

The guidance below provides general information only and is **not** meant to be used as legal advice for specific legal situations. For medical legal advice and assistance, please contact the CMPA and/or a lawyer.

Guidance to physicians: Reducing medico-legal risk in team-based care settings

Medico-legal liability concerns are often cited as being barriers to team-based care. In *Collaborative Care: A Medical Liability Perspective*, the [Canadian Medical Protective Association](#) (CMPA) believes that the medico-legal liability system that currently protects the interests of patients and individual providers can also protect team-based care practices.

Liability protection

Physicians working in team-based care settings should ensure that **all members of a collaborative health care team and the institution or facility (e.g. clinic) have appropriate and adequate professional liability protection** to protect themselves and the patients they treat. Reviewing the checklist below can help physicians manage and reduce their liability risks:

- First** - Contact the CMPA at 1-800-267-6522 to:
 - Confirm that I am eligible for appropriate and adequate professional liability protection.
 - Understand the extent of CMPA assistance for clinics and my particular collaborative practice arrangement.
- Confirm and document (or clinic has documentation process) that other members of the health care team* **and** the facility or institution (e.g. clinic) in which I practice continue to have appropriate and adequate professional liability protection and/or insurance coverage. This can be included in hiring processes and should be reviewed and confirmed periodically.
- If commercial liability insurance is needed, contact (or advise owners of institution or facility to contact) an insurance professional or a business lawyer for further guidance.
- Contact (or advise employer to contact) [WorkSafeBC](#) Employer Service Centre at 1-888-922-2768 to discuss WorkSafeBC registration and insurance requirements and the appropriate coverage is in place where required.
- Consult (or advise employer to consult) a lawyer to understand employer-specific liability issues relating to medical practice.

On your health care team, non-physician providers may be:

1. Independent contractors
2. Employed by physician practice
3. Employed by health authority or other external organization

Advice: Specify your practice arrangement in your communications with CMPA, insurance or legal professional, and WorkSafeBC. Different employment relationships may require different forms of liability protection.

*Health care providers employed by a health authority will likely have liability protection already provided by their health authority employer.

Other considerations:

- If commercial liability insurance is purchased, understand the terms of the policy and report any potential or actual claim to the insurer while the policy is still in effect.
- If there is a change in insurers or a claims-made[†] insurance policy is not renewed, consider purchasing tail coverage[‡].

Best practices to reduce medico-legal risk in team-based care settings

In addition to having adequate professional and/or commercial liability protection, physicians can take steps within their collaborative practices to mitigate medico-legal risk and enhance patient safety. For example, in *Collaborative Care: A Medical Liability Perspective*, the CMPA suggests that health care teams address the following questions to assess their medico-legal risk:

1. Are the roles and responsibilities of each team member clearly defined, based on their scopes of practice and also the individual's knowledge, skill, and ability?
2. Does every team member know their role and the role of the other team members?
3. How will health care decisions be made? Who is responsible and therefore accountable for health delivery decisions?
4. Is there a quality assurance mechanism to monitor the team function and health outcomes?
5. What are the anticipated health care outcomes the team is striving to achieve?
6. Has the patient remained an integral if not a central member of the team?
7. How will the team manage patient expectations and respond to patient concerns?
8. Is there a sound policy and procedural framework in place to define and support the team function?
9. Does the team have sufficient resources to achieve the desired health outcome?

In team settings, other professions may assume responsibilities previously performed solely by physicians.

In The new reality: Expanding scopes of practice, the CMPA advises physicians to:

1. Become familiar with scope of practice, qualifications, experience, and training of other providers.
2. Establish a mutual understanding of the responsibilities and expectations for communication between physician and other health professionals, particularly for actions where scopes of practice overlap.
3. Have confidence that each health care provider has adequate liability protection/insurance.

[†] 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.

[‡] "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.

10. Who will coordinate care, manage the team, and ensure efficient and effective communication among team members and across teams? Are procedures or processes in place to facilitate timely and appropriate communication?

How can physicians be financially impacted from legal action?

In *CPMA/CNPS Joint Statement on Liability Protection for Nurse Practitioners and Physicians in Collaborative Practice*, the CPMO outlines some of the ways in which physicians (and other providers) may be financially impacted if a patient commences legal action regarding health care treatment.

As a result of the potential liability risks highlighted below, the CPMO advises that all members of the collaborative health care team and institution or facility (e.g. clinic) have appropriate and adequate professional liability protection to protect themselves and the patients they treat.

Type of liability	Description
Direct Liability	<p>Each health care professional, both individually and as a member of a team, is accountable for his or her own professional practice. Therefore, if a physician (or other professional) 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.</p> <p>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.</p>
Vicarious Liability	<p>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.</p>
Joint & Several Liability	<p>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</p>

Type of liability	Description
	<p>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 other providers working in collaborative practice to verify that all members of the 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.</p>

For more information:

CMPA – *Assistance to clinics and facilities* (2013) - <https://www.cmpa-acpm.ca/en/membership/protection-for-members/principles-of-assistance/assistance-to-clinics-and-facilities>

CMPA/CNPS *Joint Statement on Liability Protection for Nurse Practitioners and Physicians in Collaborative Practice* (2017)- https://www.cmpa-acpm.ca/static-assets/pdf/research-and-policy/public-policy/com_joint_statement-e.pdf

CMPA – *Collaborative Care: A Medical Liability Perspective* (2007)- <https://www.cmpa-acpm.ca/en/advice-publications/handbooks/collaborative-care-summary#6>

CMPA – *The new reality: Expanding scopes of practice* (2010) - <https://www.cmpa-acpm.ca/en/advice-publications/browse-articles/2010/the-new-reality-expanding-scopes-of-practice>

Doctors of BC – *Auto, Property, Casualty & Liability Insurance* - <https://www.doctorsofbc.ca/member-area/insurance/property-casualty>

WorkSafeBC - <https://www.worksafebc.com>