

## 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 client) 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 legal claim.



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

1. Duty – The patient was owed a duty from the PT practitioner.
2. Breach of the Duty – The PT breached the applicable standard of care or duty.
3. Causation – That breach caused some harm to the patient.
4. Damages – This resulted in reward of damages to the patient

Each of these elements must be proven by the standard of proof known as a "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 the case. Therefore, it is very important for the plaintiff to have a Physical Therapy Expert Witness because they have the burden of proof.

### Let's look at some Malpractice 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: lose 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 a CNA Physical Therapy Claims Study (2006) – There were 1,464 Physical Therapy Related Claims between the years 1996 - 2006. At the time of the study, the

1,117 closed claims amounted to \$43,367,287 paid in indemnity and expenses. That is an average of \$38,825 paid out per claim. The highest states for claims were: CA, NY, FL, TX, LA, IL, and NJ. Outpatient settings amounted for 77% of the claims and an average of \$37,948 per claim. But interestingly, Nursing Home (< 6%) closed claims at an average of \$76,215.

<b>Frequency of Primary Allegation</b>	
Failure to Supervise Treatment / Procedure	15%
Injury During Manual Therapy	11%
Injury During Heat Therapy	10%
Injury due to Resistance Training and Exercise	7%
Injury in Electrotherapy	5%
Improper Management of Evaluation and Treatment	5%
Inappropriate Behavior by Clinician	4%

<b>The Most Common Injuries Resulted In</b>	
Fractures	27%
Burns	18%
Delay in Recovery	11%
Some additional outcomes include: Abrasions, Bruises and Contusions, Emotional Distress, Sprains / Strains, Neurological Injury and Death.	

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