

Professional Liability Protection: What is there to consider and how can the Canadian Nurses Protective Society be of assistance?

Occupational health nurses (OHNs) play a key role in coordinating and delivering quality occupational health services for workers and worker groups. OHNs have unique obligations, however, given that their responsibilities often entail a dual mandate. They advise their employer or the management of the corporation, on matters involving the safety of the workforce, compliance with certain legislative requirements and the safe reinstatement of employees to their duties. OHNs also can have distinct obligations to employees and workers when they manage employee personal health information and provide them with health care services. They deliver care in environments that can present constant change and shifting priorities, especially with the advent of COVID-19.

OHNs operating in Ontario must be satisfied that they have in place adequate professional liability protection, as enumerated by the Bylaws of the College of Nurses of Ontario. In this article, we will discuss professional liability protection (PLP), and why OOHNA considers that the Canadian Nurses Protective Society (CNPS) is particularly well positioned to meet the legal services needs of its members.

What is professional liability protection and why is it needed?

Professional Liability Protection (PLP) generally refers to the provision of legal representation to a professional who faces allegations of professional negligence in a claim or lawsuit, along with the payment, on behalf of the professional, of the compensation that the court may order to be paid following a trial or as a result of a settlement. As a result, the public is protected because an adequate source of compensation is available. The health care professional is also protected because they benefit from legal representation and do not have to personally bear the full cost of the legal proceedings and generally the compensation if the court orders that it be paid. In Ontario, all categories of nurses are required to maintain an acceptable source of PLP. CNO Bylaw 44.4 sets out the requisite amounts of professional liability protection that a College registrant must have in order to practice nursing in Ontario.

Who is the CNPS?

The CNPS is not an insurance company, but a legal support system for nurses. It was created by a group of provincial and territorial nursing associations and regulatory bodies in 1988, during a time of rising insurance costs, shifting healthcare policies and changes in the healthcare landscape.

The founders of CNPS envisioned creating a more adaptive system of protection that would provide adequate legal protection in a legal proceeding but would also be well-positioned to address the different issues that nurses could face in their practice. It would provide nurses with a reliable source of PLP, as well as appropriate legal advice and assistance for nurses faced with professional legal challenges in their practice. Their vision became the mission of the CNPS.

Now, over 30 years later, the CNPS serves over 140,000 nurse beneficiaries in all professional nursing designations. The CNPS is also designated as the provider of PLP for all RNs, NPs, and most RPNs in 11 of the 13 Canadian provinces and territories.

What makes the CNPS different?

a) Legal proceedings and other instances of legal representation

The CNPS operates using an approach known as “occurrence-based, discretionary assistance” which is modeled on the professional liability protection and legal support system relied upon by Canadian physicians for more than a hundred years. Requests for assistance are considered on a case-by-case basis, and assistance is provided based on the specific circumstances of each case. The key factor in determining whether the CNPS will extend assistance is generally whether the need for legal assistance arises from the exercise of professional nursing judgment¹. This allows the CNPS to effectively provide PLP and respond to a wide range of other circumstances, including, but not limited to, the legal circumstances listed at cnps.ca/services.

Similar to your current policy, CNPS PLP is [occurrence-based](#), which means nurses can seek assistance from the CNPS regarding legal proceedings arising from professional nursing services rendered while they were CNPS beneficiaries, regardless of when a claim resulting from this incident is made or a legal proceeding is commenced. Beneficiaries therefore remain eligible for assistance through retirement and interruptions in their practice for incidents that took place while they were duly licensed and CNPS beneficiaries. With CNPS assistance, there is no need for tail-coverage. Interested in learning more about these models of protection? [Consult this CNPS article](#).

We are very pleased to announce that CNPS also has legal advisors on site who provide legal advice to nurses across the country day in and day out and are therefore well positioned to understand the specific challenges of nurses. Registrants of the CNPS, known as CNPS “beneficiaries”, can contact the CNPS to speak with a legal advisor at no additional cost to discuss issues arising in their practice.

And lastly, the CNPS offers individual PLP that will generally respond to claims commenced anywhere in Canada, and there is no group or shared limit of protection. What this means is that when CNPS states that they extend up to \$10M per claim and each nurse can request assistance of up to \$10M per year² in respect of civil claims, this access is not limited by an aggregate or group limit.

The CNPS was created with the understanding that a nurse’s practice environment is not static, and that protection needed to be accessible in the many unexpected situations that can arise in a nurse’s practice environment.

b) Other services

OHNs are tasked with providing quality, confidential nursing care to worker and worker groups within legal and professional parameters. OHNs consistently find themselves at the intersection of nursing and the law, and for that reason, have unique legal requirements. They work in a dynamic environment- COVID-19 is just one example of how the issues within a nurse’s working environment can change quickly and dramatically. In this continuously shifting landscape, having the ability to contact a lawyer for confidential legal advice is a key service that CNPS

¹ An additional registration is required to extend assistance to College complaints.

² For civil claims for negligence commenced in Canada in respect of nursing services provided in Canada. Full details and terms available at <https://cnps.ca/services/plp-core/>

provides to its beneficiaries. CNPS beneficiaries can call anytime to speak to a lawyer with experience in health law to receive legal advice and support related to their nursing practice.

In addition to providing access to PLP and legal advice and assistance, CNPS provides a wide range of educational resources to help nurses manage risk in their nursing practice.

Beneficiaries can access articles, case studies, webinars, and presentations on the CNPS website which are geared to helping nurses provide the safest care possible.

OHNs may also work as independent contractors in a variety of healthcare settings and can therefore become custodians of personal healthcare information as part of their professional services agreement. As part of its core services, the CNPS provides pre-contractual reviews of professional service agreements. This review can detail the professional nursing services that are to be rendered, the nurse's professional obligations if they are to be a custodian, and the requirements for the nurse to fulfill these obligations.³ Contract reviews are provided as a benefit to CNPS beneficiaries, when adequate time is provided for the contract to be reviewed.

Any questions about CNPS services?

Please contact the CNPS directly if you have any questions. The CNPS is pleased to assist members of OOHNA in answering your questions and providing additional information about the CNPS and its professional liability protection. The CNPS can be reached at 1-800-267-3390.

To learn more about the CNPS' core services, please visit: cnps.ca/services/plp-core/.

³ [Nurses in Independent Practice: An Overview](#), CNPS, August 2021