

The College of Nurses of Ontario's Professional Liability Protection Requirement

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Overview

- What is Professional Liability Protection (PLP)?
- Why do nurses need PLP?
- How can nurses get PLP?
- Benefits of PLP through RNAO (as an automatic benefit of membership)
- Case examples

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PROFESSIONAL LIABILITY PROTECTION (PLP)

What is it?

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PROFESSIONAL LIABILITY PROTECTION (PLP): What is it?

- PLP helps protect nurses from bearing the full cost of defending against a negligence claim made by an individual(s) and damages awarded in a civil lawsuit
- The coverage focuses on alleged failure to perform on the part of, financial loss caused by, and error or omission in the service of the policyholder (nurse)
- PLP provides financial compensation to members of the public who have been harmed as a result of malpractice or negligence by a professional

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PROFESSIONAL LIABILITY PROTECTION (PLP)

Why do nurses need it?

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COLLEGE OF NURSES OF ONTARIO'S PLP REQUIREMENT

- College of Nurse of Ontario (CNO) requirement for all nurses to have PLP to take effect on March 31, 2014
- CNO may request proof of adequate PLP protection at any time on/after March 31, 2014
 - Confirmation of membership in nursing association, letter from an employer, certificate of insurance from a private insurer, etc.
- Nurses in Non-Practising Class not required to have PLP

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CNO's PLP REQUIREMENT

- CNO By-law sets out requirement for PLP for its General, Extended, Temporary, Emergency Assignment and Special Assignment class members:

44.4.01

Every member holding a certificate of registration in the General, Extended, Temporary, Emergency Assignment or Special Assignment class shall maintain professional liability protection to indemnify the member for all errors and omissions that may occur while practising nursing in Ontario.

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CNO's PLP REQUIREMENT

- Requirement the result of directive issued by the Minister of Health and Long-Term Care to the CNO subsequent to legislative amendments to the *Regulated Health Professionals Act* :

13.1(1) *No member of a College in Ontario shall engage in the practice of the health profession unless he or she is personally insured against professional liability under a professional liability insurance policy or belongs to a specified association that provides the member with personal protection against professional liability.*

13.1(2) *A member mentioned in subsection (1) shall comply with the requirements respecting professional liability insurance or protection against professional liability specified by the College and prescribed in the regulations made under the health profession Act governing the member's health profession or set out in the by-laws.*

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CNO's PLP REQUIREMENT

- Non-compliance with duty to have adequate PLP in accordance with CNO by-law constitutes an act of professional misconduct under the *Regulated Health Professions Act*:

13.1(3)a panel of the Discipline Committee shall find that a member has committed an act of professional misconduct if the member fails to comply [with the PLP requirement under this Act]

- Starting with 2015 renewal, CNO to require nurses in General, Extended, Temporary, Emergency Assignment and Special Assignment classes to declare that they understand their obligation to maintain PLP in accordance with by-laws as a condition of CNO membership

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PROFESSIONAL LIABILITY PROTECTION (PLP)

How can nurses get it?

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CNO by-law sets out three options for satisfying the PLP requirement:

1) Through a provincial or national nursing association

44.4.02 (ii) *By virtue of membership or other relationship with a Canadian or Provincial nursing association that provides protection for professional liability as a benefit of that membership...*

2) By purchasing your own PLP from an insurance provider

44.4.02 (i) *A policy of insurance in which the member is specifically named as an insured*

3) Through your employer

44.4.02 (iii) *A policy of insurance obtained by an employer of the member which provides professional liability protection for the member*

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HOW CAN I GET PLP TO SATISFY THE CNO BY-LAW REQUIREMENT ?

1) Membership in a Provincial or National Nursing Association

- All RNAO members are eligible for assistance from the Canadian Nurses Protective Society (CNPS) as *automatic benefit* of RNAO membership at *no additional cost*
- ***Assistance available to RNAO members from the CNPS satisfies the CNO's PLP requirement***
- Protection is not limited to any nursing practice settings
- Protection extends to all professional liability claims arising from any nursing service provided in any practice setting anywhere in Canada
 - unpaid/volunteer work, contract position, care provided to a stranger in a emergency situation, etc.

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***If you are a member of RNAO you have
satisfied CNO's PLP requirement!***

CNPS protection available to RNAO members
exceeds that which is required by the CNO

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CNPS protection available to RNAO members exceeds the CNO's PLP requirements:

44.4.03 *Any professional liability protection shall provide:*

- (i) *In the case of a member holding a certificate of registration, other than an Extended class certificate of registration, a minimum of \$1,000,000.00 per claim, occurrence or loss and if the policy has an annual aggregate limit, the annual aggregate limit shall not be less than \$2,000,000.00.*

RNAO members holding an RN registration with the CNO are eligible for CNPS assistance of up to \$10,000,000.00 per claim to a maximum of \$10,000,000.00 per year

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CNPS protection available to RNAO members exceeds the CNO's PLP requirements:

44.4.03 Any professional liability protection shall provide:

- (ii) *In the case of a member holding an Extended class certificate of registration, a minimum of \$5,000,000.00 per claim, occurrence or loss and if the policy has an annual aggregate limit, the annual aggregate limit shall not be less than \$5,000,000.00*

RNAO members holding an Extended Class registration with the CNO are eligible for CNPS assistance of up to \$10,000,000.00 per claim to a maximum of \$10,000,000.00 per year

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CNPS protection available to RNAO members exceeds the CNO's PLP requirements:

44.4.03 *Any professional liability protection shall provide:*

(iii) *In the case of a “claims made” policy (i.e. one which requires the claim to have occurred during the policy period), a form of protection which includes an extended reporting period of at least two years*

CNPS liability protection is occurrence-based and extends to claims arising from incidents that occur while the protection is in place, regardless of when the claim is filed.

As long as the nurse was an RNAO member and duly authorized to practice nursing where and when the incident occurred, the nurse will be eligible for assistance from CNPS regardless of when the claim is made, even after retirement.

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CNPS protection available to RNAO members exceeds the CNO's PLP requirements:

44.4.03 Any professional liability protection shall provide:

(iv) In the case of a policy which requires the member to pay a deductible, a deductible not exceeding \$1,000.00

CNPS protection for RNAO members does not have a deductible

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CNPS protection available to RNAO members exceeds the CNO's PLP requirements:

- CNO by-law sets out minimum professional liability protection amounts
- Cases where damages awarded to claimants in court cases have been in excess of minimum coverage amounts required by the CNO by-law
- CNPS protection amounts for RNAO members have been adjusted over time based on court decisions, thereby providing RNAO members with enhanced protection

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Extra benefits of CNPS liability protection for RNAO members

- Employer or union PLP may not apply to all types of allegations, for example, breach of confidentiality. RNAO members are eligible for PLP and also a range of other legal services from CNPS, including assistance with criminal prosecutions.
- RNAO members may call CNPS for confidential information about professional obligations and professional liability issues of concern to them.

For further information visit www.cnps.ca or call 1-800-267-3390

Assistance through CNPS is subject to program policies, bylaws and eligibility requirements.

Nurses must have been members of RNAO at the time of the incident(s) giving rise to the need for assistance.

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For more detailed information visit: www.cnps.ca

HOW CAN I GET PLP TO SATISFY THE CNO BY-LAW REQUIREMENT ?

2) By purchasing your own professional liability protection from an insurance provider

- Premiums for a non-group policy range from \$1,500.00 to \$5,000.00 or more depending on the level of complexity of one's nursing practice
- RNAO membership with CNPS protection as automatic benefit of membership is only \$308/year
- RNAO members benefit from full range of CNPS legal services not provided through most commercial insurance policies

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HOW CAN I GET PLP TO SATISFY THE CNO BY-LAW REQUIREMENT ?

3) Through a policy of insurance obtained by an employer of the nurse which provides professional liability protection for their employees

- Employer's insurance may not necessarily provide individual protection for its employees
- Even when it does, employer's /union's insurance does not typically provide protection for incidents which occur outside of the nurse's workplace/scope of employment
 - Ex. lawsuit related to care provided at a part-time job, volunteer position or in an emergency situation outside the workplace

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PLP through employer's policy of insurance

- *Good Samaritan Act* may apply to some of these circumstances but does not protect nurses from being sued; not all forms of negligence exempt from *Good Samaritan Act*
- CNO by-law requires that nurses maintain PLP to indemnify them for “*all errors and omissions that may occur while practising nursing in Ontario*”
- Nurses need to be confident that they have PLP coverage for all of their nursing practice and will need to obtain any additional coverage to address any gaps

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PLP through employer's policy of insurance

Questions to ask your employer to confirm coverage fulfills
CNO requirement (per CNPS):

- A) Will policy respond to all claims against you?
- B) Are you referred to in the policy?
- C) What is the amount of coverage available? It is individual or aggregate?
- D) Is the policy occurrence-based or claims-made?
- E) Can you get a copy of the policy in writing?

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PLP through employer's policy of insurance: RNAO's August 2013 submission to CNO in response to proposed by-law amendment concerning PLP

- By-law provision enables nurses to rely on employer's liability insurance policy through principle of vicarious liability
- Inherent conflict of interest that exists within this principle; interests of the health-care organization are the interests of the health-care organization and do not necessarily reflect those of the public or the nurse
- Personally holding PLP supports the nurse to be fully transparent without the uncertainty of whether open communication in a patient's interest would impact negatively on their liability protection; relying on employer's insurance coverage may limit a nurse's ability to speak out, while maintaining "whistle-blower" protection

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PLP through employer's policy of insurance: RNAO's August 2013 submission to CNO in response to proposed by-law amendment concerning PLP

- Professionals can be liable jointly and severally for damages awarded in a civil lawsuit; claimant may recover full compensation from any one of the negligent professionals, even though one professional may then be paying for more than their share of the damages
- Nurses who do not hold their own PLP may not be able to adequately compensate a victim of negligence
- No means in place for nurses to verify that employers have an appropriate policy of insurance (ie – satisfies CNO by-law requirements) and/or a policy of insurance with sufficient coverage to adequately compensate a victim of negligence

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In summary....

- Nurses are required by the CNO to have PLP for all nursing practice, effective March 31, 2014
- Nurses are accountable for ensuring they hold PLP for all their nursing practice that meets the requirements set out in the by-law
- PLP available to RNAO members through CNPS as an *automatic benefit of membership at no additional cost* satisfies the CNO requirement
- **If you are an RNAO member, you have satisfied the CNO's PLP requirement!**

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In summary....

- CNPS liability protection amounts exceed minimum amounts required by the CNO, taking into account trends in court decisions, thereby providing RNAO members with enhanced protection
- Unlike PLP through an employer or union, ***CNPS protection for RNAO members covers all nursing practice settings anywhere in Canada***, including unpaid/volunteer work , contract work, helping a neighbour or friend in need, or a stranger in an emergency situation
- CNPS liability protection is affordable, portable and completely independent of any employer

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Case Scenarios: PLP or LAP?

Assistance from the Canadian Nurses Protective Society (CNPS) and RNAO's Legal Assistance Program (LAP) is subject to program policies, bylaws and eligibility requirements.

Nurses must have been members of RNAO at the time of the incident(s) giving rise to the need for assistance. In the case of LAP, a member must have been enrolled in LAP at the time of the incident(s) and remain a participant continuously and without interruption from that time, up until their case is resolved.

Visit www.cnps.ca and www.rnao.ca/lap for complete details

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Case Scenarios: PLP or LAP?

The daughter of a 70 year-old former patient in your facility who passed away felt that if you had been more attentive, her mother would still be alive. The daughter is suing alleging negligence.

PLP

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Case Scenarios: PLP or LAP?

On your way home from work, you witness a car a short distance ahead of you spin out of control and land in a ditch. As an experienced nurse, you feel a moral and ethical obligation to help anyone who might be injured. Unfortunately, despite your best efforts, you are not able to save the badly injured driver and he succumbs to his injuries. A year later, the late driver's wife, who was a passenger in the vehicle, initiates a lawsuit. She has also made a complaint to the CNO alleging that your conduct and the assistance you provided as a nurse was deficient. You do not have the support of your employer or union because the incident did not happen in your workplace.

Lawsuit → PLP

CNO complaint → LAP

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Case Scenarios: PLP or LAP?

You receive notice of a lawsuit and CNO complaint made against you by a patient you treated almost two years ago in your former place of employment. Although you currently have the support of a union, they are unable to assist you as the incidents happened in your former, non-unionized workplace.

Lawsuit → PLP

CNO complaint → LAP

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For further information...

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