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Physical Therapy Professional Liability Exposure Claim Report: 4th Edition

Foreword

The American Physical Therapy Association (APTA) is committed to transforming individuals and communities through high-quality physical therapy care and practice. This includes promoting best practices and reducing risks and ensuring the health, safety, and welfare of those who entrust us with their health and lives. APTA's impact on health care and the growth and impact of the profession continue, as we begin our second century of excellence.

To seek our vision, live our mission, and make a strategic impact, APTA is proud to have partner Healthcare Providers Service Organization provide professional liability insurance to our members and potential members. Our collective objective is to learn from data to make decisions and advance strategies to continue to ensure safe, effective, and efficient delivery of physical therapist services to individuals and communities. To this end, APTA has provided input into the HPSO *2020 Physical Therapy Liability Exposure Claim Report*.

APTA is dedicated to engaging and empowering our members to be a leading voice in the health care industry, positive influencers of the physical therapy profession, and a strong collective force for improving the human experience. We thank HPSO, an APTA gold level strategic business partner, for their work and believe this report will serve as a valuable tool for physical therapy providers to enhance their risk management practices.



Justin Moore, PT, DPT
CEO, the American Physical Therapy Association



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Many of the top findings from this report are discussed in greater detail within subsequent topic-driven publications, entitled Physical Therapy Spotlights. The Physical Therapy Spotlights include resources such as case scenarios, risk control recommendations, and self-assessment checklists designed to help physical therapy professionals evaluate risk exposures associated with current practice. See [page 7](#) for additional information on Physical Therapy Spotlights.



Top Ten Key Findings of the Physical Therapy Liability Exposure Claim Report



The **average total incurred** of **physical therapy professional liability** closed claims **increased more than 12 percent** in the 2020 claim dataset (\$134,761) from the 2016 claim dataset (\$119,893). (See [page 7.](#))



The proportion of physical therapy professional liability closed claims that resolved between \$100,000 and \$749,999 has **increased 8.1 percent** since the 2016 claim dataset and **13.8 percent** since the 2011 claim dataset. (See [page 8.](#))



Physical therapy private offices/clinics (non-hospital) continue to experience the highest percentage of closed claims. (See [page 9.](#))



Fractures, increase or exacerbation of injury/symptoms and **burns** continue to be the **three most common** patient injuries in the 2011, 2016 and 2020 claim datasets, representing more than 60 percent of all closed claims. (See [page 13.](#))



In the 2020 claim dataset, **burns** represented **16.4 percent** of all closed claims. While the proportion of claims has decreased since prior reports, patient burns continue to be one of the most frequent injuries in the 2020 claim dataset. (See [page 13.](#))



In the 2020 claim dataset, **patient falls** comprised **30.6 percent** of all physical therapy professional liability closed claims. (See [page 15.](#))



In the 2020 claim dataset, claims associated with **re-injury** represent **33.8 percent** of all physical therapy professional liability closed claims. (See [page 16.](#))



The average cost (**\$6,420**) of defending allegations asserted against a physical therapist's or physical therapist assistant's license in the 2020 dataset **increased 33.0 percent** compared to the 2016 dataset and **68.5 percent** compared to the 2011 dataset. (See [page 20.](#))



Three out of every five license protection matters (59.4 percent) involved an allegation related to the physical therapist's or physical therapist assistant's **professional conduct**. (See [page 22.](#))



Approximately **52 percent of licensing board matters** led to some type of board action imposed against a physical therapist's license or a physical therapist assistant's certificate. (See [page 27.](#))

Part 1: Physical Therapy Closed Claims Overview

Introduction

For approximately three decades, the American Physical Therapy Association (APTA) and Healthcare Providers Service Organization (HPSO) have partnered to offer insurance solutions to physical therapy professionals through the CNA/HPSO Professional Liability Insurance Program. Through this partnership, the CNA/HPSO program continues to be one of the nation's leading providers of professional liability insurance coverage for physical therapy professionals.

In 2006, our joint professional program published the first report reviewing the professional liability closed claims encountered by CNA/HPSO on behalf of our insured physical therapists. As part of our mission to educate our insureds and the healthcare industry at large regarding risk-related issues, we are pleased to present our fourth physical therapy closed claim report entitled, *Physical Therapy Professional Liability Exposure Claim Report: 4th Edition*. Our goal is to help physical therapy professionals enhance their practice and minimize professional liability exposure by identifying loss patterns and trends.

Database and Methodology

There were 2,232 professional liability closed claims and incidents attributed to CNA-insured physical therapy professionals in the HPSO program from January 1, 2015 to December 31, 2019. Professional liability closed claims that were included in the final dataset:

- Involved a professional liability claim arising from a licensed physical therapist (PT) or physical therapist assistant (PTA) whether insured independently or through a physical therapy practice (PT practice); or another healthcare professional providing services as an employee of an insured physical therapy practice;
- Closed between January 1, 2015 and December 31, 2019, regardless of when the claim was initiated or first reported; and
- Resulted in an indemnity payment or expense of at least one dollar on behalf of a licensed PT or PTA whether insured independently or through a physical therapy practice; or other healthcare professional providing services as an employee of an insured PT practice.

These criteria, applied to the total number of reported physical therapy claims, comprise the 2020 claim dataset.

This report also provides selected findings from the CNA/HPSO 2011 (with 10 years of data) and 2016 (with five years of data) physical therapy closed claim datasets and reports as a means of comparison. As some elements of the inclusion criteria in each dataset and in this report overall may differ from that of the previous CNA/HPSO physical therapy claim analyses and claim reports from other organizations, readers should exercise caution about comparing these findings with other reviews.

Similarly, due to the fundamental uniqueness of individual claims, the average total incurred amounts referenced within this report may not necessarily be indicative of the total incurred amounts attributed to any single claim.

Terms

For purposes of this report, please refer to the definitions below:

- **Aging services** – Specialized facilities or organizations that provide care to a senior population, including residents/patients in nursing homes, assisted living centers and independent living facilities.
- **2011 claim dataset** – A reference to the prior CNA dataset used in the report, entitled “2001-2010 Physical Therapy Liability”.
- **2016 claim dataset** – A reference to the prior CNA dataset used in the report, entitled “Physical Therapy Professional Liability Exposure: 2016 Claim Report Update”.
- **2020 claim dataset** – A reference to the current CNA dataset used in the report, entitled “Physical Therapy Professional Liability Exposure Claim Report: 4th Edition”.
- **Indemnity payment** – Monies paid by CNA to a plaintiff on behalf of an insured in the settlement or judgment of a claim.
- **Expense payment** – Monies paid in the investigation, management or defense of a claim.
- **Total incurred** – Monies paid on behalf of an insured in the investigation, management or defense and the settlement or judgment of a claim.
- **Average total incurred** – The costs or financial obligations, including indemnity and expenses, resulting from the resolution of a claim, divided by the total number of closed claims.

Part 2: Physical Therapy Professional Exposures and Data Analysis

General Analysis

Analysis of Closed Claims by Professional Liability Insurance Source

Part 2 includes an analysis of the 2020 claim dataset of CNA professional liability closed claims that meet the following criteria:

- Involved a licensed PT, PTA or other healthcare professional providing services as an employee of an insured physical therapy practice.
- Closed between January 1, 2015 and December 31, 2019 (although claims may have been reported earlier).
- Resulted in an indemnity payment of \$10,000 or greater.

Figure 1 compares claim activity by professional based on whether the individual is part of a practice, an individually insured PT or PTA or an individually insured physical therapy student (PT student).

The **allegation** most frequently asserted **against individually insured PTAs** was **failure to supervise or monitor** a patient during treatment **resulting in a patient fall**.

As displayed in **Figure 1**, claims asserted against individually insured PTAs resulted in a *higher average total incurred* when compared with claims asserted against individually insured PTs and PT practices. This observation was notable in the 2016 claim dataset as well. This does not necessarily mean that individually insured PTAs are more likely to have claims asserted against them with a *higher average total incurred*. Rather, it reflects the overall lower proportion of claims asserted against a PTA and the higher proportion of closed claims with a total incurred of \$150,000 or more. The allegation most frequently asserted against individually insured PTAs was *failure to supervise or monitor a patient* during treatment resulting in a patient fall, as described in the example below:

- **Failure to supervise or monitor a patient:** A PTA was demonstrating how to perform a single step-up and step-down at the patient's home. The patient had recently been discharged from the hospital after a left side cerebrovascular accident (CVA). The PTA was standing to the patient's right side when the patient collapsed, sustaining a left-sided femur fracture. The patient alleged that he should have been wearing a gait belt and the PTA should have been standing behind him. The patient testified that all the other treating PTAs had him wear a gait belt and stood behind him during therapy. The claim resolved with a total incurred greater than \$45,000.

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 |
| Overall | 100.0% | \$46,145,142 | \$13,014,851 | \$134,761 |

In the 2011 claim dataset and the 2016 claim dataset, PT practices represented the largest percentage of closed claims. This remains consistent in the 2020 claim dataset where 63.1 percent of closed claims involved PT practices and 32.3 percent involved individually insured PTs.

Figure 2 compares the average total incurred from the 2011 claim dataset, the 2016 claim dataset and the 2020 claim dataset of all physical therapy closed claims. In the 2016 claim dataset, the average total incurred (\$119,893) increased more than 10 percent from the 2011 average total incurred (\$108,712). The average total incurred increased more than 12 percent in the 2020 claim dataset (\$134,761) from the 2016 claim dataset (\$119,893).

KEY FINDING
The average total incurred of physical therapy professional liability closed claims increased more than 12 percent in the 2020 claim dataset (\$134,761) from the 2016 claim dataset (\$119,893).



In the 2020 claim dataset, **63.1 percent** of closed claims involved **PT practices** and **32.3 percent** involved **individually insured PTs**.

2 Comparison of 2011, 2016, 2020 Claim Reports Average Total Incurred All Physical Therapy Professionals

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



The Litigation Process

A basic summary of the malpractice litigation process:

1

Incident: Patient/plaintiff perceives that their care was substandard or was the proximate cause of injury and monetary damages.

2

Complaint: Plaintiff files complaint stating allegations and naming defendant(s).

3

Summons: Court issues defendant a summons stating the plaintiff's allegation(s).

4

Answer: Defendant files an answer to the plaintiff's allegations.

5

Discovery: Plaintiff's and defendant's attorneys develop their cases by gathering information through depositions and reviewing documents and other evidence.

6

Mediation/Settlement: Both parties try to resolve the case out-of-court by trying to reach a settlement.

7

Trial/Verdict: If the parties cannot reach an agreement in mediation, they may proceed to a trial where a jury reviews the facts of the case and votes on a verdict.

8

Case Closed: After the appeals process is completed, if there is an appeal of the verdict, or after a settlement is reached, the case is closed.

Physical Therapy Spotlight

For risk control strategies related to:

- [Defending Your License](#)
- [Documentation](#)
- [Home Care](#)
- [Telehealth](#)
- [Falls](#)
- [Liability for Business Owners and Supervisors](#)
- [Burns \(video legal case study\)](#)

Visit www.hpsoc.com/ptclaimreport



Part 3: Physical Therapist Exposures and Data Analysis

Comparison of 2011, 2016 and 2020 Closed Claims Distribution

Part 3 includes only those professional liability closed claims that meet the following criteria:

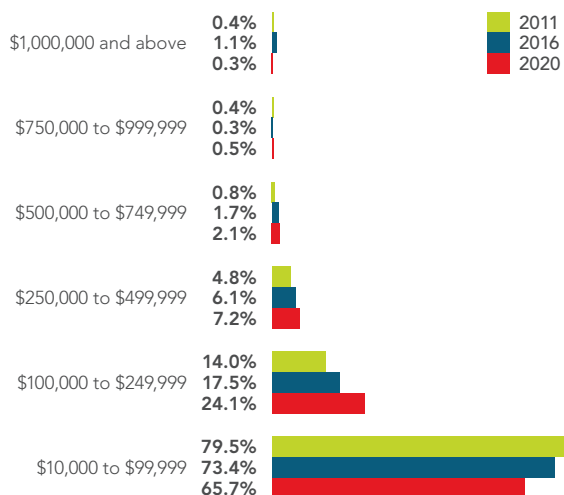
- Involved only individually insured PTs or a PT providing services as an employee of an insured physical therapy practice. This section does not include any healthcare provider working with a PT, such as an occupational therapist, massage therapist, athletic trainer, PT assistant or PT aide.
- Closed between January 1, 2015 and December 31, 2019 (although claims may have been reported earlier).
- Resulted in an indemnity payment of \$10,000 or greater.

The criteria generated a dataset of 373 closed claims.

In the 2020 claim dataset, **33 percent of all claims closed** with an indemnity payment between **\$100,000 and \$749,999**.

3 Comparison of 2011, 2016 and 2020 Closed Claim Count Distribution

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



Distribution of Closed Claims

In **Figure 3**, the majority of PT closed claims with an indemnity payment of \$10,000 or greater resolved for an indemnity payment of less than \$100,000.

As shown in **Figure 3**, the majority of PT claims in this dataset are settling for a total indemnity payment less than \$100,000, which is consistent with previous reports. However, the overall severity has been increasing due to a continued shift towards higher severity claims. Claims that resolved between \$100,000 and \$749,999 represented approximately 20 percent of the total claims in the 2011 claim dataset, and then subsequently rose to 25 percent of claims in the 2016 claim dataset, and now represent 33 percent of claims in the 2020 claim dataset.

The proportion of professional liability closed claims that resolved between \$100,000 and \$749,999 has **increased 8.1 percent** since the 2016 claim dataset and **13.8 percent** since the 2011 claim dataset.

KEY FINDING



The increasing severity of claim costs can be attributed, in part, to social inflation, which is the growth of liability/litigation risks and costs. This rate of growth is more rapid than what could be explained by inflation, and there are a number of potential drivers of this rate of growth. These possible drivers include more sophisticated plaintiff attorney litigation strategies, tort reform rollbacks, increasing class action suits, and other large jury verdicts across the country. Another possible driver of social inflation is the liability associated with the increasing complexity of patient needs. Meeting the needs of high acuity patients can involve many procedures that are surgical, restorative and diagnostic in nature.

Claim review and case scenarios presented in this claim report and accompanying Physical Therapy Spotlights indicate that failure to consistently implement risk management principles such as appropriate communication, effective documentation and adverse event management also contribute to increasing professional liability claim costs.

Analysis of Claim Outcomes by Location, Allegation and Injury

The following sections summarize the distribution of total claims and the average claim costs across various categories, including location, allegation and injury.

Analysis by Location

As shown in **Figure 4**, the closed claim location with the highest average total incurred is the **acute rehabilitation hospital (inpatient)**. Claims in this location occurred relatively infrequently and often involved a patient incurring an injury during endurance or gait training or the failure of the PT to provide a safe environment. Patients treated in an acute rehabilitation hospital tend to be clinically more fragile than those seen in other physical therapy locations (i.e., patient's home, physical therapy office/clinic, or school). Accordingly, when a claim occurs in the acute rehabilitation hospital, the incurred cost may be higher due to the medical acuity of patients in this location. An example of a closed claim involving an **acute rehabilitation hospital (inpatient)** is summarized below:

- A patient in an acute rehabilitation hospital was taken to the physical therapy area by a certified nursing assistant (CNA). The PT was providing care to another patient and advised the CNA and patient that he would need to wait until she finished with her current patient before starting therapy. The PT transported the patient to whom she was providing care for to another room for an ultrasound. While performing the ultrasound, she heard a loud noise and returned to the treatment room to find the other patient on the floor next to the treadmill. After an investigation, it was discovered that the patient, a 90-year-old male, used the

treadmill, but he had not been instructed to use nor ever used a treadmill during therapy. His fall resulted in a shoulder injury requiring surgical treatment. During the PT's deposition, she stated that the patient was a fall risk, and she assumed that the CNA would monitor him while he was awaiting treatment. The claim resolved with a total incurred amount of greater than \$75,000.


Figure 5 compares the distribution of claims by location between the 2011, 2016 and 2020 claim datasets and shows that **physical therapy private offices/clinics (non-hospital)** and **patient's home** locations continue to have the highest percentage of closed claims.

The proportion of closed claims in the **patient's home** has been decreasing since the 2011 claim dataset (8.4 percent) and 2016 claim dataset (7.5 percent). The majority of those claims were associated with injuries a patient sustained due to a fall. A detailed review on closed claims related to falls can be found on [page 15](#).

While there has been a decrease in the percentage of claims occurring in the patient's home, closed claims occurring in **physical therapy private offices/clinics, aging services facilities** and **acute rehabilitation hospitals (inpatient)** increased in the 2020 claim dataset.

KEY FINDING

Physical therapy private offices/clinics (non-hospital) continue to experience the highest percentage of closed claims.

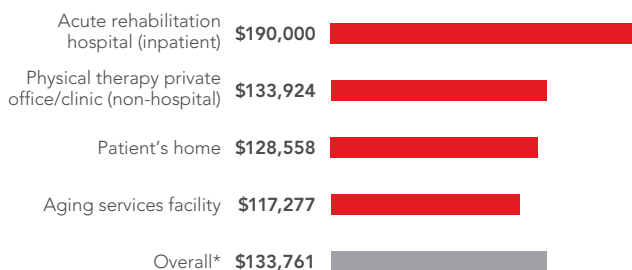


4 Average Total Incurred of Closed Claims by Location

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

This figure highlights only the locations with the highest average total incurred.

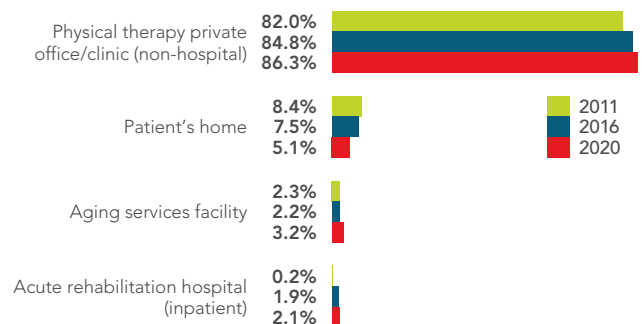
* Overall average total incurred



5 Comparison of the 2011, 2016 and 2020 Closed Claim Distributions by Location

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

This figure highlights only those locations with the highest percentage of claims.



Analysis by Allegation

Figure 6 displays the top allegation categories with the highest average total incurred.

Improper management over the course of treatment reflected the highest average total incurred (\$166,874) and comprised the highest percentage of the PT closed claims in the 2020 claim dataset (27.6 percent). Some examples of **improper management over the course of treatment** included:

- Failure of the PT to follow the referring practitioner's orders.
- Failure to report patient's condition to referring practitioner.
- Failure to cease treatment with excessive/unexpected pain.
- Improper management of surgical patient.
- Failure to obtain informed consent.
- Failure to complete a proper patient assessment.

An example of a claim related to **improper management over the course of treatment** is illustrated below:

- A 17-year-old patient presented for physical therapy after incurring an injury to her dominant right arm during gymnastics. A CT scan of the patient's right upper extremity revealed a displaced and angulated oblique fracture of the distal humeral shaft with anterolateral displacement of the distal fragment, posterior angulation at the fracture apex and approximately 2.5 cm override of the fragments. The patient underwent open reduction and internal fixation (ORIF) surgery and began physical therapy three weeks post-operatively. The referring surgeon's orders for therapy did not include a check in the box on the prescription requesting passive range of motion (PROM). Two weeks into therapy, the PT performed PROM, during which the patient stated she felt a pop and immediately complained of pain. The PT continued with treatment and did not advise the surgeon of the patient's complaints. The patient's arm swelled and her pain intensified during the evening. She scheduled an appointment with her surgeon the following day and it was determined that she had suffered a second fracture that required an additional surgery. The post-operative note indicated a "fracture across the junction proximal 2/3 and distal third of the humerus, comminuted with no evidence of infection; posterior humeral plate was fractured obliquely near the central portion at the fracture site." During his deposition, the PT testified that, even if the PROM box was not checked, he did not feel that PROM was contraindicated. The surgeon's deposition indicated that his orders were not open for interpretation and PROM was not indicated for this patient. The defense expert was not supportive of the insured's care. The expert reported that it was especially concerning that the insured continued treatment despite the patient's sudden complaint of feeling a pop and pain. The claim resolved with a total incurred amount of greater than \$100,000.

Failure to supervise or monitor a patient had the second highest average total incurred at \$161,726. This allegation category reflected 25.7 percent of the PT closed claims, with the vast majority of these claims resulting from a patient falling. An example of a failure to supervise or monitor a patient allegation closed claim can be found on [page 11](#).

The Importance of Documentation

The healthcare record is a legal document.
A well documented record can:

1

Provide an accurate reflection of patient assessments, changes in clinical state, and care provided.

2

Guard against miscommunication and misunderstanding among the interdisciplinary patient care team.

3

Demonstrate your competence as a provider and help to bolster your credibility.

4

May help guard against a lengthy litigation process.

6 Top Average Total Incurred of Closed Claims by Allegation

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

This figure highlights only those allegations with the highest average total incurred.

* Overall average total incurred

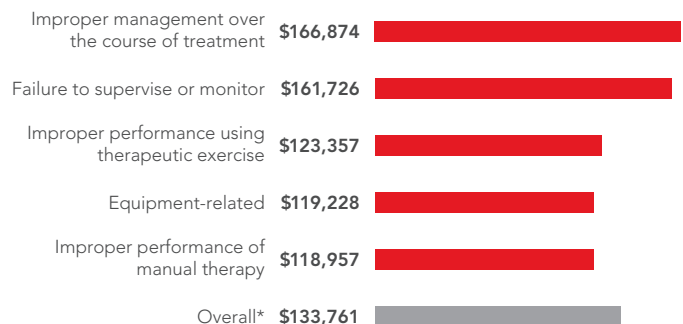


Figure 7 displays allegations with the highest distribution of closed claims in the 2020 claim dataset. Figure 8 reveals that the distribution of claims by allegation in the 2011, 2016 and 2020 claim datasets have shifted.

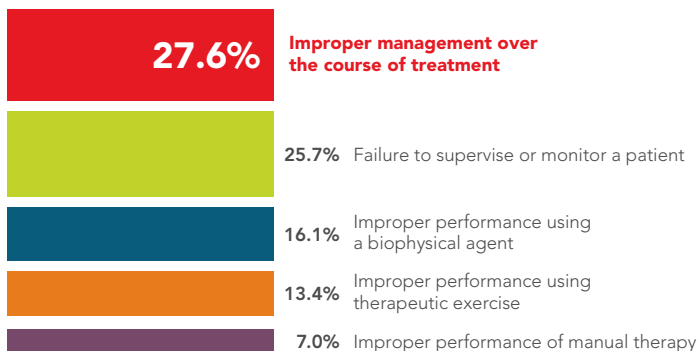
For example, the percentage of claims related to **improper performance using therapeutic exercise** and **improper performance of manual therapy** have continued to decrease in the 2016 claim dataset and the 2020 claim dataset. However, the percentage of closed claims related to the **improper management over the course of treatment** and **failure to supervise or monitor a patient** have steadily increased over time.

Across the three datasets, many of the claims alleging **failure to supervise or monitor a patient** and **improper performance using a biophysical agent** arose from the PT's lack of attentiveness to the patient, which led to a breach of the standard of care by the PT.

7 Distribution of Top Closed Claims by Allegation

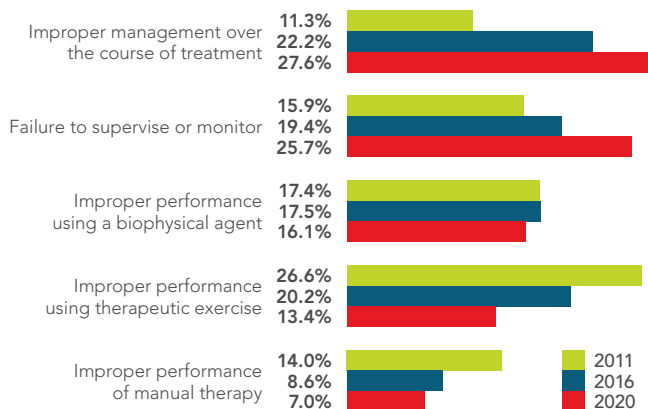
Closed Claims with Paid Indemnity of ≥ \$10,000

This figure only highlights those allegations with the highest distribution.



8 Comparison of the 2011, 2016 and 2020 Closed Claim Distributions by Allegation

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



A recurring theme in claims encompassing the **improper performance using biophysical agents** involve the PT's failure to properly monitor the patient while using hot packs or heating pads, or when applying a biophysical agent to a patient with neurological deficits. Issues related to severity of burns are analyzed in greater detail on [page 14](#).

Failure to supervise or monitor a patient includes several claims where a patient fell after being left unattended on exercise equipment or unassisted getting off a therapy table, resulting in a fracture or traumatic injury, as noted in the following claim:

- A 62-year-old patient presented for physical therapy following a surgical repair to her right quadricep tendon. During her first PT evaluation, she was asked to get on a recumbent bike. Subsequently, the patient had problems lifting her right leg to dismount the bike and began to fall, which resulted in a re-tear to her tendon requiring a second surgical repair. The claim resolved with a total incurred amount of greater than \$70,000.

Assessment and Monitoring

Accurate and timely assessment of patients and careful monitoring can mean the difference between a favorable and unfavorable outcome. The following strategies can help PTs and PTAs improve their performance of these core patient care duties:

- Perform timely head-to-toe assessments of patients. If an assessment cannot be completed, document the interventions taken.
- Accurately communicate patient assessments and observations to other members of the healthcare team and convey any changes in the patient's condition to the appropriate practitioner.
- Listen to and consider patients' complaints/concerns regarding their healthcare. If necessary, report complaints/concerns to members of the healthcare team and the patient's practitioner.
- Document patient complaints/concerns in the healthcare record and all steps taken to resolve them.
- Recognize and report any patient incident, injury, or adverse outcome and subsequent treatment/response to the appropriate practitioner.

Analysis by Injury

Figure 9 displays injuries with the highest distribution of closed claims in the 2020 claim dataset. **Figure 10** delineates the injuries with above average total incurred.

Traumatic brain injury, death and **muscle/ligament damage** comprise the *highest average total incurred*.

From the analysis, the closed claims which are most difficult to defend and have a higher average total incurred payment often reflect a failure by the PT to fulfill critical responsibilities, duties and expectations. Examples include the **failure to diagnose** a deep vein thrombosis, and **failure to report a patient's condition to the referring practitioner**. An example includes:

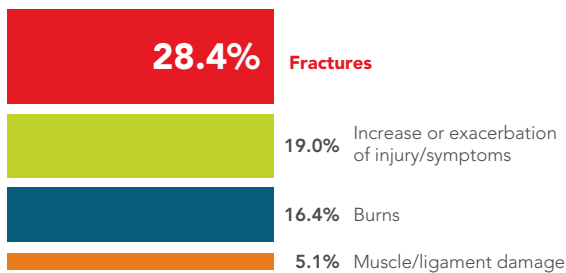
- A 52-year-old maintenance worker suffered a work-related injury to his left ankle after slipping while walking on frozen ground. The patient went to the emergency room where x-rays revealed no acute fracture, and he was diagnosed with a severe left ankle sprain. He was given an air cast and crutches with referral to an orthopedic surgeon for further care. Two days later, the patient was seen by the orthopedic surgeon who placed him on light

duty work, applied a CAM walking boot and prescribed pain medication as well as physical therapy. One week later, the patient was seen for physical therapy. The evaluation note for the initial visit stated "back to light duty work but could not walk any distances or drive, as his ankle continued to be swollen. Pain is minimal at this time." The following visit, the records note that the patient "reported soreness in the left calf at the gastrocnemius region." The PT documented that "a squeeze test on the left calf" was performed, was negative for increased symptoms and noted that the patient stated he may have pulled a muscle due to the walking boot. The patient was found deceased the following day. An autopsy revealed the cause of death to be "acute pulmonary thromboembolism" with deep vein thrombosis of the left leg and history of left ankle sprain. During the review of the healthcare record, the defense expert relayed to the defense counsel that the PT's documentation appeared to be written following the patient's death as it was self-serving and overly comprehensive. The defense expert also reported concerns to defense counsel that the referring practitioner was not notified of the patient's complaints of pain and symptoms of possible thrombosis. The claim resolved with a total incurred amount of greater than \$575,000.

9 Distribution of Top Closed Claims by Injury

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

This figure only highlights those allegations with the highest distribution.

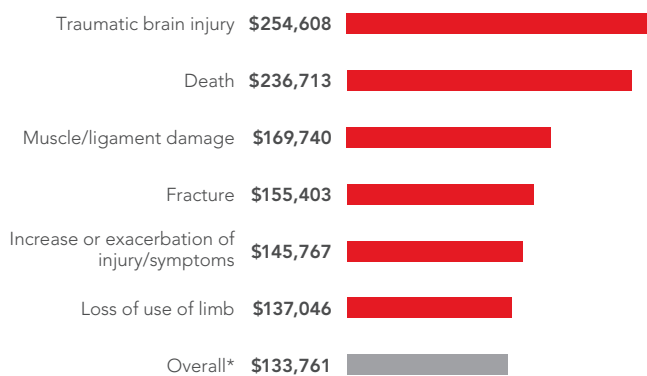


10 Top Average Total Incurred of Closed Claims by Injury

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

This figure highlights only those injuries with the highest average total incurred.

* Overall average total incurred



Responding to Adverse Events

Adverse events should be reported to a supervisor or risk manager per policy requirements, and an incident report should be completed promptly. Adverse events include incidents involving one or more of the following:

- A patient is harmed or sustains an injury.
- Potential clinical significance.
- An outcome differs from anticipated results.
- An unexpected safety crisis.

For more information on patient safety and responding to adverse events, we recommend consulting the following resources:

- [AHRQ: TeamSTEPPS® Trainings](#)
- [Institute for Healthcare Improvement \(IHI\)](#)
- [National Quality Forum \(NQF\)](#)
- [HPSO and CNA: Healthcare Perspective: Medical Error Disclosure](#)
- [HPSO and CNA: Sample Incident Form](#)

Figure 11 illustrates the most common injuries in the 2020 claim dataset and their corresponding distributions from the 2011 claim dataset and 2016 claim dataset. **Fractures** were most often associated in allegations where the **PT failed to supervise or monitor a patient** during treatment and/or the PT failed to maintain a safe environment. These failures led to a patient sustaining a fall, resulting in a fracture. Due to the frequency of claims associated with falls, additional analysis regarding falls can be found on [page 15](#).

Increase or exacerbation of injury/symptoms was primarily associated with allegations of **improper management over the course of treatment** and more specifically with the **improper management of surgical patients** and the **failure of a PT to cease treatment when a patient experienced or expressed excessive/unexpected pain**. Many of these claims involved incidents where the PT was too aggressive or initiated modalities of care too soon after surgery resulting in a re-injury. Additional information on re-injuries can be found on [page 16](#).

While relatively low in frequency, incidents of injuries resulting in the **loss of organ or organ function** also were experienced, such as:

- Injuries to the eye incurred due to resistance bands which broke while being used by patients.
- Injuries to the lungs, such as a pneumothorax, following dry needling procedures. While the frequency of claims associated with dry needling remains low, CNA/HPSO continues to monitor these claims and work closely with the American Physical Therapy Association (APTA) to educate PTs on safe dry needling practices.

Figure 11 demonstrates that the proportion of **fractures** and **increase or exacerbation of injury/symptoms** has remained relatively consistent across the three datasets.

Fractures, increase or exacerbation of injury/symptoms and burns continue to be the **three most common** patient injuries in the 2011 claim dataset, the 2016 claim dataset and the 2020 claim dataset, representing more than 60 percent of all closed claims.

KEY FINDING



While burns were still one of the most frequent injuries in the 2020 claim dataset, the percentage of closed claims related to **burns** has continued to decrease from 20.1 percent in the 2011 claim dataset to 18.8 percent in 2016 claim dataset and 16.4 percent in 2020 claim dataset. The decrease in the percentage of claims attributed to burns is noted. However, overall burn allegations are difficult to defend due to the PT's failure to properly monitor a patient while using hot packs or heating pads, or when applying a biophysical agent to a patient with neurological deficits.

In the 2020 claim dataset, **burns** represented **16.4 percent** of all closed claims. While the proportion has decreased since prior reports, patient burns continue to be one of the most frequent injuries in the 2020 claim dataset.

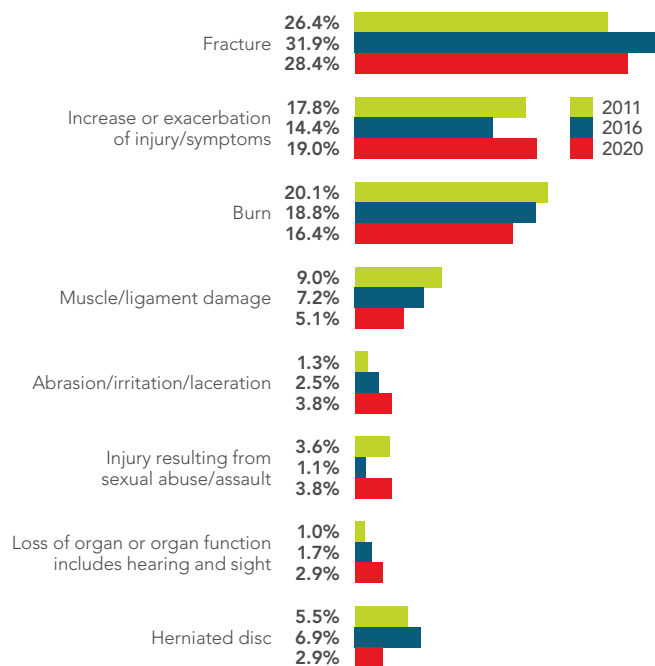
KEY FINDING

Burns were primarily associated with allegations of **improper performance using a biophysical agent**. However, there were also **burn** claims with allegations related to **equipment, as well as failure to supervise or monitor a patient**. Additional information on closed claims related to burns can be found on [page 14](#).

Closed claims involving **injury resulting from sexual abuse/assault** occur infrequently among the professional liability dataset. However, in **Part 6**, license protection matters related to physical, sexual or emotional abuse by PTs and PTAs were the most frequent allegation in the 2020 claim dataset (see [page 24](#)). Licensing board complaints may or may not involve allegations related to patient care and treatment. For example, license protection matters may include instances where a PT or PTA allegedly engaged in unprofessional conduct, was charged with a DUI or other crime, or failed to disclose certain information in a license renewal application.

11 Comparison of the 2011, 2016 and 2020 Closed Claim Distributions by Injury

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



Analysis of Closed Claims Related to Burns

Figure 12 reflects the distribution of burn claims by allegation in the 2020 claim dataset. The majority of the burns in the 2020 claim dataset were due to the **improper use of biophysical agents** on patients. The allegations associated with the **improper use of a biophysical agent** include:

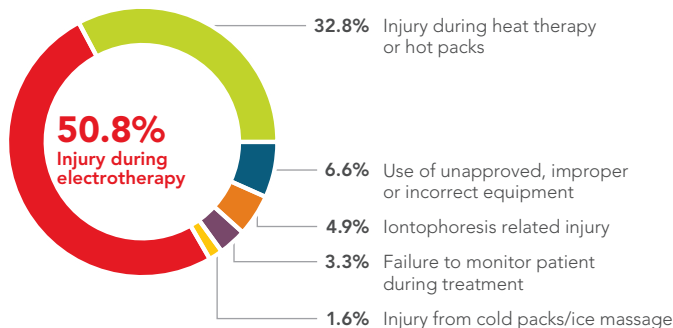
- Injury during heat therapy and hot packs;
- Injury during electrotherapy;
- Injury during iontophoresis; and
- Injury during cold packs/ice massage.

The costs associated with burn claims remain fairly consistent with the 2011 claim dataset and 2016 claim dataset. In the 2011 claim dataset, the average total incurred related to burn closed claims was \$56,864 versus \$57,985 in 2016. However, in the 2020 claim dataset, the average total incurred (\$78,422) increased 35.2 percent from the 2016 claim dataset.

During the analysis, claims involving burns were classified according to the burn intensity. **Figure 13** summarizes the burn classifications with its corresponding highest average total incurred amount.

12 Distribution of Closed Claims by Burn Allegation

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



13 Average Total Incurred of Closed Claims by Intensity of Burn

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

* Overall average total incurred

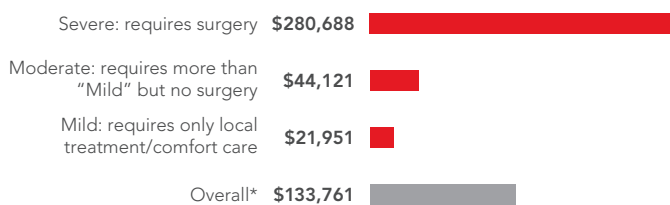


Figure 13 reveals that **severe** burns have an average total incurred of \$280,688, which is more than twice the overall average total incurred for all closed claims of \$133,761. The severe burns in this dataset often required patients to undergo treatment, such as surgical debridement and/or treatment for infections, resulting in delayed recovery and scarring. An example includes:

- 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, he complained of extreme pain during the TENS treatment. The pads were removed revealing two burns to his knee. The patient attempted to treat the burns on his own but eventually went to a physician who diagnosed him 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 of infection. The claim resolved with a total incurred amount of greater than \$700,000.

Figure 14 summarizes the locations on the body with the highest percentage of burn claims.

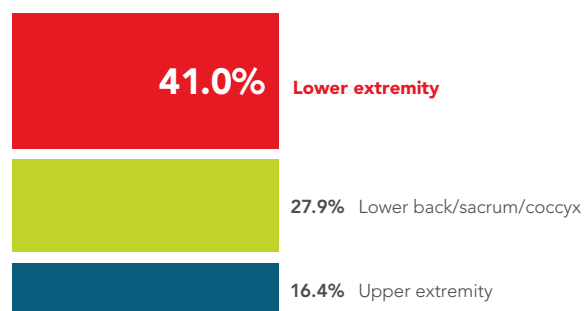
There are recurring themes in this category. These include the PT's failure to:

- 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.

14 Distribution of Top Closed Claims by Burn Location

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

This figure highlights only those body parts with the highest percentage of burn claims.



Analysis of Closed Claims Related to Falls

Preventing patient falls has been a predominant healthcare initiative for many years, especially among physical therapy professionals. In the 2020 claim dataset, it was determined that 30.6 percent of the PT closed claims involved a fall, as displayed in **Figure 15**.

In the 2020 claim dataset, **patient falls** comprised **30.6 percent** of all physical therapy professional liability closed claims.

KEY FINDING



The majority of the falls in the 2020 claim dataset were due to the PT's **failure to supervise or monitor a patient** during therapy. The analysis revealed that when a patient fall occurred, the PT often had an established relationship with the patient and was aware of the patient's status as being at risk for falls. However, at the time of the incident, the PT had monitored the patient during a variety of exercises and felt comfortable permitting the patient to perform therapy with minimal assistance.

For additional risk control information regarding falls and fall prevention, see the [Physical Therapy Spotlight: Falls](#).

Examples of closed claims in the 2020 claim dataset analysis include patient falls related to:

- Getting on or dismounting a piece of exercise equipment without assistance (e.g., stationary bikes, treadmills, elliptical machines).
- Standing or sitting up after lying in a supine position on a treatment table.
- Losing balance while performing stair exercises.
- Malfunctioning equipment such as an exercise ball suddenly bursting under the patient.
- Movement throughout the treatment area in a cluttered environment.

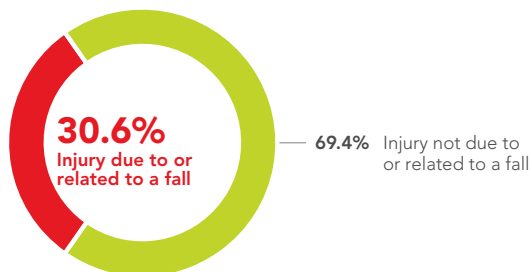
An example of a fall claim includes:

- A patient began working with the insured PT after experiencing a fall that resulted in a fractured hip requiring surgical intervention. Following her surgery, she was receiving physical therapy, which included ongoing step-up exercises. The PT believed the patient was no longer a fall risk as she had been progressing well. During her therapy, she admitted that she became distracted as she answered a call on her cell phone, causing her to miss a step and fall. She complained of wrist pain and the therapist applied ice for 12 minutes before the patient decided to leave early. The PT advised her to seek medical attention if the pain persisted. Later that evening, she went to the emergency department where she was diagnosed and treated for a fractured wrist. The patient filed a lawsuit alleging that the insured PT failed to supervise/monitor her knowing she was at risk for falling. The claim resolved with a total incurred amount of greater than \$80,000.

Figures 16-17 represent those injuries with the highest average total incurred and highest distribution of closed claims related to falls.

15 Distribution of Closed Claims by Falls

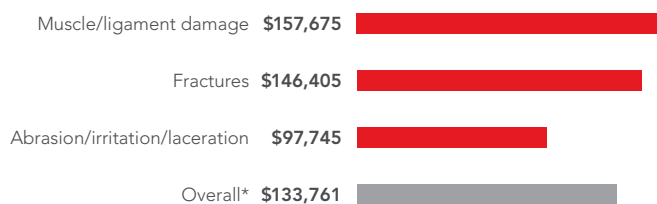
Closed Claims with Paid Indemnity of \geq \$10,000



16 Average Total Incurred of Closed Claims by Fall Injuries

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

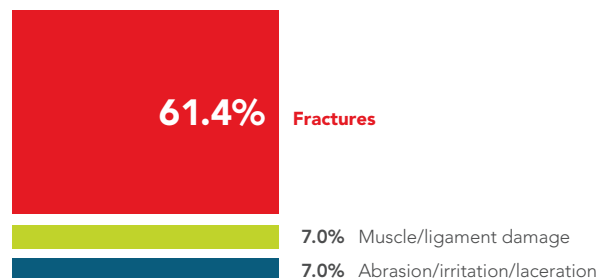
* Overall average total incurred for all claims



17 Distribution of Top Closed Claims by Fall Injuries

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

This figure highlights only those body parts with the highest percentage of fall claims.



Comparison of Re-injury versus Other Injuries

The 2020 claim dataset was analyzed to determine the prevalence of re-injury closed claims during physical therapy. For the purposes of this analysis, a claim was classified as a "re-injury" if the condition or body part for which the patient was seeking physical therapy was harmed again during the therapy session.

In the 2020 claim dataset, claims associated with **re-injury** represent **33.8 percent** of all physical therapy professional liability closed claims.

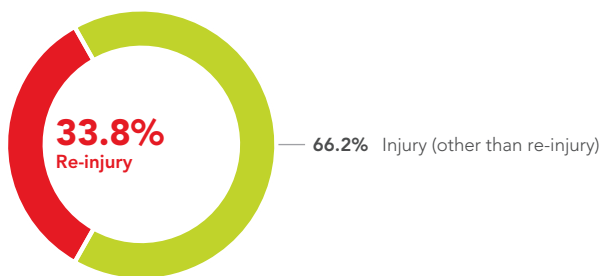
KEY FINDING



- **Figure 18** demonstrates that 33.8 percent of all PT closed claims involved a re-injury.
- The average total incurred for re-injury closed claims was \$156,461, which is 17.0 percent higher than the overall average total incurred of \$133,761, as shown in **Figure 19**.
- The allegations most frequently attributed to claims of re-injury include: **improper management over the course of treatment**, **improper performance using therapeutic exercise** and **failure to supervise or monitor a patient**, as shown in **Figure 20**.
- **Figure 21** shows that shoulders, knees, lumbar discs and hips are the body parts with the highest percentage of closed claims among re-injury claims.

18 Comparison of Re-injury Versus Other Injuries

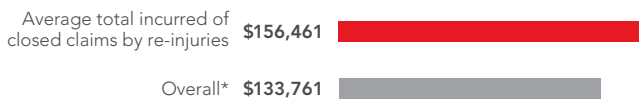
Closed Claims with Paid Indemnity of ≥ \$10,000



19 Average Total Incurred of Closed Claims by Re-injuries

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

* Overall average total incurred for all claims



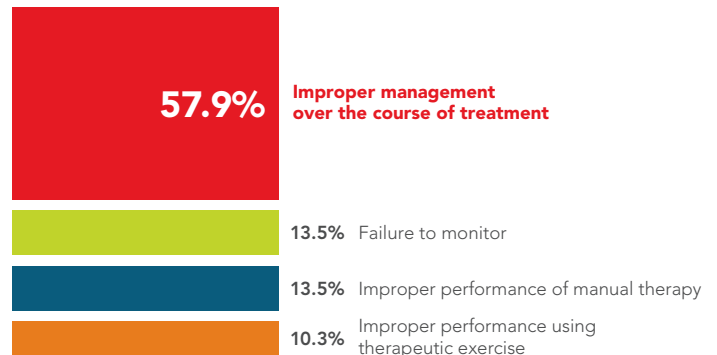
An example of a re-injury claim includes:

- Following rotator cuff repair, a patient was undergoing physical therapy. The patient was noted to be non-compliant with his therapy and had been overheard by therapists discussing his weekend fishing and hunting trips, despite being only eight weeks into his post-operative care regime with a 10 pound or less lifting restriction. Given the patient's level of activity, the PT assigned a new exercise involving overhead tricep press using a 12-pound dumbbell weight. During the second set of tricep presses, the patient complained of pain and stated the weight was too heavy. The PT called the referring practitioner who examined the patient the following day and diagnosed him with a re-injury of his rotator cuff tendon. The patient underwent two additional surgeries to repair the injury. Due to the improper management of a surgical patient, a settlement was reached. The claim resolved with a total incurred amount of greater than \$60,000.

20 Top Allegations for Re-Injury Claims

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

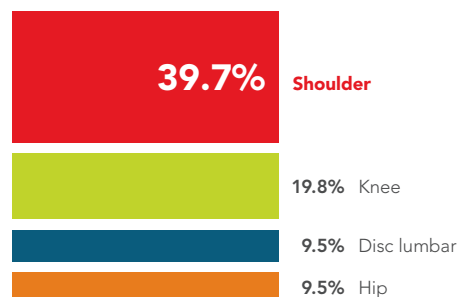
This figure highlights only those body parts with the highest percentage of re-injury allegations.



21 Top Affected Body Parts for Re-Injury Claims

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

This figure highlights only those body parts with the percentage of re-injury claims.



Part 4: Analysis of Closed Claims with a Paid Indemnity of <\$10,000

Part 4 includes only those professional liability closed claims that involved individually insured PTs or PTs providing services as an employee of an insured physical therapy practice with a paid indemnity of at least one dollar and less than \$10,000. These claims are not included in Parts 2 and 3 above. Claims in this category are often referred to as “small claims” that may lack merit or those that can be resolved for relatively smaller indemnity payments. They may seem minor in the amount of dollars spent to defend and settle, but may still have an impact on the PT. The term “small claims” does not reflect the emotional or professional stress endured by the PT. In fact, an insured may endure the same legal process with a “small claim” as in a professional liability claim which has the potential for settling at a much larger amount.

Closed claims with a paid indemnity of <\$10,000 may seem minor in the amount of the dollars spent to defend and settle, but may still have an impact on the PT. The term “small claims” does not reflect the **emotional or professional stress** endured by the PT.

Closed claims with a paid indemnity of less than \$10,000 represented 13.9 percent of all claims with an incurred payment that closed between January 1, 2015 and December 31, 2019, and therefore, insight into those claims is included here for context. The average indemnity payment for claims in this category was \$4,572. The average expense to defend these claims was \$6,289 or 37.6 percent more than the average indemnity paid for these claims.

The allegations associated with closed claims with a paid indemnity of less than \$10,000 is similar to those allegations associated with closed claims of greater than or equal to \$10,000.

Failure to supervise or monitor a patient, improper management over the course of treatment and improper performance using a biophysical agent have the highest distributions in this dataset.

Closed claims that included **equipment-related** allegations often led to a patient suffering a burn, fracture or sprain/strain due to using equipment that malfunctioned.

Figure 22 reflects only those allegations with the highest percentage of closed claims less than \$10,000 compared with the same allegations of closed claims of greater than or equal to \$10,000.

22 Comparison of Closed Claims Count Distribution by Allegation

This figure highlights only those injuries with the highest percentage of claims.

| Allegation | Distribution of closed claims with Paid Indemnity of < \$10,000 | Distribution of closed claims with Paid Indemnity of ≥ \$10,000 |
|--|---|---|
| Failure to supervise or monitor a patient | 30.0% | 25.7% |
| Improper performance using a biophysical agent | 20.0% | 16.1% |
| Improper management over the course of treatment | 19.1% | 27.6% |
| Equipment-related | 12.7% | 4.0% |

Figure 23 demonstrates that **burn** injuries accounted for the majority of claims in this category representing 27.3 percent of all claims with indemnity payment less than \$10,000. The burn injuries in this category were typically not permanent or disfiguring. However, burn injuries are often painful and may require additional medical intervention.

Burn injuries were frequently attributed to electrotherapy, which includes electrical muscle stimulation (EMS) or transcutaneous electrical nerve stimulation (TENS). Sustaining first or second degree burns with resultant minor scarring following administration of electrotherapy with a TENS unit is typical of burn claims noted in this category. Injuries can be caused by the electrodes on the TENS unit when it is not being properly maintained or inappropriate monitoring of the patient, leaving the electrodes on the tissue too long, resulting in the burn.

Burn injuries also arose from inappropriate use of heating pads, hot pads, cold packs and iontophoresis. Burn injuries are further discussed in **Part 3** on [page 14](#).

Fractures represented 14.5 percent of injuries with an indemnity payment less than \$10,000. Fractures most commonly occurred during overly aggressive therapy with an elderly or otherwise compromised patient. Falls from an examination table or while the patient is getting on or off exercise equipment are other examples which led to patient fractures.

Abrasions/bruises/contusions or lacerations represent 12.7 percent of claims closed with an indemnity payment less than \$10,000. Similar to fractures, these injuries typically arose from overly aggressive therapy, or falls during a therapy session.

Injuries that closed with indemnity payments less than \$10,000 are typically categorized as minor injuries which can be painful, but rarely threaten life, mobility or long-term survival.

23 Comparison of Closed Claims Count Distribution by Injury

This figure highlights only those injuries with the highest percentage of claims.

| Injury | Distribution of closed claims with Paid Indemnity of < \$10,000 | Distribution of closed claims with Paid Indemnity of ≥ \$10,000 |
|---|---|---|
| Burn | 27.3% | 16.4% |
| Fracture | 14.5% | 28.4% |
| Abrasion, bruise, contusion or laceration | 12.7% | 4.3% |

Protecting Patients From Burns

- Be aware of the high risk of burns from certain commonly used treatments and interventions, such as hot packs, cold/ice packs, and electrotherapy.
- Ensure each element of treatment 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. 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 hot-pack warmers, paraffin tanks, and other equipment in accordance with manufacturer instructions and organizational policies.

Burn injuries arose from inappropriate use of **heating pads, hot pads, cold packs and iontophoresis**.

Part 5: Analysis of Closed Claims with Expense Only

Part 5 includes only those professional liability closed claims that involved individually insured PTs or PTs providing services as an employee of an insured physical therapy practice with an expense payment only. Claims may resolve without an indemnity payment to a plaintiff for various reasons. For example, such a claim may have been:

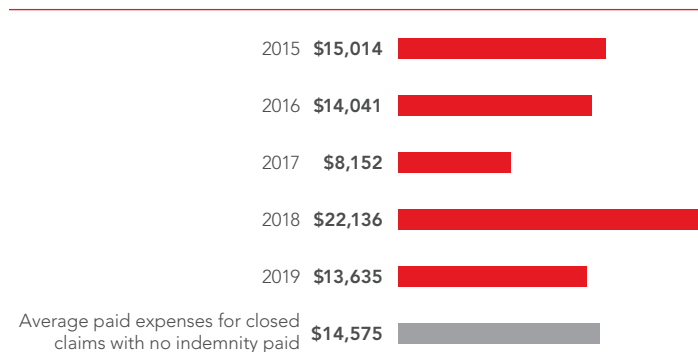
- Successfully defended on behalf of the physical therapist, resulting in a favorable defense verdict.
- Withdrawn by the plaintiff during the investigation or discovery process.
- Dismissed by the court prior to trial in favor of the defendant.

Paid expenses may include attorney fees, expert witness fees, economist fees and costs involved in investigating the claim. Claim expenses can vary widely due to the unique circumstance of every matter.

Claims with an expense payment only were not included in the preceding sections of this report as no indemnity amounts were paid. Similar to closed claims with a paid indemnity of less than \$10,000, claims with only an expense payment may affect insureds emotionally and professionally, as they also require an investment of time and resources on behalf of the PT to resolve.

24 Average Paid Expenses for Closed Claims with No Indemnity Paid by Year Closed

Closed Claims with Expense Only



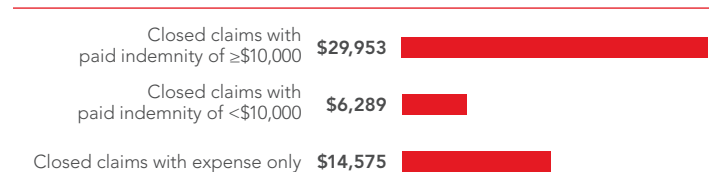
These claims represented 38.8 percent of all claims with an incurred payment that closed between January 1, 2015 and December 31, 2019 and therefore are included here for context. The average expense to defend claims in this category was \$14,575, as displayed in **Figure 24**. Examples of claims with lower overall expense payments may include costs for an attorney to petition the court or respond to a summons. While the average cost to defend was \$14,575, defense expenses reached as high as \$300,000 for complex claims requiring expert opinions, but ultimately resulted in a favorable defense verdict. **Figure 25** compares expense costs of closed claims with and without any paid indemnity.

On average, claims with an expense payment only can take 2.49 years to close, as shown in **Figure 26**. The 2.49 years is slightly less than the time it can take for a claim to close with a paid indemnity of >\$10,000 at 3.02 years.

While the **average cost to defend** was **\$14,575**, defense expenses **reached as high as \$300,000** for complex claims requiring expert opinions, but **ultimately resulted** in a **favorable defense verdict**.

25 Comparison of Expense Costs

Closed Claims with Expenses



26 Comparison of Average Number of Years from Notice to Closure



Part 6: Analysis of License Protection Matters with Defense Expense Payment

Introduction

License protection matters involve the defense of the insured PT or PTA before a state board of physical therapy (SBPT) or comparable state regulatory agency. License protection matters include only the cost of providing legal representation to defend the PT or PTA during the investigation. They are distinguished from professional liability claims, which include an indemnity or settlement payment to an injured patient or family member. Therefore, the average defense expense noted within this section is not necessarily indicative of the severity of the matter before the SBPT. In addition, a regulatory or licensing board action against a PT's or PTA's license to practice differs from a professional liability claim in that it may or may not involve allegations related to patient care and treatment. For example, license protection matters may include instances where a PT or PTA allegedly engaged in unprofessional conduct, was charged with a DUI or other crime or failed to disclose certain information in a license renewal application.

Defense payments for license protection matters reflect legal expenses, associated travel, food, lodging, and wage loss costs reimbursable under the policy.

Database and Methodology

As noted in the introduction, three datasets are used in this report. The 2020 dataset discussed in this section consists of license protection matters that closed between January 1, 2015 and December 31, 2019 and resulted in a defense expense/payment of at least one dollar. These criteria, applied to the total number of reported PT or PTA license protection matters create the 2020 dataset consisting of 170 license protection matters. Similar criteria produced a 2016 dataset comprised of 144 license protection matters and a 2011 dataset of 170 matters.

Data Analysis

As shown in **Figure 27**, while the number of license protection matters included in the 2020 dataset increased 18.1 percent compared to the 2016 dataset, the average payment per license defense matter increased more dramatically (from \$4,828 to \$6,420, or 33.0 percent).

The average cost (**\$6,420**) of defending allegations asserted against a PT or PTA's license in the 2020 dataset **increased 33.0 percent** compared to the 2016 dataset and **68.5 percent** compared to the 2011 dataset.

KEY FINDING



Defense payments for license protection matters reflect legal expenses, associated travel, food, lodging and wage loss costs reimbursable under the policy. The reasons for the rising average payment associated with license protection matters include the escalating costs of defense counsel, inflation, and the individual nature of each SBPT disciplinary investigation, which may take years to resolve.

27 License Protection Data Comparison, 2011, 2016 and 2020 Datasets

| | 2011 | 2016 | 2020 |
|--|----------------|----------------|----------------|
| Number of years included in dataset | 10 | 5 | 5 |
| License protection paid matters included in dataset | 170 | 144 | 170 |
| Average number of license protection paid matters per year | 17 | 29 | 34 |
| Total paid | \$647,700 | \$695,165 | \$1,091,462 |
| Average payments | \$3,810 | \$4,828 | \$6,420 |

Figure 28 displays license protection matters by insured type, and **Figures 29** and **30** display average payment and distribution of license protection matters by licensure type, each comparing the matters in the 2011, 2016 and 2020 datasets. The percentage of license protection matters with defense payments correlates to the proportion of physical therapy practices and individually insured PTs and PTAs within the overall CNA/HPSO-insured physical therapy population. In addition, any differences in the average payment per license protection matter between PTs versus PTAs, or PTs and PTAs who are individually insured, versus insured through a physical therapy practice, are not reflective of the severity of the license protection matters. Rather, PTs and PTAs should understand that **Figures 28, 29** and **30** are intended to illustrate how the average payment per license protection matter has risen over the last two decades, regardless of insurance source or licensure type.

The average payment per license protection matter has risen over the last two decades, regardless of insurance source or licensure type.

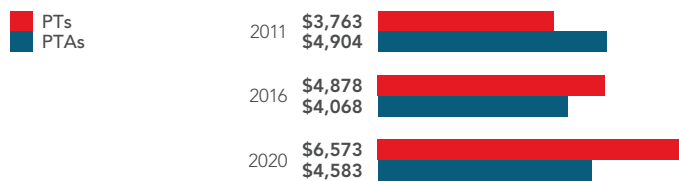
License Protection vs. Professional Liability. What is the difference?

| License Protection | Professional Liability |
|--|---|
| <p>Inquiry by the State Board, arising from a complaint.</p> <p>Allegations can be directly related to a physical therapist's clinical practice and professional responsibilities, and they can be of a nonclinical nature, such as physical abuse, unprofessional behavior, or fraud.</p> <p>The State Board of Physical Therapy can suspend or revoke a license. Its primary mission is to protect the public from unsafe practice.</p> | <p>Civil lawsuit arising from a patient's malpractice claim.</p> <p>Allegations are related to clinical practice and professional responsibilities.</p> <p>The civil justice system cannot suspend or revoke your license to practice. Professional liability lawsuits serve to fairly compensate patients who assert that they have suffered injury or damage as the result of professional negligence.</p> |

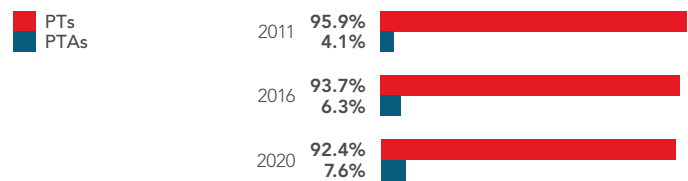
28 Closed License Protection Matters by Insured Type

| | Physical therapy practice | | | Individually insured PTs/PTAs | | |
|---|---------------------------|---------|---------|-------------------------------|---------|---------|
| | 2011 | 2016 | 2020 | 2011 | 2016 | 2020 |
| Percentage of license protection paid matters | 30.6% | 33.3% | 38.2% | 69.4% | 66.7% | 61.8% |
| Average payments | \$4,110 | \$4,665 | \$7,580 | \$3,677 | \$4,909 | \$5,702 |

29 License Protection Data Comparison, 2011, 2016 and 2020 of Average Payments by Licensure Type



30 License Protection Data Comparison, 2011, 2016 and 2020 of Percentage of Paid Matters by Licensure Type by Percentage



Analysis of License Protection Matters by Allegation Class

This section of the report highlights the most common licensing board allegations against PTs and PTAs. The primary allegation categories identified in this report extend beyond the classification systems of many state and regulatory bodies that oversee physical therapy practice. Often, these classification systems do not provide sufficient insight into the specific circumstances that led to the allegations and complaints. Therefore, while complaints against a PT's or PTA's license to practice often involve multiple allegations, this analysis classifies license protection matters based upon the primary reason for the complaint. Note that percentages are based upon the total number of matters with defense expense payments for all PTs and PTAs.

Three out of every five license protection matters (59.4 percent) involved an allegation related to the professional conduct of a PT or PTA.

KEY FINDING



Allegations related to **professional conduct and management over the course of treatment** accounted for 83.5 percent of all license protection matters.

31 Distribution of License Defense Matters by Primary Allegation Class

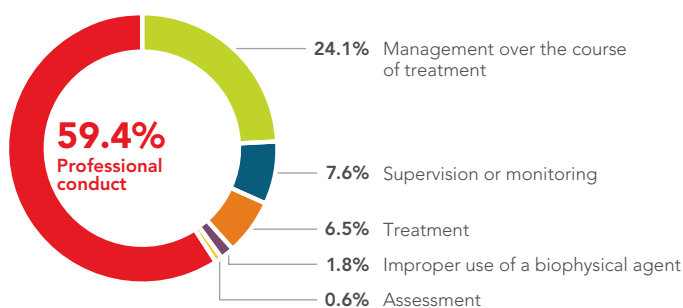


Figure 31 displays the distribution of the primary allegation categories. Complaints related to the **professional conduct** of a PT or PTA accounted for the majority of the license protection matters in the 2020 dataset, at 59.4 percent. Collectively, **professional conduct** and **management over the course of treatment** accounted for 83.5 percent of all license protection matters. These top allegation categories will be discussed in greater depth in this section of the report. Note that discussion of primary allegation categories does not appear in the same order as displayed in **Figure 31**.

Allegations related to **supervision or monitoring** constituted 7.6 percent of all license protection matters and include allegations of **failure to supervise or monitor patients during treatment** (2.9 percent of all license protection matters). These complaints were filed with the SBPT after a failure on the part of a PT or PTA to monitor and assist their patient during treatment which led to the patient falling and sustaining an injury. As discussed in **Part 3**, a **failure to ensure a safe environment** can expose PTs and PTAs to professional liability, as well as potential action by the SBPT. This category also includes allegations of **failure to supervise or monitor unlicensed assistive personnel or other providers** (4.7 percent of all license protection matters), as in the following example:

- A traveling PT was working at a clinic where an insured PTA served as the clinic manager. The PT filed a complaint against the PTA with the SBPT. The complainant stated that while working at the clinic she became aware that the PTA would assign all patient treatment/modality responsibilities to the physical therapy techs/aides. The PT refused to sign the patient treatment notes written by the techs/aides because she had not seen the patient, and even questioned the legality of this practice to the PTA. The complaint further alleged that the techs/aides provided, supervised and monitored all patient treatments/modalities, documented those treatments/modalities in the patients' healthcare record, and would send the treatment notes to the PT to be signed and billed for physical therapy services. In his response to the complaint, the PTA repeatedly denied that the techs/aides were given individual patient assignments and responsibilities without PT oversight/supervision/monitoring. However, following a review of subpoenaed healthcare and business records, the SBPT found evidence that, as clinic manager, the PTA enabled physical therapy techs/aides to maintain their own patient assignments, document entire daily intervention notes and permitted the techs/aides to bill for therapy services. The SBPT concluded that the PTA interfered with the investigation by willfully misrepresenting facts. The SBPT placed the PTA on probation for four years. The expenses associated with defending the PTA in this case exceeded \$15,600.

Treatment-related allegations comprised 6.5 percent of all license protection matters and include allegations of **improper technique** (4.1 percent of all license protection matters), **unnecessary treatment** (1.2 percent), and **failure to respond to patient's complaints that treatment was too aggressive or painful** (1.2 percent). Many of these allegations could have been prevented by obtaining the patients' acknowledgment that they agreed to the treatment to be provided (informed consent) and were aware of the expected treatment outcome. Allegations related to treatment also may result from miscommunication or lack of communication between the PT or PTA and the patient as in the following example:

- The PT practice where the insured PTA worked sued an auto insurance company for payment related to the treatment of a patient's injuries sustained in an automobile accident. The PTA was soon notified that the auto insurance company had an expert review the bills submitted by the PT practice, and they filed a complaint with the SBPT alleging that the PTA overutilized physical therapy services in treating this patient. The SBPT's investigation concluded that the PTA's documentation did not support the need for the quantity of care delivered. The PTA admitted that he failed to communicate with the responsible PT during the patient's course of treatment and document those discussions to support the patient's care. The SBPT assessed a \$100 fine and ordered that the PTA complete 9 hours of continuing education. The expenses associated with defending the PTA in this case exceeded \$3,900. The SBPT also placed the PT practice on probation and fined the practice an unknown amount for failing to appropriately supervise the PTA and inadequate record keeping and documentation.

Careful documentation can help to mitigate communication-related risks. For more risk control recommendations for physical therapists, see the HPSO and CNA's [Physical Therapy Spotlight: Documentation](#).

Allegations related to treatment often result from **miscommunication** or **lack of communication** between the **PT or PTA and the patient**.

Informed Consent Checklist

Before engaging in treatments or interventions, the PT must obtain the patient's informed consent, with all discussions carefully documented. At a minimum, informed consent discussions should include:

- Known risks and benefits of the treatment plan, alternative treatment options and the likely consequences of declining the suggested therapy.**
- Disclosure of clinically indicated touching and/or potential discomfort during treatment.**
- Answers to patient and family questions.**
- Repetition of important information by the patient to ensure understanding.**
- Written confirmation that the patient agrees to the proposed treatment.**
- Provision of pertinent patient education materials and corresponding documentation.**

Physical Therapy Spotlight: Defending Your License

A PT's or PTA's license or certification to practice is their livelihood, so protecting it is paramount. This Physical Therapy Spotlight provides an overview of the complaint and investigation process, as well as additional analysis and risk management insights.

Visit www.hpso.com/ptclaimreport_defendlicense



Analysis of Allegation Class Sub-Categories

Figures 32 and 33 provide additional information regarding the most frequent allegation sub-categories.

Allegations Related to Professional Conduct

Allegations related to the professional conduct of PTs and PTAs comprised 59.4 percent of all license protection matters in the 2020 claim dataset. This category includes matters where the PT or PTA failed to exercise sound professional judgment. Along with the privilege of being a licensed or certified professional, PTs and PTAs are responsible for adhering to professional codes of conduct, including the APTA *Code of Ethics for the Physical Therapist* and the *Standards of Ethical Conduct for the PTA*. Failure to act ethically and respect the rights and dignity of all patients, colleagues, and the public can result in action by the SBPT.

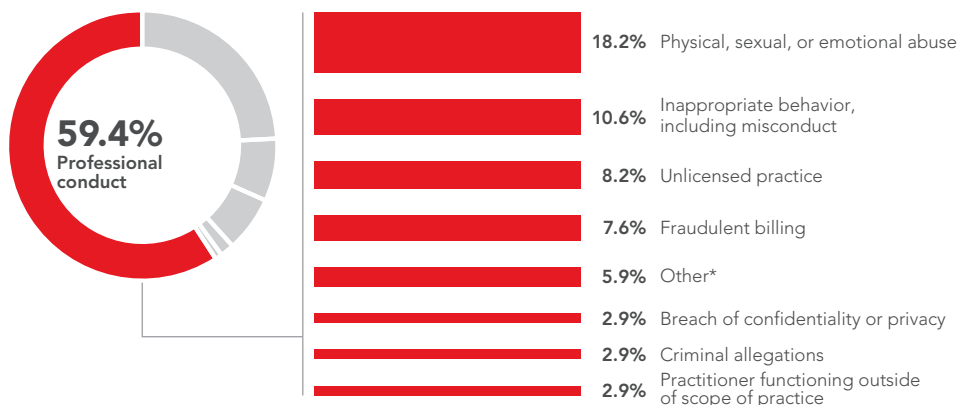
As depicted in Figure 32, allegations of **physical, sexual, or emotional abuse** were the most frequent allegation in the 2020 claim dataset, comprising 18.2 percent of all license protection matters. Physical, sexual or emotional abuse allegations were also noted as one of the most frequent types of license protection matters observed in both the 2011 and 2016 claim datasets, demonstrating that this remains a significant issue for the profession. These license protection matters involved allegations of PTs and PTAs harassing or assaulting a patient, a coworker or in a few cases breaching professional boundaries by initiating a relationship with a patient. Practice owners, PTs and PTAs can take steps to prevent sexual harassment and abuse. PTs and PTAs should receive education about professional boundary issues. PTs and PTAs should avoid any activity that falls outside of the accepted patient and PT/PTA professional relationship. Practice owners should

establish and implement policies that address abuse and harassment and outline reporting steps for patients and staff. Patients expect that their PT or PTA is a professional and will be held accountable if harassment occurs. Failure to recognize and address issues of sexual abuse and harassment can allow perpetrators to continue to victimize patients and colleagues for years, as in the following examples:

- The SBPT received a complaint alleging that the insured PT engaged in inappropriate conduct that included kissing and touching a PTA student. During the SBPT’s investigation, four former patients informed the SBPT investigator that the PT touched them inappropriately during therapy. After the SBPT presented its evidence, the PT voluntarily surrendered his license. The matter took six months to resolve, and expenses paid to defend the PT exceeded \$24,800.
- After a former employee filed a complaint with the SBPT, the SBPT’s investigation determined that the insured PT, the co-owner of a physical therapy practice, engaged in a repetitive pattern of sexual harassment directed at five employees over the course of seven years. The SBPT’s investigation concluded that the PT engaged in inappropriate behaviors including, but not limited to, repeated, unwanted touching, giving prolonged hugs, making inappropriate comments and kissing. The PT then retaliated against one of the employees after she complained about his inappropriate behavior. The SBPT placed the PT on probation for three years and ordered him to pay a fine. This matter took more than a year to resolve, and the expenses paid to defend the PT exceeded \$9,000.

32 Allegations Related to Professional Conduct

* Other allegations in the professional conduct category, which account for <2.5% of all license protection matters in the 2020 dataset, include failure to follow policies and procedures, substance abuse, reciprocal action and issues related to information provided during the license/certificate renewal process.



Allegations of **inappropriate behavior, including misconduct**, represented 10.6 percent of all license protection matters in the 2020 claim dataset. This is a broad allegation category that includes **failing to act with integrity and honesty**, and **engaging in unprofessional conduct towards coworkers and/or patients**, as in the following examples:

- The SBPT found that an insured PT knowingly issued a false medical excusal note for a colleague's boyfriend to justify his absence from work. The SBPT placed the PT on probation for two years and issued a \$1,000 fine. Expenses paid to defend the PT in this matter exceeded \$2,500.
- A PT practice owner submitted evidence to the SBPT that an insured PT documented inappropriate comments in patients' healthcare and billing records. The practice owner testified that while reviewing the PT's documentation, she and her office manager found multiple instances where the PT made unprofessional, disparaging comments about patients which were not related to care or treatment. In one instance, the PT used the unapproved acronym "DHHST" on a patient's billing record, which the PT claimed stood for "Doesn't Have His Sh** Together." The PT admitted to writing the inappropriate comments on patient records, asserting that he did it to "boost morale." The PT contended that he was never told not to write those types of comments or else he would not have done so. The SBPT did not find the PT's testimony to be credible. The PT's license was suspended for six months and concurrently placed on probation for two years. This licensing board matter took over two years to resolve, and the expenses paid to defend the PT in this matter exceeded \$18,800.

The allegation of **unlicensed practice** comprised 8.2 percent of all license protection matters in the 2020 claim dataset. The majority of these allegations involved a practice owner who was aware that a PT or PTA was providing professional services without an active license or certification. The remainder of the allegations involved a PT or PTA supervising or monitoring an unauthorized person in the practice of physical therapy. These matters underscore that SBPTs not only consider it an ethical obligation for PTs and PTAs to discourage illegal or unethical practices, but they also have a duty to report illegal or unethical practices to the appropriate authorities.

Self-Assessment Checklist: Professional Conduct

- Speak to patients, families and staff in a courteous and professional manner.
- Be sensitive to and respectful of cultural differences in patients/families, staff, and coworkers.
- Explain procedures and treatments to patients; describe any touching they can anticipate during the assessment, monitoring and treatment process; and obtain their permission before proceeding.
- Warn patients of potential treatment-related discomfort. Assist the patient in recognizing the difference between discomfort and pain, and ensure that the patient understands the need to communicate about pain levels.
- Have a second staff member present during treatments if the patient requires treatment in sensitive areas, has expressed embarrassment or fear, or has demonstrated unusual behaviors.
- Respect the patient's rights throughout the episode of care, remaining attentive to their wishes and feelings.
- Cease treatment/procedure immediately if the patient expresses emotional discomfort or states that the touching seems excessive, painful, abusive or inappropriate in any way.
- Do not discourage patients from asking questions, expressing their concerns, speaking with a supervisor or requesting another therapist.
- Report any patient allegations immediately to a manager and the referring practitioner.
- Refrain from developing personal relationships with patients or family members that may result in a conflict of interest, such as:
 - exchanging gifts
 - relating in a flirtatious or overly familiar manner
 - socializing outside of a professional relationship
 - connecting on social media
- If questions arise relating to professional behavior or ethics, refer to the resources provided by the American Physical Therapy Association at www.apta.org.

Allegations Related to Improper Management Over the Course of Treatment

PTs and PTAs are required to demonstrate professional competence. They should conform to professional standards of practice, and use evidence of best practices and their experience as a practitioner to inform their daily practice. Allegations related to **improper management over the course of treatment** (Figure 33) involved circumstances where the PT or PTA failed to meet the standards of physical therapy practice, including **failure to obtain informed consent** (2.9 percent of all license protection matters), **failure to follow referring practitioner orders** (1.2 percent), and **patient abandonment** (1.2 percent).

Improper management over the course of treatment, which comprised 7.1 percent of all license protection matters in the 2020 claim dataset, is a broad category that includes alleged failures on the part of the PT or PTA to meet the minimum acceptable standards of physical therapy practice. Allegations of **improper management of a surgical patient** (2.9 percent of all license protection matters) include matters where the PT or PTA failed to meet the minimum standards of practice specific to a post-surgical patient. Following the conclusion of professional liability lawsuits, SBPTs are notified. After the SBPT investigates the matter, the SBPT may choose to close the matter without imposing disciplinary action against the PT or PTA as in the following example:

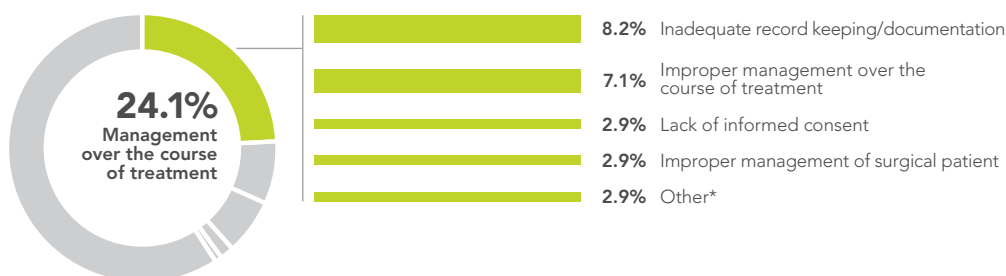
- The insured PT treated a patient for lower back pain. The patient filed a malpractice lawsuit against the PT alleging that the PT's manipulation exercises exacerbated her back injury, requiring a back surgery. A settlement was reached prior to trial. Following the conclusion of the lawsuit, the settlement was reported to the National Practitioner Data Bank and the SBPT opened an investigation into the matter. Upon reviewing the facts presented by the PT's defense, the SBPT did not find evidence of a violation of the Physical Therapy Practice Act and dismissed the complaint. The matter took more than three years to be resolved, and expenses associated with defending the PT in the investigation exceeded \$6,600.

Documentation and record keeping are essential to managing patient care and are cornerstone risk management practices. Allegations related to **inadequate record keeping and documentation** comprised 8.2 percent of all license protection closed matters in the 2020 claim dataset. Inadequate documentation may not only impede the quality of patient care, it also may result in a SBPT complaint. Patient care assessments, observations, communications and actions should be documented in an objective, timely, accurate, complete, appropriate and legible manner. Documentation should support the treatment plan and satisfy SBPT regulatory and third-party billing requirements, as evidenced by reviewing the following scenario:

- A third-party payer filed a complaint against the insured PT with the SBPT, alleging that insurance claims filed by the PT failed to include his name and license number, and he failed to sign his patient notes. During the SBPT investigation, the PT admitted that his record keeping skills were "deficient." The SBPT also found that the PT was using an unsecure electronic medical documentation program to maintain his patients' healthcare records. The PT admitted that he had not maintained or contemporaneously signed any of his patients' healthcare records. In light of these findings, the SBPT publicly reprimanded the PT, required him to submit all of his patients' healthcare records to a SBPT-approved monitor for one year, and ordered him to pay a civil fine of \$10,000. Furthermore, subsequent to the first SBPT investigation and disciplinary action, a neighboring state where the PT also maintained a license opened its own investigation. The SBPT in the second state also publicly reprimanded the PT's license and issued a civil fine of \$1,500. The total incurred cost to represent and defend the PT in these two SBPT investigations was greater than \$15,800, and the matters took more than six years to resolve.

33 Allegations Related to Improper Management Over the Course of Treatment

* Other allegations in this category, which account for <2.5% of all license protection matters in the 2020 dataset, include patient abandonment, failure to follow referring practitioner orders, and failure to follow proper infection control procedures.



State Board of Physical Therapy Outcomes

While the terminology used to describe the types of disciplinary actions SBPTs impose may differ between states and jurisdictions, disciplinary action taken by all SBPTs can affect a PT's or PTA's ability to practice. Any complaint filed against and potentially implicating the license/certification of a PT or PTA can have career-altering consequences, ranging from **reprimands** or **fines** to **surrender** or **revocation** of license, resulting in career termination.

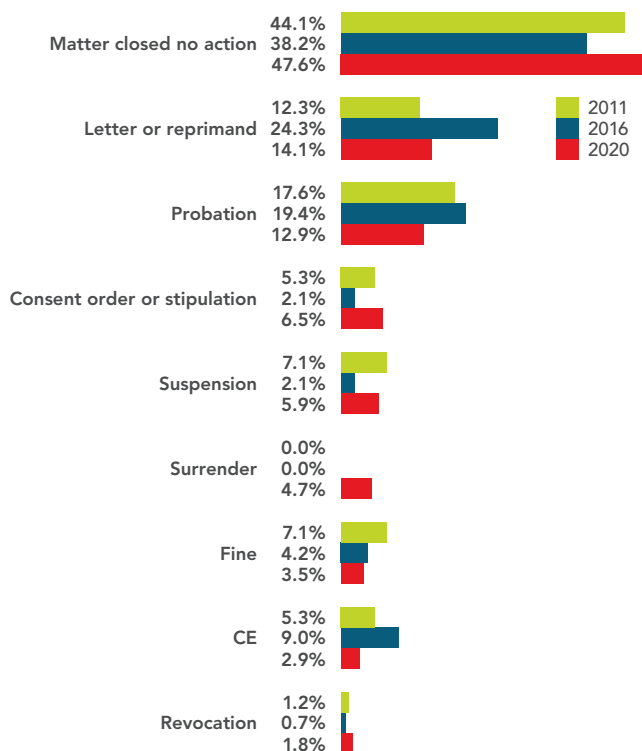
Figure 34 compares the distribution of SBPT licensing actions between the 2011, 2016 and 2020 datasets. In the 2020 dataset, the largest percentage of license protection matters, 47.6 percent, **closed with no action taken** by the SBPT. A SBPT's decision to not impose disciplinary action represents a positive outcome for the insured PT or PTA.

Approximately **52 percent of licensing board matters** led to some type of board action against a physical therapist's license or a physical therapist assistant's certificate.

KEY FINDING



34 Comparison of 2011, 2016 and 2020 Distribution of State Board of Physical Therapy Actions for PTs and PTAs



Notably, 4.7 percent of license protection matters in the 2020 dataset resulted in the PT electing to **voluntarily surrender** their license to practice; an outcome which was not observed in the 2016 or 2011 datasets. Each of these matters involved complaints of either sexual misconduct or investigations by the SBPT following criminal allegations.

Even complaints resulting in less severe decisions by the SBPT, such as **probation**, **consent agreements** or **stipulations**, **fines**, **mandated continuing education**, or **letters or reprimands**, may have a significant emotional and professional impact on the PT or PTA. SBPT investigations are serious matters, requiring legal assistance as well as significant investment of time and effort by the PT or PTA until they are resolved.

While it may be difficult to prevent complaints from being filed, following basic risk management principles, including consistent adherence to state practice acts and organizational policies and procedures, proactively obtaining professional education and training to maintain clinical competencies, and proper documentation, increase the likelihood of a "no action" decision by the board.

Risk Management Recommendations for Everyday Practice

- Practice within the requirements of your state physical therapy practice act, in compliance with organizational policies and procedures, and within the national standard of care.
- Maintain basic clinical and specialty competencies by proactively obtaining the professional information, education, and training needed to remain current regarding physical therapy techniques, clinical practice, and equipment.
- Document your patient care assessments, observations, communications, and actions in an objective, timely, accurate, complete, and appropriate manner.
- If necessary, utilize the chain of command or consult the risk management or legal department regarding patient care or practice issues.
- Maintain files that can be helpful with respect to your character, such as letters of recommendation, performance evaluations, and continuing education certificates.



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In addition to this publication, CNA and Healthcare Providers Service Organization (HPSO) have produced numerous studies and articles that provide useful risk control information on topics relevant to physical therapy professionals, as well as information relating to physical therapy professionals insurance, at www.hpso.com. These publications are also available by contacting CNA at 1-866-262-0540 or at www.cna.com.

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