We can show you more.®

Physical Therapy Professional Liability Exposure: 2016 Claim Report Update

A COMPARATIVE ANALYSIS FROM
CNA AND HEALTHCARE PROVIDERS SERVICE ORGANIZATION

Foreword

The American Physical Therapy Association (APTA) is proud to have provided input into the development of *Physical Therapy Liability Exposures: 2016 Claim Report*. APTA's commitment to its members represents an effort to work collaboratively to achieve positive outcomes for patients and the profession. We thank CNA and Healthcare Providers Service Organization, an APTA Gold Level Strategic Business Partner, for their work, and we believe that the report will assist our members in enhancing their risk management practices.

J. Michael Bowers
CEO, The American Physical Therapy Association

APTA
American Physical Therapy Association

Part 1

CNA PHYSICAL THERAPY CLOSED CLAIMS ANALYSIS

January 1, 2010 through December 31, 2014

RISK CONTROL STRATEGIES AND RISK CONTROL SELF-ASSESSMENT CHECKLIST

Introduction

In 1992, the American Physical Therapy Association (APTA) began its partnership with the Healthcare Providers Service Organization (HPSO) by offering insurance solutions to its members through the CNA/HPSO Professional Liability Insurance Program. The CNA/HPSO affiliation continues to be the nation's largest underwriter of professional liability insurance coverage for physical therapy providers, with more than 79,000 policies in force in an increasingly broad array of locations and specialties.

Purpose

In collaboration with HPSO, we are pleased to present our third report on physical therapist risk exposures, which examines CNA physical therapy claims that closed between January 1, 2010 and December 31, 2014. By identifying liability patterns and trends, we seek to help physical therapy professionals understand their major areas of vulnerability and take appropriate action to protect their patients from injury and themselves (or their employers) from potential litigation. The report has three segments: Part 1 analyzes physical therapy closed professional liability claims, Part 2 reviews physical therapy license protection closed claims, and Part 3 summarizes survey findings on a range of physical therapy professional matters and risk issues.

Where possible, this report compares CNA/HPSO physical therapy professional liability closed claims that occurred between January 1, 2001 and December 31, 2010 with the corresponding dataset of closed claims that occurred from January 1, 2010 through December 31, 2014. The two groups of closed claims are referred to as the 2011 and 2015 datasets, respectively. This comparison provides a broad historical perspective on claim characteristics, including trends in frequency and severity, as well as additional insights about emerging liability concerns.

The report also summarizes individual closed claims with settlements or judgment awards equal to or greater than $500,000 and offers case scenarios in which therapists failed to comply with professional standards of care, resulting in patient injury and consequent claims of negligence. Finally, risk control recommendations and a self-assessment checklist are included to assist physical therapist professionals in reviewing their custom and practice in relation to the risks identified in the report.

Database and Methodology

There were 3,105 professional liability closed claims and incidents attributed to CNA-insured physical therapy professionals in the HPSO program from 2010 through 2014. Professional liability claims were included in the final dataset only if they:

- Involved a licensed physical therapist (PT), physical therapist assistant (PTA) or other healthcare professional providing services as an employee of an insured physical therapy practice.
- Had a closure date between January 1, 2010 and December 31, 2014.
- Resulted in an indemnity payment equal to or greater than $10,000.

Closed claims with an indemnity payment of less than $10,000 were excluded from both the 2011 and 2015 datasets, as these smaller claims typically involve injuries that are less severe and/or resolve without extensive litigation.

The 2015 dataset (with five years of data) consists of 443 professional liability closed claims, whereas the 2011 dataset (with 10 years of data) comprises 477 closed claims. Please note that the two datasets are not totally distinct, as they overlap in 2010, and also that the number of insureds has increased since the 2011 report, resulting in more potential claim activity in the 2015 dataset. Nevertheless, the two datasets reveal changes in physical therapy litigation patterns over time.

The methodology used in this report differs from other physical therapy claims reports issued by other organizations. For this reason, its findings should not be compared with other studies.

Scope

This report examines the severity of physical therapy closed claims, focusing on such claim characteristics as incident location, allegation, injury, re-injury and related disability. The report also compares the liability situation of individually insured PTs with that of PTs who are employed and insured by a physical therapy practice.

The listed indemnity payments or expenses were paid by CNA on behalf of an insured and do not include any additional payments from employers, other insurance companies or other parties. This analysis reflects CNA data only and is not necessarily representative of all closed claims for PTs and/or physical therapy practices.

It may take several years to resolve a professional liability claim. Therefore, although all the claims closed between January 1, 2010 and December 31, 2014, some may have resulted from events that occurred prior to 2010.

Terms

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

- **Allegation –** An assertion that the healthcare professional or organization has done something wrong or illegal.
- **Average total incurred –** Indemnity plus expense costs paid by CNA, divided by the number of closed claims.
- **Biophysical agent –** "A broad group of agents that use various forms of energy and are intended to assist muscle force generation and contraction; decrease unwanted muscular activity; increase the rate of healing of open wounds and soft tissue; maintain strength after injury or surgery; modulate or decrease pain; reduce or eliminate edema; improve circulation; decrease inflammation, connective tissue extensibility, or restriction associated with musculoskeletal injury or circulatory dysfunction; increase joint mobility, muscle performance, and neuromuscular performance; increase tissue perfusion and remodel scar tissue; and treat skin conditions," according to the American Physical Therapy Association's *Guide to Physical Therapist Practice* 3.0, 2014.
- **Expense payment –** Monies paid in the investigation, management or defense of a claim.
- **Indemnity payment –** Monies paid by CNA to a plaintiff on behalf of an insured in the settlement or judgment of a claim.
- **Physical therapy practice –** An organization insured through the CNA/HPSO physical therapy program that provides professional physical therapy services and employs PTs, PTAs, physical therapy aides, massage therapists, athletic trainers and/or other healthcare providers.
- **Referring practitioner –** A licensed independent healthcare practitioner other than a PT (e.g., physician, dentist, advanced practice nurse, physician assistant, podiatrist, etc.) who is authorized to refer patients to physical therapy.
- **Re-injury –** An incident during therapy that causes additional harm to the body part being treated.
- **Vicarious liability –** A legal principle that assigns responsibility for harm not to the person whose negligent act or omission caused an injury (such as a PT, PTA or physical therapy student or aide), but rather to that person's employer or supervisor if the act or omission occurred during the course and scope of practice.

General Data Analysis

Analysis of closed claims by insurance source

- Figure 1a provides an overview of claim results based upon the type of insured. The first row describes closed claim results for PTAs who are individually insured. The second describes closed claim results for PTs, PTAs and other healthcare providers who receive their professional liability coverage through a CNA/HPSO-insured physical therapy practice. The third row describes closed claim results for PTs who are individually insured. *This is the only chart that includes all **443** claims in the database*. Additional information on physical therapy practices can be found in Figure 2a on page 11 and on pages 37-39.
- Individually insured PTs experienced a 20.2 percent increase in average total incurred compared with the 2011 closed claim report. The highest average paid indemnity involves individually insured PTAs, due to several claims that closed with an indemnity payment of $150,000 or greater. The allegations asserted against individually insured PTAs include failure to monitor a patient during treatment, failure to follow practitioner's orders and failure to follow organizational policy, all of which are described below:
  - **Failure to monitor a patient during treatment:** A PTA was providing treatment in the patient's home. He instructed the patient to sit in a chair without any supervision, so the PTA could go to his vehicle and obtain equipment for the next exercise. The patient was confused and experiencing diminished mental capacity. When the PTA returned to the patient's house, the patient stood up and fell, hitting her head on the fireplace. The patient suffered a slow, undetected intracranial bleed that proved fatal.
  - **Failure to follow practitioner's orders:** The referring practitioner ordered that a patient receive a two-person assist during transfers because of her size. The PTA ignored the recommendation and attempted to lift the patient by himself. The PTA dropped the patient, resulting in the patient suffering a fracture to her femur.
  - **Failure to follow organizational policy:** A PTA failed to apply a gait belt to a patient during gait exercises, despite the organization's policy to use gait belts for all patients with balance issues. The patient fell during the gait training exercises and fractured her wrist.
- Physical therapy practices account for most closed claims. Of the total physical therapy closed claims, 75.4 percent involve physical therapy practices and 22.6 percent involve individually insured PTs. Physical therapy practice closed claims are analyzed on pages 37-39.

1a CLAIMS BY TYPE OF INSURED FOR ALL PHYSICAL THERAPY PROFESSIONALS

Licensure type	Percentage of closed claims	Total paid indemnity	Average paid indemnity	Average paid expense	Average total incurred
Individually insured PTA	2.0%	$1,186,750	$131,861	$16,965	$148,826
Physical therapy practice (PTs, PTAs and other professional designations)	75.4%	$32,263,702	$96,598	$24,552	$121,150
Individually insured PT	22.6%	$8,787,456	$87,875	$25,218	$113,092
Overall	100.0%	$42,237,908	$95,345	$24,548	$119,893

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

1b COMPARISON OF 2011 AND 2015 CLAIMS BY TYPE OF INSURED FOR ALL PHYSICAL THERAPY PROFESSIONALS

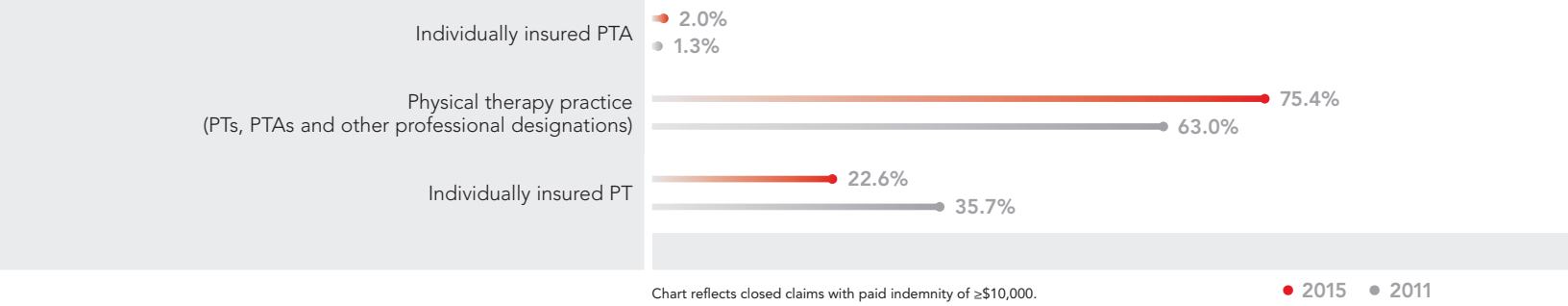


Chart reflects closed claims with paid indemnity of ≥$10,000.

● 2015 ● 2011

- The single "other" closed claim in Figure 2 involves an individual within a practice who fraudulently posed as a PT and treated a patient without a practitioner's referral. The patient had been prescribed therapy for her shoulder, but told the fraudulent PT that her knee also hurt, and he offered to assess it. After the patient told him that she had had an anterior cruciate ligament (ACL) repair five years previously, the fraudulent PT stretched her leg, placing it in a position that strained the muscle of her thigh and calf. He told her she should see her practitioner about her knee complaints because the joint appeared unstable. The patient returned several times for therapy on her shoulder and at each visit, the fraudulent PT would work on her knee despite her increasing knee pain. After experiencing several weeks of growing pain and instability, the patient followed up with her practitioner. An MRI of the knee showed a re-tear of her ACL caused by the fraudulent PT's "therapy."
- PTs working within physical therapy practices have the highest percentage of closed claims, at 78.1 percent.
- Five claims involve PT oversight of PT and PTA students who performed techniques on patients that were either beyond their training or not in compliance with the referring practitioner's orders, resulting in vicarious liability, as observed in the following examples:
  - A PT was serving as a preceptor for a PT student while performing an assessment on a patient three weeks after hip replacement surgery. During the assessment, the PT requested that the student measure the flexion and abduction of the patient's leg, and then left the student alone with the patient. The student, who had the patient's hip and knee at a 90-degree extension, attempted to do a Faber test, although the PT had not asked him to do so. During the test, the student used too much force, causing the patient's hip to immediately dislocate. The patient was taken to the hospital, where she underwent surgery.
  - The patient, a student at a local high school, was being treated for a recent ACL repair. The PT requested that the PTA student he was precepting perform the initial assessment strength test. The student did not feel comfortable with the PT's request, due to her limited knowledge of the procedure. However, the PT described it as a "great" learning opportunity and insisted she perform the assessment. During the strength testing, the patient felt a pop, which was later diagnosed as a patella stress fracture.

2a CLAIMS BY PROVIDERS INSURED BY A PHYSICAL THERAPY PRACTICE

Practitioner type	Percentage of closed claims	Total paid indemnity	Average paid indemnity	Average paid expense	Average total incurred
Other	0.3%	$350,000	$350,000	$42,713	$392,713
Physical therapist	78.1%	$26,995,578	$103,431	$25,798	$129,229
Physical therapist assistant	15.3%	$3,824,539	$74,991	$21,203	$96,194
Physical therapist aide	4.8%	$900,550	$56,284	$19,616	$75,900
Athletic trainer	0.3%	$45,000	$45,000	$875	$45,875
Massage therapist	0.9%	$123,035	$41,012	$9,448	$50,460
Occupational therapist	0.3%	$25,000	$25,000	$0	$25,000
Overall	100.0%	$32,263,702	$96,598	$24,552	$121,150

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

2b COMPARISON OF 2011 AND 2015 CLAIMS BY PROVIDERS INSURED BY A PHYSICAL THERAPY PRACTICE

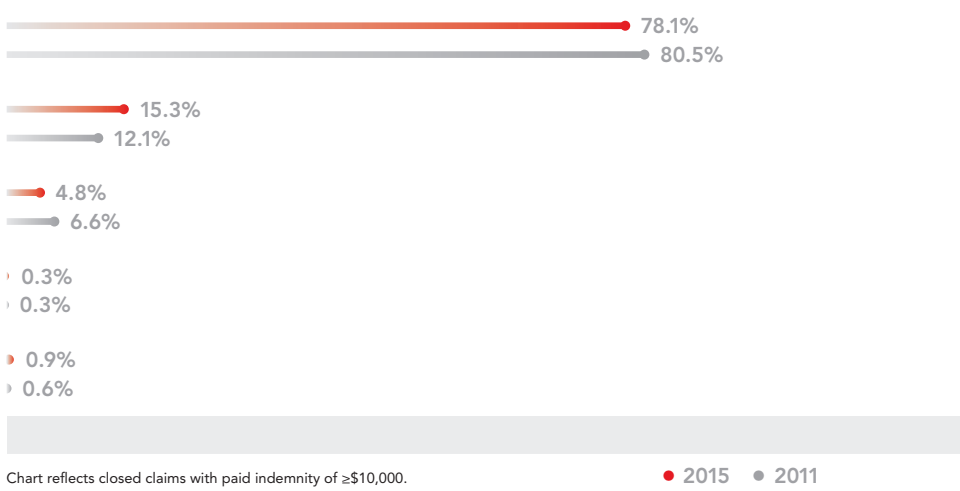


Chart reflects closed claims with paid indemnity of ≥$10,000.

Analysis of severity by year closed

Please note that from this point forward, the analysis solely reflects closed claims involving individually insured PTs and PTs insured through the professional liability policy of the physical therapy practice. Data inclusion and exclusion criteria are explained on page 7.

- From 2001 through 2014, losses for individual years vary. The data suggest an upward trend in terms of indemnity payments, but associated expenses remain stable.
- The increases in 2004 and 2009 were based upon the high number of closed claims with a paid indemnity equal to or greater than $200,000.

3 AVERAGE PAID INDEMNITY AND AVERAGE PAID EXPENSES BY YEAR CLOSED

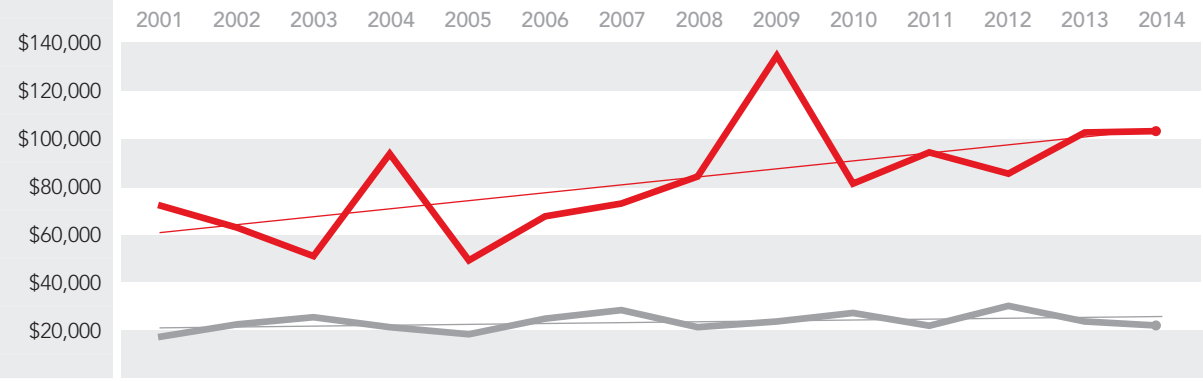


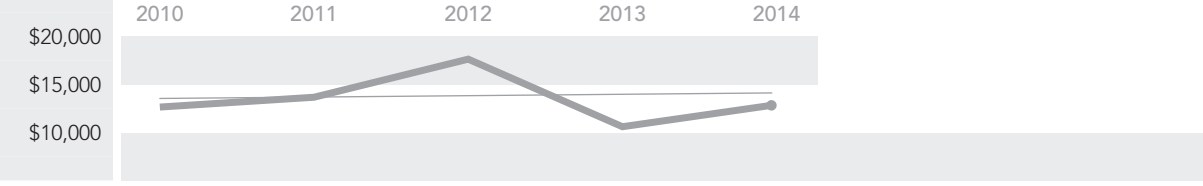
Chart reflects closed claims with paid indemnity of ≥$10,000.

- Average paid indemnity
- Linear (average paid indemnity)
- Average paid expense
- Linear (average paid expense)

Figure 4 displays *average paid expenses* for PT closed claims that closed with no indemnity payment. The data include closed claims with paid expenses of one dollar or greater in each of the five years covered by the report.

- Figure 4 displays average paid expenses for PT closed claims with no indemnity payment and paid expenses of one dollar or greater, with the highest average paid expense occurring in 2012.
- The chart includes closed claims that were successfully defended on behalf of the PT, dismissed or abandoned by the plaintiff during the investigative or discovery process, or terminated by the court in favor of the defendant prior to trial.
- For an example of a successful defense with no indemnity payment, see page 36.

4 AVERAGE PAID EXPENSE FOR CLOSED CLAIMS WITH NO INDEMNITY PAID BY YEAR CLOSED



- Average paid expense
- Linear (average paid expense)

Comparison of 2011 and 2015 distribution of closed claims

- The majority of PT closed claims resolved for an indemnity payment under $100,000 in both the 2011 and 2015 reports. However, the percentage of costlier claims increased, indicating that overall indemnity payments are rising.
- In the 2011 dataset, only 0.4 percent of the PT closed claims incurred the policy limits of $1 million, whereas in the 2015 dataset the proportion almost tripled to 1.1 percent. These high-indemnity claims reflect treatment resulting in severe and irreversible harm to patients.

5a COMPARISON OF 2011 AND 2015 BY SEVERITY

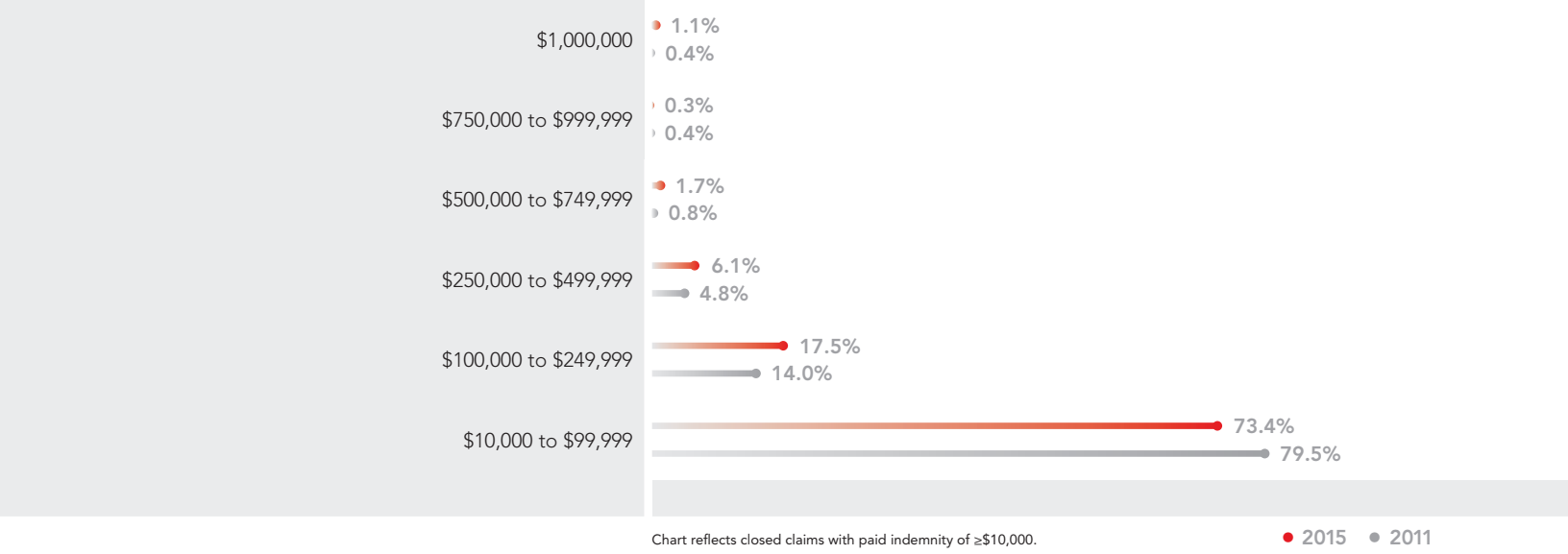


Chart reflects closed claims with paid indemnity of ≥$10,000.

5b COMPARISON OF 2011 AND 2015 CLOSED CLAIMS BY AVERAGE PAID INDEMNITY

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

Analysis of severity by location

- The high average paid indemnity for the LTACH category reflects one claim involving a contracted PT who failed to report new contractures of a patient's ankles to the referring practitioner. The delay in reporting hindered treatment, leaving the patient non-ambulatory with permanent impairment of both ankles.
- The highest percentage of closed claims occurred in physical therapy offices or clinics, followed by the patient's home.
- The golf course-related claim involves a PT who volunteered to work at a golfing event in order to promote his business. The PT performed a technique on a golfer that re-injured his back, causing a disc herniation to his T3-T4 that required surgical intervention. The PT had failed to obtain either a proper history on the golfer or an informed consent prior to treatment.

6a ANALYSIS OF SEVERITY BY LOCATION

Location	Percentage of closed claims	Total paid indemnity	Average paid indemnity
Long term acute care hospital (LTACH)	0.3%	$450,000	$450,000
School	0.8%	$1,140,443	$380,148
Acute medical-surgical hospital (inpatient)	1.9%	$1,905,496	$272,214
Aging services facility	2.2%	$840,000	$105,000
Patient home	7.5%	$2,766,821	$102,475
Physical therapy office/clinic (non-hospital)	84.8%	$28,425,925	$92,895
Golf course	0.3%	$50,000	$50,000
Fitness center	0.3%	$35,000	$35,000
Practitioner office or private clinic	1.7%	$156,349	$26,058
Spa	0.3%	$13,000	$13,000
Overall	100.0%	$35,783,034	$99,122

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

6b COMPARISON OF 2011 AND 2015 ANALYSIS OF SEVERITY BY LOCATION

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

● 2015 ● 2011

Analysis of Severity by Allegation

Figure 7a organizes the data by general allegation category, followed by an analysis of the more frequent types of allegations. Allegation categories comprising more than 5 percent of the total PT closed claims include:

- Improper performance of manual therapy, Figure 8.
- Failure to supervise or monitor, Figure 9.
- Improper management over the course of treatment, Figure 10.
- Improper performance using therapeutic exercise, Figure 11.
- Improper performance using a biophysical agent, Figure 12.

Allegation by category

- **While failure to properly test or treat the patient** has the highest average paid indemnity in 2011 and again in this report, this allegation accounts for only 1.9 percent of the PT closed claims. Some examples of failure to properly test or treat the patient include:
  - A patient was seen for three weeks after rotator cuff surgery. While testing the strength of the patient's shoulder, the PT heard a snap, which he believed was the long arm tendon. Two days later, the patient told the PT that her right bicep had been torn during the strength testing, requiring surgical repair of the right shoulder. The referring practitioner testified that the PT was negligent in performing the strength test, which was the cause of the injury.
  - A 35-year-old marathon runner patient underwent 60 therapy sessions for a two-week history of acute right hip weakness and pain with no known injury. At one of the last sessions, the patient reported falling three times over the weekend. The PT documented the patient's gait pattern as abnormal, with an anterior rotation of the pelvis during swing phase and heel strike, and referred her back to her referring practitioner. The patient later filed a claim, alleging that the PT was responsible for a delay in diagnosing a benign giant cell tumor in her hip. The patient underwent surgery (including a hip replacement) to remove the tumor. She suffered permanent partial impairment and can no longer perform any high-impact activity.

- **Equipment-related closed claims** have an average paid indemnity of $127,448, which is greater than the overall average of $99,122 for all closed claims. The severity is driven by the following claims, which involved an inappropriate use of unapproved equipment:
  - The PT utilized an over-the-counter infrared foot massager on a diabetic patient with decreased extremity sensation. The massager caused blisters and wounds to his feet, subsequently resulting in a below-the-knee amputation of both legs.
  - Following hip replacement surgery, a 40-year-old man was participating in a work-hardening program in which his head and shoulders were supported by a classic exercise ball. While the patient was doing a bench-press exercise with a 65-pound dumbbell in each hand, the exercise ball exploded. The patient hit the ground with a dumbbell in each hand, causing both of his hands to hyperextend and fracturing his forearms. During the investigation of the incident, the exercise ball was found to be excessively worn and not in safe, operable condition. The PT testified during his deposition that he never inspected or rotated the balls prior to use, although he was aware that they were several years old.
- **Environment of care closed claims** include equipment not mounted properly on the wall and cluttered treatment areas resulting in patient falls. These closed claims have an average paid indemnity slightly lower than the dataset as a whole. Closed claims in this category occur in such settings as acute medical-surgical hospitals, patient homes and physical therapy offices/clinics. Most involve a patient falling due to cluttered or unsafe treatment areas.
  - A visually impaired patient was walking across the treatment room when she tripped over several pieces of equipment that had been used by another patient as an obstacle course. The patient had been left alone when she fell to the ground, fracturing her left hip.
- **Improper behavior by a practitioner** comprises 1.7 percent of all closed claims, reflecting an overall decrease since the 2011 report. Closed claims in this allegation category include:
  - *PT functioning outside the accepted scope of practice.* One example involves a PT who advanced a patient from wheelchair to walker against the referring practitioner's express orders.
  - *Physical, sexual, emotional abuse and/or misconduct by a PT.* Typically, these closed claims involve the patient alleging inappropriate touching during manual therapy.
  - *PT failing to follow organizational policy.* A typical claim of this type involves failure of a PT to place a gait belt on a patient during gait training in contravention of organization guidelines, resulting in a fall. Even if the patient's resulting injuries are minor, claims involving disregard of organizational protocols are difficult to defend.

7a SEVERITY OF ALLEGATIONS BY CATEGORY

Allegation	Percentage of closed claims	Total paid indemnity	Average paid indemnity
Failure to properly test/treat	1.9%	$2,047,500	$292,500
Equipment-related	4.7%	$2,166,624	$127,448
Improper performance of manual therapy	8.6%	$3,925,490	$126,629
Failure to supervise or monitor	19.4%	$7,677,447	$109,678
Improper management over the course of treatment	22.2%	$8,370,914	$104,636
Improper performance using therapeutic exercise	20.2%	$6,806,382	$93,238
Environment of care	3.9%	$1,268,942	$90,639
Improper behavior by practitioner	1.7%	$479,000	$79,833
Improper performance using a biophysical agent	17.5%	$3,040,735	$48,266
Overall	100.0%	$35,783,034	$99,122

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

7b COMPARISON OF 2011 AND 2015 SEVERITY OF ALLEGATIONS BY CATEGORY

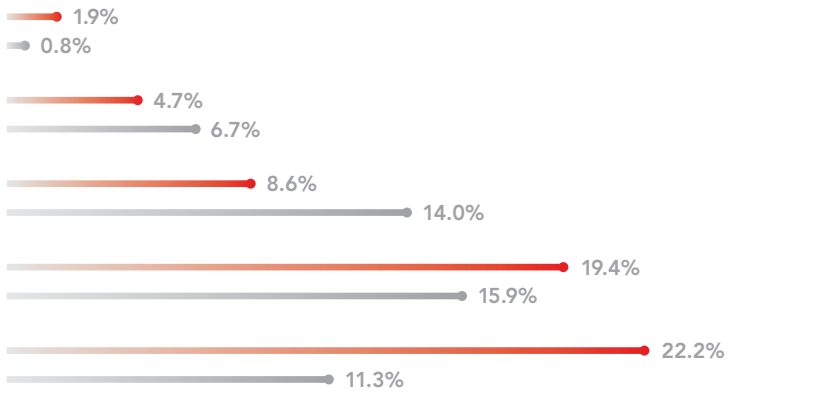


Chart reflects closed claims with paid indemnity of ≥$10,000.

Figures 8 through 12 examine the categories of allegations that comprise more than 5 percent *of all the PT closed claims. They are ranked from highest to lowest average paid indemnity, as listed in Figure 7a. The percentages are based upon the number of claims within the allegation category.*

Allegations related to improper performance of manual therapy

- Improper performance of manual therapy resulted in the second-highest average paid indemnity of all allegations. Within this allegation category, data analysis reveals the following:
  - Injury during manual traction has the highest average paid indemnity in this category, but the lowest percentage of closed claims. The severity of this allegation is driven by a claim where the patient suffered from a lumbar disc herniation caused by the PT applying too much weight during traction. The herniation caused spinal cord depression, requiring emergency surgical intervention.
  - Injury during manual therapy tends to result in fractures, herniated discs and muscle/ligament damage, typically requiring an additional corrective surgical procedure.
- One example of improper performance of manual therapy involves a PT who performed an aggressive cervical adjustment, causing the patient to suffer damage to his carotid artery. The consequent stroke resulted in brain damage.

8 ALLEGATIONS RELATED TO IMPROPER PERFORMANCE OF MANUAL THERAPY

Allegation	Percentage of closed claims	Total paid indemnity	Average paid indemnity
Injury during manual traction	6.5%	$330,000	$165,000
Injury during passive range of motion	19.4%	$826,353	$137,726
Injury during manual therapy - improper technique	61.3%	$2,362,538	$124,344
Injury during connective tissue manual therapy or massage	12.9%	$406,599	$101,650
Overall	100.0%	$3,925,490	$126,629

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

Allegations related to failure to supervise or monitor

- Failure to supervise other providers during patient care has the highest average paid indemnity in this allegation category. These claims involve PTs leaving the department/facility and placing a PTA or PT aide in charge of patient care when an injury occurred.
  - A frail elderly male was recovering from a recent cerebrovascular accident and attended physical therapy three times a week. He was progressing well when the PT decided that the patient was able to tolerate walking on a treadmill at low speed with assistance. The PT instructed a PT aide to assist the patient with a gait belt and stand behind him for safety. After watching the patient and aide for a few moments, the PT went to lunch. The patient fell soon after the PT left. Although the PT aide assisted the patient down to the ground, the patient suffered a fractured ankle and femur.
- Failure to monitor the patient during treatment has the highest total paid indemnity ($6,709,947), as well as the highest percentage of closed claims in this allegation category (87.1 percent). This allegation includes several claims where a patient fell after being left unattended on exercise equipment, resulting in a fracture or traumatic injury, as noted in the following claim:
  - The patient, a college student being treated for a recent ACL repair, had been instructed to walk backwards on a treadmill for 10 minutes when she fell, causing a lumbar injury requiring lumbar fusion. Although the PT and other staff members were present, no one was close enough to the patient to support her when she fell. During the PT's deposition, he testified that as the patient appeared capable of walking backwards on the treadmill, he believed there was no reason to stand beside her.
- Another claim involved failure to maintain proper infection prevention. Although it resolved for significantly less than the other allegations in this category, the claim deserves attention because it involves dry needle therapy, which represents an emerging area of risk. Additional dry needling claims can be found on page 22.
  - A patient underwent three dry needling procedures with a PT to treat a calf injury. After the second procedure, the patient reported that her calf was hot to the touch, swollen and painful. The patient was referred back to her referring practitioner. The PT later learned that the patient had contracted a bacterial infection requiring intravenous therapy and two surgical procedures.

9 ALLEGATIONS RELATED TO FAILURE TO SUPERVISE OR MONITOR

Allegation	Percentage of closed claims	Total paid indemnity	Average paid indemnity
Failure to supervise other providers	8.6%	$920,000	$153,333
Failure to monitor patient during treatment	87.1%	$6,709,947	$109,999
Failure to maintain proper infection control	1.4%	$27,500	$27,500
Failure to respond to patient	2.9%	$20,000	$10,000
Overall	100.0%	$7,677,447	$109,678

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

Claim Scenario: Failure to properly monitor or supervise

A 77-year-old man with a history of Parkinson's disease, osteoporosis and a recent cerebrovascular accident (CVA) was receiving physical therapy at the insured's physical therapy practice. He suffered from severe postural deficits, creating a severe forward bent posture. Also, due to right-sided weakness caused by the CVA, he was using a cane for mobility assistance. Prior to his stroke, the patient was living at home alone with minimal assistance. The patient had been seen on and off at the insured's physical therapy office for several years. After his CVA, he resumed therapy due to his inability get out of bed and his frequent falls.

The patient was referred to participate in physical therapy sessions three times a week for eight weeks to provide transfer, balance and flexibility training intended to improve his range of motion. Toward the end of the eighth week, the patient was permitted to perform his exercises under the supervision of a PTA. While standing using exercise bands, he performed scapula retraction exercises and balancing on his own. After a few minutes of performing the exercise, he lost his balance and began to fall. The PTA, who was across the gym assisting another patient, rushed over to prevent the patient from falling. The patient landed on his buttocks on top of the PTA's feet, and when the PTA assisted the patient to a standing position, he immediately complained of right hip pain. The PTA encouraged the patient to be evaluated by a practitioner, so an ambulance was called to transport the patient to the local emergency department. While in the emergency department, the patient was diagnosed with a right intertrochanteric fracture, which was surgically repaired. He was hospitalized for six weeks and after discharge was sent to an aging services facility for rehabilitation. The patient was able to return home, but he required a full-time home health aide to assist with activities of daily living. He has been unable to walk since the accident and now requires a wheelchair or one-on-one assistance while ambulating. The patient sued the insured PT and his practice, alleging failure to monitor the patient and failure to supervise the PTA.

During the initial interview, the insured PT recalled that the patient had performed scapula retraction exercises hundreds of times before the incident without hands-on assistance and knew how to properly perform them. He therefore believed that one-on-one supervision of the patient was unnecessary.

Several defense expert PTs were asked to review the claim and offer opinions. Most were supportive of the original plan of care, but were concerned that a patient with posture and balance issues was allowed to exercise without supervision throughout the course of his physical therapy. The experts agreed that the PT did not have to be in the therapy gym to directly supervise the PTA, but he should have been on site. The claim asserted against the PT and his business settled in the low six-figure range.

Allegations related to improper management over the course of treatment

- The allegation of improper management over the course of treatment has the highest overall percentage of closed claims at 22.2 percent, which is 10.9 percentage points higher than in the 2011 closed claim report. Some examples of improper management over the course of treatment include:
  - Failure to follow practitioner orders.
  - Failure to obtain informed consent.
  - Failure to complete a proper patient assessment.
  - Failure to cease treatment following excessive/unexpected pain.
  - Failure to report the patient's condition to the referring practitioner.
- Improper management of a surgical patient has the highest percentage of closed claims in this allegation category. A significant number of incidents involve re-injury, as illustrated by the following claim:
  - During therapy post-rotator cuff surgery, the patient did not consistently comply with restrictions, such as wearing a sling. During a stretching exercise, the patient and PT heard a pop with clicking in the shoulder. The PT told the patient that this pop was normal after rotator cuff surgery and would resolve as the shoulder muscles strengthened and the shoulder settled into its normal position. The patient continued treatment for another month, with no further complaints. The PT was unaware that an injury had occurred until he received a call and letter from the patient's attorney. The patient alleged that the PT had applied too much pressure to the shoulder and overextended his arm during therapy, which re-tore the rotator cuff. After the patient's rotator cuff was repaired, the patient re-tore it a third time, which necessitated plating of the shoulder. The patient is now permanently injured and unable to fully use his arm.
- The allegation of failure to report a patient's condition to a referring practitioner is driven by a claim involving a PT who neglected to report new contractures of the ankles to the patient's physician. The patient suffered permanent impairment of both ankles, leaving him non-ambulatory.

10 ALLEGATIONS RELATED TO IMPROPER MANAGEMENT OVER THE COURSE OF TREATMENT

Allegation	Percentage of closed claims	Total paid indemnity	Average paid indemnity
Failure to report patient's condition to referring practitioner	2.5%	$537,500	$268,750
Injury during training for use of assistive devices or equipment	2.5%	$517,500	$258,750
Failure to complete proper patient assessment	6.3%	$925,302	$185,060
Improper management of surgical patient	30.0%	$2,773,721	$115,572
Failure to follow practitioner orders	18.8%	$1,593,625	$106,242
Failure to cease treatment with excessive/unexpected pain	10.0%	$652,500	$81,563
Improper management of course of treatment	26.3%	$1,239,266	$59,013
Inadequate recordkeeping/documentation	1.3%	$50,000	$50,000
Lack of informed consent	2.5%	$81,500	$40,750
Overall	100.0%	$8,370,914	$104,636

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

Allegations related to improper performance using therapeutic exercise

- Injury during active resistance or assistive range of motion exercises has the highest average paid indemnity in this category, $78,821 higher than the dataset as a whole.
- Improper technique allegations declined in frequency relative to 2011, but remain the most common allegation within this category.
- The average paid indemnity for improper technique allegations changed little between 2011 and 2015.
- Claims alleging improper technique often involve a therapist applying too much pressure during a modality, improperly instructing a patient on how to perform an exercise and/or improperly inserting a needle during dry needle therapy. Only one claim related to dry needling appeared in the 2011 report. However, the 2015 report has several dry needling-related claims, which shared such elements as lack of informed consent and improper insertion techniques, as noted in the following examples:
  - Several hours after the PT provided dry needle therapy to a patient's cervical and shoulder area, the patient was hospitalized for treatment of shortness of breath and diagnosed with a right pneumothorax.
  - During a dry needling procedure for left scapular, cervical and trapezius pain, the PT punctured the patient's left lung, causing a pneumothorax. Initially, the patient did not appreciate the full impact of her injury, but over the course of the day, she experienced breathing difficulties and increasing pain. That evening, she was admitted to the local medical center for further observation with the possibility of surgical intervention.
  - A PT was performing trigger-point dry needling therapy on the patient's thoracic spine area when the patient began to experience chest pain. The PT took the patient to the nearest hospital, where she was admitted for a two-centimeter pneumothorax. The patient, a very thin marathon runner, was hospitalized for three days.
  - A patient was undergoing dry needle therapy on her hip when the needle handle broke off, with the needle remaining lodged inside the hip muscle. The patient was taken to the nearest medical center, where she underwent surgery to have the needle removed.

11 ALLEGATIONS RELATED TO IMPROPER PERFORMANCE USING THERAPEUTIC EXERCISE

Allegation	Percentage of closed claims	Total paid indemnity	Average paid indemnity
Injury during active or assistive range of motion exercises	20.8%	$2,669,147	$177,943
Injury from restrictive or elastic bandage/support/brace	5.6%	$410,094	$102,524
Improper technique	27.4%	$1,566,968	$78,348
Injury during resistance exercise or stretching	12.5%	$674,548	$74,950
Injury during gait or stair training	12.5%	$612,500	$68,056
Injury during endurance activities	18.1%	$770,625	$59,279
Injury during aquatic exercise/therapy	2.8%	$72,500	$36,250
Improper positioning	1.4%	$30,000	$30,000
Overall	100.0%	$6,806,382	$93,238

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

Claim Scenario: Improper performance using therapeutic exercise

The patient was a healthy, active 76-year-old woman who had undergone an L4-L5 hemilaminectomy and discectomy. The patient suffered a complication after the surgery that left her weak and unstable, so her neurosurgeon prescribed physical therapy to increase her muscle strength. Her first round of physical therapy, which focused on balance training, consisted of walking on a 2x4 balance beam three inches off the ground, as well as standing first on one leg and then the other for 10 seconds on a 2x6 balance beam while carrying weights. She completed three weeks of therapy, but continued to suffer from balance issues. At her follow-up visit, her referring practitioner ordered an additional three weeks of therapy with the insured PT.

At the first visit of her second course of therapy, the insured PT had the patient step on a small stability exercise ball and then step over it, first with her right leg and then with her left. However, when the patient lifted her right leg to step forward onto the ball, her left leg unexpectedly gave way. As the PT had no time to catch her, the patient fell to the ground and struck her head. The PT was standing near and to the right of the patient when she fell to her left. The patient fell too fast even to extend her hands to break her fall.

The patient was immediately sent to the hospital and diagnosed with a mild brain injury. Radiology exams confirmed that she suffered from bi-frontal hemorrhages, causing seizures and severe headaches.

After discharge from the hospital, she was then admitted to a rehabilitation facility for continued physical therapy and occupational therapy. The rehabilitation facility's health record indicates that she had multiple health problems. These related to head injuries associated with the fall, as well as her prior back surgery. During her rehabilitation, her seizures were controlled with medication, but she was diagnosed with variable vertigo, which continues to be a problem.

The patient's experts alleged that the patient remained weak and unstable at the time she was using the stability exercise ball and that the decision to use the ball fell below the standard of care. The patient should have been instructed to hold onto something when stepping on and off the ball, or the therapist should have been in physical contact with the patient during her first session with the exercise ball. The settlement was in the low six-figure range.

Allegations related to improper performance using a biophysical agent

- The average paid indemnity for this category ($48,266) is significantly less than the average paid indemnity for the overall dataset ($99,122).
- Average paid indemnity for claims related to the use of heat therapy or hot packs continues to be significantly higher than the average paid indemnity for claims related to the use of cold packs/ice massage. Issues related to severity of burns are analyzed in greater detail on page 32.
- Closed claims alleging injury during electrotherapy involve the use of transcutaneous electrical nerve and electrical muscle stimulation units. Analysis of these claims reveals that the injuries are due to failure to use equipment properly or to identify situations where a biophysical agent was contraindicated, as discussed in the following examples:
  - A PT provided electric stimulation therapy to an elderly patient for chronic low back pain. Shortly after the unit was started, the patient complained that the unit was a "little intense," but the PT failed to examine the patient or discontinue use. The PT commented to the patient that the stimulation may feel different than in the past because she was utilizing a different type of electrode. The patient again requested that the unit be turned down, but the PT became busy with another patient and forgot to do so. The patient returned the following day to show the PT that he had four round burn marks where the electrodes had been placed. He had suffered third-degree burns, requiring extensive debridement and six months of wound care. The unit was checked and appeared to be working fine. Experts concluded that while the electrodes caused the burn, the PT's failure to respond to the patient's complaint and request to turn down the unit contributed to the magnitude of the injury.
  - For approximately four months, an elderly uncontrolled diabetic patient had been treated by a PT for back pain and difficulty walking due to diabetic neuropathy. His treatment regimen included electrical stimulation to his lower back. At his last visit to the physical therapy office, the patient sustained three dime-sized third-degree burns on his back near the spine. The patient initially went to an urgent care center, where he was referred for wound care treatment. The care entailed debridement and six months of once- or twice-weekly wound therapy. When the wounds did not heal, he was also prescribed negative-pressure wound therapy (NPWT). The patient underwent NPWT for two months, during which time the wound healed. Experts alleged that the PT had inappropriately applied electrodes over the spinal column and had failed to closely monitor a patient with decreased sensation.

12 ALLEGATIONS RELATED TO IMPROPER PERFORMANCE USING A BIOPHYSICAL AGENT

Allegation	Percentage of closed claims	Total paid indemnity	Average paid indemnity
Injury during heat therapy or hot packs	54.0%	$1,652,817	$48,612
Injury during electrotherapy	44.4%	$1,358,418	$48,515
Injury from cold packs/ice massage	1.6%	$29,500	$29,500
Overall	100.0%	$3,040,735	$48,266

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

Claim Scenario: Improper use of a biophysical agent

A 32-year-old man was prescribed therapy after undergoing an arterial bypass procedure on his right leg for a popliteal artery entrapment. On evaluation, the patient had a complex medical history that included morbid obesity, diabetes and chronic leg pain. His social history revealed that he had a sedentary occupation, smoked a pack of cigarettes a day and occasionally consumed alcohol. Due to the patient's size and post-surgical pain and numbness, he had difficulty bearing weight on his right leg and used crutches to ambulate. He was on several pain medications including hydromorphone, Lyrica® and a non-steroidal anti-inflammatory.

The patient's surgeon prescribed physical therapy for three months to assist with mobility and strengthen his lower extremities. The patient attended three sessions of therapy, and at the end of each session the insured PT used a transcutaneous electrical nerve stimulation (TENS) on the patient for 12 minutes. The PT adjusted the voltage based upon the patient's comfort level and instructed the patient to let her know if the unit caused him discomfort. The patient seemed to enjoy the nerve stimulation, reporting that the TENS was the only treatment that restored feeling to his leg. On the day of the incident, the patient completed a session with the TENS unit. When the PT took the pads off his leg, she noticed two round red marks that appeared to be burns. Neither the patient nor the PT believed the burns were serious enough for him to go to the emergency department. Antibiotic ointment was applied to the burns, and the PT instructed the patient to follow up with his practitioner, if needed. The TENS unit was checked and was in good working order. The only possible source for the burns appeared to be the pads, which looked a little worn.

The following day, the patient called the PT to let her know he needed to go to the doctor because the burns were looking worse. During a follow-up telephone call, the patient informed the insured PT that he had been diagnosed with third-degree burns and would need debridement and skin grafts, as the burns were serious. The patient continued his physical therapy as much as possible, but it was complicated due to the treatment of his burn and subsequent pain.

Two months after the incident, the patient was diagnosed with reflex sympathetic dystrophy (RSD), experiencing temperature intolerance, excessive sweating, stress and insomnia due to the pain. The RSD symptoms also prevented him from working. As a result, he and his family lost their health insurance benefits and suffered potential bankruptcy.

The patient pursued a claim against the PT and her employer. The claim was difficult to defend due to the absence of written policies and procedures, as well as the PT's lack of training on how to appropriately use the TENS unit. During the insured PT's deposition, she stated that she knew how to use a TENS unit from experience, but had never received any formal training from her employer relating to the manufacturer's guidelines. From her own experience with the unit, she believed that the amount of voltage output from the TENS unit is based upon the patient's expressed tolerance and comfort. She noted that if the stimulus was painful to a patient, she would certainly reduce the voltage output. The claim settled in the high six-figure range.

Analysis of Severity by Injury

- Paralysis as an injury represents the highest average paid indemnity in both the 2011 and 2015 reports. The severity of this injury is driven by one claim involving a PT who performed manual therapy on a patient resulting in paraplegia, which closed at policy limits.
- Fractures account for the highest percentage of injuries and total paid indemnity in both PT claim reports.
- Burns, which have the second-highest percentage of closed claims, are primarily associated with allegations of improper performance using a biophysical agent.
  - As an injury, burns are slightly less common than in the 2011 dataset, but are 30.4 percent more costly. This increase in severity may reflect a growing perception that burns are an avoidable injury.
  - Many burns are due to biophysical agents on patients who were left unattended or who had neurological deficits that prevented them from feeling pain or discomfort.
- Increase or exacerbation of injury closed claims is primarily associated with allegations of improper management over the course of treatment. Many of these claims involve incidents where the PT was too aggressive or initiated certain modalities of care too soon after surgery, as in the following example:
  - A patient underwent a left knee replacement due to severe chondromalacia of the knee and a meniscus tear. She completed two prescriptions of physical therapy, which included thermal and pain relief modalities; manual techniques, including joint and soft tissue mobilization; massage; therapeutic exercises; postural education; and home exercise education. On the second-to-last visit six weeks after surgery, the PT instructed the patient to perform leg extensions with light weights, which the patient completed without any problems. However, the next day, the patient returned reporting swelling and pain, and said she felt a popping feeling when ambulating. For several months, the patient continued to suffer from severe pain and swelling and felt a popping feeling when ambulating. Her surgeon suspected her prosthesis had become misaligned as a result of the resistance exercise. He performed a left knee arthrotomy, lateral release, Elmslie-Trillat tibial tubercle transfer and reconstruction of the medical patella femoral.

13 SEVERITY BY INJURY

Injury	Percentage of closed claims	Total paid indemnity	Average paid indemnity
Paralysis	0.3%	$1,000,000	$1,000,000
Death	0.8%	$1,747,500	$582,500
Loss of use of limb	2.2%	$3,358,500	$419,813
Nerve injury/damage	0.8%	$890,000	$296,667
Bleeding/hemorrhage	0.6%	$525,000	$262,500
Herniated disc	6.9%	$4,053,555	$162,142
Cerebrovascular accident/stroke	0.8%	$360,000	$120,000
Traumatic brain injury	0.6%	$222,788	$111,394
Amputation	0.6%	$210,266	$105,133
Fractures	31.9%	$11,571,824	$100,625
Physical injury resulting from abuse/assault	1.1%	$359,000	$89,750
Increase or exacerbation of injury/symptoms	14.4%	$4,445,033	$85,481
Dislocation	3.0%	$932,500	$84,773
Pain and suffering	0.3%	$62,500	$62,500
Burns	18.8%	$3,561,859	$52,380
Muscle/ligament damage	7.2%	$1,307,273	$50,280
Neurological - peripheral and all other	0.6%	$100,000	$50,000
Infection/abscess/sepsis	0.8%	$140,000	$46,667
Pressure ulcer	0.6%	$82,500	$41,250
Loss of organ or organ function, including hearing	1.7%	$218,468	$36,411
Sprain/strain	1.9%	$250,000	$35,714
Bruise/contusion	1.1%	$142,750	$35,688
Cracked/broken tooth	0.3%	$27,500	$27,500
Abrasion/irritation/laceration	2.5%	$194,218	$21,580
Additional procedure required	0.3%	$20,000	$20,000
Overall	**100.0%**	**$35,783,034**	**$99,122**

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

Comparison of re-injury versus other injuries

The data were analyzed to determine the prevalence of re-injury during physical therapy – e.g., a patient who overextends his shoulder during therapy subsequent to shoulder repair surgery and tears the same rotator cuff.

- Several claims involving re-injuries may well have been legally defensible but for a poor informed consent process, failure to appropriately document in the health record or inadequate patient education.
- More than a third (36.6 percent) of the PT closed claims involve a re-injury, compared with 22.2 percent of closed claims in the 2011 claim study.
- Re-injury closed claims have a slightly higher average paid indemnity than does the overall PT closed claim dataset.
- The following scenario is a typical example of a PT re-injury claim:
  - A 30-year-old patient had injured his right shoulder in a work-related accident believed to have occurred while he was tossing garbage bags into a dumpster. The patient presented with a prescription for physical therapy four weeks after a right shoulder rotator cuff repair. During the evaluation, the PT noted that the patient had a grade-three rotator cuff repair with moderate arthritis. The patient reported being in significant pain and was concerned about beginning therapy, but agreed with the PT's plan of care. One week into therapy, the PT had the patient perform straight-arm pull-down exercises using five-pound weights, although the referring practitioner had ordered that no weights be used until the third week of therapy. On the second repetition, the patient heard a loud pop, followed by intense pain. The patient was sent directly to his referring practitioner, who noted that he had suffered a re-tear of his rotator cuff. The patient underwent two additional shoulder surgeries and was unable to return to work with a full-duty release.

14 COMPARISON OF RE-INJURY VERSUS OTHER INJURIES

Type of injury	Percentage of closed claims	Total paid indemnity	Average paid indemnity
Re-injury	36.6%	$13,653,857	$103,438
Injury (Other than re-injury)	63.4%	$22,129,177	$96,634
Overall	100.0%	$35,783,034	$99,122

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

Analysis of severity for re-injury

- Loss of use of limb has the highest average paid indemnity. The following claim scenario involves loss of limb due to re-injury:
  - During a therapy session that occurred two days after a total left knee revision arthroplasty, an 80-year-old patient was requested by the PT to sit in a chair. The patient objected because she felt the chair was low, but the PT insisted she sit in it. As she sat down, the patient felt a pop in her left knee and experienced severe pain. On examination, the patient was found to have suffered a rupture of the left patella tendon, requiring surgery. Following the tendon surgery, the patient suffered a blood clot behind her knee, which eventually caused an above-the-knee amputation. The orthopedic surgeon testified that the chair the patient was instructed to sit in was too low, causing the knee to bend beyond practitioner orders.
- Bleeding/hemorrhage, herniated disc, sprain/strain, nerve damage and infection are associated with an average paid indemnity higher than the overall average for PT closed claims.

15 SEVERITY BY INJURY FOR RE-INJURIES

Injury	Percentage of closed claims	Total paid indemnity	Average paid indemnity
Loss of use of limb	2.3%	$1,472,500	$490,833
Bleeding/hemorrhage	1.5%	$525,000	$262,500
Herniated disc	10.6%	$1,900,500	$135,750
Sprain/strain	0.8%	$135,000	$135,000
Nerve injury/damage	0.8%	$120,000	$120,000
Infection/abscess/sepsis	0.8%	$100,000	$100,000
Fractures	28.8%	$3,655,775	$96,205
Burns	0.8%	$87,500	$87,500
Increase or exacerbation of injury/symptoms	38.6%	$4,433,030	$86,922
Dislocation	5.3%	$458,000	$65,429
Muscle/ligament damage	8.3%	$701,552	$63,777
Cerebrovascular accident/stroke	0.8%	$50,000	$50,000
Abrasion/irritation/laceration	0.8%	$15,000	$15,000
Overall	100.0%	$13,653,857	$103,438

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

Analysis of severity for re-injury by selected body part

- Re-injuries of shoulders and knees are relatively common, accounting for nearly half of all re-injuries by affected body part. In most of the reviewed claims, the PT did not clearly disclose to the patient the risk of re-injury or reveal that successful therapy could be an arduous process. The following examples are typical of such claims:
  - A patient suffering from a four-centimeter, Stage IV rotator cuff tear was prescribed physical therapy four weeks after surgery. He claims that the referring practitioner inappropriately prescribed aggressive physical therapy too soon after the rotator cuff repair, which contributed to a re-tear and a second surgery. The patient suffered an infection at the incision site, which later required intravenous antibiotic therapy that further delayed his recovery.
  - A patient was recovering from surgery to repair a tendon in his right hand, which was injured when it was caught in a machine at work. During the sixth week of therapy, the therapist was performing active range-of-motion exercises when the patient felt a pop and lost control of his wrist. The PT did not contact the patient's practitioner, instead instructing the patient to come back the following day so he could reassess the hand. The patient, however, decided to call his surgeon and report the condition of his hand. After examining the patient in his office, the surgeon determined that the tendon in his hand had torn and the patient would require a second surgery. The surgeon called the PT to ascertain how the re-tear occurred and learned that he had not followed his orders to withhold all range-of-motion exercises until week eight of therapy. The PT admitted that he had failed to call the patient's practitioner to report the pop in the patient's wrist, and also that he had used an incorrect protocol for the injury and started therapy two weeks early.

16 SEVERITY OF PATIENT RE-INJURIES BY AFFECTED BODY PART

Body part	Percentage of closed claims	Total paid indemnity	Average paid indemnity
Hand	0.8%	$240,500	$240,500
Upper back	2.3%	$648,000	$216,000
Brain and brain stem	2.3%	$600,000	$200,000
Disc - lumbar	3.8%	$814,000	$162,800
Knee	23.5%	$4,050,457	$130,660
Neck	3.8%	$597,500	$119,500
Lower back	2.3%	$350,000	$116,667
Pelvis	1.5%	$211,250	$105,625
Hip	8.3%	$1,068,275	$97,116
Upper leg	1.5%	$177,000	$88,500
Arm	3.8%	$433,853	$86,771
Foot	2.3%	$256,500	$85,500
Toe	2.3%	$237,000	$79,000
Elbow	1.5%	$156,147	$78,074
Ankle	3.0%	$310,000	$77,500
Shoulder	22.7%	$2,279,875	$75,996
Lower leg	6.1%	$580,000	$72,500
Fingers	0.8%	$70,000	$70,000
Disc - thoracic	3.8%	$346,000	$69,200
Wrist	3.8%	$227,500	$45,500
Overall	100.0%	$13,653,857	$103,438

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

Allegations related to re-injury

- The re-injury allegations with the highest average paid indemnity involve equipment that either malfunctioned or was not operated safely, as seen in the following example:
  - The patient, recovering from rotator cuff surgery and other injuries, was on the treadmill when it unexpectedly sped up. He contended that he did not know how to shut it off, as he had never been shown how to do so. He fell off the treadmill, causing the sutures from the previous rotator cuff surgery to tear away from the tendons. The injury necessitated another surgery to repair the damage. The patient also sustained injuries to his knees, lower back and face from the fall.
- The most frequent re-injury-related allegations include:
  - Improper performance using therapeutic exercise.
  - Improper management over the course of treatment.
  - Failure to monitor.

17 ALLEGATIONS RELATED TO RE-INJURY

Allegation classification	Percentage of re-injury closed claims	Total paid indemnity	Average paid indemnity
Equipment-related	1.5%	$290,000	$145,000
Failure to test/treat	3.0%	$460,000	$115,000
Improper performance using therapeutic exercise	18.9%	$2,779,272	$111,171
Improper management over the course of treatment	41.7%	$6,016,177	$109,385
Environment of care	4.5%	$613,750	$102,292
Failure to monitor	18.2%	$2,412,305	$100,513
Improper performance using a biophysical agent	0.8%	$87,500	$87,500
Improper performance of manual therapy	11.4%	$994,853	$66,324
Overall	100.0%	$13,653,857	$103,438

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

Analysis of claims related to burns

- The average burn-related indemnity payment increased more than $12,000 between 2011 and 2015. While the overall percentage of closed claims related to burns decreased, the average paid indemnity associated with severe burns increased 58.4 percent.
- Burns to the lower extremities have the highest average paid indemnity, the highest total paid indemnity and the highest frequency. Many patients who suffered burns to the lower extremities required surgical debridement and treatment for infections, which often resulted in a delayed recovery and/or permanent scarring.
- A recurring theme in this category is 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.
- The following examples of burn-related claims are typical:
  - A patient was referred to therapy with a diagnosis of chronic inflammatory demyelinating polyneuropathy. She desired to improve her level of mobility, which was impaired by her weakness and foot drop. On the third visit, the patient advised the PT that she had sustained a burn from a heating pad on the previous visit. The PT gave the patient direction and advice on caring for the burn. The patient's healing process was delayed due to an infection requiring multiple rounds of antibiotics and surgical skin debridement, which left her foot permanently scarred.
  - A 12-year-old patient suffered from transverse myelitis, with decreased sensation in her legs. The PT applied moist hot packs to her hamstrings to loosen up her muscles in preparation for gait exercises. The PT left the patient to work with other patients in the room, occasionally returning to the patient to ask if the hot packs were comfortable. She replied that they were. The PT did not visually inspect the patient's legs at this time, but noticed burns on her legs when she walked to the restroom. The patient, who had been going to the clinic since she was a baby, never returned after this incident.
  - The insured PT performed an initial evaluation on an elderly woman referred to therapy after suffering multiple injuries from a recent motor vehicle accident, including a partial meniscus tear to her right knee. She was not a candidate for surgical repair because of her poor medical condition, which included a recent cerebrovascular accident and a long history of severe atherosclerotic peripheral vascular disease and chronic obstructive pulmonary disease. On her sixth visit, the PT applied a moist heat pack wrapped in a terry cloth cover and toweling to both the cervical spine and knee. The patient suffered second-degree burns to her right knee, requiring surgical debridement and plastic surgery. Following the surgery, the patient suffered an infection and was on intravenous antibiotics for two weeks.

18 AVERAGE PAID INDEMNITY RELATED TO INTENSITY OF BURN

Burn severity	Percentage of closed claims	Total paid indemnity	Average paid indemnity
Severe: requires any type of surgery	32.4%	$2,097,322	$95,333
Moderate: requires more than local treatment but not surgery	50.0%	$1,235,037	$36,325
Mild: requires only local treatment/comfort care	17.6%	$229,500	$19,125
Overall	100.0%	$3,561,859	$52,380

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

Analysis of severity of disability

- While deaths related to PT care are rare, such fatal injuries have the highest average paid indemnity at $582,500, more than five times higher than the overall average indemnity payment of $99,122. The deaths were the result of a PT's failure to:
  - Recognize the symptoms of a patient suffering from a pulmonary embolism.
  - Monitor/supervise a patient with a history of seizures who was swimming in a pool.
  - Assist a patient with gait difficulties who fell while walking and suffered head trauma.
- Permanent partial disability comprises 26.6 percent of all closed claims and has the highest total paid indemnity.

19 SEVERITY OF DISABILITY

Disability	Percentage of closed claims	Total paid indemnity	Average paid indemnity
Death	0.8%	$1,747,500	$582,500
Permanent total disability from injury/illness	3.3%	$5,021,679	$418,473
Permanent partial disability from injury/illness	26.6%	$12,473,813	$129,936
Temporary total disability from injury/illness	1.9%	$508,292	$72,613
Temporary partial disability from injury/illness	67.3%	$16,031,750	$65,974
Overall	100.0%	$35,783,034	$99,122

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

Summary Analysis of Physical Therapist Assistant Closed Claims

Figures 20 and 21 include both individually insured PTAs and PTAs who are employed and insured by physical therapy practices.

Severity of allegations related to physical therapist assistants

- PTA closed claim indemnity payments average $15,601 less than PT indemnity payments.
- Improper management over the course of treatment has the highest average paid indemnity among PTA closed claims.
  - During a patient's tenth visit to physical therapy, she suffered third-degree burns over the left scapula area, which were apparently caused by an interferential current machine. The patient did not complain of any pain during the visit. However, she called back later that afternoon to report that she had suffered a burn on her left shoulder during therapy. The PTA examined the machine, which appeared to be in proper working order. The only explanation was that the voltage had been set too high. The following day the PTA examined the patient and instructed her to see her primary care practitioner about the electrical burn.

20 SEVERITY OF ALLEGATIONS RELATED TO PHYSICAL THERAPIST ASSISTANTS

Allegation classification	Percentage of closed claims	Total paid indemnity	Average paid indemnity
Improper management over the course of treatment	23.3%	$1,808,749	$129,196
Improper behavior by practitioner	8.3%	$600,000	$120,000
Improper performance using therapeutic exercise	18.3%	$971,953	$88,359
Equipment-related	8.3%	$374,000	$74,800
Failure to monitor	11.7%	$494,849	$70,693
Improper performance of manual therapy	5.0%	$208,450	$69,483
Environment of care	3.3%	$75,000	$37,500
Improper performance using a biophysical agent	21.7%	$478,288	$36,791
Overall	100.0%	$5,011,289	$83,521

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

All PTA and PT closed claims: Comparison of the top three elements by severity

- This chart includes both individually insured PTAs and PTAs who are employed and insured by physical therapy practices.
- PTA and PT data differ in terms of top claim locations, allegations, injuries and causes of death, but are similar in terms of injury severity.

21 PTA AND PT CLAIM COMPARISON - TOP THREE ELEMENTS BY SEVERITY

Licensure type	PTA	PT
Percentage of claims	13.5%	81.5%
Average paid indemnity	$83,521	$99,122
Locations	Patient's home Aging services facility Physical therapy office/clinic (non-hospital)	Long term acute care hospital (LTACH) School Acute medical-surgical hospital (inpatient)
Allegations	Improper management over the course of treatment Improper behavior by a practitioner Improper performance using therapeutic exercise	Failure to test/treat Equipment-related Improper performance of manual therapy
Injuries	Loss of use of limb Amputation Death	Paralysis Death Loss of limb
Causes of death	Traumatic brain injury Bleeding/hemorrhage Fracture(s)	Cardiopulmonary arrest Fracture(s) Traumatic injury
Injury severity	Permanent total disability Death Permanent partial disability	Death Permanent total disability Permanent partial disability

Chart reflects closed claims with paid indemnity of ≥$10,000.
The total percentage of claims is less than 100 percent because only PT and PTA closed claims are counted here.

Claim Scenario: Alleged improper care (a success story)

A 10-year-old boy and his mother were in a motor vehicle accident. The child was brought via ambulance to the nearest hospital and diagnosed with a fracture of the left femur. Later that same day, he was placed in an immobilizer and transferred to the nearest children's hospital, which was 100 miles away. When the patient arrived at the hospital, his left leg was placed in a cast, and traction was applied for approximately 48 hours. Afterward, he underwent surgery for an external fixation of the left femur.

Approximately nine weeks after the accident, the orthopedic surgeon removed the external fixation device and referred the patient to physical therapy. The referral was written for therapy to the left leg involving range-of-motion exercises for the knee.

The patient was evaluated by the insured PT one week after removal of his external fixation device. The PT told the patient and his mother that the plan of care was to begin therapeutic exercises, and that the referring practitioner ordered him to bear weight as tolerated. The child seemed eager to start therapy and agreed to begin the following day. On that same day, the PT communicated with the referring practitioner by telephone confirming the patient's plan of care. The PT relayed his concern that it was premature to begin therapy nine weeks after a child had suffered a long bone fracture, as well as his doubts about the child's ability to safely bear weight on his affected leg. The practitioner confirmed that it was fine for the child to bear weight as tolerated, because the radiology exams confirmed that the bone had healed.

At his first physical therapy session, the child was instructed to perform standing hip abduction to 25 or 30 degrees. The exercise was demonstrated, and then the child was instructed to go 30 degrees and no farther. The first repetition was fine. On the second repetition, the patient began to bend to the right. He was instructed to stand straight, go slower and not to go too high. According to the PT's notes and testimony, the PT was standing right behind the patient while guarding him. On the third repetition the child lifted his left leg approximately 45 degrees and bent to the right. The PT immediately told the patient to stop and bring his left leg down because he had gone too high. As he was bringing the leg down, a pop was heard. The patient screamed and dropped into the PT's arms and onto the mat. Eighteen months after the incident occurred, the patient's mother filed a claim against the insured PT, who owned his physical therapy practice.

The PT contended that he was simply following the orders of the referring practitioner, who was also the co-defendant. The insured had verified the order via a telephone call to the practitioner, who told him that weight-bearing exercises for the child were acceptable as tolerated during physical therapy. Defense experts agreed that orders for physical therapy with weight-bearing as tolerated were premature, in that the fracture was not fully healed at the time of the referral. They also concluded that it is not the responsibility of the therapist to assess the weight-bearing capacity of the patient or the status of the patient's bone healing.

The PT's telephone call to the referring practitioner and careful documentation led to an aggressive and successful defense. No indemnity payment was offered, and the court issued a summary judgment dismissing the actions against the insured PT and the physical therapy owner.

More than $160,000 was spent over more than six years to defend the claim. While settlement may have been less costly, the successful legal defense demonstrated the PT's competence and protected his professional reputation.

Analysis of physical therapy practice closed claims

Figures 22 through 25 focus on the 334 *physical therapy practice claims* in the 2015 dataset. (See Figure 1a on page 9.) Physical therapy practices have many of the same exposures as individually insured PTs and PTAs. However, a significant proportion of the claims reflect the practice's vicarious liability for the injuries caused by its employees or contract employees.

- Of the overall physical therapy closed claims included in Figure 1a, 75.4 percent involve a physical therapy practice. Of these physical therapy practice claims, 91.0 percent occurred in a physical therapy office/clinic.
- Closed claims in locations other than the physical therapy office/clinic involve physical therapy professionals working as contract employees, as in the following examples:
  - A PT contracted to work in a respiratory care unit with bedbound patients, in order to prevent muscle atrophy and pressure ulcers.
  - A PTA contracted to provide services at a long term rehabilitation facility, assisting with wound debridement and exercise modalities.
  - A PT contracted to work at a school for children with intellectual and developmental disabilities, helping them build muscle control.

22 PHYSICAL THERAPY PRACTICE ANALYSIS OF SEVERITY BY LOCATION

Location	Percentage of closed claims	Total paid indemnity	Average paid indemnity
Long term acute care hospital (LTACH)	0.3%	$450,000	$450,000
School	0.6%	$762,333	$381,167
Acute medical-surgical hospital (inpatient)	1.5%	$1,667,371	$333,474
Patient home	4.2%	$1,913,167	$136,655
Physical therapy office/clinic - non-hospital	91.0%	$26,987,489	$88,775
Aging services facility	2.1%	$448,342	$64,049
Fitness center	0.3%	$35,000	$35,000
Overall	100.0%	$32,263,702	$96,598

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

- While physical therapy practices have a different pattern of claims than do individually insured PTs, improper management over the course of treatment is the most common allegation for both groups.
- Improper performance using a biophysical agent has the second highest percentage of closed claims, but the average paid indemnity for these claims is half the overall average paid for physical therapy business owners.

23 PHYSICAL THERAPY PRACTICE ANALYSIS OF SEVERITY BY ALLEGATIONS

Allegation classification	Percentage of closed claims	Total paid indemnity	Average paid indemnity
Failure to test/treat	1.8%	$2,037,500	$339,583
Improper behavior by practitioner	2.7%	$1,084,000	$120,444
Equipment-related	6.0%	$2,387,124	$119,356
Improper management over the course of treatment	20.7%	$8,199,772	$118,837
Failure to monitor	19.2%	$6,206,307	$96,974
Improper performance using therapeutic exercise	18.9%	$5,995,188	$95,162
Improper performance of manual therapy	7.5%	$2,216,341	$88,654
Environment of care	3.6%	$940,192	$78,349
Improper performance using a biophysical agent	19.8%	$3,197,278	$48,444
Overall	100.0%	$32,263,702	$96,598

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

24 PHYSICAL THERAPY PRACTICE ANALYSIS OF SEVERITY BY INJURY

Injury	Percentage of closed claims	Total paid indemnity	Average paid indemnity
Death	0.9%	$2,062,500	$687,500
Bleeding/hemorrhage	0.3%	$500,000	$500,000
Nerve injury/damage	0.6%	$770,000	$385,000
Loss of use of limb	2.4%	$3,071,000	$383,875
Amputation	1.5%	$870,266	$174,053
Herniated disc	6.9%	$3,428,555	$149,068
Fractures	29.3%	$9,773,071	$99,725
Sexual abuse/assault - physical	1.8%	$534,000	$89,000
Increase or exacerbation of injury/symptoms	11.7%	$3,432,658	$88,017
Neurological - peripheral and all other	0.3%	$87,500	$87,500
Traumatic brain injury	0.9%	$252,788	$84,263
Dislocation	2.4%	$647,500	$80,938
Sprain/strain	2.7%	$634,500	$70,500
Pain and suffering	0.3%	$62,500	$62,500
Muscle/ligament damage	8.4%	$1,521,476	$54,338
Burns	20.7%	$3,543,452	$51,354
Cerebrovascular accident/stroke	0.3%	$50,000	$50,000
Infection/abscess/sepsis	0.9%	$140,000	$46,667
Bruise or contusion	2.1%	$299,750	$42,821
Loss of organ or organ function, including hearing and/or sight	1.8%	$218,468	$36,411
Abrasion/irritation/laceration	2.7%	$266,218	$29,580
Teeth - cracked/broken	0.3%	$27,500	$27,500
Pneumonia/respiratory infection	0.3%	$25,000	$25,000
Delay in recovery	0.3%	$25,000	$25,000
Additional procedure required	0.3%	$20,000	$20,000
Overall	100.0%	$32,263,702	$96,598

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

Summary of Closed Claims with a Minimum Indemnity Payment of $500,000 or Greater

The claims in Figure 25 resolved with an indemnity payment of $500,000 or greater. The highest-severity closed claims most frequently involve improper performance using therapeutic exercise or improper management over the course of treatment, such as failure to comply with facility policies or operate within the appropriate scope of practice. These actions render the claims difficult to defend.

25 CLOSED CLAIMS WITH A MINIMUM INDEMNITY PAYMENT OF $500,000 OR GREATER

Summary	Allegation	Injury	Licensure type	Location
A PT saw a patient only twice, once for the evaluation and again for the initial treatment. On the second visit, the patient's knee was sore, swollen and warm to the touch. The patient left the physical therapy session early due to the condition of her knee and was later found unresponsive in her car. Cause of death was pulmonary embolus.	Failure to diagnose	Death	Physical therapist	Physical therapy office/clinic
A patient was treated with an inappropriate piece of equipment, an over-the-counter infrared foot massager. The patient alleged that the use of the infrared massager caused blisters and wounds to her foot, eventually resulting in a below-the-knee amputation due to complications in healing.	Improper use of equipment	Loss of limb	Physical therapist	Physical therapy office/clinic
A PT performed manual therapy on a patient with a complaint of upper back and neck pain with muscle spasms and muscle tension. The PT failed to complete a thorough history and physical on the patient prior to starting the therapy. During the procedure, the patient complained of intense leg pain and numbness and was later diagnosed with paraplegia.	Improper performance of manual therapy	Paralysis	Physical therapist	Physical therapy office/clinic
A PT instructed a patient recovering from surgery to sit in a chair that was too low. At first, the patient refused, but the PT assured her that the chair height was fine. When the patient sat down, she ruptured her patella tendon, resulting in loss of mobility and the need for an additional surgery.	Improper management over the course of treatment	Loss of use of limb	Physical therapist	Hospital-inpatient physical therapy
For purposes of class demonstration, a medical student volunteered to undergo a manual therapy technique performed by a PT. The patient suffered debilitating back pain after the PT performed the technique, which eventually caused the student to drop out of medical school.	Improper management over the course of treatment	Neurological deficit/damage	Physical therapist	School
A patient was burned in his lower extremities by a transcutaneous electrical nerve stimulation unit, resulting in reflex sympathetic dystrophy and lifelong debilitating pain.	Improper performance using a biophysical agent	Loss of use of limb	Physical therapist	Physical therapy office/clinic

25 CLOSED CLAIMS WITH A MINIMUM INDEMNITY PAYMENT OF $500,000 OR GREATER (CONTINUED)

Summary	Allegation	Injury	Licensure type	Location
A patient being treated for a lumbar disc bulge was prescribed a work-hardening program by her referring practitioner. The patient was prescribed two weeks with light weights, followed by a gradual increase based upon the patient's tolerance. At the third visit, the PT required the patient to lift a box weighing 20 pounds. The patient suffered immediate leg and lower back pain. One week later, the patient was diagnosed with a herniated disc with nerve root compression.	Improper performance using therapeutic exercise	Disc herniation	Physical therapist	Physical therapy office/clinic
Two weeks after knee replacement, a patient was performing knee raises when she fell and fractured her femur. The patient remained wheelchair-bound after the fracture healed.	Improper performance using therapeutic exercise	Loss of limb	Physical therapist	Patient's home
The PTA went to the patient's home to provide therapy following recent surgical repair of her anterior cruciate ligament. The PTA instructed the patient to stand on her affected leg with a brace in place and move her opposite hip. The exercise caused a re-tear of the tendon. The patient suffered complications after the second repair, leading to an above-the-knee amputation.	Improper performance using therapeutic exercise	Loss of limb	Physical therapist assistant	Patient's home
A patient was prescribed physical therapy after she fell at home, which resulted in a fractured hip, surgery and extensive hospitalization. The patient fell again after being instructed to stand during the initial assessment and evaluation, suffering a cerebellar hematoma that required an emergency craniotomy.	Improper management over the course of treatment	Neurological deficit/damage	Physical therapist	Hospital-inpatient physical therapy
An elderly patient in declining health and with a history of falls suffered a syncopal episode while on a stationary bicycle. She fell, hitting her head and fracturing several cervical discs. The PT had gone to assist another patient and was not in the room when the patient fell. The patient underwent three surgeries due to the fractures and now requires 24-hour nursing care.	Failure to monitor	Fracture of cervical disc	Physical therapist	Physical therapy office/clinic
A frail patient, who had a history of long hospitalizations due to chronic illness, was on a treadmill when he suffered a syncopal episode. The patient fell, striking his head on the floor and suffering major head and neck trauma. The PT was not in the room, and the PTA was too far from the patient to prevent his fall.	Failure to monitor	Head trauma	Physical therapy practice	Physical therapy office/clinic

Looking Forward

The preceding claims analysis provides a current snapshot of professional liability exposures for PTs, PTAs and physical therapy practices. However, new theories of liability will emerge as healthcare delivery models evolve. Long-range planning efforts should consider the following industry developments, among others:

Mergers and acquisitions (M&A)

M&A activity will continue to increase in the healthcare arena, including the physical therapy industry, due to narrowing profit margins. While consolidation may increase efficiency, it also presents its own set of risk exposures, including the following:

- Lapses in the due diligence process.
- Failure by new or previous owners to maintain the integrity and accessibility of patient health records.
- Inconsistent quality of care.
- Failure to recognize cultural differences in organizational practices and leadership styles.

Information technology (IT)

IT is a component of strategic planning and should be addressed in capital budgets. IT refers not only to electronic health records, but also to applications such as telemedicine, wireless accessibility, Skype™ and social networking. Patient care applications must interface with other healthcare providers' systems in order to enhance continuity of care. As the use of IT increases in healthcare, risks to consider include:

- Inadequate backup processes
- Data corruption
- Intentional or unintentional breaches in security and confidentiality
- Inappropriate information contained in emails or text messages
- Lost or stolen portable equipment (e.g., laptops and hand-held devices)
- Patient identity theft

Staffing shortage

The demand for healthcare professionals is increasing for many reasons, including an aging population and an influx of patients who have health insurance for the first time through the enactment of the Patient Protection and Affordable Care Act. While the demand for healthcare services is increasing, the American Physical Therapy Association predicts a shortage of physical therapists.* In addition, high turnover rates and difficulties in hiring qualified staff may affect consistency of care, thus potentially leading to unintentional understaffing and use of under-qualified staff. Each of these risk factors diminishes quality, which in turn may damage professional reputations and increase vulnerability to professional liability claims.

* See "A Model to Project the Supply and Demand of Physical Therapists 2010-2020" at https://www.apta.org/WorkforceData/ModelDescriptionFigures/.

Social media and Internet usage

Utilization of social media platforms and social networking has exponentially increased consumer access to information, including feedback posted by patients, their families, significant others and employees. This increase in access and networking has led to emerging liability exposures, including boundary issues, negative consumer reviews and breaches of protected health information. As a result, the PT and/or physical therapy practice must establish boundaries regarding the sending or accepting of "friend requests" with respect to patients and family members, as well as commenting about work-related situations on social media sites. Risks associated with social media include:

- Legal actions arising from marketing materials or statements containing guarantees, warranties and/or deceptive representations, which are posted on the facility's website or distributed through social media.
- Claims of libel or slander.
- Breach of confidentiality in regard to patients' protected health information and/or the facility's proprietary information.
- Inappropriate behavior by the PT, PTA or other employees of a physical therapy practice.

Changes in reimbursement

Medicare and Medicaid reimbursement rates will continue to decrease, resulting in the potential for medical claims to be denied for certain preventable conditions and "never events." The primary risks associated with declining reimbursement are understaffing, as well as failure to maintain a safe environment and to replace broken or worn out equipment in a timely manner. Reducing staff in the face of increasing patient acuity levels also may result in legal actions that are difficult to defend.

Increasing complexity of risk exposures

As this section and the claims analysis demonstrate, risks in physical therapy continue to emerge and evolve. Each development discussed in this section may escalate into litigation. Therefore, physical therapy professionals must become more knowledgeable and proactive in addressing emerging exposures and fostering the organization's ability to manage risks. Emerging exposures include dry needling, oversight of students and support staff, and re-injury to the body part being treated. The following risk management recommendations address these emerging exposures:

Dry needling

Dry needling is a technique that uses a thin filiform or hollow-core hypodermic needle to penetrate the skin and stimulate underlying myofascial trigger points in muscular and connective tissues in order to manage neuromuscular pain. This skilled intervention should be performed only by individuals with adequate knowledge, skills and training, and only after appropriate patient examination and evaluation. The following guidelines may help minimize dry needle-related liability:

- Prior to dry needle therapy, consult with the patient's referring practitioner regarding precautions or contraindications and obtain a thorough and accurate history.
- Perform a thorough and accurate informed consent process, including risks and benefits of the treatment, as well as possible alternative therapies.
- Examine the patient's skin and document any abnormalities.
- Implement appropriate infection prevention techniques and adhere to standard precautions, such as:
  - Utilizing good hand hygiene practices.
  - Wearing personal protective equipment as needed.
  - Maintaining a clean area where the procedure will be performed, free of dust, food, drinks, clutter and animals.
  - Avoiding insertion of needles in areas of the skin with lesions, redness or swelling.
- Document all patient-related discussions, clinical information, areas where the needle was inserted, response elicited, and patient's condition pre- and post-therapy.
- If the patient requires immediate medical care, implement the following measures:
  - Communicate urgent or critical patient care concerns to the referring practitioner in a timely manner.
  - Execute emergency responses to treat and transfer to a higher level of care any patient who has sustained a perforation of lungs or other hollow organ, or who has suffered secondary physiological effects or complications associated with dry needle therapy.

The above list is a starting point for efforts to enhance dry needle therapy safety. For more information, including guidelines for appropriate patient selection, see APTA's "Description of Dry Needling in Clinical Practice" at http://www.apta.org/StateIssues/DryNeedling/.

Student oversight

Overseeing physical therapy students can be an excellent means of training future PTs and recruiting qualified employees upon graduation and licensure. The following recommendations can help reduce the risk of patient injury and potential liability when serving as a preceptor for a PT or PTA student:

- Maintain a clinical agreement with the student and or school that delineates:
  - Roles and responsibilities of the preceptor and student.
  - Professional liability insurance requirements and proof of coverage of the school and/or student.
  - School expectations (e.g., weekly report from the PT on the student's progress).
  - Reasonable limitations regarding patient interactions and interventions.
  - Criminal background checks.
  - Education on state and federal regulations (e.g., patient privacy).
- Meet with the student prior to any patient contact, in order to review the facility's policies and procedures and establish clear expectations and boundaries regarding patient care.

Re-injury

Patients may be more or less prone to re-injure themselves based upon their condition prior to physical therapy. Before establishing a treatment plan, the PT should be aware of the patient's pre- and post-surgical diagnoses, including the extent of injury (e.g., grade and percentage of tear in a shoulder or knee), as this can significantly affect the likelihood of a re-injury. The following recommendations can reduce the risk of re-injury and consequent liability:

- Review information regarding the patient's pre- and post-surgical diagnosis (e.g., operative notes, referring practitioner's office notes).
- Obtain and document a thorough and accurate social and medical history from the patient prior to initiating therapy.
- Establish realistic expectations in regard to the likelihood of experiencing pain during therapy, probable outcomes and duration of treatment.
- Conduct and document a thorough and accurate informed consent process, including risks and benefits of the therapy, as well as alternative therapies.
- Counsel patients regarding the risk of being noncompliant and/or failing to adhere to the plan of care and treatment regimen.
- Document all discussions with the patient in the health record.

Risk Control Self-assessment Checklist

The following checklist is designed to serve as a starting point for physical therapy professionals seeking to assess and enhance their patient safety risk control practices. For additional risk control tools and information, visit www.cna.com and www.hpso.com.

RISK CONTROL SELF-ASSESSMENT CHECKLIST

Scope of Practice	Yes	No	Actions needed to reduce risks
I read my physical therapy practice act at least annually to ensure that I understand the legal scope of practice in my state.			
If a job description, contract, or set of policies and procedures appears to violate my state's laws and regulations, I bring this discrepancy to the organization's attention and refuse to practice in breach of these laws and regulations.			
I decline to perform a requested service that is outside my legal, professional and personal scope of practice, and immediately notify my supervisor of the situation.			
I contact the supervisor, risk management and/or legal department regarding patient and practice issues, if necessary.			
If necessary, I contact the state board of physical therapy and request an interpretation, opinion or position statement on practice issues.			
If necessary, I make use of the chain of command to resolve patient care or safety issues.			
I am aware of the direct access laws in my state, including any restrictions or provisions relating to treatment absent a practitioner referral.			

Supervision of Personnel	Yes	No	Actions needed to reduce risks
I direct support staff (e.g., physical therapist assistants, physical therapy aides, students, etc.) to perform only those tasks that are appropriate and within their training.			
I provide clinical support and supervision for physical therapist assistants, aides and students in compliance with standards of practice for physical therapy.			
I know the current scope of practice parameters for physical therapist assistants, aides and students, and I do not instruct them to provide services beyond their scope of practice.			
I document and update the competencies of physical therapist assistants, aides and students as necessary.			
I am aware of the levels of supervisory responsibility of a physical therapist and know when to exercise general or direct personal supervision of physical therapist assistants, aides and students.			

Documentation	Yes	No	Actions needed to reduce risks
I am aware of my responsibility to authenticate patient examinations/evaluations, encounters, re-examinations, discharges and discontinuation summaries.			
I document every encounter with a patient.			
I document no-shows and cancellations.			
I correct my charting errors in accordance with my organization's policy and procedure.			
I document concurrently and make a late entry only if it is necessary for the safe continued care of the patient, ensuring that it is clearly labeled as a late entry.			
I refrain from documenting inappropriate subjective opinions, conclusions or derogatory statements about patients, colleagues or other members of the patient care team.			
My documentation: - Is consistent with treatment plans and includes skilled services that are medically necessary. - Justifies the services billed. - Reflects established coding procedures and billing codes. - Meets state and local law, as well as all applicable professional and ethical guidelines.			
I contact my manager, risk manager or legal department/ counsel for assistance with documentation concerns or questions, especially if they may have liability or regulatory implications.			

Communication	Yes	No	Actions needed to reduce risks
I communicate in a professional manner with all staff, healthcare providers and patients, both verbally and in writing.			
I always consider what information to share with a staff member or patient, when to share it and how to share it (e.g., written versus spoken).			
At every visit, I inform the patient of goals and discuss expectations.			
I treat the patient as a partner when developing a plan of care and throughout the course of therapy.			
I refrain from using potentially insulting or inappropriate humor, sarcasm or idiomatic expressions (e.g., "No pain, no gain").			
I avoid the use of complex or overly technical medical terminology when speaking with a patient.			
I am sensitive to language barriers and use an interpreter when necessary.			
I respect a patient's right to have different cultural beliefs and am aware of my own cultural/unconscious biases and preconceptions.			
I refrain from sidebar conversations with other staff members when I am with a patient.			
I refrain from making or responding to personal telephone calls or text messages when I am with a patient.			
I refrain from discussing patient matters outside the clinical area (e.g., on elevators or in public areas) or on social media sites.			
I am cognizant of appointment times and respect the value of patients' time.			
I am prepared to spend extra time with patients who have special needs (e.g., hearing or sight impairments, minimal intellectual capacity, complex co-morbidities).			
I practice active listening skills and teach-back techniques to ensure that my patients understand my directions and instructions.			
I am attentive to a patient's non-verbal cues (e.g., grimacing or appearing cold, confused, nervous or uncomfortable).			
I have been trained in techniques for managing and de-escalating conflict.			
I encourage patients to voice concerns and encourage them to ask questions if clarification is needed.			

Claim Tips

Below are some proactive measures and behaviors to include in your therapy protocols and practice, as well as steps to take if you believe you may be involved in a claim situation.

Everyday practice

- Practice within the requirements of your state practice act, in compliance with organizational policies and procedures, and within the national standard of care. If regulatory requirements and organizational scope of practice differ, comply with the most stringent of the applicable regulations or policies. If in doubt, contact your state board of physical therapy or specialty professional association for clarification.
- Document your patient care assessments, observations, communications and actions in an objective, timely, accurate, complete, appropriate and legible manner. Never alter a record for any reason or add anything to a record after the fact unless it is necessary for the patient's care. If information must be added to the record, clearly label the late entry. However, never add anything to a record for any reason after a claim has been made. If additional information related to the patient's care emerges after you become aware of pending legal action, discuss the need for additional documentation with your manager, the organization's risk manager and/or legal counsel.

Once you become aware of a claim or potential claim

- Immediately contact your professional liability insurance carrier if:
  - You become aware of a filed or potential professional liability claim asserted against you.
  - You receive a subpoena to testify in a deposition or trial.
  - You have any reason to believe that there may be a potential threat to your license to practice physical therapy.
- If you purchase your own professional liability insurance, report claims or potential claims to your insurance carrier, even if your employer advises you that the organization will provide you with an attorney and/or that the employer's insurance will cover you for a professional liability settlement or verdict amount.
- Refrain from discussing the matter with anyone other than your defense attorney or the claim professionals managing the case.
- Promptly return calls from your defense attorney and the claim professionals assigned by your insurance carrier. Contact your attorney or claim professional before responding to calls, e-mail messages or requests for documents from any other party.
- Provide your insurance carrier with as much information as you can when reporting such matters, including contact information for your organization's risk manager and the attorney assigned to the litigation by your employer.
- Never testify in a deposition without first consulting your professional liability carrier or, if you do not carry individual liability professional insurance, the organization's risk manager and/or legal counsel.
- Copy and retain all legal documents for your records, including the summons and complaint, subpoenas and attorney letters pertaining to the claim.

Part 2

HEALTHCARE PROVIDERS SERVICE ORGANIZATION'S ANALYSIS OF PHYSICAL THERAPY LICENSE PROTECTION PAID CLAIMS

(January 1, 2010 – December 31, 2014)

How Does a Professional Liability Claim Differ from a License Protection Paid Claim?

An action taken against a PT or PTA license to practice differs from a professional liability claim in the following areas:

- It may or may not involve allegations related to patient care and treatment.
- The amounts paid for a license protection claim represent the costs of legal representation to defend the PT or PTA against licensure or disciplinary allegations before a regulatory board. The amounts do not include indemnity or settlement payments to a plaintiff.

License Defense Claims

A complaint can be filed by a patient, a patient's family member, a co-worker, employer or regulatory agency. Any complaint filed against and potentially implicating the license of a PT or PTA can have career-altering consequences, ranging from suspension or probation to surrender or revocation of license, resulting in career termination. While it is impossible to prevent complaints from being filed, consistent adherence to organizational policies and procedures – including documentation, patient communication, and confirmation by the patient of the treatment plan and completion of care – increases the likelihood of a "no action" decision by the board.

During the period of this report (January 1, 2010 through December 31, 2014), there were 309 reported licensing protection incidences or claims among physical therapy professionals insured through the CNA/HPSO insurance program. The final 2015 data set includes 144 license protection paid claims, involving both medical and non-medical regulatory board complaints. The 2011 closed claim report had a 10-year period with 170 claims and 314 reported incidences, whereas the present report comprises five years' worth of data. Comparison of the two reports reveals that the frequency of licensing claims seems to be increasing within the CNA/HPSO professional liability insurance program.

Both defense costs and ultimate disciplinary decisions by the regulatory or licensing body varied significantly. Decisions ranged from no finding, a letter of concern, or a warning or reprimand to mandatory surrender or revocation of professional license.

Claims by type of insured

This section examines complaints filed against an employee of a physical therapy practice insured in the CNA/HPSO program or an individual PT or PTA insured in the CNA/HPSO program. The data reveal that average license protection claim payments have risen 21.0 percent since the 2011 report.

Owners of physical therapy practices must ensure that employees are properly supervised and receive ongoing and updated training on basic clinical procedures, including proper documentation, appropriate patient management and effective communication. Employees and independent contractors must be apprised of their organization's policies and procedures to ensure compliance, while PTs are responsible for providing appropriate direction and supervision of assistants or aides, as well as documenting and authenticating all treatments provided.

1 LICENSE DEFENSE PAID CLAIMS

Insured type	Percentage of paid claims	Total paid	Average paid
Physical therapy practice	33.3%	$223,926	$4,665
Individually insured physical therapist/physical therapist assistant	66.7%	$471,239	$4,909
Total	100.0%	$695,165	$4,828

Claims by licensure type

- The vast majority of licensing board complaints involve PTs rather than PTAs. This finding is consistent with the 2011 report, where more than 90 percent of claims were attributed to PTs.
- Since the 2011 report, the frequency of license protection claims against PTs has increased 2.9 percent.
- Since the 2011 report, the average payment for PT license protection claims has risen 29.6 percent (i.e., an additional $1,115).

2 PERCENT CLOSED CLAIMS BY LICENSURE TYPE

Licensure Type	Percentage of paid claims	Total paid	Average paid
Physical therapist assistant	6.3%	$36,612	$4,068
Physical therapist	93.7%	$658,553	$4,878
Total	100%	$ 695,165	$4,828

Claims by location

- Of the total license protection claims, 93.1 percent involve PTs/PTAs working in an office or group practice setting.
- The average payment for an allegation arising from treatment provided in a physical therapy office/clinic setting ($4,782) is not significantly different from the overall average ($4,828).
- Average office/clinic setting payments are 22.2 percent higher than in the 2011 report. Treatment provided in a hospital setting has the highest average payment ($11,905), but this "average" is based on only one claim.

3 SEVERITY BY PRACTICE LOCATION

Practice location	Percentage of paid claims	Total paid	Average paid
Hospital	0.7%	$11,905	$11,905
Patient's home	2.1%	$26,361	$8,787
Physical therapy office/clinic	93.1%	$640,858	$4,782
Group home	0.7%	$3,089	$3,089
Aging services facility	2.8%	$10,687	$2,672
School	0.7%	$2,265	$2,265
Total	100%	$695,165	$4,828

Allegations by class

- The two allegation classes with the highest frequency of paid claims are improper management over the course of treatment (38.2 percent) and improper behavior (36.1 percent).
- The allegations with the highest severity are fraudulent billing ($5,884), inappropriate behavior by practitioner ($5,884) and failure to supervise ($5,443).
- Board complaints for fraudulent billing account for 9.0 percent of the total claims analyzed in this section. The average payment for fraudulent billing claims ($5,884) is higher than the average for all claims ($4,828).
  - Fraudulent billing differs from documentation errors in that such claims involve billing for services that were not provided, resulting in accusations of fraud. Detailed, accurate and truthful documentation can help prevent such billing transgressions. It is also important not to pre-chart treatments, which may end up not being provided due to a change in the patient's condition.
  - Complaints were filed by patients, patient's family members and former employees.
- Failure to supervise has relatively high severity ($5,443). Physical therapists should actively demonstrate to patients that they are overseeing their care, in order to avoid allegations that assistants and/or aides were not properly supervised. In addition, it is important to ensure that treatments are delivered safely and correctly, in order to avoid patient re-injury.

4 SEVERITY OF ALLEGATIONS BY CLASS

Allegation class	Percentage of paid claims	Total paid	Average paid
Fraudulent billing	9.0%	$76,495	$5,884
Inappropriate behavior	36.1%	$305,962	$5,884
Failure to supervise	9.0%	$70,753	$5,443
Failure to test/treat	2.1%	$12,628	$4,209
Improper performance using a biophysical agent	3.5%	$19,019	$3,804
Improper management over the course of treatment	38.2%	$204,645	$3,721
Improper performance using therapeutic exercise	2.1%	$5,663	$1,888
Total	100.0%	695,165	$4,828

Exhibits 5 and 6 provide additional information regarding the most frequent and costly allegations. Please note that the percentages are calculated in two ways – as a percentage of claims within the specific allegation class and as a percentage of the 144 total claims.

Allegations related to improper management over the course of treatment

- Improper management over the course of treatment has the highest frequency (38.2 percent) of the license protection paid claims.
- Documentation issues, failure to cease treatment and improper treatment comprise 80 percent of the license protection claims alleging improper management over the course of treatment. Documentation issues, failure to cease treatment and improper treatment include:
  - Omission of treatment provided in the health records.
  - Inaccurate recording of treatment times in the health records.
  - Failure to cease treatment when the patient reported excessive and/or unexpected pain, resulting in patient re-injury.
- Failure to follow the referring practitioner orders has the highest severity but accounts for only two claims in this allegation class.
- Most of these allegations could have been prevented by following standard documentation procedures; taking the time necessary to record date, time and treatment; and obtaining patients' acknowledgment that they agree to the treatment to be provided and are aware of the expected treatment outcome.

5 SEVERITY BY ALLEGATIONS RELATED TO IMPROPER MANAGEMENT OVER THE COURSE OF TREATMENT

Allegations	Percentage of paid claims within allegation class	Total paid	Average paid
Failure to follow referring practitioner orders	3.6%	$15,630	7,815
Improper performance of a test	1.8%	$5,858	5,858
Documentation issues	29.1%	$69,423	4,339
Failure to complete proper assessment	12.7%	$29,067	4,152
Improper treatment	23.6%	$50,595	3,892
Failure to cease treatment	27.3%	$32,289	2,153
Lack of informed consent	1.8%	$1,783	1,783
Total	100.0%	$204,645	3,721

Allegations related to inappropriate behavior by severity

Inappropriate behavior has the second highest frequency (36.1 percent) of all license protection claims. Together with fraudulent billing allegations, it also has the highest average severity at $5,884. This allegation class has increased in severity since the 2011 report.

- Substance abuse ($7,763) is the most severe subcategory, but not the most frequent. The high severity is driven by incidents involving forged prescriptions and failed drug tests.
- Patient abuse – whether physical, sexual or emotional – is the most frequent complaint (46.2 percent) and has the second highest severity ($7,472). The average payment for patient abuse allegations is higher than the overall average payment for license protection claims. These claims involve a PT or PTA who breached professional boundaries by initiating a relationship with the patient or a member of the patient's family.
- Practicing beyond the scope of licensure (13.5 percent) is associated with the advertising or use of dry needling as part of treatment.
- Failure to follow policy is one of the most frequent allegations (19.2 percent), but the average paid is below the overall average for this allegation class. Specific allegations include failure to provide a patient with records, comply with a licensing board request for records and timely renew a license.
- Criminal allegations are a result of self-reporting actions unrelated to patient care, such as a conviction for shoplifting.

6 ALLEGATIONS RELATED TO INAPPROPRIATE BEHAVIOR BY SEVERITY

Allegation	Percentage of paid claims within allegation class	Total paid	Average paid
Substance abuse	9.6%	$38,814	$7,763
Physical, sexual, emotional abuse	46.2%	$179,328	$7,472
Breach of confidentiality or privacy	5.8%	$12,030	$4,010
Practitioner functioning outside of scope of practice	13.5%	$27,441	$3,920
Failure to follow policy	19.2%	$39,154	$3,915
Criminal allegations	5.8%	$9,195	$3,065
Total	100.0%	$305,963	$5,884

Claim Scenario: Inappropriate behavior by a physical therapist

A physical therapy practice insured in the CNA/HPSO program provided therapy services to patients in its clinic and in patient homes. The PT was an independent contractor working in a home health setting and was defended before the governing state physical therapy licensing board.

In late 2013 and early 2014, the physical therapist provided treatment to Patient A in the home. A complaint was filed by a family member of Patient A, alleging that over a three-month period the PT exhibited unwanted and inappropriate behavior toward the family member. Behaviors included suggestive gestures and comments on three separate occasions, including casual touching of the relative, as well as a telephone call to the relative during which lewd comments were made. After the third incident, Patient A requested that the agency send a different therapist for her treatments. The complaint allegations also included statements by Patient A that the PT constantly used a personal cellular telephone during her treatments.

During the same time frame, while providing treatment to Patient B, the PT behaved inappropriately toward the patient's relative by walking away from the patient during treatment to make suggestive comments. Patient B also reported circumstances where the PT used a personal cellular telephone to make and receive calls and to send text messages during her treatment. The complaint included an allegation that the PT failed to supervise while Patient B was doing exercises.

Because of the allegation of repeated use of the PT's personal cellular telephone during treatment times, the governing state physical therapy licensing board issued a subpoena to the PT's telecommunications provider for cellular telephone activity during treatment periods. The board compared billing records with the cellular telephone activity logs and concluded that the PT was using a cellular telephone phone during most if not all of the therapy times of Patients A and B.

The governing state board found that the PT failed to maintain the standard of care due to repeated cellular telephone usage, which diverted attention away from patients; fraudulent billing for the time spent on the telephone rather than providing care; negligence emanating from the failure to supervise patients performing exercises; and failure to use sound and professional judgment by engaging in inappropriate behavior with relatives of patients.

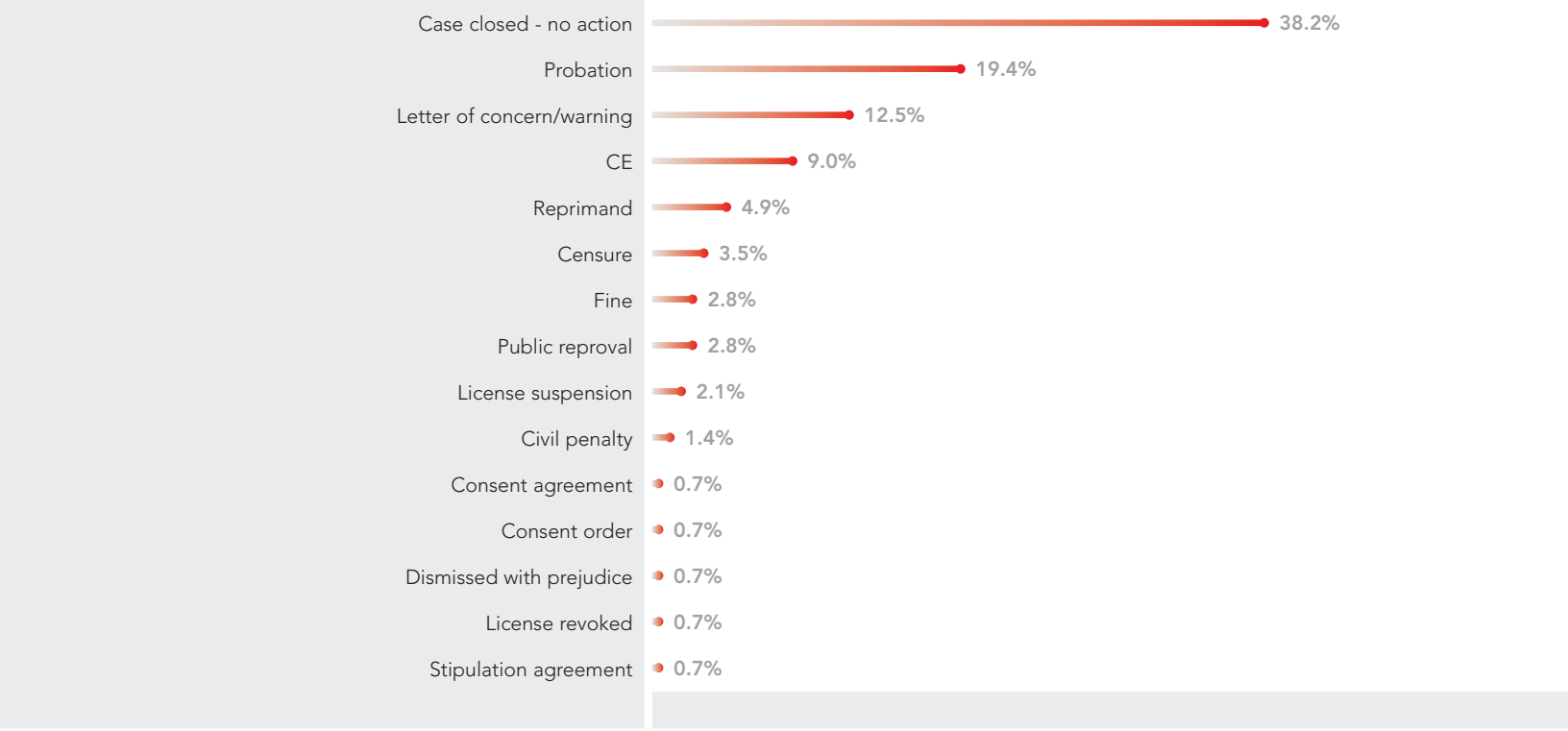
The licensing board hearing resulted in:

- Probation for three years.
- Work assignments in a supervised setting.
- Supervising PT sign-off on all patient treatments.
- Having a co-worker present at all times during patient care.

The cost to defend this claim exceeded $16,000.

Licensing Board Outcomes

7 LICENSING BOARD OUTCOMES



Explanation of Terms

- **Censure –** A public written reprimand regarding a violation of the Physical Therapy Practice Act, which does not impose any conditions on the professional license.
- **Civil penalty –** A fine assessed for a violation.
- **Consent order –** A stipulation of a condition or conditions that must be met before the PT/PTA will be allowed to continue to practice.
- **Dismissed with prejudice –** A decision indicating that a complaint has been permanently dismissed.
- **Letter of concern/warning –** A communication from the Physical Therapy Board expressing concern that the PT/PTA may have engaged in questionable conduct.
- **Public reproval –** A public disclosure of a violation, which may or may not include conditions that must be met prior to resuming practice.
- **Stipulation –** A condition or limitation on the PT's/PTA's practice.

Conclusion

By understanding the most common types of allegations filed against them, PTs, PTAs and owners of physical therapy practices can better identity their vulnerabilities and implement effective preventive measures. Basic risk control strategies to minimize the risk of license actions include the following:

- Develop effective communication and interpersonal skills and utilize them when interacting with colleagues, patients and family members.
- Adhere to organizational policies and procedures, and document compliance.
- Maintain skills/competencies through continuing education.
- Accurately and contemporaneously document care given in the patient health record.
- Provide proper levels of supervision for both patients and staff members.
- Obtain thorough and complete informed consent from patients, and document the process.

Part 3

HIGHLIGHTS OF THE HEALTHCARE PROVIDERS SERVICE ORGANIZATION'S 2015 QUALITATIVE PHYSICAL THERAPIST WORK PROFILE SURVEY

Introduction

In 2015, CNA and HPSO conducted a three-part survey on PT and PTA liability. Part 3 differs significantly from the closed claims analysis in Parts 1 and 2, as it presents selected highlights from the 2015 Qualitative Physical Therapist Work Profile Survey. This survey reflects direct feedback from two subsets of our insured PTs and PTAs: those who had a claim filed against them, and a demographically similar group of insured PTs and PTAs with no claims filed against them. This survey examines many demographic profiles and workplace attributes not reflected in the analysis of the professional liability closed claims.

The survey enables us to compare several workplace variables that may influence professional liability exposure, including:

- The effect of implementing a process for reporting adverse events versus no process in place.
- The relationship between varying levels of education and the average paid indemnity amounts.
- The effect of having supervisory experience at the time of the incident.
- The effect of direct access to physical therapy services for those who worked in states where no referral was required versus states where an independent practitioner referral was required.

Methodology

This survey was undertaken to examine the relationship between professional liability exposures and a variety of factors, including demographic factors and workplace attributes. The survey examines a sample of CNA/HPSO program PTs and PTAs who experienced a closed professional liability claim between January 1, 2010 and December 31, 2014, and compares their responses with a sample of insureds who did not experience a claim during the same period.

Two similar survey instruments were distributed to CNA/HPSO-insured PTs and PTAs with and without claims. The first group consisted of 1,085 PTs and PTAs who were identified as having had a claim close between January 1, 2010 and December 31, 2014. The second, non-claims group of CNA/HPSO PTs and PTAs consisted of a randomized sample of 5,000 current insureds, which approximately matched the geographic distribution of the closed claims groups. In this survey, "respondent" refers to those CNA/HPSO-insured PTs and PTAs who voluntarily replied to the HPSO survey.

A hybrid methodology was used involving a printed and mailed survey, which included an email invitation to complete an online version of the survey. Each participant was sent the print version and, if an email address was available, the online invitation as well. Those receiving the print version were invited to take the online survey via a generic link. Each survey was labeled with a unique identifier to prevent multiple responses. Sample members were sent reminder notifications to encourage study participation.

Survey findings are based upon self-reported information and thus may be skewed due to memory lapses and personal biases. The qualitative HPSO survey results are not comparable to the CNA PT and PTA closed claims data in Part 1 of this report or the PT and PTA license protection closed claims data in Part 2, and are not representative of all HPSO-insured PT and PTA paid claims.

SURVEY RESPONSE RATES		
Response Rate	Claims	Non-claims
Initial deployment	9/28/15	9/28/15
Reminder #1 sent	10/19/15	—
Field closed	11/11/15	11/11/15
Initial sample size	1,085	5,000
Undeliverable/opt out	32	—
Usable sample	1,053	5,000
Number of respondents	261	678
Response rate	24.8%	13.6%

Within the report, results are reported on overall responses for both the claims and non-claims segments. The margin of error at the 95 percent confidence level for the claims portion of the study was ±5.3 percent. In addition, the corresponding margin of error for the non-claims version is ±3.8 percent. Both subsets are based upon a 95 percent confidence level, which enables us to conclude that percentages in the actual population would not vary by more than this in either direction.

The figures include the average paid indemnity of the respondents' closed claims. These amounts refer to indemnity payments made on behalf of CNA/HPSO-insured PTs and PTAs who experienced a closed claim and who responded to the survey.

Summary of Findings

- PT respondents with only a bachelor's degree experienced a higher percentage of claims.
- More than half of the respondents who experienced a claim (57.6 percent) were 46 years old or older.
- Respondents who experienced a claim were more likely to work in states that required a referral for therapy (55.2 percent) as compared to those who at the time of the survey worked in direct access states or states that do not require a referral (44.8 percent).
- Physical therapist professionals with 11 or more years in practice at the time of the incident were more likely to experience a claim. Additionally, average indemnity is directly correlated with years of practice.
- The majority of respondents who experienced a claim (75.3 percent) report that their organization or practice had a process in place for reporting or managing adverse events.
- Physical therapist respondents who have not received risk management education for more than three years had a higher average paid indemnity.
- An established process for peer review decreases the likelihood of a claim occurring.

The complete survey results may be accessed on the HPSO website at www.hpso.com/PTclaimreport2015.*

* Note that the numbering of the figures in this section of the report is not sequential because they have been excerpted from the full survey results posted on the HPSO website.

Topic 1: Respondent Demographics

Physical therapy licensure

The majority of respondents who experienced a claim were licensed PTs. PTAs were less likely to experience claims and had a lower average paid indemnity relative to PTs.

1 PHYSICAL THERAPY LICENSURE
Q: Please indicate your current physical therapy licensure.

	Non-claims	Claims	Average paid indemnity
PT	87.7%	94.3%	$47,222
PTA	12.3%	5.7%	$9,574

Gender

A higher proportion of respondents who experienced a claim are men, although women have a higher average paid indemnity payment ($56,105 versus $37,323). According to the U.S. Bureau of Labor Statistics (2014), the profession consists of 69.8 percent women and 30.2 percent men, a gender breakdown closer to the non-claims group.

2 GENDER
Q: What is your gender?

	Non-claims	Claims	Average paid indemnity
Female	73.9%	44.1%	$56,105
Male	26.1%	55.9%	$37,323

Age

The majority of respondents who experienced a claim were 41 years old or older, with 43.7 percent 51 years old or older.

3 AGE

Q: What is your age?

	Non-claims	Claims	Average paid indemnity
30 years or younger	20.2%	0.9%	$77,292
31 to 35 years	17.9%	6.8%	$47,564
36 to 40 years	12.9%	15.1%	$53,392
41 to 45 years	11.3%	19.6%	$31,075
46 to 50 years	9.9%	13.9%	$49,515
51 to 60 years	20.2%	28.6%	$30,219
61 years or older	7.6%	15.1%	$77,272

Specialty certifications

The majority of respondents report that they do not hold a specialty certification. This is the first survey where certification in electroneuromyography (ENMG) or dry needling was reported. Only a small proportion of physical therapy professionals report that they hold this certification.

5 SPECIALTY CERTIFICATIONS

Q: Do you have a specialist certification? (check all that apply)

	Non-claims	Claims	Average paid indemnity
I do not have a specialist certification	61.8%	68.7%	$50,212
Orthopedics	7.6%	15.2%	$38,905
Other*	11.9%	13.2%	$18,630
ENMG (dry needling)	1.3%	2.5%	$49,454
Geriatrics	2.1%	2.5%	$26,160
Sports	2.7%	2.1%	$80,499
Neurology	1.5%	1.7%	$20,653
Pediatrics	1.9%	1.7%	$35,382
Women's health	1.9%	0.8%	$4,802
Wound care	0.9%	0.4%	$5,754
Cardiovascular and pulmonary	0.5%	0.0%	
Clinical electrophysiology	0.2%	0.0%	

The percentages in this figure add up to more than 100 percent due to all questions being "check all that apply."
*Includes Certified Hand Therapist, Certified Kinesio Taping Practitioner, Certified Lymphedema Therapist, Certified Orthopedic Manual Therapist and Vestibular Rehabilitation.

Years since initial specialty certification

The respondents holding a specialty certification for more than six years were more likely to experience a claim. Respondents holding a specialty certificate for less than a year have a low frequency of claims, but have the highest average paid indemnity.

6 YEARS SINCE CERTIFICATION

Q: How many years has it been since your initial specialist certification?

	Non-claims	Claims	Average paid indemnity
Less than 1 year	34.5%	8.4%	$112,021
1 to 2 years	12.8%	4.7%	$41,478
3 to 5 years	17.7%	13.1%	$31,759
6 to 10 years	13.1%	22.4%	$45,123
11 to 15 years	9.2%	18.7%	$33,004
16 to 20 years	2.8%	16.8%	$35,685
21 years or more	9.9%	15.9%	$36,604

Education level

A larger percentage of respondents who experienced a claim have both bachelor's and master's degrees, which can be correlated to the age demographics of this sample. The highest average indemnity payment was experienced by PTs with a master's degree ($55,651), reflecting an increase of $7,470 over those holding solely a bachelor's degree.

8 HIGHEST LEVEL OF EDUCATION

Q: What is your highest level of education completed in physical therapy?

	Non-claims	Claims	Average paid indemnity
Associate's degree	9.8%	4.9%	$9,316
Bachelor's degree	22.8%	34.6%	$48,181
Master's degree	19.4%	30.9%	$55,651
Doctorate degree	48.0%	29.6%	$35,339

Topic 3: About the Claim Submitted

Referral requirement

Respondents in states where an independent practitioner referral is required are more likely to experience a claim as compared to those who work in states where no referral is required. The average indemnity payments are $12,943 higher in states where referrals are not needed.

21

REFERRAL REQUIREMENT

Claims Q: At the time of the incident, did your state allow consumers to seek physical therapy treatment without a referral (i.e., direct access physical therapy)?

Non-claims Q: Does your state allow consumers to seek physical therapy treatment without a referral (i.e., direct access physical therapy)?

	Non-claims	Claims	Average paid indemnity
Yes, my state did not require referral to initiate treatment by a licensed physical therapist	76.5%	55.2%	$47,221
No, my state required a physician/licensed independent practitioner referral to initiate treatment by a licensed physical therapist	23.5%	44.8%	$34,278

Years in practice

Physical therapy professionals with 11 or more years of practice at the time of the incident were more likely to experience a claim. Also, as experience increases so does the average indemnity.

23

YEARS IN PRACTICE

Claims Q: At the time of the incident, how many years have/had you practiced physical therapy?

Non-claims Q: How many years have you been a licensed physical therapist/physical therapist assistant?

	Non-claims	Claims	Average paid indemnity
Less than 1 year	5.5%	1.4%	$11,549
1 to 2 years	8.8%	4.3%	$18,385
3 to 5 years	13.1%	4.3%	$28,294
6 to 10 years	17.2%	15.2%	$53,549
11 to 15 years	13.4%	21.9%	$44,825
16 to 20 years	11.9%	17.6%	$54,885
21 years or more	30.1%	34.8%	$32,737
Don't recall	0.0%	0.5%	$50

Practice setting

At the time of the incident, most respondents reported working in a physical therapy office or clinic. However, it was noted that higher indemnity payments involve other types of settings, such as hospital outpatient clinics, fitness centers, adult day care facilities and practitioner offices/private clinics.

24

PRACTICE SETTING

Claims Q: Which of the following best describes your practice setting where the incident occurred?

Non-claims Q: What area best describes the practice setting where you currently work as a physical therapist or physical therapist assistant?

(Check all that apply)

	Non-claims	Claims	Average paid indemnity
Physical therapy office/clinic (non-hospital)	40.3%	71.6%	$34,065
Patient home	22.3%	9.1%	$53,117
Other*	8.3%	5.8%	$75,247
Practitioner office or private clinic	2.1%	2.9%	$76,991
Aging services facility	12.1%	2.4%	$18,427
Hospital outpatient area	7.8%	1.9%	$100,615
Long-term acute care hospital (LTACH)	2.1%	1.4%	$36,656
School	8.8%	1.4%	$9,250
Fitness center	3.8%	1.0%	$74,263
Acute medical-surgical hospital (inpatient)	7.8%	1.0%	$7,772
Adult day care	0.6%	1.0%	$137,682
Hospital inpatient rehabilitation	5.7%	0.5%	$6,204
College or university	3.4%	0.0%	
Home health/hospice	0.9%	0.0%	
Pediatric or developmentally disabled long term care	2.1%	0.0%	

The percentages in this figure add up to more than 100 percent due to all questions being "check all that apply."
*Includes prison, therapeutic riding center, gymnastics facility and early intervention facility.

Patient care assistance

Among respondents who experienced claims, 37.7 percent did not have assistance in caring for a patient. When assistance was provided and a claim occurred, average paid indemnity was similar whether the assistance was given by another PT, PTA or physical therapy aide.

The highest average paid indemnity involves assistance provided by either a visitor, family member, PT student, massage therapist or operating room technician. While assistance with patient care may be a necessity, caution should be exercised when requesting help from individuals without physical therapy training.

25

ASSISTING WITH PATIENT CARE

Claims Q: At the time of the incident, who was assisting you in the care of your patient?

Non-claims Q: Does anyone assist you in the care of your patients?

(Check all that apply)

	Non-claims	Claims	Average paid indemnity
No one	29.1%	37.7%	$32,254
Physical therapy aide	32.5%	21.3%	$40,960
Other PT	36.3%	21.3%	$39,515
PTA	37.1%	16.4%	$42,992
Visitor, family member	12.2%	2.4%	$69,551
Other*	6.6%	13.0%	$57,609

The percentages in this figure add up to more than 100 percent due to all questions being "check all that apply."
*Includes PT student, massage therapist and operating room technician.

Assigned patients per day

On average, respondents treat six to 10 patients per day. The highest average indemnities are associated with respondents who treated three to five patients a day at the time of the incident.

30

PRACTICE SETTING

Claims Q: At the time of the incident, which best describes the number of individual patient visits per day (in an 8-hour day) assigned to you?

Non-claims Q: Which of the following best describes the number of individual patient visits per day (in an 8-hour day) assigned to you?

	Non-claims	Claims	Average paid indemnity
1	1.1%	2.0%	$5,317
2	1.5%	2.0%	$16,605
3 to 5	10.6%	6.5%	$107,545
6 to 10	48.0%	36.8%	$30,921
11 to 14	26.1%	34.3%	$51,742
15 to 19	9.5%	13.4%	$24,124
20 to 24	2.5%	3.5%	$47,587
25 to 29	0.3%	0.5%	$21,658
30 to 39	0.2%	1.0%	$6,173
40 or more	0.2%	0.0%	

Assigned patients per session

Respondents experiencing claims are more likely than respondents without claims to have scheduled two or more patients per appointment session time. The average indemnity is highest for respondents who scheduled six to 10 patient visits per session ($58,870), followed by respondents who scheduled two patient visits per session ($50,810).

31

ASSIGNED PATIENTS PER SESSION

Claims Q: At the time of the incident, which best describes the number of patient visits scheduled per single 60-minute appointment session time?

Non-claims Q: Which best describes the number of patient visits scheduled per single 60-minute appointment session time?

	Non-claims	Claims	Average paid indemnity
1	43.8%	30.7%	$37,935
2	42.8%	51.0%	$50,810
3 to 5	10.3%	14.4%	$20,915
6 to 10	2.1%	2.9%	$58,870
11 to 14	0.5%	0.5%	$1,314
15 to 19	0.2%	0.5%	$1,296
20 or more	0.2%	0.0%	

Supervising responsibilities

More than half (62.9 percent) of respondents experiencing claims did not have supervisory responsibility at the time of the incident.

34

SUPERVISING RESPONSIBILITIES

Claims Q: At the time of the incident, were you responsible for delegating patients to others and therefore supervising the care of the patients delegated?

Non-claims Q: Are you responsible for delegating patients to others and therefore supervising the care of the patients delegated?

	Non-claims	Claims	Average paid indemnity
Yes	37.6%	37.1%	$45,432
No	62.4%	62.9%	$39,943

Topic 4: About the Facility Where the Incident Occurred

Reporting adverse events

The majority (75.3 percent) of respondents who experienced a claim report that their employer had a policy and/or process in place for reporting adverse events. The average paid indemnity is substantially higher for respondents experiencing claims whose employer had a policy or process for reporting adverse events.

39

REPORTING ADVERSE EVENTS

Claims Q: At the time of the incident, did your organization/practice have a process and/or specific form for reporting adverse events and/or patient injuries?

Non-claims Q: Does your organization/practice have a process and/or specific form for reporting adverse events and/or patient injuries?

	Non-claims	Claims	Average paid indemnity
Yes	85.4%	75.3%	$47,965
No	14.6%	24.7%	$27,827

Risk management programs

At the time of the incident, 40.1 percent of respondents who experienced a claim had attended a risk management education or quality improvement presentation/program within the last year. However, those respondents who report that they did not attend a risk management or quality improvement presentation/program in three or more years have a higher frequency of claims and a higher average paid indemnity.

40

RISK MANAGEMENT PROGRAMS

Claims Q: At the time of the incident, how long had it been since you attended a risk management education or quality improvement presentation/program?

Non-claims Q: How long has it been since you attended a risk management education or quality improvement presentation/program?

	Non-claims	Claims	Average paid indemnity
0 to 1 year	52.7%	40.1%	$39,099
2 to 3 years	15.1%	16.0%	$33,450
More than 3 years	32.2%	43.9%	$49,987

Ongoing peer review process

Having an established process for peer review decreases the likelihood of a claim occurring.

41

PEER REVIEW PROCESS

Claims Q: At the time of the incident, did your organization/practice have an ongoing process for peer review?

Non-claims Q: Does your organization/practice have an ongoing process for peer review?

	Non-claims	Claims	Average paid indemnity
Yes	55.3%	45.0%	$53,368
No	30.1%	38.8%	$31,998
Don't know	14.6%	16.2%	$40,197

Concluding Remarks

Knowing the risks that confront today's physical therapy professionals is the critical first step in the process of enhancing quality of care, serving patients appropriately and reducing liability exposures. The claims data, analyses and risk control recommendations contained in this resource are intended to inspire physical therapy professionals nationwide to carefully examine their practices, dedicate themselves to patient safety, and direct risk control effects toward the areas of statistically demonstrated liability and loss. Safety and quality improvement is an ongoing and collaborative process, and we at CNA and HPSO take seriously our responsibility to support healthcare providers in the effort to minimize risk.

Published 1/2016

CNA

We can show you more.®

333 South Wabash Avenue
Chicago, IL 60604
1.888.600.4776 www.cna.com

HPSO®

159 East County Line Road
Hatboro, PA 19040
1.800.982.9491 www.hpso.com