

Independent Practice



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In this issue of *infoLAW*[®], the Canadian Nurses Protective Society (CNPS) reviews accountability, business issues, liability protection and professional considerations for nurses in independent nursing practice.

Accountability/professional liability

Independent practice nurses do not operate under the direct control of an employer, health care institution or physician. This autonomy means increased potential liability for nurses making independent nursing assessments and providing care. Working independently may also create additional legal responsibility as a tenant, landlord or employer.

Sources of liability include: civil liability, such as negligence,¹ assault and battery, defamation, breach of contract; professional misconduct; criminal liability; tax liability; and occupier's liability.

Business structure

Before beginning your independent practice, you should review possible business structures and their tax and legal implications with a business lawyer. Options include: sole proprietorship, an association, partnership and incorporation. If you plan to incorporate, you should consult with your licensing body first as incorporation may be prohibited or regulated in your jurisdiction. Generally, professionals are precluded from using incorporation as a way to avoid personal professional liability to their clients.

Liability protection

CNPS Protection

Nurses in independent practice who are members in good standing with participating² professional associations or colleges are eligible for \$1,000,000 professional liability protection for each occurrence up to a maximum of \$3,000,000 per year from CNPS. For registered nurse practitioners,³ CNPS' assistance is available up to \$5,000,000 for each occurrence to a maximum of \$5,000,000 per year. You may require commercial insurance as well as CNPS protection depending on the risk of the work being done. CNPS liability protection extends only to you as an individual providing professional nursing services. It does not extend to an incorporated company, a partnership, or directors/shareholders of a company.

Insurance Needs

Employees are covered by their employer's insurance because of the legal doctrine of vicarious liability.⁴ Vicarious liability means that the employer is responsible for the actions of its employees in the course of the employment relationship. In independent practice, you do not have this protection. You will be held directly accountable for your practice. If you carry on a part-time private practice while working as a part-time employee elsewhere, you should be aware that your employer's insurance will only cover your employment activities.

The type and amount of liability protection required is contingent upon the business structure selected, services provided and the risks involved. For example, business insurance is recommended for the protection of an incorporated company or a partnership. In addition, you should have personal professional liability protection. If you are an employer, you also require business insurance

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to cover your legal responsibility for the activities of your employees. Occupier's liability insurance is necessary to cover potential claims from a client who injures himself while on your premises.

If you provide services other than professional nursing services or you require a higher limit of protection than that offered by CNPS, you should make appropriate insurance coverage arrangements with a commercial insurance broker. CNPS sponsors an insurance plan called CNPS Plus[®], designed to meet the additional insurance needs of nurse practitioners and nurses in independent practice. For further information, call Aon Reed Stenhouse at 1-800-267-9364.

Professional regulation

You are accountable to your professional regulatory body to maintain the appropriate standard of care. As an independent practitioner, it is incumbent on you to keep up to date with nursing standards and to adhere to current practices and guidelines. You should consult your licensing body regarding professional limitations on your practice (e.g. scope of practice, conflict of interest, advertising, solicitation of clients and endorsement of products).

Documentation, Storage and Retrieval of Records

Documentation is a legal and professional requirement for nurses in independent practice. Nursing records may be used at a later time to re-construct events, refresh memory, provide detailed evidence of the care that was provided and may minimize your legal risk.⁵ If you use computer technology to chart, you must ensure that confidentiality is maintained and that records can be retrieved. All confidential⁶ health records must be stored in a secure place. You should review your provincial/territorial legislation and consult your regulatory body to determine how long to retain records.

Informed Consent

You have a legal and ethical responsibility to obtain informed consent from your clients for any nursing treatment.⁷ The fact and circumstances of the consent should be documented.

Summary

When considering independent practice, you should consult CNPS and such business professionals as lawyers, accountants, tax and insurance specialists. In addition, you should be familiar with your provincial/territorial professional requirements. The Canadian Nurses Protective Society (CNPS) is available to discuss independent practice and other liability issues. If you have questions please call CNPS at 1-800-267-3390. Further information is available on the CNPS web site at www.cnps.ca. Call CNPS, your professional association or college for the user name and password.

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1. *infoLAW*[®], Negligence (Vol. 3, No. 1, November 2004, revision of September 1994).
 2. Participating means as a member of CNPS. CNPS' members are AARN, SRNA, CRNM, RAO, NANB, CRNNS, ANPEI, ARNNL, RNANT/NU and YRNA.
 3. Nurse practitioner means a nurse registered by a nurses' professional association or college as "RN Extended Class (EC)", "RN Extended Practice (EP)", "Nurse Practitioner (NP)", or other legislated title designating the RN as an advanced practice nurse.
 4. *infoLAW*[®], Vicarious Liability (Vol. 7, No. 1, April 1998).
 5. *infoLAW*[®], Quality Documentation (Vol. 1, No. 1, May 1992, reprinted Spring 1993).
 6. *infoLAW*[®], Confidentiality of Health Information (Vol. 1, No. 2, September 1993, reprinted November 1996).
 7. *infoLAW*[®], Consent to Treatment (Vol. 3, No. 2, December 1994).

N.B. In this document, the feminine pronoun includes the masculine and vice versa.

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