



CMPA/CNPS JOINT STATEMENT ON LIABILITY PROTECTION FOR NURSE PRACTITIONERS AND PHYSICIANS IN COLLABORATIVE PRACTICE

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INTRODUCTION

New and evolving models for healthcare delivery have increased the opportunity for collaborative practice between physicians, nurse practitioners (NPs) and other healthcare providers. Collaborative practice inevitably reinforces the need for healthcare professionals to ensure they individually have adequate personal professional liability protection and that the other healthcare professionals with whom they work collaboratively are also adequately protected so that neither is held financially responsible for the acts or omissions of another. The Canadian Medical Protective Association (CMPA) and the Canadian Nurses Protective Society (CNPS) have developed this document to respond to questions from NPs and physicians working in collaborative practice.

LIABILITY RISKS

When a patient commences a legal action regarding healthcare treatment, it is likely that all healthcare professionals who were involved in the treatment, as well as the institution or facility where that treatment was rendered, will be named as defendants. A finding of negligence or fault by the court may have a financial impact on the defendant(s) in 3 ways:

1. Direct Liability

Each healthcare professional, both individually and as a member of the collaborative practice team, is accountable for his or her own professional practice. Therefore, if a physician or NP is found to have been negligent or at fault, a court may award damages to the plaintiff that are to be paid by the individual defendant. This form of liability is called direct liability. CMPA and CNPS professional liability protection is designed to assist physicians and NPs with this kind of damage award.

A defendant employer or facility may also be found negligent or at fault and held directly liable for breaching duties it owed to the patient. These could include, for example, the duty to: select professional staff using reasonable care; review staff performance on a regular basis; have and enforce appropriate policies and procedures; provide reasonable supervision of staff; and provide adequate staffing, equipment and resources.

2. Vicarious Liability

If an employee is found to be negligent or at fault, the court may order that damages be paid by the employer pursuant to the doctrine of vicarious liability. This legal doctrine provides that an employer, which may be an individual or an institution, can be held financially responsible for the negligence or fault of its employees. An employment relationship must have existed at the time of the event and the defendant employee must have been sued for work done within the scope of his or her employment. It will be up to the court to determine in each case if an employer/employee relationship existed and therefore whether vicarious liability would apply. Some of the factors the court would consider in determining if an employment relationship existed are the level of control the employer has over the employee's activities, any agreements which describe the relationship and requirements to follow the employer's policies or procedures.

3. Joint and Several Liability

When a court finds more than one defendant negligent or at fault, the court will assess the amount of damages (often expressed as a percentage of the total damage award) to be paid by each defendant. Defendants can be jointly and severally liable for the damages awarded. This means the plaintiff may recover full compensation from any one of the defendants found to be negligent or at fault, even though that defendant may then be paying for more than their share of the damages. That defendant may then seek contribution from the other defendant(s) found to be negligent or at fault.

For this reason, it is essential for physicians and NPs working in collaborative practice to verify that all members of the collaborative practice team and the facility or institution have adequate professional liability protection in place at the beginning of the work relationship and on an ongoing basis.

LIABILITY PROTECTION

Because of these potential liability risks, all members of the collaborative healthcare team and the institution or facility must have appropriate and adequate professional liability protection to protect themselves and the patients they treat.

When a CMPA member is sued by a patient regarding medical treatment, that member is generally eligible for assistance from the CMPA. This protection is occurrence-based, which means the eligible professional's protection extends from the date the event occurred regardless of when the claim is made. For CMPA members, there is no financial limit. In some circumstances, clinics and other practice arrangements may be eligible for assistance.

Registered nurses and nurse practitioners who are CNPS beneficiaries are generally eligible for the professional liability protection offered by the CNPS if they are named as a defendant in a civil action arising from the provision of professional nursing services. CNPS beneficiaries include all members of a CNPS member organization¹ who hold a valid license or registration to practice registered nursing.

CNPS professional liability protection is personal and occurrence-based (see above definition). Financial limits apply and are adjusted from time to time, taking into account evolving trends in court awarded damages.

1. A list of the CNPS member organizations is available on the CNPS website at www.cnps.ca.

CNPS protection extends to the NP as an individual for the defence of legal actions arising from the provision of professional nursing services. It is not available for claims against an NP's employees, an NP in his or her capacity as employer, or a business entity such as an incorporated company or partnership, other than a business entity of which the NP is the sole owner as well as the sole employee or provider of nursing services.

To meet their general liability protection and/or business professional liability protection needs, registered nurses in all Canadian provinces and territories may purchase commercial insurance from a CNPS-sponsored group insurance plan.

RISK MANAGEMENT

Taking the following steps will help decrease your risks when working collaboratively:

- have appropriate and adequate professional liability protection and/or insurance coverage;
- confirm the continuing appropriate and adequate professional liability protection and/or insurance coverage of the other members of the collaborative healthcare team;
- physicians should contact the CMPA at 1-800-267-6522 to discuss issues related to collaborative practice or the extent of assistance for clinics and other practice arrangements;
- NPs should contact the CNPS at 1-800-267-3390 to discuss issues related to collaborative practice or the extent of assistance;
- if you have or require commercial insurance, you should consult a business lawyer or insurance professional about how to identify your business insurance needs and protect your individual and business interests; consider scheduling a periodic review of these issues;
- if commercial insurance is purchased, abide by the terms of the policy and report any potential or actual claim to the insurer while the policy is still in effect;
- if you change insurers or do not renew a claims-made² insurance policy, purchasing tail coverage³ is recommended.

In case of any questions about information in this document, physicians should contact the CMPA directly and nurse practitioners should contact the CNPS.

2. A "claims-made" policy requires reporting a potential or actual claim to the insurer before the policy's expiry date. Only events that have occurred after the "retroactive date," if there is one in the policy, and that are reported during the policy period are covered. If there is no retroactive date in the policy, events that occurred before the policy came into effect are covered if they are reported during the policy period and you were unaware of the claims at the time you purchased the policy.

3. "Tail coverage" may also be called an "extended reporting clause" or "discovery clause." Tail coverage is only applicable to claims-made policies and it extends the reporting period in which a claim can be made.



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