

Presented by
HPSO and CNA

Physical Therapists Medical Malpractice Case Study with Risk Management Strategies

Case Study: Engaging in fraud or material deceptions in the delivery of professional services, including reimbursement

Defense Expenses: Greater than \$24,000

Summary

From 2010 through 2014 our insured PT was employed by a home health agency. During his employment he received several corrective disciplinary actions from his supervisors; most due to poor work ethic and inappropriate statements regarding patients. During the last year of his employment he began a habit of being late to work and failing to complete patient healthcare records and billing documentation. His employment ended in termination and the cause was documented as substandard care provided to patients. Supportive documentation for the termination included statements from patients' family members and co-workers.

Prior to his termination, he and the home health agency were involved in a professional liability claim stemming from an incident involving a patient. The patient claimed the PT performed range of motion exercise too aggressively causing a hip fracture. The professional malpractice claim was resolved by the employer on behalf of the PT for an undisclosed amount.

In June 2015 while working for another home health agency, our insured PT received a notice of an administrative hearing from the state board of physical therapy. The notice ordered the PT to appear and defend his professional license against two allegations which occurred in 2008 and 2014. The allegations involved incidents where the PT violated state professional laws and regulations by engaging in fraud or material deception in the delivery of professional services.

The complaint was made by his former employer, and based on the information provided, the board found probable cause to believe the PT had falsified patient care documentation. This documentation indicated that the insured provided therapy services on June 17, 2008 and March 18, 2014 when in fact he did not.

During the investigation of the allegations, the PT admitted to falsifying documentation regarding physical therapy services in 2008 and 2014. After reviewing his documentation for June 17, 2008 he confessed that he had falsified his documentation and billing for services for June 17, 2008. He recalled that he was in a minor motor vehicle accident the morning of June 17th and was unable to see his afternoon patients due to inability to use his car.

Any complaint filed against a healthcare provider's license can have career-altering consequences.

An action taken against a physical therapist's (PT's) or physical therapist assistant's (PTA's) license to practice differs from a professional liability claim in that it may or may not involve allegations related to patient care and treatment. Also, the amounts paid pursuant to license protection claims represent the cost of providing legal representation to the PT or PTS in defending such actions, rather than indemnity or settlement payments to a plaintiff.



He also conceded that he had deliberately documented and billed for services for March 18, 2014 when in fact had not provided any services. He recalled not being able to go to work that day due to partying the previous night and not feeling well the next day. He knew that if he had called out of work again he would risk being fired, so he thought he would just document he saw the patients instead of risking potential termination.

The PT knew falsifying his documentation was wrong and agreed to plead guilty to the allegations.

Risk Management Comments

Defense of the PT's board complaints was difficult due to several prior board complaints. The first complaint occurred in 2012 and involved the PT making unprofessional comments to an elderly patient. The complaint was made by the patient's family member when they believed the insured was making

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demeaning comments to the patient during treatment. The board investigated the complaint and found insufficient evidence that the PT had acted inappropriately. The board investigation lasted six months and the cost to defend the complaint was less than \$500.

The second complaint was received in 2014. After the settlement of the professional liability claim, the former employer filed a complaint in 2014 with the state board of physical therapy claiming:

- Gross negligence or gross incompetence in his practice of physical therapy
- Substandard patient care by himself or by persons working under his supervision due to a deliberate or negligent act

The board took five months to investigate the complaint before concluding that there was insufficient evidence to support a possible violation. The defense costs for this incident were greater than \$1,100.

Resolution

The PT admitted to both counts of engaging in fraud or material deceptions in the delivery of professional services, including reimbursement. As part of the board settlement the following disciplinary actions were specified:

- The PT's license to practice physical therapy in the state was reprimanded.
- The PT's license was placed on probation for three years from the date of the settlement.
- The PT reimbursed the board \$2,500 for the of investigation and legal costs associated with the complaint and \$1,000 for violating state law.
- The PT's practice of physical therapy, including documentation regarding any patient care, was to be monitored by a board approved licensed physical therapist. The board approved physical therapist reviewed the first 60 days of documentation after the settlement date, then approximately once every 90 days for the remaining three year probation period.

- The PT was responsible for all costs associated with each monitoring visit.
- The PT was prohibited from working in a home health setting during the probationary period.
- The PT must provide all current employers with a copy of the board's settlement agreement.
- The PT was required to complete a compliance and professional integrity course and provide proof of completion to the board.

The settlement agreement is also considered a public document, available for inspection at any time by any member of the public under the state open records act. The board may share the settlement agreement with any governmental or professional board or organization, in publication of board newsletters, and on the board's website. The board also specified that if the PT practices or resides in another state, then he must notify the board within ten days of his departure

Risk Management Recommendations:

- **Annually review the physical therapy practice** act to ensure an understanding of the legal and ethical requirements associated with a professional licensure.
- **Be cognizant of how personal, legal and ethical hardships** can affect ones professional career/employment.
- **Develop effective communication and interpersonal skills** and utilize them when interacting with colleagues, patients and family members.
- **Refrain from making inappropriate, subjective opinions, conclusions or derogatory statements** about patients, colleagues or other members of the patient care team.
- **Accurately and contemporaneously** document care given in the patient health record.
- **Adhere to organizational policies and procedures**, and document compliance.

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.



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