



HPSO Physical Therapy Spotlight: Liability for Business Owners and Supervisors

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.

This Physical Therapy Spotlight focuses on an analysis and risk recommendations regarding one of the most significant topics in the report: Physical Therapy Business Owners and Supervisors.

Physical Therapy Business Owners

Physical therapy (PT) business owners, as employers, are vicariously liable for the conduct of employees who are acting within the scope of their employment. The professional conduct of employees should be considered as extensions of the business, and PT business owners must ensure that staff also view their actions in this manner.

The legal theory of vicarious liability holds employers responsible for the acts and omissions of their employees. Vicarious liability is based upon the legal concept of *respondent superior*, which holds the "master" (employer) responsible for the acts or omissions of its "servant" (employee). When a person employs another for a profit, fairness demands that the person also bear responsibility for managing the risks and paying for the damages associated with the employee's work.

Vicarious liability risks are typically clinical in nature, although they can be based upon errors or omissions of communication.

For example, the patient may assert that he or she was given incorrect clinical information, or was never told the correct clinical information by a staff member. Fortunately, such claims are not common. However, claims more frequently arise from a patient's dissatisfaction with staff interaction, especially when the patient believes the employee has impeded the ability to see or speak with the manager or business owner.

Visit the HPSO Resource tab to review claim scenarios involving physical therapy business owners, including the following case [illustrating the liability risks associated with the failure to create and implement appropriate policies and procedures for supervision and oversight which may lead to a patient injury](#).

Figure 1 from the *Physical Therapy Liability Claim Report: 4th Edition*, reflected that closed claims involving PT practices represented the largest percentage of closed claims at 63.1 percent, which remains consistent with prior HPSO/CNA claim reports.

1 Claims by Insurance Source for All Physical Therapy Professionals

Chart reflects closed claims with paid indemnity of ≥ \$10,000

Insurance source	Distribution of closed claims	Total paid indemnity	Total paid expense	Average total incurred
PT practice (PTs, PTAs and other professional designations)	63.1%	\$27,791,629	\$7,616,174	\$127,826
Individually insured PT	32.3%	\$16,204,533	\$4,854,939	\$148,306
Individually insured PTA	3.2%	\$1,803,980	\$491,003	\$163,927
Individually insured PT student	1.4%	\$345,000	\$52,736	\$66,289

Physical Therapy Business Owners, cont.

As previously noted, the professional liability claims asserted against an individually insured PT can differ from claims asserted against a PT business owner. In smaller practices, however, the business owner may also be the treating PT provider. **Figure 2** displays the top five allegations against individually insured PTs:

- Improper management over the course of treatment;
- Failure to supervise or monitor a patient;
- Improper performance using a biophysical agent;
- Improper performance using therapeutic exercise; and
- Improper performance of manual therapy.

2 Top Severity and Distribution of Individually Insured Physical Therapist Closed Claims by Allegations

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

This figure only highlights those allegations with the highest distribution and severity against individually insured physical therapists.

Allegation Class	Percentage of Closed Claims	Average Total Incurred
Improper management over the course of treatment	29.5%	\$189,611
Failure to supervise or monitor a patient	26.5%	\$182,662
Improper performance using a biophysical agent	11.4%	\$97,074
Improper performance using therapeutic exercise	10.6%	\$153,777
Improper performance using manual therapy	8.3%	\$153,777

As shown in **Figure 3**, a further analysis of PT practice closed claims from the *Physical Therapy Liability Claim Report: 4th Edition* reveals that the top five allegations against a PT business owner include:

- Improper management over the course of treatment;
- Failure to supervise or monitor a patient;
- Improper performance using a biophysical agent;
- Improper performance using therapeutic exercise; and
- Improper performance of manual therapy.

Figure 3 also illustrates the severity and distribution of the top five allegations against PT business owners from the *Physical Therapy Liability Claim Report: 4th Edition*.

3 Top Severity and Distribution of PT Business Owner Closed Claims by Allegations

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

This figure only highlights those allegations with the highest distribution and severity against insured PT business owners.

Allegation Class	Percentage of Closed Claims	Average Total Incurred
Improper management over the course of treatment	26.6%	\$153,018
Failure to supervise or monitor a patient	25.3%	\$149,714
Improper performance using a biophysical agent	18.7%	\$66,301
Improper performance using therapeutic exercise	14.9%	\$111,527
Improper performance using manual therapy	6.2%	\$129,660

Recognizing the allegations with the highest severity and distribution may assist PT business owners to mitigate exposures that could lead to a vicarious liability claim.

Risks of Vicarious Liability

Physical therapy practice owners, regardless of how small or specialized, should be aware of their risks and take appropriate measures to protect the practice against clinical, operational and financial exposures. For the allegations listed in **Figure 2**, the PT business owner often did not have appropriate safeguards in place that could have avoided a patient injury and the consequent professional liability claim. The risk of vicarious liability claims is higher in practices that have:

- Substandard leadership by the business owner
- Inadequate office policies, procedures and staff training programs
- Deficient supervision of staff and/or patients
- Improper delegation of patient care and treatment to unqualified personnel
- Inadequate understanding among staff of duties and responsibilities

Understanding the Risks

Leadership

The PT business owner should see the PT practice as a membership community and empower all members (staff) with a detailed knowledge of their rights, including ownership of their responsibilities and their obligations in the community.

No matter how or where you look, staff are vitally important to every aspect of a practice. The ability of staff to help manage risk is critical to an effective patient safety and risk management program. PTAs and PT aides may contribute to the process of making clinical settings safer for patients and increase productivity. Front desk staff represent the public face of the practice, the first office representatives to whom the patient will speak by phone or meet in person. Patients' first impressions of them can have a profound effect on the practice. Financial personnel are charged with ensuring the cash flow of the practice and are delegated the task of managing accounts receivable. Maintenance and facilities staff members that ensure patients and other staff members operate in a clean, safe environment. Whatever their role, all staff influence patients' opinions of the practice as well as their sense of satisfaction.

Why is this important? We know patient dissatisfaction represents a significant factor in professional liability claims. A significant number of CNA/HPSO closed physical therapy claims do not result in a payment to the claimant. Although exceptions exist, the majority of the claims that did progress were not instituted solely because of inadequate patient care. Rather, they were pursued due to patient dissatisfaction arising from non-clinical issues. With multiple patient contacts in a variety of interactions, all staff have a profound ability to improve patient satisfaction and reduce the likelihood of a professional liability claim.

Policy and Procedure

Written policies and procedures serve as an operating framework within which physical therapists (PTs) and PT owners can accomplish essential clinical and administrative tasks in a systematic and consistent manner. The term "policy" refers to governing principles that reflect an organization's mission, philosophy and goals, while "procedure" denotes measures required to implement the policy. PT businesses that lack formal practice parameters, or that diverge from written policy, may find themselves at a disadvantage regarding accreditation, regulatory compliance and legal defense in the event of a claim.

Written policies and procedures primarily seek to improve patient outcomes. Thus, most organizations focus initially on clinical practices associated with the delivery of patient care and gradually move toward standardization of administrative functions.

Supervision and Monitoring

The supervision and monitoring of staff and patients may constitute an area of risk for PT business owners. PT business owners should verify that supervisors/managers are fulfilling their due diligence to ensure that clinical staff perform only those tasks that are appropriate, within their training, and within their jurisdictional and designated scope of practice. They also should confirm that clinical support and supervision for physical therapist assistants (PTAs), physical therapy aides (PT aides) and physical therapy students (PT students) comply with physical therapy standards of practice.

25.3 percent of all closed claims against PT business owners involve allegations of failure to supervise or monitor

KEY FINDING



According to the analysis of PT business owner closed claims, the average total incurred for allegations involving the **failure to supervise or monitor is \$174,347** and represents **25.3 percent of all closed claims against PT business owners**. The sub-set of allegations involving the failure to supervise and monitor includes:

- Failure to supervise other providers (e.g., PTAs, PT aides, PT students);
- Failure to monitor a patient during treatment;
- Failure to respond to the patient;
- Failure to provide a safe environment; and
- Failure to maintain proper infection control.

Proper supervision is fundamental to ensuring that delegated tasks are performed safely and that licensed providers and non-licensed assistive personnel (e.g., PTAs, PT aides, PT students) function within their permitted "scope of practice" (SOP). The PT business owner should ensure that a PT is physically present in

the department/facility when delegating tasks to licensed personnel. PT Business owners should also confirm that PT monitoring and on-site supervision is mandatory when delegating any therapy-related tasks to non-licensed staff. Written supervisory guidelines for licensed and non-licensed staff should focus on the following performance indicators, at a minimum:

- **Basic skills** and level of competence.
- **Compliance** with practice protocols and task proficiency.
- **Urgency of response** to unexpected situations.
- **Openness of communication** with the delegating provider.
- **Accuracy** of documentation and timeliness in the patient's healthcare information record.
- **Transparency** in error reporting and overall reliability.

Supervising PTs also are expected to review selected patient healthcare information records in order to evaluate the assigned staff member's compliance with written policy directives and applicable standards of care. Assessment results and other performance-related findings should be documented in the staff member's personnel file.

Scope of Practice and Delegation

SOP represents a critical concept within the healthcare industry, defined as the activities that healthcare providers are permitted to perform in alignment with their professional license, education and clinical experience. SOP is typically delineated in state statutes and regulations. Where no state-specific regulatory guidance exists, competency is generally determined by certification, education, training and skills assessment, as well as guidance that may be issued by relevant professional associations.

SOP is evolving in the direction of greater flexibility due to a number of compelling factors – such as rising patient acuity, widespread professional burnout, the retirement of large numbers of healthcare providers, and the stresses of the COVID-19 pandemic.

Due to vital challenges within healthcare systems and organizations, healthcare providers, such as PTs, have been subject to mounting pressure to deliver more services from every level of staff. These demands have resulted in an increased tendency to broaden the SOP of licensed PT providers, as well as to delegate tasks to non-licensed assistive personnel with lower levels of training.

As staffing challenges intensify, PT business owners should consider new approaches to maximize efficiency and address staffing deficits, while ensuring that licensed staff practice and non-licensed assistive personnel work within their competency and legally authorized practice parameters.

Below is a list of critical issues that PT business owners or practice leaders may use to identify and address risks associated with SOP and delegation decisions:

- **Increasing leadership and provider awareness** of SOP-related legal parameters.

- **Ensuring that tasks are appropriately delegated** by staff members within their statutory authority to do so.
- **Confirming that staff have the education, training and competence** to safely perform the delegated task.
- **Strengthening the approval process** for expanding SOP and delegation of tasks.
- **Determining whether patients/residents are appropriate candidates** to receive the proposed care.
- **Enhancing compliance** with monitoring and supervisory requirements.
- **Maintaining ongoing communication** between delegating providers and assigned delegees.

Prior to authorizing any changes in SOP, PT business owners should determine the tasks and activities that may be safely assigned, as well as those that should not be assigned to others. The following questions can help healthcare organizations determine whether an activity is safe for delegation:

- Is the task performed on a routine basis within the healthcare setting?
- Can the task be performed safely by non-licensed assistive personnel guided by standing orders or directions?
- Is the task relatively simple, or does it involve making complex observations, interpretations and/or critical decisions?
- Is the task invasive, creating potentially life-threatening consequences for the patient if performed incorrectly?
- Do non-licensed staff have the proper education, training and competence to safely carry out the task?
- Will a PT be available for consultation while the task is carried out, if applicable?
- Are there sufficient human resources, if onsite supervision is required?
- What is the extent of liability for the provider and organization if the task is delegated?

Delegation decisions should be guided by written criteria and reflect PT state practice authorizations and/or national guidelines. In addition, they must not compromise patient well-being or be motivated primarily by financial considerations. Delegation protocols and related information – including assessment of competence to perform the task in question – should be comprehensively documented in practice agreements, job descriptions and/or personnel files.

Any change in clinical practice requires that the staff member be capable of performing the activity safely and effectively. Even if state law and/or delegation guidelines sanction the task, it may not be within the individual's demonstrated competency and skill set. As a general rule, tasks delegated to non-licensed assistive personnel should not require independent assessment or a high degree of problem-solving ability. In some cases, these staff members should undergo proctoring sessions in order to

demonstrate their competence. These sessions should be documented in personnel files and job performance reviews, including primary credentials, continuing education courses and the dates and results of competency testing.

The American Physical Therapy Association (APTA) has published information which PT business owners may find useful when establishing policies and procedures on a [PT's responsibilities on delegation](#) and supervision and the [roles of PT aides](#).

Additional resources on delegation for PT business owners can be found at [HPSO.com/Resources](https://www.hpsoc.com/Resources).

Staff Responsibilities Versus Staff Accountability

In the evolving world of value-based accountability care, responsibility is no longer the key element for staff performance (Porter-O'Grady & Malloch, 2018, p. 486). In the twentieth century workplace, if an employee did the job well and met pre-established professional expectations, the employee's performance was judged to be successful. As a result, the employee was rewarded based on a laundry list of functions and activities. The evaluation of job performance concentrated on the quality of the work process, how the work was performed and how many errors were committed (Porter-O'Grady & Malloch, 2018, p. 486).

However, in the 21st century, healthcare is now viewed in the context of value-based accountability care. Therefore, PT business owners should focus their organization and employees to view their jobs and professional performance from a perspective of responsibility to that of accountability. Having a professional accountability view means employees have complete ownership of daily responsibilities and the commitment to apply their talents, energy and skills in a way that make the circumstances better for themselves and others within the organization (Porter-O'Grady & Malloch, 2018, pp. 486-488).

Despite implementing an employment environment based on accountability, PT business owners should recognize poor or inadequate staff performances as well as clinical or employment situations that may place the organization at risk. The following suggestions can help PT business owners minimize vicarious liability risks:

- Consider the professional conduct of your employees as extensions of your own - and ensure that staff also view their actions in this manner.
- Foster a positive attitude and open communication in your practice. Do not encourage staff members to obstruct patient access to clinical staff.
- Hire qualified staff members who strive to meet the work performance standards you set for the practice.
- Establish thorough, written policies and protocols that give direction to your staff. Review policies at least annually, or as needed, to remain compliant with clinical, legal or regulatory changes.
- Clearly document the duties and responsibilities of each staff position in a written job description.
- Examine the job and employment credentials of all applicants, including salaried employees, hourly employees and independent contractors. Check with the references listed on résumés.

- Background checks may be considered, though it is important to understand and comply with state and/or federal anti-discrimination laws. Consult an attorney experienced in employment law for professional advice in this area. Useful information also may be obtained on the U.S. Equal Employment Opportunity Commission [website](#).
- When evaluating prospective job applicants, keep in mind that tasks can be taught, but kindness, empathy, and concern are qualities that are not easily learned.
- Verify current credentials of all employees whose job responsibilities require licensure or certification.
- Establish clear, written performance expectations for staff.
 - For example, instead of informing the receptionist that a job function is answering the telephone, direct the receptionist to answer the telephone in three rings or less, stating the words or script you desire, using a pleasant tone of voice.
- Review your state physical therapy practice act - all PTs must practice within the limitations imposed by this statute.
- Do not assign duties to any staff member that fails to comply with the state physical therapy practice act.
- Conduct performance reviews at least annually.
- Provide adequate training for staff members.
- Encourage and financially support staff attendance at continuing education courses that update their knowledge and skills.
- Supervise each employee from the outset of employment to ensure that the employee has adequate knowledge and skill to perform assigned duties.
- Schedule regular staff meetings to reinforce office policies and improve staff communication.
- Use staff meetings to discuss office successes and/or shortcomings, resolve problems or other office practice situations that require improvement, and educate your staff. Incorporate patient safety and risk management topics in all staff meetings.
- Respect and show confidence in all staff, especially when patients are present.
- Review the professional liability insurance policy to determine whether it includes vicarious liability coverage.
- Through the use of surveys and evaluations, ask patients for feedback about your practice and include staff as an evaluation subject. This tool will assist in gaining insight into patients' perceptions of staff and the quality of staff-patient interactions.
- Require a certificate of insurance from all independent contractors. Confirm that the organization is listed as an additional insured on each of the independent contractor's policies.
- Ask independent contractors or other clinical/licensed staff sharing the office space to sign a hold harmless / indemnification provision, which indemnifies against any losses arising from their activities. (As these clauses are varied and complex, consult with your attorney before signing any contracts containing a hold harmless provision.)

REFERENCES

American Physical Therapy Association. (2017, September). Physical Therapy's Scope of Practice HOD P06-17-09-16/HOD P06-17-08-07* [Position]. Retrieved from <https://www.apta.org/contentassets/position-pt-scope-practice.pdf>

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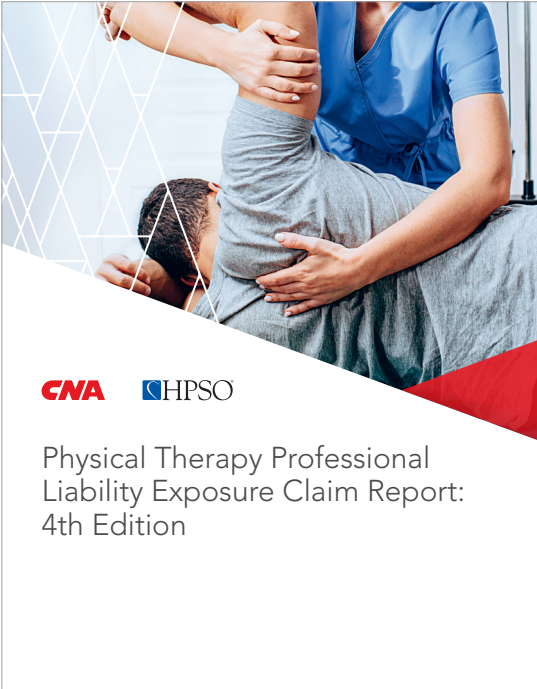
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