



HPSO Physical Therapy Spotlight: Burns

Featuring Video Legal Case Study

Healthcare Providers Service Organization (HPSO), in collaboration with CNA, has published our *Physical Therapy Professional Liability Exposure Claim Report: 4th Edition*. It includes statistical data and case scenarios from CNA claim files, as well as risk management recommendations designed to help physical therapists and physical therapist assistants reduce their malpractice exposures and improve patient safety.

You may access the complete report, and additional Risk Control Spotlights, at: hpso.com/ptclaimreport. You may also view the video legal case study [here](#).

This Physical Therapy Spotlight focuses on a case study and risk control recommendations regarding one of the most significant topics in the report: Burns.

In the 2020 claim report dataset, burns contributed to 16.4 percent of all closed claims. While the proportion of closed claims attributed to burn injuries has decreased since prior reports (Figure 1) patient burns continue to be one of the most frequent injuries in the 2020 claim dataset. Burns were primarily associated with allegations of improper performance using a biophysical agent (Figure 2). However, there were also burn claims with allegations related to equipment, as well as failure to supervise or monitor a patient.

The costs associated with burn claims in the 2020 claim dataset are found to have increased 35.2 percent from the 2016 claim dataset, with an average total incurred of \$78,422. Additionally, claims involving burns were classified according to the burn intensity. Figure 3 summarizes the burn classifications with its corresponding average total incurred amount. Figure 3 reveals that severe burns have an average total incurred of \$280,688, which is more than three and a half times the average total incurred for all burn claims (\$78,422) and twice the overall average total incurred for all closed claims (\$133,761). The severe burns in the dataset often required patients to undergo treatment, such as surgical debridement and/or treatment for infections, resulting in delayed recovery and scarring.

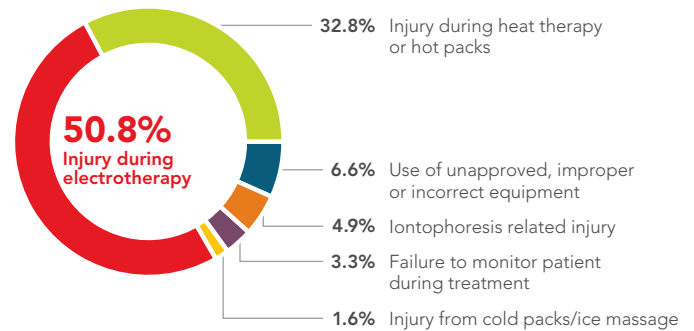
1 Comparison of the 2011, 2016 and 2020 Closed Claim Distributions by Injury

Closed Claims with Paid Indemnity of ≥ \$10,000



2 Distribution of Closed Claims by Burn Allegation

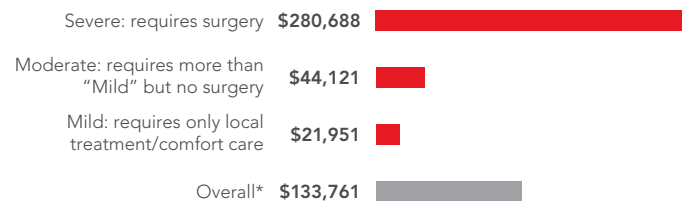
Closed Claims with Paid Indemnity of ≥ \$10,000



3 Average Total Incurred of Closed Claims by Intensity of Burn

Closed Claims with Paid Indemnity of ≥ \$10,000

* Overall average total incurred



Analysis of physical therapy professional liability closed claims in the *Physical Therapy Professional Liability Exposure Claim Report: 4th Edition* revealed recurring themes for claims involving burn injuries and allegations of improper use of biophysical agents. Overall, burn allegations are difficult to defend due to the PTs failure to properly monitor a patient while using hot packs or heating pads, or when applying a biophysical agent to a patient with neurological deficits. Many burn injuries are also related to the PT's failure to assess the patient's skin integrity, neurological status, and ability to perceive pain or discomfort prior to using biophysical agents such as hot packs, electrotherapy, iontophoresis, or cold packs/ice. The case study that follows provides an example of such a claim. This case study involves a physical therapist working in an outpatient physical therapy office setting.

Legal Case Study: TENS unit burn results in \$750K claim

Note: There were co-defendants in this claim who are not discussed in this scenario. While there may have been errors/negligent acts on the part of other defendants, the case, comments, resolution, and recommendations only relate to the defendant; the physical therapist.

**View our video of
this case study!**



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.

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 Management Recommendations: Burns

The following risk control recommendations are designed to help physical therapy professionals reduce the risk of burn injuries.

- **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 the treatment is clinically appropriate and that there are no clinical contraindications for their use.
- **Inspect and/or test equipment prior to patient use**, documenting safety checks and preventive maintenance for all equipment per manufacturer guidelines and facility policies.
- **Recognize patients' medical conditions, co-morbidities and any additional specific risk factors that may affect therapy**, including:
 - Diabetes
 - Sensory loss involving heat/cold sensitivity, hearing, vision, speech, or proprioception
 - Neurological impairments, dementia, or behavioral health concerns
 - Cardiac problems
 - Coagulation disorders
 - Pulmonary disease
 - Side effects of medications or dietary supplements

- **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.
- **Warn patients of potential treatment-related discomfort**. Assist the patient in recognizing the difference between discomfort and pain and ensure that the patient understands the need to communicate about pain levels.
- **Closely supervise and/or monitor patients** during treatment, including frequent skin checks. Arrange for someone to stay with the patient if it is necessary to leave temporarily for any reason.
- **Cease treatment/procedure immediately if the patient expresses discomfort** or states that the therapy seems excessive, painful or inappropriate in any way.
- **Discuss any perceived alterations** in skin integrity with the referring practitioner and healthcare team.
- **Remove any equipment that appears broken, unreliable, or unsafe**. Immediately sequester any equipment that is involved in a patient injury.

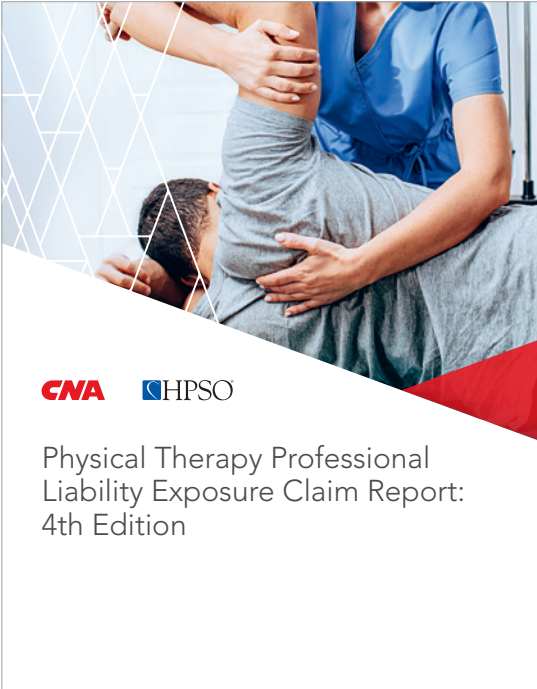
Physical Therapy Spotlight: Defending Your License



For risk control strategies related to:

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To download HPSO and CNA's full report, *Physical Therapy Professional Liability Claim Report: 4th Edition*.

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1100 Virginia Drive, Suite 250
Fort Washington, PA 19034
1.800.982.9491 www.hpso.com



333 South Wabash Avenue
Chicago, IL 60604
1.888.600.4776 www.cna.com

In addition to this publication, CNA and Healthcare Providers Service Organization (HPSO) have produced numerous studies and articles that provide useful risk control information on topics relevant to physical therapy professionals, as well as information relating to physical therapy professionals insurance, at www.hpso.com. These publications are also available by contacting CNA at 1.866.262.0540 or at www.cna.com.

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