

# INDEPENDENT PRACTICE

## CNPS CHECKLIST



### Are you contemplating providing nursing services as an independent practitioner?

The CNPS does not provide business advice. However, this resource highlights a number of risk-management considerations when deciding whether to engage in independent practice, whether as an individual practitioner, a professional corporation or other business entity. You may wish to discuss them further with your personal business advisor. These considerations are not specific to any nursing practice.

If you are considering providing virtual care as an independent practitioner, we invite you to also review [Twelve Things to Consider Before Joining a Virtual Care Practice](#).

If you are considering providing cosmetic services as an independent practitioner, we invite you to also review [Ask a lawyer: Providing cosmetic services](#).

### TABLE OF CONTENTS

1. SERVICES .....	2
2. BUSINESS LEGAL STRUCTURE .....	3
3. INFRASTRUCTURE .....	3
4. PLANNING FOR INCLUSIVITY AND CULTURAL SAFETY .....	4
5. JURISDICTIONAL CONSIDERATIONS .....	5
6. INFORMED CONSENT/DISCHARGE .....	5
7. DOCUMENTATION AND INFORMATION MANAGEMENT .....	6
8. FEES AND PAYMENT FOR PROFESSIONAL SERVICES .....	7
9. SALE OF PRODUCTS AND OTHER POTENTIAL CONFLICTS OF INTERESTS .....	7
10. ADVERTISEMENT AND PROMOTION .....	7
11. CONTRACTS   PROFESSIONAL SERVICES AGREEMENTS .....	8
12. FINANCIAL AND TAX CONSIDERATIONS .....	8
13. THE NURSE AS AN EMPLOYER .....	9
14. INDIVIDUAL PROFESSIONAL LIABILITY PROTECTION .....	9
15. BUSINESS INSURANCE .....	11

### IMPORTANT NOTICE

This guide is not intended to replace professional advice from a business, legal and/or financial advisor. Health care is a complex and highly regulated field of practice.

#### We strongly recommend:

- reviewing any standard or guideline issued by your nursing regulatory body with respect to independent practice, which include requirements and expectations regarding several of the aspects listed below; and
- obtaining advice from a legal and financial advisor to appropriately structure your business and ensure that it meets all the applicable legal and regulatory requirements.

#### Do you have additional questions?

To speak to a CNPS Legal Advisor, please call us at 1-800-267-3900 or contact us via our website at [cnps.ca/contact-us/](https://cnps.ca/contact-us/)

# 1. SERVICES

## 1.1. What services do you intend to provide?

## 1.2. Does your nursing regulator have a process for approval of your self-employed nursing practice? Are all the services that you propose to offer considered to fall within the scope of nursing services?

Your nursing regulatory body is the best authority as to whether the services that you propose to offer constitute nursing services. If some services do not fall within the scope of nursing services, they may not count as nursing hours. In addition, CNPS professional liability protection may not extend to these services. You may require an additional source of liability protection.

## 1.3. Do these services fall within your scope of personal competence?

- Do you have personal experience and education in the conditions that these professional services are intended to treat?
- Do you have the necessary training in the techniques that you will be using?
- Would you be able to recognize complications, and do you have a reasonable plan to respond to them in a timely manner should they arise?

## 1.4. Can all the nursing services be provided autonomously or do they require an assessment and/or order by an authorized prescriber (MD or NP)?

- If so, is there a documented arrangement between the nurse administering the treatment and the authorized prescriber with respect to their respective roles in the provision of care?
- Have you ascertained with your regulatory body whether an order must be issued individually for each patient or if it can be issued as a directive and applied to several patients/clients?
- Is the authorized prescriber available and able to address complications following the administration of the prescription?
- Is there adequate documentation of the assessments, orders and treatment?
- Will the authorized prescriber and the nurse providing the treatment each have access to the complete records so that the necessary information is available to both as required?
- Is the authorized prescriber available and able to address complications following the administration of the prescription?
- Will the patient/client be informed that their personal information will be made available to the authorized prescriber and the nurse providing the treatment?

## 1.5. Will you be the patient/client's primary care provider? If so, is there a need to provide instructions to your patients/clients so that they will know where to seek care if you are unavailable in the event of an emergency?

1.6. Are you expecting that you may have to consult with another health care provider or refer patients for more specialized care? Have you considered what these consultation/referral channels would be? Is there any need to make these arrangements in advance?

## 2. BUSINESS LEGAL STRUCTURE

2.1. Have you consulted a legal or business advisor to determine if you will structure your independent practice as:

- a sole proprietorship;
- a business entity, such as a professional corporation (within the meaning of the governing nursing or health professions legislation), a corporation, a partnership or limited partnership?

2.2. Legislation governing nursing or health professions, more generally, often contains specific requirements applicable to professional corporations or professional limited partnerships. Are you aware of those requirements? Have you discussed them with your legal/business/financial advisor? Is your legal/business/financial advisor expected to alert you to any changes to these requirements or are you expected to monitor changes yourself?

## 3. INFRASTRUCTURE

In this guide, “infrastructure” refers to the combination of various elements that support your ability to provide independent services. It includes, for instance:

- the physical space within which you will provide services;
- if you plan to operate virtually, the physical structure where your technological equipment will be located or where you will provide virtual services;
- appropriate storage for the medication, products and any specialized equipment that you will use;
- the medication, products and the specialized equipment;
- the computers and record-keeping software;
- your accounting system;
- the system of policies and procedures that govern the operation of your independent practice; etc.

3.1. Do you intend to set up your own infrastructure (i.e. buy or rent physical space, establish your own record-keeping system, supply your own equipment) OR will you be providing services to or via an organization (clinic, virtual care service, etc.) that will supply all the infrastructure that you will require to provide the services?

**3.2. If you intend to set up your own infrastructure, it is important to consider that some of the responsibilities that normally fall on employers/facilities will now rest with you.**

For instance:

- Is the physical space safe (for instance, is it in a good state of repair? Are sharps disposed of securely in dedicated "sharps containers"? Are there arrangements in place to maintain walkways and other external space so that clients can safely access the premises?)
- Is the physical space designed to provide the necessary privacy to your patient/client?
- Do you have a maintenance plan (if necessary) for your equipment so that it remains in good condition and appropriately calibrated if necessary? Will you own specialized equipment that may need to be maintained by specialized technicians? What reminders will you have in place to ensure that you follow the appropriate maintenance schedule? Where will you keep your maintenance records?
- Is confidential information, including patient or client records maintained in a secure location and protected from unauthorized access? See also section 7, below "Documentation and Information Management."
- Is the physical space workspace and your equipment adequately insured? See also Section 15, below "Business Insurance."

**3.3. If you intend to rely on another organization to provide the infrastructure (equipment, medications, communication tools, record-keeping system), it is important that you obtain legal advice to determine whether and how this should be documented in a professional services agreement.**

It does not fall within the scope of CNPS services to draft agreements on behalf of beneficiaries, but if you provide nursing services as an individual independent practitioner or as the sole owner and employee of a professional corporation, the CNPS could advise whether a professional services agreement contemplates the provision of services or an "infrastructure" to support your nursing practice. (The CNPS does not act as legal advisor to corporations, partnerships, and other legal entities with an independent legal status.)

See also Section 11 "Contracts/Professional Services Agreements".

## **4. PLANNING FOR INCLUSIVITY AND CULTURAL SAFETY**

### **4.1. Have you reviewed your nursing regulatory bodies' guidelines on inclusion, cultural humility, and cultural safety?**

### **4.2. Have you considered how to integrate the practice of cultural humility in your approach to the provision of nursing services?**

## 5. JURISDICTIONAL CONSIDERATIONS

**5.1. Do you intend to provide nursing services in person (i.e. while physically present with your patient/client) in more than one Canadian province or territory? If so, do you meet the licensing/registration requirements in each of those provinces and territories?**

**5.2. Do you intend to provide nursing services virtually to patients/clients physically located in a Canadian province/territory where you do not currently hold a nursing license/registration? If so, have you consulted the nursing regulatory body of each of the provinces/territories where your patients/clients will be physically located to determine if you are required to register for a practising license when providing care virtually in those provinces/territories?**

**5.3. Do you intend to provide nursing services to individuals who normally reside outside Canada?**

Providing services to individuals who normally reside outside of Canada increases the risk that if a legal proceeding arises from your care, it may be commenced outside of Canada, even if the nursing services are provided in Canada or virtually from Canada. CNPS assistance was not designed to extend outside of Canada and will not extend to legal proceedings outside of Canada, particularly if services have been advertised outside of Canada. While legal documents can provide that any legal dispute regarding your services will be resolved in the Canadian justice system, they may still need to be enforced by a court system outside of Canada. We recommend that you secure additional professional liability protection and/or insurance specifically applicable to various forms of legal proceedings commenced outside of Canada before offering services to individuals who normally reside outside of Canada.

If you intend to provide services while you are physically located outside of Canada or virtually to individuals normally residing outside of Canada, it would be important to also be well-informed about licensing/registration requirements and professional liability protection requirements in the country/state where the clients would be located.

## 6. INFORMED CONSENT/DISCHARGE

**6.1. Informed consent:** The responsibility to obtain the patient/client's informed consent generally falls upon the health care provider who determined the indications for the treatment and is providing the treatment.

- Are you aware of the benefits and risks associated with the treatment that you propose to undertake so that you may appropriately explain them to the patient/client?
- If the responsibility for conducting the assessment of the patient/client, issuing an order for the treatment and administering the treatment are shared between two health care professionals, do both professionals share the same understanding as to who will obtain the patient/client's informed consent? Is this understanding documented?
- Have you considered how you will reliably document the patient/client's informed consent?

**6.2. Informed discharge:** When releasing a patient from your care after administering a treatment (even if temporarily, until a subsequent appointment), it is advisable to provide your patient/client sufficient information to recognize the signs and symptoms of a potential complication so that they may know when and where to seek the necessary medical attention. Have you considered how to best communicate this information to your clients and how to document this process?

## 7. DOCUMENTATION AND INFORMATION MANAGEMENT

### 7.1. Will you be the custodian/trustee of personal health information?

As a health care professional in independent practice, it is likely that you will be the custodian or trustee of personal health information (“PHI”). This means that you will have legal responsibility to safeguard the PHI collected as part of your practice. The custodian or trustee of PHI is primarily responsible to ensure that the PHI is retained in a secure manner, for the period designated by law, and to limit access to individuals legally authorized to access that information. The custodian or trustee is also primarily responsible to ensure that in the operation of the independent practice, PHI is collected, used and disclosed in compliance with the requirements set out in the applicable information protection legislation.

If you are providing services to or on behalf of another organization, it is possible that the other organization will be the custodian or trustee of the PHI that you collect during the provision of nursing services.

Whether you are the custodian or trustee of PHI is based on the law that governs the management of PHI in your province or territory. We strongly recommend consulting a lawyer to obtain the answer to that important legal question and understand your legal obligations as a custodian or trustee.

If you provide nursing services as an individual independent practitioner, the CNPS can offer advice as to whether you are a custodian or trustee of PHI.

### 7.2. If you are the custodian of PHI, how should you structure your information management system to comply with your legal obligations?

Your information management system can be in paper form or in electronic form, provided that it is structured in such a way that enables you to meet your legal obligations under the applicable legislation applicable to personal information or personal health information.

Generally speaking, your information management system, supported by written policies and procedures, should enable you to:

- maintain the information in a secure environment to which you can control access;
- grant access to the information only to those legally authorized within or outside your organization to have access;
- retain personal information for the period required by law;
- comply with the applicable legal requirements regarding the collection, use and disclosure of personal information and personal health information.

In some jurisdictions, custodians are also required to submit a privacy impact assessment before engaging in the collection of personal health information.

It is not within the scope of CNPS assistance to provide detailed instructions on how to structure a personal health information system or how to prepare a privacy impact assessment, if one is required. The Office of the Privacy Commissioner in your province or territory may have published a guide for custodians regarding the management of personal health information.

However, if you provide nursing services as an individual independent practitioner or if you are personally a custodian of personal health information, you are eligible for advice from the CNPS regarding your obligation to submit a privacy impact assessment or if you have specific questions regarding the management of personal health information.

As noted above, the CNPS does not act as legal advisor to corporations, partnerships and other legal entities.

## 8. FEES AND PAYMENT FOR PROFESSIONAL SERVICES

### 8.1. Have you consulted the information made available by your nursing regulatory body regarding any fee and conditions of payment for nursing services when operating an independent practice?

The regulations that govern nursing practice in your province or territories or the standards and guidelines adopted by your nursing regulatory body may contain limitations regarding the setting of fees for services and payment modalities.

## 9. SALE OF PRODUCTS AND OTHER POTENTIAL CONFLICTS OF INTERESTS

### 9.1. Are you proposing to engage in the sale of products?

The regulations that govern nursing practice in your province or territories or the standards and guidelines adopted by your nursing regulatory body may set conditions for the sale of products that limit financial gains from the sale of health care products. Such restrictions should be considered when setting the price for any product that you intend to sell.

### 9.2. Engaging in practices that give rise to a conflict of interest may give rise to a finding of professional misconduct. Are you familiar with the business practices that may give rise to a conflict of interest?

Other activities that are often perceived as giving rise to a conflict of interest include:

- patient/client referrals in exchange for financial compensation or another financial benefit such as a discount in rent;
- product endorsements in exchange for financial compensation or any other benefit;
- when providing services to or on behalf of a third party, accepting a compensation structure linked to the volume of services rendered/sold;
- offering/providing services to friends or family members.

## 10. ADVERTISEMENT AND PROMOTION

### 10.1. Are you familiar with the regulations, standards and guidelines adopted by your nursing regulatory body regarding the advertisement and promotion of services?

Please note that you may be held personally accountable by your regulatory body for improper advertisement with respect to your services, even if:

- you outsource the preparation of promotional material and did not review the content of the advertisement or promotion;
- you provide services at the request of a business and are not given the opportunity to review the promotional material prior to publication.

## 11. CONTRACTS | PROFESSIONAL SERVICES AGREEMENTS

### 11.1. Are you considering signing a contract/professional services agreement with a third party (generally an organization) that has been prepared and presented to you by that third party?

A legal review can identify content that would create an unnecessary legal risk for you, or that would be inconsistent with your professional or legal obligations, for instance:

- The professional services that you are to provide may not be clearly outlined in the agreement, or they may exceed your scope of practice or your area of expertise;
- Some of the obligations that you are required to fulfill under the agreement may be inconsistent with your legal obligations as a regulated health care provider;
- The contract may extend your liability to circumstances outside your control and require you to pay amounts in excess of what the court could otherwise order;
- The contract may unfairly favour the other party; for instance, it may focus only on your obligations to the other party, without mentioning the other party's obligations to you;
- The contract may impose obligations on you regarding the management of personal health information that are inconsistent with the law;
- The contract may expect you to provide nursing services in another province (or country) even if you are not licensed or registered as a nurse in that province.

It is important to submit such contracts or professional services agreement for a legal opinion prior to signature. (A contract can rarely be amended after it has been signed.)

The CNPS will generally agree to undertake the review of a contract at the request of a beneficiary who provides nursing services as an individual independent practitioner if:

- the contract has not yet been signed;
- the contract was prepared by another party to the agreement who is not also a CNPS beneficiary.

The review undertaken by the CNPS will focus solely on the terms of the agreement that may unfairly extend a beneficiary's legal responsibility or that are inconsistent with the law or with a beneficiary's professional/ethical obligations. It will not address commercial or financial aspects of a contract.

Contracts can be complex and may require some time to review. They should be submitted to the CNPS (or another legal advisor) at the earliest opportunity.

## 12. FINANCIAL AND TAX CONSIDERATIONS

### 12.1. Have you consulted a financial advisor?

Nurses and nurse practitioners are usually subject to greater financial responsibilities when operating an independent practice than when working as employees. For instance, they are generally responsible for the proper accounting of the business operations, they may have to comply with obligations relating to the collection and payment of goods and services tax and they are generally responsible to retain and pay their own income tax. It is important to consult a financial advisor to understand the full extent of their financial obligations.

## 13. THE NURSE AS AN EMPLOYER

### 13.1. Do you intend to hire employees or independent contractors to assist you in providing nursing services or to support the delivery of your nursing services?

- Most provinces and territories have adopted legislation setting out minimum requirements regarding employment conditions. Are you familiar with the legal obligations of employers in your province or territory?
- Under the legal principle of vicarious liability, employers can be held liable for the negligence of their employees acting within the scope of their employment and as such, be required to pay the compensation ordered by the court in favour of a client or patient who has been harmed as a result of that negligence.
- If the court determines that the employer failed to provide adequate supervision and direction to the employee, the employer may also be itself found negligent and liable on this basis.
- While the circumstances in which liability can flow to an individual or organization hiring an independent contractor are much more limited, it can still occur, notably if the selection of the independent contractor is found to have been negligent or if so much control is exercised over the work of the independent contractor that the independent contractor is considered to be an employee, in the eyes of the law.
- CNPS professional liability protection does not extend to the vicarious liability of beneficiaries. Accordingly, CNPS beneficiaries who hire employees or independent contractors should secure a form of business professional liability protection or insurance to protect them against any liability arising from the negligence of an employee. See also Section 15 "Business Insurance," below.

## 14. INDIVIDUAL PROFESSIONAL LIABILITY PROTECTION

(This section addresses frequently asked questions from CNPS beneficiaries with respect to independent practice.)

### 14.1. Does a CNPS beneficiary remain eligible for CNPS protection when providing nursing services in an independent practice?

Regulated health care professionals retain their personal legal responsibility when they incorporate their practice. A patient/client who initiates a legal proceeding because they believe that they have been harmed in the course of receiving services from an independent practitioner will generally name the individual practitioner as a defendant in the proceeding, even if the services were formally provided on behalf of the practitioner's business entity.

Accordingly, it is important for independent practitioners to retain personal professional liability protection even if they choose to structure their independent practice as a corporation or other separate legal entity (See also, however, Section 15 regarding Business Insurance).

Nurses who are beneficiaries of the CNPS remain eligible for CNPS professional liability protection and other core services in respect of nursing services rendered as independent practitioners.

The CNPS reviews each request for assistance on a case-by-case basis and may take into account existing coverage available from other sources of professional liability protection when deciding whether to extend assistance.

## 14.2. Should I secure additional professional liability protection?

CNPS assistance with respect to claims for professional negligence is generally available up to \$10 million on an occurrence-basis.

Nurses contemplating an independent practice often inquire if \$10 million provides adequate protection when engaged in an independent practice. The CNPS does not provide advice as to the amount of protection that individual nurses or nurse practitioners may require. By way of reference, however, an award of damages of \$10 million would normally be sufficient to compensate a patient/client who has suffered a very serious injury. It remains that where a catastrophic injury suffered by a minor or young adult in the course of receiving health care services has resulted in a lifelong inability to earn a living or engage in activities of daily living, some courts have awarded damages in excess of \$10 million.

If you are concerned that your nursing activities will focus on high-risk activities, it would be wise to obtain personal legal advice as to the need for additional professional liability protection.

In addition, if some services do not fall within the scope of nursing services, CNPS professional liability protection may not extend to these services and you may require an additional source of liability protection.

For more information about CNPS services, visit [cnps.ca/services/plp-core/](https://cnps.ca/services/plp-core/).

## 14.3. Does CNPS provide assistance with regulatory complaints?

CNPS professional liability protection (and the other CNPS Core Services) do not extend to regulatory matters. Nurses in independent practice remain subject to the oversight of their nursing regulatory body and may have to address complaints or participate in a regulatory investigation if concerns have been raised about their professional practice. In order to be eligible for CNPS assistance with regulatory investigations, CNPS beneficiaries can register with the CNPS Supplementary Protection program for an additional fee. More information about this program can be found here: [cnps.ca/services/regulatory-complaints/](https://cnps.ca/services/regulatory-complaints/).

The Supplementary Protection Program was created with a desire to provide an affordable source of legal assistance with regulatory matters. Participation in this program is entirely voluntary.

## 15. BUSINESS INSURANCE

### 15.1. Have you consulted a business, financial, or legal advisor regarding your potential business insurance needs?

These professionals may assist in determining the type and extent of protection or coverage that would be appropriate for your business.

As noted in sections 3 and 9, nurses in independent practice may undertake business responsibilities that extend beyond strictly nursing responsibilities. In addition, they may enter into contractual obligations when entering into a professional services agreement as contemplated in section 11. Finally, if they choose to incorporate their practice or join a partnership, the resulting corporation or partnership may also hire employees, rent spaces, and/or be named in litigation in addition to (or very occasionally, instead of) the health care professional(s) who provided the health care services. For these reasons, it is important to consider the need for additional business coverage including possible coverage to address claims stemming from the activities of the business' employees and the oversight of those activities. What is adequate will vary according to the circumstances, which may change over time.

There are various types of business insurance that cover different kinds of risk. Some examples are:

- clinic or corporate professional liability insurance;
- directors and officers (D&O) liability insurance;
- commercial general liability insurance;
- cyber security and privacy liability insurance; and
- employment practices (management) liability.

Business insurance may be purchased through various commercial insurance brokers. In an attempt to make comprehensive business coverage readily available to its beneficiaries at an affordable rate, the CNPS engaged BMS, an insurance broker, to structure a business insurance program that would include different insurance products made available by reputable commercial insurers to address the needs of nurses in independent practice.

The BMS-brokered Nursing Business Solutions program is independent from and in addition to the protection and other individual services offered by the CNPS. It is designed to offer business insurance coverage as a complement to the individual professional liability protection services offered by the CNPS. Further information can be found here: [cnps.ca/education/business-practice/](https://cnps.ca/education/business-practice/).

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### Do you have additional questions?

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**CNPS** Canadian Nurses  
Protective Society