



*Professional
Liability
Protection
for Nurses
by Nurses*

*Protection
responsabilité
professionnelle
pour les
infirmières par
les infirmières*

VIA FACSIMILE & MAIL

File: 230-28

19 February 2007

Dr. Wendy Graham
President and CEO
Association of Family Health Teams of Ontario
c/o Blue Sky Family Health Team
304 - 111 Main Street
North Bay ON P1B 2T6

Dear Dr. Graham

Further to our meeting of January 31st, I am writing to respond to the document sent to me by your assistant, Lynn, for that meeting but which I did not receive until after the meeting was over (due to a power outage at our office). While it is after the fact, I thought it important to address the misconceptions about the Canadian Nurses Protective Society (CNPS) apparent in the chart regarding the AFHTO insurance coverage for RNs and RPNs, as well as a few of the statements in the remainder of the document, for clarification.

Firstly, though included in the chart, RPNs are not eligible for assistance from CNPS.

Secondly, using three of the columns from your chart, the chart should read as follows:

MODEL FOR NURSE (RN or NP)	MALPRACTICE PROTECTION FROM CNPS	AFHTO INSURANCE COVERAGE
Employee (Hired by MD. FHT flow through funds.)	No. Employer is vicariously liable.	Employer needs insurance coverage for vicarious liability claims for all employees
Employee. Hired by MD. (MD funds)	No. Employer vicariously liable (funding source irrelevant).	Employer needs insurance coverage for vicarious liability claims for all employees.

MODEL FOR NURSE (RN or NP)	MALPRACTICE PROTECTION FROM CNPS	AFHTO INSURANCE COVERAGE
Blended. (Split FHT flow through funds and MD funds.)	No. RN is still an employee, employer is vicariously liable (funding source irrelevant).	Employer needs insurance coverage for vicarious liability claims for all employees.
Contracted - (independent contractor) to provide services to MD's practice or FHT (funding source irrelevant).	Yes, RN is eligible, provided RN is truly independent (autonomous) = self-employed.	Not required.
Employee of FHT (paid by FHT).	No. Employer is vicariously liable.	Employer needs insurance coverage for vicarious liability claims.

In 4 out of 5 of these scenarios, the RN or NP is an employee for whom the employer may be held vicariously liable. Where the funding comes from does not affect that relationship. In each of these 4 scenarios, the employer, whether a physician or the FHT, needs insurance to cover the vicarious liability risk the employer bears for all employees, including nurses and nurse practitioners.

For a nurse (RN or NP) to work as an independent contractor, the employment relationship must be that of an autonomous, self-employed nurse contracting his or her services to the physician's practice or FHT on agreed upon terms. Please refer to the attached Briefing Note for additional indicia of self-employment.

On the second page of your document, in paragraph 1, there is a statement that "Canadian law does not recognize teams as entities that may be sued"; that it is only individual professionals that are sued. This is not true for those teams or groups of professionals that are incorporated as a legal entity, so this statement is somewhat misleading.

Further in the same paragraph, CNPS is described as very similar to CMPA, and is identified as the sole source of liability protection for nurses. This is also misleading. It suggests that every nurse, including an employee nurse, is solely responsible for his or her own liability protection, and that that liability protection comes entirely from CNPS. In the majority of

Dr. Wendy Graham, President and CEO
Association of Family Health Teams of Ontario
Page 3
19 February 2007

cases, nurses are employees and they are covered by their employers' insurance for vicarious liability. In this, and in several other respects, CNPS is quite different from CMPA.

CNPS looks at each reported case on its facts and while there may be some unusual circumstances where an employer would not be vicariously liable for an employee (in which case CNPS may assist the nurse), in the vast majority of cases it is clear where the nurse is an employee that the employer would be vicariously liable for the nurse. In this instance, CNPS would direct the nurse to the employer's insurer, with the reasonable expectation that this insurance would cover the nurse's legal defense costs, court costs and damage award. CNPS does not assume the employer's legal obligation for an employee.

We are therefore very concerned to learn that there are RNs and NPs currently working as employees of physicians and FHTs where there is no employer coverage for them. It is obviously a matter of some urgency, as you indicated at the meeting, that this and all other insurance gaps be filled.

I wish you well in your efforts to get the necessary insurance coverage for the potential vicarious liability of AFHTO members. If there is anything further we can do to support you in your efforts, please let us know.

Sincerely



Patricia A. McLean, R.N., B.N., LL.B.
Chief Executive Officer

Attach.

cc: Cécile Hunt, President, Canadian Nurses Protective Society

Ministry of Health and Long-Term Care:
Dr. Jim MacLean, Team Lead for Primary Care Reform,
Mr. Ray Hunt, Acting Manager, North and Family Health Team Lead
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Dr. Wendy Graham, President and CEO
Association of Family Health Teams of Ontario
Page 4
19 February 2007

Canadian Medical Protective Association:
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