

## Physical Therapy and Malpractice (Negligence) Claims

In the majority of lawsuits involving a physical therapist the most common cause of action (claim) is negligence. In physical therapy negligence or malpractice cases, a patient (or plaintiff) sues a physical therapist and / or the physical therapy practice owner, claiming some form of negligence regarding care he or she received or failed to receive. It is then the plaintiff's attorney who is responsible to legally prove certain "elements" in the negligence case. An "element" is defined as a segment or part of the legal claim.



The elements for a cause of action in a medical negligence case are:

1. Duty – The patient was owed a duty from the PT practitioner.
2. Breach of Duty – The PT breached the applicable standard of care or duty.
3. Harm – The patient was injured.
4. Causation – That breach of duty caused harm (injury) to the patient.

Each of these elements must be proven by the standard of proof, known as “preponderance of evidence”, which is typically established through case law in a civil case. Again, it is important to point out that it is the plaintiff's attorney who must prove each of these elements in a case. Therefore, it is very important for the plaintiff to have a Physical Therapy Expert Witness because that have the burden of proof.

## Let's look at some Malpractice (Negligence) Statistics:

We will use Outpatient Physical Therapy Clinics as an example.

Outpatient physical therapy clinics or private practices primarily see patients with acute exacerbation of chronic disease, various pain problems, postoperative orthopedic cases, and a mix of sports and orthopedic injuries. These types of practice settings typically face several types of civil lawsuits, including:

- Premises or Product Liability – Examples: loose handrails, trip hazards, malfunctioning equipment
- Malpractice – Example: inappropriate care after surgery
- Negligent Supervision – Example: Hot pack burns, Lack of supervision on balance equipment
- False Advertising – Example: Delay in recovery

In the HPSO (CNA) Physical Therapy Professional Liability Exposure Study (2016) – There were 3,105 Physical Therapy Related Claims between the years 2010 – 2014. At the time of the study, there were 443 closed claims with settlements > \$10,000, which amounted to \$42,237,908 paid in indemnity and expenses. That is an average of \$99,122 paid out per claim.

Outpatient physical therapy settings amounted for 84.8% of the claims, and an average of \$92,895 per claim. For comparison, the second highest location for claims was in the Patient's Home (7.5%) and closed claims paid an average of \$102,475.

The ratio of re-injury to new injury was: 36.6% and 63.4% respectively.

The severity of disability ranged from partial permanent disability (26.6%), to total permanent disability (3.3%) to death (.8%). The remaining were temporary disabilities (69.2%).

Tables:

<b>Frequency of Primary Allegation</b>	
Improper Management over the course of Treatment	22.2%
Improper Performance using Therapeutic Exercise	20.2%
Failure to Supervise or Monitor	19.4%
Improper Performance using a Biophysical Agent	17.5%
Improper Performance of Manual Therapy	8.6%
Equipment-Related	4.7%
Environment of Care	3.9%
Failure to Properly Test / Treat	1.9%
Improper Behavior by Practitioner	1.7%

<b>The Most Common Injuries Resulted In</b>	
Fractures	31.9%
Burns	18.8%
Increase or Exacerbation of Injuries / Symptoms	14.4%
Muscle / Ligament Damage	7.2%
Herniated Disc	6.9%
Dislocations	3.0%
Abrasion / Laceration	2.5%
Loss of Limb	2.2%

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