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Professional Liability Exposures for Physical Therapy - A Contemporary View

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Webinar

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Learning Objectives

- List at least three of the leading allegations made against PTs, PTAs, and PT Practices in malpractice lawsuits.
- Describe at least three of the leading license/regulatory Board complaints made against PTs, PTAs, and PT Practices.
- List at least three key risk management tools that PTs, PTAs, and PT Practices can incorporate into their practice.

What is Malpractice?

- *Definition:* Negligence or failure to provide the degree of care required of a professional under the scope of license resulting in injury, death or damage.
- Malpractice is a type of negligence that pertains to professionals.
- Physical Therapists and other professionals can be sued for malpractice.

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Elements of Malpractice

- Duty: Standard of care
- Breach: Duty/standard of care not followed
- Cause: Role that breach of duty played in the client suffering harm
- Harm (Key Factor): Damages

How does a patient define malpractice?

- *Perception* of wrongdoing.
- Even excellent physical therapists fail to connect with their patients.
- If a patient perceives he or she has been injured as a result of the care you provided, or failed to provide, that patient could sue.

Who can allege malpractice?

- Injured Party
- Their Legal Counsel
- Parents/Guardians
- An Estate

What to expect

- Summons/complaint Letter
- Legal paperwork, or a demand for services or money
- Oral threat or complaint
- Notice of Arbitration

All alleging an act or omission in the rendering of professional services.

Types of damages

- Economic Damages
 - Medical expense
 - Loss of Income
 - Funeral expense
- Non-Economic Damages (aka Pain & Suffering)
 - Mental anguish
 - Pain and suffering
 - Loss of consortium

Regulatory Board Complaint

What is a Disciplinary Action?

- A complaint filed with a state or federal administrative agency, licensing or regulatory authority responsible for regulating professional conduct.
- Physical Therapists, and other professionals, can have complaints filed against them.
- Anyone can file a complaint - employer, co-worker, client, parent, friend, etc.

Key Terms

Indemnity - monies paid on behalf on a HPSO/CNA insured PT, PTA or PT Practice in the settlement or judgment of a claim.

Expenses are monies paid in the investigation, management or defense of a claim – this may include but not limited to expert witness fees, court costs, etc.

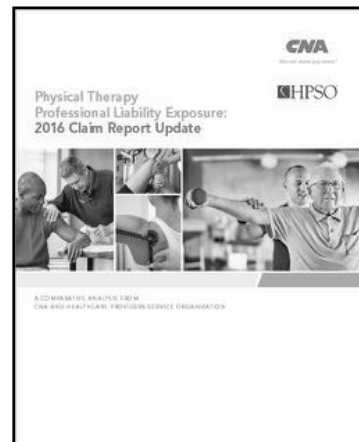
Defendant - the party against whom a claim or charge is brought in a court.

Plaintiff - the party who brings suit in a court.

PT Claim Report

Professional Liability Exposures for Physical Therapy – A Contemporary View

- List the leading allegations made against PTs, PTAs, and PT Practices in malpractice lawsuits.
- List the leading license/regulatory Board complaints made against PTs, PTAs, and PT Practices.
- Identify key risk management tools that PTs, PTAs, and PT Practices can incorporate into their practice.





PT Professional Liability Exposures: 2016 Claim Report

The report also has case scenarios, risk control recommendations and a self-assessment checklist.

Part 1

Closed Claims Study

- Professional Liability Exposures: CNA Healthcare Closed Claims Analysis
- January 1, 2010 – December 31, 2014
- Quantitative Analysis

Part 2

License Protection Paid Claims

- Analysis of paid claims related to allegations made against a PT/PTA's license.
- Quantitative Analysis
- May or may not be related to patient care

Part 3

Work Profile Survey

- Highlights from 2015 Work Profile Survey
- Qualitative Analysis
- CNA/HPSO PT/PTA Customers (with / without claims)

PT Professional Liability Exposures: 2016 Claim Report – Inclusion Criteria

- Claim was against a physical therapist, physical therapist assistant or a PT Private Practice
- Claim closed between January 1, 2010 and December 31, 2014 (5 years of data)
- Claim indemnity payment was \geq \$10,000
 - Application of the inclusion criteria resulted in 443 closed professional liability closed claims for in-depth analysis.
- In addition to the primary dataset, the 2011 dataset was used to draw comparisons. This includes claims closed between January 1, 2001 and December 31, 2010 (10 years of data)
 - The 2011 dataset includes 477 closed professional liability closed claims.

PT Case Study

Case Study

- This case involves a 77-year-old man with a history of Parkinson's, osteoporosis and a recent cerebrovascular accident (CVA). He was receiving physical therapy at our physical therapist's PT practice.
- He suffered from significant postural deficits, creating a severe forward bent posture. Also, due to right-sided weakness caused by the CVA, he was using a cane for mobility assistance.
- Prior to his stroke, the patient was living at home alone with minimal assistance.
- The patient had been seen on and off at our physical therapist's office for several years, so after his CVA, he began therapy again due to his inability get out of bed and his frequent falls.
- The patient had a referral to attend therapy three times a week for eight weeks to provide transfer, balance and flexibility training intended to improve his range of motion. Toward the end of the eight weeks, the patient was allowed to perform his exercises under the supervision of a PTA.
- While standing using exercise bands, he performed scapula retraction exercises and balancing on his own. After a few minutes of performing the exercise, he lost his balance and began to fall.

Case Study

- The PTA, who was across the gym assisting another patient, rushed over to keep the patient from falling. The patient landed on his buttocks on top of the PTA's feet, and when the PTA assisted the patient to a standing position, he immediately complained of right hip pain.
- The PTA encouraged the patient to be evaluated by a practitioner, so an ambulance was called to transport the patient to the local emergency department.
- While in the emergency department, the patient was diagnosed with a right intertrochanteric fracture, which was surgically repaired. He was hospitalized for six weeks and after discharge was sent to a long-term care facility for rehabilitation.
- The patient was able to return home, but he required a full-time home health aide to assist with activities of daily living.
- He has been unable to walk since the accident and now requires a wheelchair or one-on-one assistance while ambulating.
- The patient sued our physical therapist and his PT practice, alleging failure to monitor the patient and failure to supervise the PTA.

Case Study

- Do you believe this PT was negligent?
- Do you believe any other practitioners were negligent?
- Do you believe that an indemnity and/or expense payment was made on behalf of the PT?
- If yes, how much?

Allegations

- Failure to monitor a patient
- Failure to provide clinical support and supervise staff

What the Experts Said

- During the initial interview, our PT recalled that the patient had performed scapula retraction exercises hundreds of times before the incident without hands-on assistance and knew how to properly perform them.
- Although the PT was not on site at the time of the patient's fall, he believed that one-on-one supervision of the patient was not necessary.
- Several defense expert PTs were asked to review the claim and offer an opinion. Most were supportive of the original plan of care, but were concerned that a patient with posture and balance issues was allowed to exercise without supervision throughout the course of his physical therapy.
- The experts agreed that the PT did not have to be in the therapy gym to directly supervise the PTA, but he needed to be on site.
- 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 \$225,000 and \$350,000.

The Resolution

- Indemnity payment: in excess of \$185,000
- Expense payment: less than \$40,000

Figures represent only the payments made on behalf of our physical therapist and his role as a PT Practice Owner and do not include any payments that may have been made from any co-defendants. Amounts paid on behalf of the multiple co-defendants named in the case are not available.

Risk Control Recommendations for the Treating PT

- **Provide clinical support and supervision** for physical therapist assistants, aides and students in compliance with standards of practice for physical therapy.
- **Delegate patient therapy services only to the appropriate level of staff** and provide appropriate supervision for all delegated patient services.
- **Recognize patients' medical conditions**, co-morbidities and any additional specific risk factors that may affect therapy.
- **Utilize appropriate safety devices**, such as gait belts, hands-on assistance and/or have the patient hold onto a balance beam bars when stepping on and off of steps or exercise balls.
- **Never leave the therapy area** when the patient is receiving services from another level of staff.
- **Observe high-risk patients closely to prevent falls** and/or injuries, and never leave them unattended.

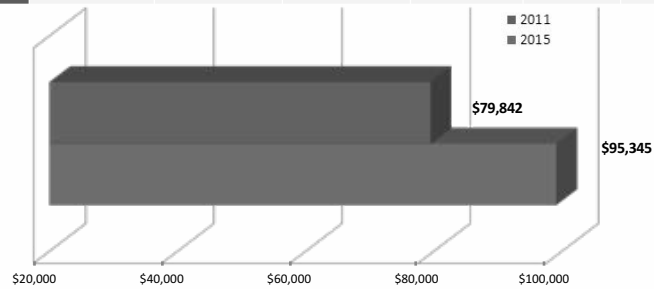
Risk Control Recommendations for PT Practice Owners

- ***Know the current scope of practice parameters*** for a physical therapist, a physical therapist assistant, physical therapy aides and physical therapy students.
- ***Ensure that clinical practices comply with standards endorsed by physical therapy professional associations***, state practice acts and facility protocols.
- ***Be knowledgeable of the levels of supervisory responsibility of a PT*** and know when it is acceptable for a PT to have general, direct or direct personal supervision of physical therapist assistants, aides and students.

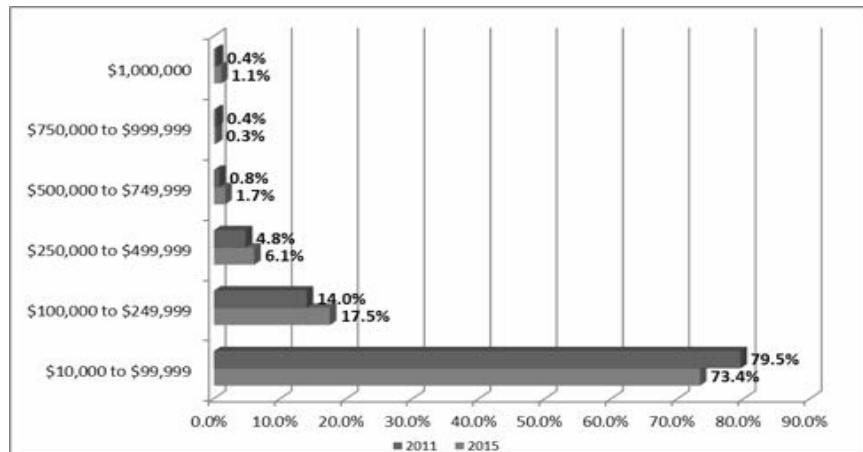
PT Claim Metrics

Closed Claims by Type of Coverage

Licensure type	Percentage of closed claims	Total paid indemnity	Total paid expense	Average paid indemnity	Average paid expense	Average total incurred
Individually Insured PTA	2.0%	\$1,186,750	\$152,685	\$131,861	\$16,965	\$148,826
PT practice	75.4%	\$32,263,702	\$8,200,411	\$96,598	\$24,552	\$121,150
Physical therapist	22.6%	\$8,787,456	\$2,521,782	\$87,875	\$25,218	\$113,092
Overall	100.0%	\$42,237,908	\$10,874,878	\$95,345	\$24,548	\$119,893



Distribution of Claims: 2011 versus 2015



Comparison of 2011 and 2015 Closed Claims by Type of Coverage

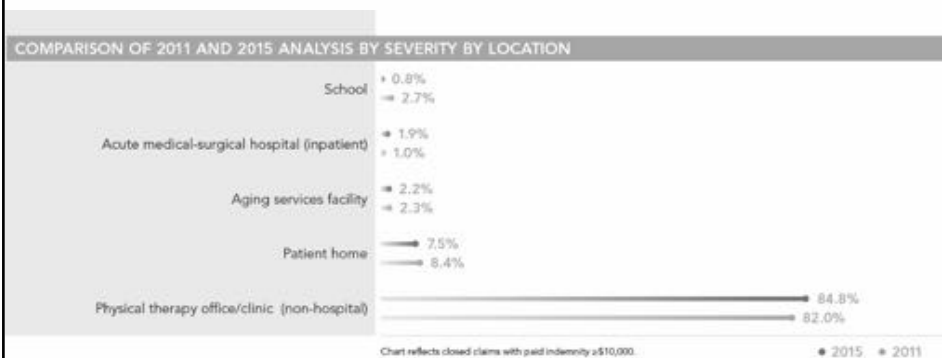
COMPARISON OF 2011 AND 2015 CLAIMS BY INSURANCE SOURCE FOR ALL PHYSICAL THERAPY PROFESSIONALS



Closed Claims by Location

Location	Percentage of closed claims	Total paid indemnity	Average paid indemnity
Long term acute care (LTAC)	0.3%	\$450,000	\$450,000
School	0.8%	\$1,140,443	\$380,148
Acute medical-surgical hospital (inpatient)	1.9%	\$1,905,496	\$272,214
Aging services facility	2.2%	\$840,000	\$105,000
Patient home	7.5%	\$2,766,821	\$102,475
Physical therapy office/clinic (non-hospital)	84.8%	\$28,425,925	\$92,895
Golf course	0.3%	\$50,000	\$50,000
Fitness center	0.3%	\$35,000	\$35,000
Practitioner office or private clinic	1.7%	\$156,349	\$26,058
Spa	0.3%	\$13,000	\$13,000
Overall	100.0%	\$35,783,034	\$99,122

Comparison of 2011 and 2015 Closed Claims by Location

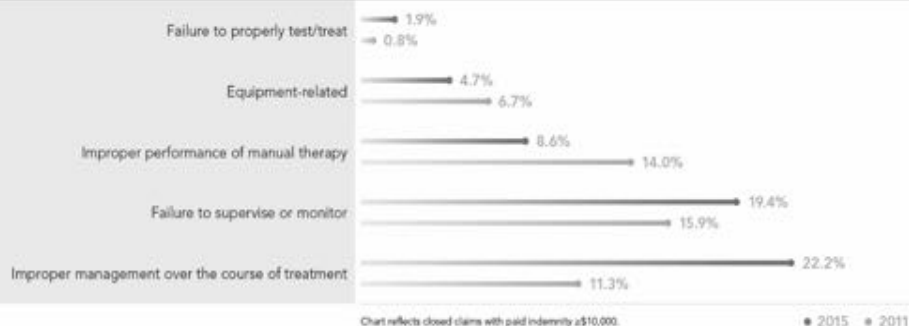


Closed Claims by Allegation

Allegation	Percentage of closed claims	Total paid indemnity	Average paid indemnity
Failure to properly test/treat	1.9%	\$2,047,500	\$292,500
Equipment-related	4.7%	\$2,166,624	\$127,448
Improper performance of manual therapy	8.6%	\$3,925,490	\$126,629
Failure to supervise or monitor	19.4%	\$7,677,447	\$109,678
Improper management over the course of treatment	22.2%	\$8,370,914	\$104,636
Improper performance using therapeutic exercise	20.2%	\$6,806,382	\$93,238
Environment of care	3.9%	\$1,268,942	\$90,639
Improper behavior by practitioner	1.7%	\$479,000	\$79,833
Improper performance using a biophysical agent	17.5%	\$3,040,735	\$48,266
Overall	100.0%	\$35,783,034	\$99,122

Comparison of 2011 and 2015 Closed Claims by Allegation

COMPARISON OF 2011 AND 2015 SEVERITY OF ALLEGATIONS BY CATEGORY



Improper Management over the Course of Treatment

Allegation	Percentage of closed claims	Total paid indemnity	Average paid indemnity
Failure to report patient's condition to referring practitioner	2.5%	\$537,500	\$268,750
Injury during training for assistive devices or equipment	2.5%	\$517,500	\$258,750
Failure to complete proper patient assessment	6.3%	\$925,302	\$185,060
Improper management of surgical patient	30.0%	\$2,773,721	\$115,572
Failure to follow practitioner orders	18.8%	\$1,593,625	\$106,242
Failure to cease treatment with excessive/unexpected pain	10.0%	\$652,500	\$81,563
Improper management of course of treatment	26.3%	\$1,239,266	\$59,013
Inadequate record-keeping/documentation	1.3%	\$50,000	\$50,000
Lack of informed consent	2.5%	\$81,500	\$40,750
Overall	100.0%	\$8,370,914	\$104,636

Improper Performance Using Therapeutic Exercise

Allegation	Percentage of closed claims	Total paid indemnity	Average paid indemnity
Injury during active or assistive range of motion exercises	20.8%	\$2,669,147	\$177,943
Injury from restrictive or elastic bandage/support/brace	5.6%	\$410,094	\$102,524
Improper technique	27.4%	\$1,566,968	\$78,348
Injury during resistance exercise or stretching	12.5%	\$674,548	\$74,950
Injury during gait or stair training	12.5%	\$612,500	\$68,056
Injury during endurance activities	18.1%	\$770,625	\$59,279
Injury during aquatic exercise/therapy	2.8%	\$72,500	\$36,250
Improper positioning	1.4%	\$30,000	\$30,000
Overall	100.0%	\$6,806,382	\$93,238

Failure to Supervise or Monitor

Allegation	Percentage of closed claims	Total paid indemnity	Average paid indemnity
Failure to supervise other providers	8.6%	\$920,000	\$153,333
Failure to monitor patient during treatment	87.1%	\$6,709,947	\$109,999
Failure to maintain proper infection control	1.4%	\$27,500	\$27,500
Failure to respond to patient	2.9%	\$20,000	\$10,000
Overall	100.0%	\$7,677,447	\$109,678

Improper Performance Using a Biophysical Agent

Allegation	Percentage of closed claims	Total paid indemnity	Average paid indemnity
Injury during heat therapy or hot packs	54.0%	\$1,652,817	\$48,612
Injury during electrotherapy	44.4%	\$1,358,418	\$48,515
Injury from cold packs/ice massage	1.6%	\$29,500	\$29,500
Overall	100.0%	\$3,040,735	\$48,266

PT Case Study

Case Study

- This case involves a 32-year-old man who was prescribed 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 a 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 and Lyrica®.
- The patient's surgeon prescribed physical therapy for three months to assist with mobility and strengthen his lower extremities.
- The patient attended three sessions of therapy, and at the end of each session our PT would have the patient use a transcutaneous electrical nerve stimulation (TENS) unit for 12 minutes.
- The PT adjusted the voltage based on the patient's comfort level and told the patient to let her know if the 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 making him feel better.

NIHPSO

Case Study

- On the day of the incident, the patient completed a session with the TENS unit.
- When the PT took the pads off of his leg, she noticed two round red marks that appeared to be burns. Neither the patient nor the PT believed the burns were serious enough for him to go to the emergency department.
- Antibiotic ointment was applied to the burns, and the PT instructed the patient to follow up with his practitioner if needed.
- The TENS unit was checked and was 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), 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.

NIHPSO

Case Study

- Do you believe this PT was negligent?
- Do you believe any other practitioners were negligent?
- Do you believe that an indemnity and/or expense payment was made on behalf of the PT?
- If yes, how much?

Allegations

- Improper performance using therapeutic exercise
 - Failure to monitor patient during treatment
- Note: unit image was not the unit used in the providing of therapy

What the Experts Said

- The patient pursued a claim against the PT, as well as her employer. The claim was difficult to defend due to the absence of written policies and procedures, as well as the PT's lack of training on how to appropriately use the TENS unit.
- 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.
- Based on her own experience with the unit, she believed that the amount of voltage used on 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.
- It was the defense counsel's opinion that the treatment of this patient was within the standard of care and that specifically, the use of the TENS unit. However, the burns, which were serious and required several debridements, were noted immediately after the TENS unit was taken off this patient, which would make liability in this matter hard to defend.
- The possibility of a defense verdict was deemed to be less than 20 percent and the potential exposure/claim value of the case was assessed between \$750,000 and \$1 million.

The Resolution

- Indemnity payment: greater than \$700,000
- Expense payment: greater than \$150,000

Figures represent only the payments made on behalf of our physical therapist and do not include any payments that may have been made from any co-defendants. Amounts paid on behalf of the multiple co-defendants named in the case are not available.

Risk Control Recommendations for the Treating PT

- ***Be aware of the high risk of burns*** from certain commonly used treatments and interventions, such as whirlpool, hot packs, paraffin, 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.
- ***Routinely test, monitor and log temperatures*** of whirlpool water, hot-pack warmers, paraffin tanks and other equipment in accordance with facility policies.

PT Claim Metrics

Severity by Injury

Injury	Percentage of closed claims	Total paid indemnity	Average paid indemnity
Paralysis	0.3%	\$1,000,000	\$1,000,000
Death	0.8%	\$1,747,500	\$582,500
Loss of use of limb	2.2%	\$3,358,500	\$419,813
Nerve injury/damage	0.8%	\$890,000	\$296,667
Bleeding/hemorrhage	0.6%	\$525,000	\$262,500
Herniated disc	6.9%	\$4,053,555	\$162,142
Cerebrovascular accident/Stroke	0.8%	\$360,000	\$120,000
Traumatic brain injury	0.6%	\$222,788	\$111,394
Amputation	0.6%	\$210,266	\$105,133
Fractures	31.9%	\$11,571,824	\$100,625

Closed Claims above \$100,000
average paid indemnity

Severity by Injury (Continued)

Injury	Percentage of closed claims	Total paid indemnity	Average paid indemnity
Physical injury resulting from abuse/assault	1.1%	\$359,000	\$89,750
Increase or exacerbation of injury/symptoms	14.4%	\$4,445,033	\$85,481
Dislocation	3.0%	\$932,500	\$84,773
Pain and suffering	0.3%	\$62,500	\$62,500
Burns	18.8%	\$3,561,859	\$52,380
Muscle/ligament damage	7.2%	\$1,307,273	\$50,280
Neurological - peripheral and all other	0.6%	\$100,000	\$50,000
Infection/abscess/sepsis	0.8%	\$140,000	\$46,667
Pressure ulcer	0.6%	\$82,500	\$41,250
Loss of organ or organ function, including hearing	1.7%	\$218,468	\$36,411
Sprain/strain	1.9%	\$250,000	\$35,714
Bruise/contusion	1.1%	\$142,750	\$35,688
Cracked/broken tooth	0.3%	\$27,500	\$27,500
Abrasion/irritation/laceration	2.5%	\$194,218	\$21,580
Additional procedure required	0.3%	\$20,000	\$20,000
Overall	100.0%	\$35,783,034	\$99,122

Closed Claims below \$100,000
average paid indemnity

Comparison of Re-injury versus Other Injury

Type of injury	Percentage of closed claims	Total paid indemnity	Average paid indemnity
Re-injury	36.6%	\$13,653,857	\$103,438
Injury (Other than re-injury)	63.4%	\$22,129,177	\$96,634
Overall	100.0%	\$35,783,034	\$99,122

PT License Defense

License Defense

An action taken against a license to practice differs from a professional liability claim in that it may extend beyond matters of professional negligence and involve allegations of a personal, nonclinical nature, such as substance abuse. License protection claims represent only the cost of providing legal defense, rather than indemnity or settlement payments to a plaintiff.

License Defense Paid Claim by Insured Type

Insured type	Total paid claims	Percentage of paid claims	Total paid	Average paid
Physical therapy practice	48	33.3%	\$223,926	\$4,665
Individually insured Physical therapist or Physical therapist assistant	96	66.7%	\$471,239	\$4,909
Total	144	100.0%	\$695,165	\$4,828

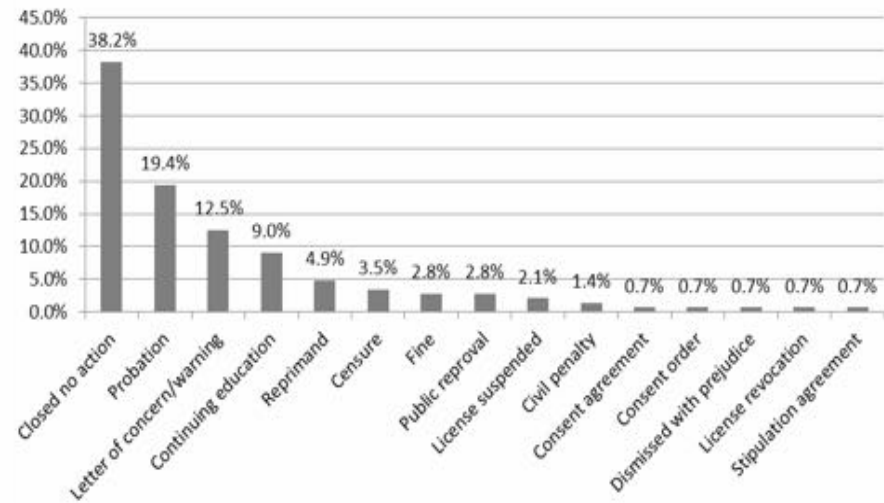
License Defense Paid Claim by Allegation Class

	Percentage of paid claims	Total paid	Average paid
Improper management over the course of treatment	38.2%	\$204,645	\$3,721
Inappropriate behavior	36.1%	\$305,962	\$5,884
Fraudulent billing	9.0%	\$76,495	\$5,884
Failure to supervise	9.0%	\$70,753	\$5,443
Improper performance using a biophysical agent	3.5%	\$19,019	\$3,804
Failure to test/treat	2.1%	\$12,628	\$4,209
Improper performance using therapeutic exercise	2.1%	\$5,663	\$1,888
Total	100.0%	695,165	\$4,828

Inappropriate Behavior Allegation

	Percentage of paid claims within allegation class	Percentage of paid claims	Average paid
Physical, sexual, emotional abuse	46.2%	16.7%	\$7,472
Failure to follow policy	19.2%	6.9%	\$3,915
Practitioner functioning outside of scope of practice	13.5%	4.9%	\$3,920
Substance abuse	9.6%	3.5%	\$7,763
Breach of confidentiality or privacy	5.8%	2.1%	\$4,010
Criminal allegations	5.8%	2.1%	\$3,065
Total	100.0%	36.1%	\$5,884

Board Outcomes



PT License Defense Case Study

PT License Defense Case Study

- A PT practice provided therapy services to patients in their clinic and in patients' homes.
- The PT was an independent contractor working for the PT practice in a home health setting.
- The PT was practicing for 9 years as of the date of the first incident in 2013.

Patient A

- In late 2013 and early 2014, the physical therapist provided treatment to Patient A in their home. A complaint was filed by a family member of Patient A which alleged that over a three-month period the PT exhibited unwanted and inappropriate behavior toward the patient's relative.
- Behaviors included suggestive gestures and comments on three separate occasions with the first two instances involving casual touching of the relative. The third instance was a telephone call to the relative making lewd comments.
- After the third incident, Patient A requested the agency send a different therapist for her treatments. The complaint allegations also included statements by Patient A that the PT constantly used his personal cellular telephone during her treatments.

Patient B

- During the same time period in 2013 and 2014, while providing treatment to Patient B, the PT behaved inappropriately towards the patient's relative by walking away from patient during treatment to make suggestive comments.
- Patient B also reported instances where the PT was using his personal cellular telephone for calls and texting during her treatment.
- The complaint included an allegation that while Patient B was performing exercises, the physical therapist failed to supervise.

Actions by the Board

- Because of the allegation of repeated use of the PT's personal cellular telephone during treatment times, the State physical therapy licensing board issued a subpoena to the PT's telecommunications provider for cellular telephone activity during treatment periods.
- The board compared billing records with the cellular telephone activity logs and concluded that the PT was using his cellular telephone phone during most of if not all of Patients A and B therapy times.

Findings of the Board

The findings of the State board included:

- A failure to maintain standard of care because of repeated cellular telephone usage diverting focus from direct treatment to patients
- Fraudulent billing for the time not deducted for telephone usage when physical therapist was to be providing care
- Negligence because of failure to supervise patients performing exercises
- Failure to use sound and professional judgment by engaging in inappropriate behavior with relatives of patients

Final Board Decision

- Probation for 3 years
- Must work in a supervised setting
- Must have supervising PT sign off on treatment to patients
- Must have a co-worker present during treatment

Cost to defend: \$16,700

PT Case Study

Case Study

- This case involves a 10-year-old child and his mother who were in a motor vehicle accident.
- The child was brought via ambulance to the nearest hospital and diagnosed with a fracture of the left femur.
- Later that same day, the child was placed in an immobilizer and transferred to the nearest children's hospital, which was 100 miles away.
- When the patient arrived at the hospital, his left leg was placed in a cast, and traction was applied for approximately 48 hours. Afterward, he underwent surgery for an external fixation of the left femur.
- Approximately nine weeks after the accident, the orthopedic surgeon removed the external fixation device and referred the patient to physical therapy.
- The referral was written for therapy to the left leg involving range-of-motion exercises for the knee.
- The patient was evaluated by our PT one week after removal of his external fixation device. The PT told the patient and his mother that the plan of care was to begin therapeutic exercises, and that the referring practitioner ordered him to bear weight as tolerated.
- The child seemed eager to start therapy and agreed to begin the follow day.
- On that same day, the PT had a telephone conversation with the referring practitioner confirming the patient's plan of care.
- The PT felt it was a little premature to begin therapy nine weeks after a child suffered a long bone fracture and was concerned about the child's ability to safely bear weight on his affected leg.
- The practitioner confirmed that it was fine for the child to bear weight as tolerated, because the radiology exams confirmed that the bone had healed.

Case Study

- At his first physical therapy session, the child was instructed to perform standing hip abduction to 25 or 30 degrees. The exercise was demonstrated, and then the child was instructed to go 30 degrees and no farther. The first repetition was fine.
- On the second repetition, the patient began to bend to the right. He was instructed to stand straight, go slower and not to go too high.
- According to PT's notes and testimony, the PT was standing right behind the patient while guarding him.
- On the third rep, the child lifted his left leg approximately 45 degrees and bent to the right.
- The PT immediately told the patient to stop and bring his left leg down because he had gone to high.
- As he was bringing the leg down, a pop was heard. The patient screamed and dropped into the PT's arms and onto the mat.
- Although other PTs and PTAs were present, as was the mother, no one actually witnessed the accident.
- Eighteen months after the incident occurred, the patient's mother filed a claim against the insured PT, who owned his PT practice.

NIHPSO

Case Study

- **Do you believe this PT was negligent?**
- **Do you believe any other practitioners were negligent?**
- **Do you believe that an indemnity and/or expense payment was made on behalf of the PT?**
- **If yes, how much?**

Allegations

- Improper performance using therapeutic exercise
- Failure to monitor patient during treatment

What the Experts Said

- The PT claimed that he was simply following the orders of the referring practitioner, who was also the co-defendant.
- Our PT verified the order via a telephone call to the practitioner, who told him that weight-bearing exercises for the child were fine as tolerated during physical therapy.
- Defense experts agreed that orders for physical therapy with weight-bearing as tolerated were premature, in that the fracture was not fully healed at the time of the referral.
- They also concluded that it is not the responsibility of the therapist to assess the weight-bearing capacity of the patient or the status of the patient's bone healing.

The Resolution

- Indemnity payment: \$0.00
- Expense payment: greater than \$160,000

Figures represent only the payments made on behalf of our physical therapist and do not include any payments that may have been made from any co-defendants. Amounts paid on behalf of the multiple co-defendants named in the case are not available.

More About the Outcome

- No indemnity payment was offered and the court issued a summary judgment dismissing the actions against our PT and the PT practice owner.
- Significant legal and related expenses were paid to successfully defend this claim. While settlement may have been less costly, the PT's telephone call to the referring practitioner and careful documentation led to an aggressive and successful defense. The cost to defend this claim exceeded \$160,000 and took more than six years.

Risk Control Recommendations for the Treating PT

- **Know and comply with state laws regarding scope of practice.** PTs are responsible for knowing and understanding the regulations governing the practice of physical therapy in each state where they practice, as well as the policies and protocols of their employers and the facilities where they provide services.
- **Contact the referring practitioner** for clarification if referring protocol appears premature or beyond the patient's abilities.
- **Be vigilant about protecting patients from the most common types of injuries.**
- **Practice active listening skills** and teach back to ensure that my patients understand directions and instructions.
- **Refrain from documenting subjective opinions or conclusions**, as well as making any derogatory statement about patients or other providers in the record.

Self-Assessment Checklist

PT Self-assessment Checklist & Claim Tips
hpso.com/PTclaimreport2016

The image shows two overlapping documents. The top document is the cover of the 'Physical Therapy Professional Liability Exposure: 2016 Claim Report Update'. It features the CNA logo, the HPSC logo, and a photograph of physical therapists working with a patient. The bottom document is the 'Self-Assessment Checklist for Physical Therapists', which is a detailed form with multiple sections for self-evaluation, including areas for 'Risk Control', 'Professional Liability', and 'Patient Safety'. The form includes checkboxes and space for notes.

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Questions?