed for each patient is readily available and checked before each use.
  - Sequester any equipment that is involved in patient injury.
- **Always ensure that patients are correctly and securely positioned on treatment tables and equipment.**
- **Train staff and patients in the proper use of equipment** and require an initial demonstration of competency to avoid injury.

## 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](http://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](http://www.hpso.com/ptclaimreport2011).

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X-11775-1115