

Medical malpractice claims can be asserted against any healthcare provider, including physical therapists. This case study involves a physical therapist working in an outpatient PT office setting.

To view a video of this case study, including additional risk control analysis and recommendations, click the link below:

## CASE STUDY TENS unit burn results in \$750K claim

*(Monetary amounts represent only the expense payments made on behalf of the insured physical therapist.)*



### Summary

A male patient in his early 30s was prescribed physical therapy after undergoing an arterial bypass procedure on his right leg for a popliteal artery entrapment. On evaluation, the patient had a complex medical history that included morbid obesity, diabetes and chronic leg pain. His social history revealed that he had a sedentary occupation, smoked a pack of cigarettes per day and occasionally used alcohol. Due to the patient's size and post-surgical pain and numbness, he had difficulty bearing weight on his right leg and used crutches to ambulate. He was on several pain medications which included hydromorphone, non-steroidal anti-inflammatory drugs and pregabalin.

The patient's surgeon prescribed physical therapy for three months for pain management, to strengthen his lower extremities, and to assist with mobility. The patient attended three sessions of physical therapy. The insured Physical Therapist (PT) used a transcutaneous electrical nerve stimulation or TENS unit on the patient's right leg for 10-15 minutes at the end of each session. However, the Physical Therapist failed to complete a sensory test before using the TENS unit on the patient.

The PT adjusted the intensity based on the patient's comfort level and asked the patient to let her know if the TENS unit caused him discomfort. The patient seemed to enjoy the nerve stimulation, reporting that the TENS unit was the only thing that really seemed to be bringing feeling back into his leg and reduced the pain in his leg.

On the day of the incident, the patient completed a 12-minute session with the TENS unit. When the PT took the pads off his right leg, she noticed two round red marks that appeared to be burns. Neither the patient nor the PT believed the burns were severe enough for a hospital visit. While it was not within the PT's scope of practice to diagnose the burn or provide treatment, the PT applied antibiotic ointment to the burns and advised the patient to follow up with his medical practitioner on an as-needed basis.

The PT checked the TENS unit, which appeared to be in good working order. The only possible source for the burns appeared to be the pads, which looked a little worn.

The following day, the patient called the PT to let her know he needed to go to the doctor because the burns were looking worse. During a follow-up telephone call, the patient informed the insured PT that he had been diagnosed with third-degree burns and would need debridement and skin grafts, as the burns were serious.

The patient continued his physical therapy as much as possible, but it was complicated due to the treatment of his burn and subsequent pain. Two months after the incident, the patient was diagnosed with reflex sympathetic dystrophy (RSD), and he also reported experiencing temperature intolerance, excessive sweating, stress and insomnia due to the pain. The RSD symptoms also prevented him from working. As a result, he and his family lost their health insurance benefits and suffered potential bankruptcy.

### Risk Management Comments

The patient pursued a malpractice claim against the PT, as well as her employer. The burns, which were serious and required several debridements, were noted immediately after the TENS unit was taken off this patient, making the PT's liability in this matter hard to defend.

During the insured PT's deposition, she stated that she knew how to use a TENS unit from experience but had never received any formal training from her employer relating to the manufacturer's guidelines, and she also noted that her employer lacked written policies and procedures. Based on her own experience with TENS units, she believed that the intensity of the TENS unit is up to the patient and noted that if the stimulus was painful to the patient, she would certainly bring it down.

*continued...*

[View our video of this case study!](#)



## Resolution

It was the defense counsel's opinion that the PT's lack of training on how to appropriately use the TENS unit, and the PT's failure to check to ensure the TENS unit pads were in proper working order prior to applying them to the patient, would make the claim difficult to defend. The claim was also difficult to defend due to the PT's failure to complete a sensory test before using the TENS unit on the patient, whose ability to perceive the burning sensation may have been impaired by factors such as his post-op pain and diabetes. The possibility of a defense verdict was deemed to be less than 20 percent. Defense counsel assessed the potential exposure/claim value of the case as being between \$750,000 and \$1 million.

Due to the potential low possibility of a defense verdict in favor of the PT, coupled with the high potential exposure, the decision was made to settle the case prior to trial. The total incurred for this case, including the expenses associated with defending the claim and the settlement, wound up being approximately \$750,000.

## Risk Control Recommendations

The following recommendations are designed to serve as a starting point for physical therapists and healthcare business owners in reviewing their current customs and practices, in order to enhance their patient/client safety practices and protect themselves from liability.

## FOR PHYSICAL THERAPISTS:

- **Be aware of the high risk of burns** from certain commonly used treatments and interventions, such as hot packs, cold/ice packs and electrotherapy. Ensure that each of these treatments is clinically appropriate and that there are no clinical contraindications for their use.
- **Evaluate and document each patient's skin integrity**, neurological status, and ability to perceive pain or discomfort and convey problems to staff. Evaluation should be performed prior to the course of treatment and periodically thereafter.
- **Closely supervise and/or monitor patients** during treatment, including frequent skin checks.
- **Discuss any perceived alterations** in skin integrity with the referring practitioner and healthcare team.
- **Inspect and/or test equipment prior to patient use**, documenting safety checks and preventive maintenance for all equipment per manufacturer guidelines and facility policies.
- **Remove any equipment that appears broken, unreliable, or unsafe.** Immediately sequester any equipment that is involved in a patient injury.

## Physical Therapy Malpractice Claim Report



Ever wonder why physical therapists are sued for malpractice, and what you can do to reduce the risk of patient harm and potential lawsuits? HPSO, in collaboration with CNA, has released the fourth edition of their *Physical Therapy Professional Liability Exposure Claim Report*. This report provides a wealth of statistical data and analysis that shows how physical therapists' malpractice claims have evolved over the past 20 years, as well as risk control strategies to reduce potential liability exposures and enhance patient safety.

Visit [hpso.com/PTClaimReport](https://hpso.com/PTClaimReport) to access this valuable resource.



\*HPSO and CNA Physical Therapy Professional Liability Exposure Claim Report: 4th Edition. 2021. [www.hpso.com/ptclaimreport](https://www.hpso.com/ptclaimreport).

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