



THE CANADIAN
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CANADIAN
NURSES
PROTECTIVE
SOCIETY

SOCIÉTÉ DE
PROTECTION DES
INFIRMIÈRES ET
INFIRMIERS DU
CANADA

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

March 2005

INTRODUCTION

New and evolving models for health care delivery have increased the opportunity for collaborative practice between physicians, nurse practitioners (NPs)¹ and other health care providers. Collaborative practice inevitably reinforces the need for health care professionals to ensure they individually have adequate personal professional liability protection and that the other health care 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 health care treatment, it is likely that all health care 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 by the court may have a financial impact on the defendant(s) in three ways:

1. Direct Liability

Each health care 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, 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 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.

1. There is currently no legislated title common to all Canadian jurisdictions to identify registered nurses with a legislated extended scope of practice. For CNPS purposes, an NP is a nurse registered by a member association or college as "RN extended class (EC)," "RN extended practice (EP)," "Nurse Practitioner" or other **legislated title**.

2. Vicarious Liability

If an employee is found negligent, 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 of its employees. An employment relationship must have existed at the time of the incident 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, 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 negligent defendants, 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 negligent defendant(s).

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 health care 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 incident 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.

CNPS provides professional liability protection to registered nurses who are members in good standing of the following professional associations or colleges: AARN, SRNA, CRNM, RNAO, NANB, CRNNS, ANPEI, ARNNL, RNANT/NU and YRNA². An NP who is a member in good standing of one of these associations or colleges at the time of an incident is eligible for personal, occurrence-based (see above definition) professional liability protection in the amount of \$5 million per incident with an annual aggregate of \$5 million.

2. Alberta Association of Registered Nurses (AARN), Saskatchewan Registered Nurses' Association (SRNA), College of Registered Nurses of Manitoba (CRNM), Registered Nurses Association of Ontario (RNAO), Nurses Association of New Brunswick (NANB), College of Registered Nurses of Nova Scotia (CRNNS), Association of Nurses of Prince Edward Island (ANPEI), Association of Registered Nurses of Newfoundland and Labrador (ARNNL), Registered Nurses Association of the Northwest Territories and Nunavut (RNANT/NU) and Yukon Registered Nurses Association (YRNA).

The protection extends to the NP as an individual for defence of legal actions arising from the provision of professional nursing services. CNPS assistance is not available for claims against: an NP's employees for whom an employer is vicariously liable; a business entity such as an incorporated company or partnership; the directors, officers or shareholders of a corporation; general liability claims; or professional discipline defence costs.

To meet nurses additional liability protection needs, two group insurance plans have been developed. Nurses in all Canadian provinces and territories may purchase commercial insurance from CNPS Plus[®] (1-800-267-9364), a CNPS-sponsored group insurance plan. The Registered Nurses Association of Ontario also sponsors a group insurance plan available to RNAO members called NurseInsure (1-888-711-8399).

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 health care 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 **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; and
- if you change insurers or do not renew a claims-made³ insurance policy, purchasing tail coverage⁴ is recommended.

If you have questions about information in this document, physicians should contact the CMPA directly and nurse practitioners should contact CNPS.

3. A "claims-made" policy requires reporting a potential or actual claim to the insurer before the policy's expiry date. Only incidents 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, incidents 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.

4. "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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