



Vicarious liability for patient burn

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Physical therapist case study: Vicarious liability for employed PT's actions resulting in patient burn

*Physical Therapy Malpractice Case Study with Risk Management Strategies
Presented by HPSO and CNA*

Medical malpractice claims may be asserted against any healthcare provider, including a physical therapist. This case study involves an employed physical therapist (PT) working at an insured physical therapy firm in an outpatient setting.

Summary

An active, healthy 70-year-old patient presented for physical therapy following a total left knee replacement. Therapy treatment included transcutaneous electrical nerve stimulation (TENS). During the patient's fourth visit, the PT applied the TENS to the patient's knee and left the patient unattended. Shortly thereafter, the patient experienced extreme pain during a stimulation and attracted the attention of another employed PT. The PT noted the electrodes were placed directly on the patient's kneecap and recent surgical incision. When the electrodes were removed, the PT noted two burns to the patient's knee and applied ice to the site.

The patient attempted to treat the burns on his own but was eventually diagnosed with third degree burns. The burns became infected and resulted in the patient undergoing three additional surgical revisions to his total knee replacement due to the complications.

Medical expenses related to the burns and ongoing surgical interventions to the knee due to the burn were greater than \$300,000.

The patient filed suit against the insured physical therapy firm and the employed PT. The allegations against the insured physical therapy firm included:

- Failing to properly instruct staff on the use of TENS;
- Failing to instruct the staff on the proper use of TENS in accordance with manufacturer guidelines; and

- Vicarious liability for the employed PT's actions.

The allegations against the employed PT included:

- Improper use of TENS;
- Improper application of TENS, including electrode placement;
- Inappropriate settings on the device;
- Leaving the patient unsupervised while TENS was in use; and
- Failure to follow recommendations and guidelines of the manufacturer.

Risk Management Comments

The TENS unit was inspected, and no defects were noted. The inspection revealed that when the injury occurred, the unit was set to 100 Hz, which is twice the manufacturer's recommended setting for the patient's age, treatment location and injury type.

Defense experts reviewed the patient's physical therapy healthcare information record and noted issues with the documentation, specifically related to the lack of adequate documentation. The experts reported the following issues:

- No documentation of the TENS being used on the patient for six physical therapy visits, although billing records reflecting a TENS was used on the patient for those visits;
- An inadequate description of the patient's burn on the day of the incident;
- No documentation of any medical treatment provided to the burns; and
- No documentation on how the patient should care for the burns, and no notification to the surgeon or a description of the burns on subsequent visits.

Resolution

Defense counsel did not believe the claim could be defended successfully, as the employed PT acknowledged that the patient's burns were his fault. The claim involved relatively high damages with serious injury and extended recovery. Defense counsel opined that the overall therapy, including the use of TENS on the patient, was within the standard of care.

However, the burns, which were serious and required several debridements, were noted immediately after the TENS unit was removed from the treatment site, which would make this matter difficult to defend. 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.

The case ultimately settled with a total incurred of more than **\$700,000**.

(Note: Monetary amounts represent only the payments made on behalf of the employed physical therapist and the insured PT therapy firm)

Risk Management Recommendations with regard to treating *Physical Therapists*:

- ***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 based upon manufacturer guidelines.
- ***Assess the patient's skin integrity, neurological status, and ability to perceive pain*** or discomfort sensation prior to hot pack/cold pack placement.
- ***Properly monitor the patient while using hot packs, heating pads or when applying a biophysical agent*** to a patient with neurological deficits.

Risk Management Recommendations pertaining to *Physical Therapy Practice Owners*:

- ***Perform at least annual performance reviews for each employee, including a review of errors, "near misses", document requirements compliance, existing skills and directly observed competencies.*** Provide physical therapy staff with coaching, mentoring, and clinical and system education, as needed, to ensure that patient safety requirements are satisfied.
- ***Ensure that clinical practices comply with standards endorsed by physical therapy professional associations***, state practice acts and facility protocols.
- ***Provide appropriate clinical support for physical therapists, in compliance with supervisory or employment agreements.*** Encourage compliance with relevant legal, ethical and professional standards for clinical practice.

- ***Train staff and patients in the proper use of equipment*** and require an initial demonstration of competency to avoid injury.

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