

Physiotherapists and medical negligence

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Although the role of the physiotherapist is inherently connected with the rehabilitation of injured persons, like all other providers of health care services, the physiotherapist can exacerbate existing injuries or indeed, create a new injury if the physiotherapy treatment is not carried out to the requisite standard of care.

The healing hands of the physiotherapist can become the vehicle of assault and injury to the patient. Patients undergoing treatment at the hands of an inept or careless physiotherapist can suffer significant injuries including burns, skin damage and bodily collapse.

Of concern to patients, lawyers and physiotherapists alike is the holding out by some within the community that they are physiotherapists when they do not hold the necessary training, qualifications and registration. This is sometimes seen at the local sporting club where a person, usually a well meaning member of the club, has assumed the designation physiotherapist and then proceeds to administer all forms of treatment to injured sportspersons.

All practising physiotherapists are required to be registered with the relevant registration board. Lawyers should note that a registration board is held in each state and a practising physiotherapist is only required to be registered with the board in the state in which they practise. Practitioners wishing to check on the status of a physiotherapist can contact the registration board in the appropriate state and a search of the registration records can easily be carried out to ascertain whether the physiotherapist was in fact registered.

It may not be widely known to practitioners that physiotherapy, like medicine, is a rapidly advancing profession with a number of colleges of speciality. For example, manipulation physiotherapists now undertake a further period of twelve months full time study to become specialised. There are further post graduate courses for physiotherapists to undertake who wish to provide hydrotherapy treatment to patients

Lawyers concerned with the quality of treatment provided to clients by physiotherapists, and the standard of care required, may seek to determine in addition to the registration status of the physiotherapist, whether the physiotherapist had completed additional education allowing them to practise in a specialist field. Significant injury can result from the provision of physiotherapy treatment that does not meet the required standard of care.

There are an array of machines and methods used by a physiotherapist that can, if not properly used and supervised, cause harm to a patient. Three common forms of treatment provided by physiotherapists are electro physical agents, cervical spine manipulation and hydrotherapy. Burns can result from the use of electro physical agents such as ultrasounds and thermal modalities. The use of an ultrasound can, if set too high, or if the head stops, cause burns to the patient. Generally ultrasounds should be used on the basis that they are non-thermal. Electrical stimulation or indifferent treatment is commonly used by physiotherapists to assist blood circulation. However, the improper placement of electrodes, or too high a current flow, can again cause burns. Burns can also occur if electro-physical methods are used on broken skin. Further, the physiotherapist should carry out hot/cold tests and sharp/blunt tests prior to the use of thermal modalities to determine the full clinical position of the patient prior to commencing treatment. Just as heat can cause burns so to can cold. Ice packs applied directly to the skin for long periods can result in significant burns to the patient.

The Queensland special interest group has been told the true story of a sportsman who sought treatment some years ago from his sporting club's physiotherapist, after receiving a sporting injury. The physiotherapist advised the sportsman to apply an ice pack to his calf muscle, the site of the

injury. The physiotherapist advised the sportsman patient to keep the ice applied for a period of twenty minutes. The sportsman patient applied the ice and then drove home which took about twenty minutes. When the patient got home he removed the ice. The next day he presented to his regular properly qualified and registered, physiotherapist, Tony McNamee, with third degree burns from the application of ice as recommended by the physiotherapist engaged at the sporting club the previous day. This was an example of a complete failure to adhere to the required standard of care as well as, in all probability, the provision of physiotherapy services by a non-qualified physiotherapist.

Like all medical practitioners, physiotherapists have a duty to provide warning advice to patients regarding the treatment that will be given. They must obtain informed consent from their patient. Typically, if a physiotherapist was to provide cervical spine manipulation, the warnings they should give include: an explanation of his intention to manipulate the cervical spine; a warning of the risk of further injury and the possible severity of that injury; discussion of the results of tests that have indicated cervical spine manipulation is desired; an explanation of the technique to be used; a request for consent.

Warnings should also be given to patients receiving electrical based treatment such that they know to report any pain resulting from the treatment immediately as the pain may relate to skin and tissue damage. The Australian Physiotherapy Association has established standard warning signs which can be located throughout a physiotherapy practise. The careful physiotherapist will record the giving of warnings and consent on the patient record. It is recognised that as with all equipment, the equipment in a physiotherapy centre should be tested regularly and at least every twelve months to ensure burns are not sustained due to equipment failure. ▶

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It has also been recognised that inversion therapy, the placement of a patient upside down, increases the cranial blood flow and places the patient at a greater risk of death. It is rare for inversion therapy to be practised by the careful physiotherapist. One of the most over-represented areas of complaints against physiotherapists is that of sexual misconduct. Studies have shown that around a quarter of all physiothera-

pists will have some form of improper relationships with their patients. Lawyers can contact the Australian Physiotherapy Association and obtain a copy of a guide that details the standard of care required of physiotherapists by the APA. Of particular relevance to plaintiff lawyers is the fact that the professional indemnity insurance carried by physiotherapists is, unlike that provided by medical defence organisations, not subject to discretionary indemnity.

Insurance is not a pre-requisite to registration however it is understood that it is universally employed by physiotherapists. ■

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