

**From:** [Butler, Janice HLTH:EX](#)  
**To:** [Anderson, Kristy HLTH:EX](#)  
**Cc:** [Cairns, Leann HLTH:EX](#); [Smith, Leah M HLTH:EX](#)  
**Subject:** CMPA and availability of coverage for physicians  
**Date:** July 12, 2022 9:09:46 PM  
**Attachments:** [CMPA LTR to BC Government re Treating non-residents seeking abortions in Canada.pdf](#)  
**Importance:** High

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Hi Kristy ... As very briefly mentioned end of day yesterday, CMPA has now reached out to provincial Ministers of Health directly (attached) and HPHS has been tagged with response to the request from IGR. As discussed, I offered to provide some additional information that might assist in determining where "lead" on this file should live.

In addition to the notes provided in the initial email below, the CMPA letter to the BC government includes additional information not contained in the open letter to federal ministers:

- *The CMPA views the inappropriate signing or co-signing of Internet or cross-border prescriptions for persons with whom they have no prior recognized doctor-patient relationship as outside the professional practice of medicine in Canada. As a result, the CMPA will generally not extend assistance to a CMPA member for any medico-legal activity (whether inside or outside Canada) arising from this activity.*
- It is not immediately clear whether this is a shift in position or response to the issue at hand.
- CMPA is advocating that:
  - *The scope of the issue is larger than the CMPA can address on its own. It is necessary for governments to address the need for liability protection for criminal matters and civil actions brought in the U.S. against physicians providing abortion services in Canada to U.S. patients. We have sent a letter to the Minister of Health, the Honourable Jean-Yves Duclos, requesting the federal government to work with provincial and territorial governments to address this concern.*
- CMPA has recognized the need for the federal government to work with provincial and territorial governments to address the issue. CMPA itself is a national organization and would benefit from a consistent approach across the provinces and territories, ideally led at the federal level.
- A national approach would also assist in ensuring that no single province becomes a "magnet" for abortion access for non-residents.

The ability for the province to consider liability protection for criminal matters and civil actions is largely based on the issues of:

- availability of reasonable liability coverage through private markets or enhanced coverage through CMPA; and / or
- potential indemnification of involved practitioners.
- The potential options are best identified / managed in concert with the Risk Management Branch (RMB), Ministry of Finance.
  - RMB currently administers a "self-insurance" program for Health Authorities (and other specified entities) which was developed in response to the liability insurance crisis of the 1980s in which market capacity was withdrawn and premiums for remaining coverage were substantially increased. The Health Care Protection Program (HCPP) is funded by the MOH based on an annual actuarial analysis that looks at claims reported,

- claims paid and future claims potentially unreported but anticipated.
- Under the *Financial Administration Act* (FAA), the province established special account status of the notional funds to pay for claims under HCPP through the Insurance and Risk Management Account (IRMA). Special Account status essentially allows IRMA to carry funds forward on a year-to-year basis and build a “pool” of funds to pay for current and future losses. For details, refer to the [Ministry of Finance’s Internal Audit Report on IRMA](#).
- HCPP does not provide coverage to independent physicians but would respond to claims generally (subject to policy wordings) against a health authority as well as employed physicians and nurse practitioners.
- Outside of HCPP, should the province wish to consider opportunities for indemnification or guarantee, the [Indemnities and Guarantees Regulation](#) under the FAA establishes approval requirements for any indemnification or guarantee to be granted by government or a defined government corporation. Pre-approval is required by either the Minister of Finance, the Deputy Minister of Finance, or the Executive Director of the RMB. In practice, approvals are generally managed through RMB.
- The Ministry’s relationship and interaction with RMB and HCPP currently resides with Finance and Corporate Services.
- s.13

- Engagement with HSWBS to date indicates little to no Ministry involvement with CMPA.

Happy to discuss further but in general, assuming there is desire to support non-residents in accessing abortion services within Canada, my recommendation is that Finance is best positioned to take the lead (with various program areas) in determining options to support.

Jan

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**From:** Butler, Janice HLTH:EX  
**Sent:** July 7, 2022 9:48 AM  
**To:** Anderson, Kristy HLTH:EX <Kristy.Anderson@gov.bc.ca>  
**Cc:** Cairns, Leann HLTH:EX <Leann.Cairns@gov.bc.ca>  
**Subject:** RE: HSWBS1-1\_Topics\_July 7

As discussed, for your conversation with Mark ...

- Abortion services can be accessed by out-of country non-BC residents on both an emergent and non-emergent basis
- Abortion services can be both surgical (provided by physicians) and medical (available both in-person and through telehealth by both physicians and nurse practitioners)
- The availability of comprehensive liability insurance for practitioners has been identified as an issue

- The Canadian Medical Protective Association (CMPA) has published a position on the provision of abortion services to non-resident patients
- Of specific importance, CMPA will respond with medico-legal assistance for issues arising out of abortion services *provided the legal action is brought within Canada* and provided the service has not been directly or indirectly solicited
- They will generally decline to provide assistance if the legal action is commenced outside of Canada (this is consistent with their current practice)
- Given this, and given the uncertain legal climate in the US where some states are considering legislation to potentially allow for criminal charges and civil legal actions to be brought against health providers who provide abortions to residents out of the state (even where the care is delivered out of the state), CMPA is advising its members who are considering providing abortion services to US citizens to consider the need for additional liability coverage and noting the risk of potential criminal charges / actions in the US.
- CMPA has written an open letter to the federal ministers of Health and Families, Children and Social Development advocating for federal support for medico-legal issues arising out of the provision of abortions to non-Canadian residents
- It is anticipated a similar issue exists for Nurse Practitioners although the Canadian Nurses Protective Association (CNPS) has not, to this point, published any guidance. (The NPS is reaching out.)

Additional BC context:

- NPs are required to purchase protective coverage through CNPS as part of their nursing registration
- As employees of Health Authorities, NPs are provided with liability coverage under the Health Care Protection Program (HCPP) which is considered primary
- HCPP coverage does not contain a jurisdictional exclusion, however, unlike both CMPA and CNPS which are mutual protection schemes with no insurance policy attached, HCPP does have a coverage wording and there are other exclusions including criminal activities
- HCPP is a MOH funded self-insurance scheme which means there is more flexibility / ability to control which risks the program retains
- While there may be value in the flexibility, it may also be important to ensure the issues of liability protection are managed federally to avoid making one province a “magnet” over another

Eric Bringsli is acting for Kevin Brown and is aware of the issue generally although I am advised the Division has typically no engagement with CMPA. Eric Gauf in IGR is now aware and was looking yesterday to determine how to bring the matter forward to a federal table. I’ve looped Shana Ooms in this morning and will send her a copy of the above info just so she has a broad awareness. I have also connected with Sharon White at HCPP who is aware of the matter. HCPP’s usual contact point with MOH is through their ED and historically the ADM in FCS.

Let me know if you need anything else from me.

Thanks

Jan

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**From:** Anderson, Kristy HLTH:EX <[Kristy.Anderson@gov.bc.ca](mailto:Kristy.Anderson@gov.bc.ca)>  
**Sent:** July 7, 2022 7:47 AM  
**To:** Butler, Janice HLTH:EX <[Janice.Butler@gov.bc.ca](mailto:Janice.Butler@gov.bc.ca)>; Parte, Maura HLTH:EX <[Maura.Parte@gov.bc.ca](mailto:Maura.Parte@gov.bc.ca)>; Gudaitis, Paul HLTH:EX <[Paul.Gudaitis@gov.bc.ca](mailto:Paul.Gudaitis@gov.bc.ca)>  
**Cc:** West, Jenna HLTH:EX <[Jenna.West@gov.bc.ca](mailto:Jenna.West@gov.bc.ca)>; Mumblo, Melissa HLTH:EX <[Melissa.Mumblo@gov.bc.ca](mailto:Melissa.Mumblo@gov.bc.ca)>; Nisbet, Corinna HLTH:EX <[Corinna.Nisbet@gov.bc.ca](mailto:Corinna.Nisbet@gov.bc.ca)>  
**Subject:** RE: HSWBS1-1\_Topics\_July 7

Not until 11:30 – loads of time.  
s.22

Cheers,

**Kristy Anderson**

a/ADM, Ministry of Health  
(250) 952-3387 (desk)  
(250) 920-6324 (mobile)  
[Kristy.Anderson@gov.bc.ca](mailto:Kristy.Anderson@gov.bc.ca)

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**From:** Butler, Janice HLTH:EX <[Janice.Butler@gov.bc.ca](mailto:Janice.Butler@gov.bc.ca)>  
**Sent:** July 7, 2022 7:45 AM  
**To:** Anderson, Kristy HLTH:EX <[Kristy.Anderson@gov.bc.ca](mailto:Kristy.Anderson@gov.bc.ca)>; Parte, Maura HLTH:EX <[Maura.Parte@gov.bc.ca](mailto:Maura.Parte@gov.bc.ca)>; Gudaitis, Paul HLTH:EX <[Paul.Gudaitis@gov.bc.ca](mailto:Paul.Gudaitis@gov.bc.ca)>  
**Cc:** West, Jenna HLTH:EX <[Jenna.West@gov.bc.ca](mailto:Jenna.West@gov.bc.ca)>; Mumblo, Melissa HLTH:EX <[Melissa.Mumblo@gov.bc.ca](mailto:Melissa.Mumblo@gov.bc.ca)>; Nisbet, Corinna HLTH:EX <[Corinna.Nisbet@gov.bc.ca](mailto:Corinna.Nisbet@gov.bc.ca)>  
**Subject:** Re: HSWBS1-1\_Topics\_July 7

Sure, what time is your meeting? I am just heading in to the office

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**From:** Anderson, Kristy HLTH:EX <[Kristy.Anderson@gov.bc.ca](mailto:Kristy.Anderson@gov.bc.ca)>  
**Sent:** Thursday, July 7, 2022 7:40:28 AM  
**To:** Butler, Janice HLTH:EX <[Janice.Butler@gov.bc.ca](mailto:Janice.Butler@gov.bc.ca)>; Parte, Maura HLTH:EX <[Maura.Parte@gov.bc.ca](mailto:Maura.Parte@gov.bc.ca)>; Gudaitis, Paul HLTH:EX <[Paul.Gudaitis@gov.bc.ca](mailto:Paul.Gudaitis@gov.bc.ca)>  
**Cc:** West, Jenna HLTH:EX <[Jenna.West@gov.bc.ca](mailto:Jenna.West@gov.bc.ca)>; Mumblo, Melissa HLTH:EX <[Melissa.Mumblo@gov.bc.ca](mailto:Melissa.Mumblo@gov.bc.ca)>; Nisbet, Corinna HLTH:EX <[Corinna.Nisbet@gov.bc.ca](mailto:Corinna.Nisbet@gov.bc.ca)>  
**Subject:** RE: HSWBS1-1\_Topics\_July 7

I can take it to Mark – it probably spans a few areas – can you draft a quick summary for me.

Thx

**Kristy Anderson**

a/ADM, Ministry of Health  
(250) 952-3387 (desk)  
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[Kristy.Anderson@gov.bc.ca](mailto:Kristy.Anderson@gov.bc.ca)

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**From:** Butler, Janice HLTH:EX <[Janice.Butler@gov.bc.ca](mailto:Janice.Butler@gov.bc.ca)>

**Sent:** July 7, 2022 7:27 AM

**To:** Anderson, Kristy HLTH:EX <[Kristy.Anderson@gov.bc.ca](mailto:Kristy.Anderson@gov.bc.ca)>; Parte, Maura HLTH:EX <[Maura.Parte@gov.bc.ca](mailto:Maura.Parte@gov.bc.ca)>; Gudaitis, Paul HLTH:EX <[Paul.Gudaitis@gov.bc.ca](mailto:Paul.Gudaitis@gov.bc.ca)>

**Cc:** West, Jenna HLTH:EX <[Jenna.West@gov.bc.ca](mailto:Jenna.West@gov.bc.ca)>; Mumblo, Melissa HLTH:EX <[Melissa.Mumblo@gov.bc.ca](mailto:Melissa.Mumblo@gov.bc.ca)>; Nisbet, Corinna HLTH:EX <[Corinna.Nisbet@gov.bc.ca](mailto:Corinna.Nisbet@gov.bc.ca)>

**Subject:** Re: HSWBS1-1\_Topics\_July 7

Hi Kristy! US Citizens and Abortion Access - Lack of full liability coverage for physicians, and possibly NPs; potential criminal charges. Is that a Mark issue, a Jonathan issue or an IGR issue? (Or all of the above). I probably have the broadest awareness of the insurance issues but I don't think we are lead on this.

Thanks  
Jan

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**From:** Anderson, Kristy HLTH:EX <[Kristy.Anderson@gov.bc.ca](mailto:Kristy.Anderson@gov.bc.ca)>

**Sent:** Thursday, July 7, 2022 6:46:51 AM

**To:** Parte, Maura HLTH:EX <[Maura.Parte@gov.bc.ca](mailto:Maura.Parte@gov.bc.ca)>; Gudaitis, Paul HLTH:EX <[Paul.Gudaitis@gov.bc.ca](mailto:Paul.Gudaitis@gov.bc.ca)>; Butler, Janice HLTH:EX <[Janice.Butler@gov.bc.ca](mailto:Janice.Butler@gov.bc.ca)>

**Cc:** West, Jenna HLTH:EX <[Jenna.West@gov.bc.ca](mailto:Jenna.West@gov.bc.ca)>; Mumblo, Melissa HLTH:EX <[Melissa.Mumblo@gov.bc.ca](mailto:Melissa.Mumblo@gov.bc.ca)>; Nisbet, Corinna HLTH:EX <[Corinna.Nisbet@gov.bc.ca](mailto:Corinna.Nisbet@gov.bc.ca)>

**Subject:** HSWBS1-1\_Topics\_July 7

Hi all – attached is my draft agenda for my 1:1 with Mark today – is there anything you would like to add?

AAs? Or ...

Cheers,

July 7, 2022

Via email: [HLTH.Minister@gov.bc.ca](mailto:HLTH.Minister@gov.bc.ca)

The Honourable Adrian Dix  
Minister of Health  
Government of British Columbia  
1515 Blanshard Street  
Victoria, BC V8W 9P1

Dear Minister Dix:

**Re: CMPA Extent of Assistance for Abortions Provided to Non-Resident Patients**

The Canadian Medical Protective Association ("CMPA") recognizes the significance of the recent U.S. Supreme Court decision overturning the *Roe v. Wade* decision that established the right to an abortion. Several American states have taken or will soon take steps to restrict abortion access. The CMPA is aware of the very real possibility that American patients may wish to come to Canada for abortion care. We've heard from physicians and others who are interested in the medico-legal implications of physicians in Canada providing abortion services to patients who are not residents of Canada. We are reaching out to share the CMPA's approach to liability protection in these circumstances and to identify a gap for Canadian physicians seeking to provide services to non-resident patients.

**Nature of CMPA Assistance**

As you may know, the CMPA provides medico-legal assistance and liability protection to more than 105,000 physicians in Canada. Physician members are typically eligible for CMPA assistance in the event of medico-legal difficulties arising **in Canada** as a result of professional work done **in Canada**. The CMPA is not, however, structured to assist with medico-legal problems and legal actions that arise **outside of Canada**.

*Matters brought in Canada*

Consistent with the CMPA's *Principles of Assistance for Treating Non-Residents of Canada*, the Association **will** generally extend assistance to a member who provides abortion care to a non-resident patient and is subject to a matter brought **in Canada** (*i.e.* through the courts, licensing bodies, or other administrative tribunals of a Canadian province or territory) arising from care provided to the non-resident patient in Canada.



The Canadian Medical Protective Association  
L'Association canadienne de protection médicale

Where a physician is providing care to a non-resident patient, the CMPA expects the physician to make reasonable efforts in the circumstances to ensure the CMPA's Governing Law and Jurisdiction Agreement is completed before treatment is provided. The Agreement assists in ensuring that legal actions against the physician will be brought in Canada, where CMPA assistance is generally available.

#### *Matters brought outside of Canada*

In accordance with its *Principles of Assistance for Treating Non-Residents of Canada*, where a matter is brought **outside of Canada** (*i.e.* through the courts, licensing bodies, or other administrative bodies of a foreign jurisdiction such as the U.S.) against a member in relation to care provided to a non-resident patient in Canada, the CMPA will generally **decline** to extend assistance.

In some circumstances, the CMPA may exercise its discretion to assist a member with a legal action brought outside of Canada. Such an instance may occur if the care is considered emergent or urgent such as treating a non-resident visitor to Canada who unexpectedly develops medical problems. In these cases, the CMPA may provide discretionary assistance to attempt to have the legal matter transferred to Canada to be heard by a Canadian court or tribunal.

The CMPA will not generally consider extending assistance for legal proceedings commenced outside Canada when a member has, directly or indirectly, solicited, actively undertaken, or offered to undertake the treatment of a non-resident patient. For example, if a member solicits or encourages the creation of a doctor-patient relationship with patients from another country, the member will not generally be eligible for CMPA assistance if sued outside Canada.

#### *Matters brought in or outside Canada*

When a member physician provides virtual care to a patient outside of Canada (even if the physician is in Canada), the CMPA will not generally assist with medico-legal matters brought in Canada or in another country.

The CMPA views the inappropriate signing or co-signing of Internet or cross-border prescriptions for persons with whom they have no prior recognized doctor-patient relationship as outside the professional practice of medicine in Canada. As a result, the CMPA will generally not extend assistance to a CMPA member for any medico-legal activity (whether inside or outside Canada) arising from this activity.

The CMPA is aware that some American states are contemplating legislation that would potentially allow for criminal charges and civil legal actions to be brought against health care providers who provide abortions to residents out of the state (even where the care is delivered outside of the state). In light of the CMPA's principles of assistance and the potential to become engaged in legal proceedings in the U.S., CMPA members providing abortion services to non-residents of Canada are being encouraged to seek out alternate liability protection for medico-legal matters arising in the U.S. from the delivery of abortions in Canada.

The CMPA is doing everything it can to support physicians who wish to provide abortion services to U.S. patients. However, the scope of the issue is larger than the CMPA can address on its own. It is necessary for governments to address the need for liability protection for criminal matters and civil actions brought in the U.S. against physicians providing abortion services in Canada to U.S. patients. We have sent a letter to the Minister of Health, the Honourable Jean-Yves Duclos, requesting the federal government to work with provincial and territorial governments to address this concern.

If there is any further information the CMPA can provide with respect to these issues, I would be pleased to speak with you.

Sincerely,

A handwritten signature in black ink, appearing to read "Lisa Calder". The signature is fluid and cursive, with the first name "Lisa" and last name "Calder" clearly distinguishable.

Lisa Calder, MD, MSc, FRCPC  
Chief Executive Officer

cc. Dr. M. Cohen, President, CMPA  
Ms. S. White, Director, BC Risk Management