

3. Liability Issues

3.1 *Introduction*

The purpose of this section is to make demonstration hospitals aware of the potential for liability arising from participating in the PA Hospital Demonstration Project, and to provide advice on the ways and means by which to minimize the potential for liability.

PAs are unregulated health providers who perform clinical work including delegated controlled acts assigned by a supervising physician ultimately responsible for patient care. They are both an agent of the physician who supervises them and the hospital that employs them. There is a need to ensure adequate comprehensive general liability and professional liability coverage for the protection of all parties and, in particular, of the patients being served. The Compensation and Liability Task Force of the Physician Assistant Implementation Steering Committee has worked with applicable carriers to understand the liability coverage available for this demonstration.

This chapter provides an overview of the liability coverage relevant to the PA Demonstration Project, and available through existing carriers. Please note that this document does not constitute nor is it a substitute for legal, accounting or other professional advice. Participating hospitals and individuals who intend to take, or refrain from taking, any action based on information contained herein should first consult with their qualified legal counsel or appropriate regulatory authorities.

3.2 *Hospital Insurance*

All employers in the Ontario Physician Assistant project must have adequate comprehensive liability insurance in place for employed PAs, as it does for all its employees. This includes Physician Assistants from the IMG-stream who are hospital employees during the Physician Assistant Integration Program (including the didactic phase in the CEHPEA classrooms and the on-site clinical phase).

The Ministry's minimum requirements for hospital Comprehensive General Liability Insurance are set out in article 14 of the Service Agreement. The inclusive limit should be at minimum two million dollars (\$2,000,000) per occurrence for property damage, bodily injury and personal injury. The Province needs to be included in the policy as an additional insured.

As the healthcare liability insurance provider for many of the hospitals participating in the demonstration project, The Healthcare Insurance Reciprocal

of Canada (HIROC) was contacted to confirm that their general liability coverage would extend to employed PAs. In response, HIROC confirmed that:

“All employees of HIROC subscribers are covered by HIROC. Therefore any PA, or individual working in a PA-like clinical role, who is an employee of a HIROC subscriber, will be covered by virtue of their employee status.”

(letter from HIROC dated February 7, 2007)

HIROC policy wording explicitly covers all employees of subscribers for liability arising from: bodily injury; advertising injury liability; property damage; healthcare professional liability; blood transfusion legal liability; contingent employer's liability; environmental impairment liability; and errors and omissions liability. While limits of liability vary by subscriber, the minimum coverage is \$10 million for any one occurrence with no annual aggregate and no deductible. Defence costs up to the policy limits are also included.

Upon hire of the PA, the hospital should notify their insurance carrier of the new employee. Sites should ensure their PA will be covered under their general comprehensive liability policy if not a HIROC subscriber.

3.3. *Physicians Supervising PAs*

The relationship between the PA and any supervising physician is such that negligence on the part of the PA may expose the supervising physician to liability. Hence, the need to ensure that all physicians participating in the demonstration project are registered with the College of Physicians and Surgeons of Ontario and have professional liability insurance coverage.

The Compensation and Liability Task Force of the Physician Assistant Implementation Steering Committee requires supervising physicians in the project to hold Canadian Medical Protective Association or equivalent liability coverage. No additional liability insurance is required for the physician to supervise a PA.

The Canadian Medical Protective Association (CMPA) has indicated that it will consider clinical work a physician performs as part of supervising PAs the same as any other clinical activity and consider providing assistance in the same manner.

Project guidelines are available to assist physicians with supervision of the PA including delegating controlled acts to the PA according to the CPSO's policy on delegation. These guidelines should be followed to minimize any potential liability risk.

3.4 Individual Physician Assistants

PAs employed by hospitals are not required to obtain their own professional liability insurance because the hospital must have adequate comprehensive liability insurance for all employees, including PAs.

However, Canadian certified PAs have the option of accessing liability coverage from the insurer coordinated by their national professional association, the Canadian Association of Physician Assistants (CAPA), should they wish to do so.