



Canadian  
Physiotherapy  
Association

July/August 2021  
Vol. 11, No. 4

# PHYSIOTHERAPY Practice

## The Insurance Issue



- Are You Covered?
- What Coverage Do You Need?
- FAQs

**PLUS:** Navigating the College Complaint Process

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To register or for more information please visit [k-taping.ca](http://k-taping.ca) or call 1-800-561-0310 ext 1756.

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# Joint Advocacy Efforts on the Manulife FollowMe™ Plan



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THIS PAST FEBRUARY, various members had contacted both the Canadian Physiotherapy Association (CPA) and the Ontario Physiotherapy Association (OPA) with concerns towards the changes of Manulife's FollowMe™ Plan. These proposed changes included the removal of physiotherapy coverage for those over 65 years of age and the addition of a requirement of a referral for coverage, where one did not previously exist. In response to the advocacy efforts from the CPA and the OPA, an email was received from Wally Thompson, VP, Head of Distribution, Affinity Markets at Manulife, informing that they are no longer implementing these changes.

*“On behalf of our members across Ontario, consumers of Manulife’s FollowMe™ plan, and the physiotherapy profession writ large, we’re ecstatic to see Manulife recognize the importance of physiotherapy and removing what would have been incremental barriers to access of physiotherapy services. We know the importance of packages like Manulife’s FollowMe™ Plan for Canadians in ensuring they have access to critical rehabilitation services like physiotherapy for the improvement of outcomes, and aging in place, and this is an excellent example of [the] CPA’s role in working with insurers like Manulife to emphasize the importance of access to physiotherapy coverage.”*

~Viivi Riis, Past President of the CPA  
(June 2019-2021)

*“The CPA has been hard at work, alongside our Branch colleagues, including the OPA, to ensure that our advocacy efforts are targeting and addressing the needs of our members. We value the feedback of our members and the important role our advocacy plays in improving access to physiotherapy for the improved health of Canadians. I’d like to especially recognize Joe Frederico for all of his support, insight, and persistence as we managed through this change.”*

~John-Paul Cody-Cox, CEO of the CPA



### What Happened

Earlier this year, Manulife announced that it had made changes to the FollowMe™ policy for physiotherapy, which would remove coverage for those over 65 years of age and require a referral for access to physiotherapy, where one did not previously exist.

### Our Advocacy Efforts

As our members know, these changes would create barriers to access and appeared to have been made based on misinformation. The CPA and the OPA were quickly in touch with Manulife, asking them to reverse their decision on the basis that only a very small portion of Ontario's seniors can access publicly funded physiotherapy through the Community Physiotherapy Clinic Program (approximately 2-4% of the total number of seniors in the province).

On behalf of Manulife policy holders who have contacted the Association with concerns, as well as our physiotherapy professionals across Ontario who rely on these plans for their patients' coverage, the CPA and the OPA have been working together in communicating to Manulife the true impact of these changes and requesting a reversal of these decisions for those who, in good faith, purchased these insurance products.

### The Result

Following these discussions, the CPA and the OPA were contacted by Manulife, who thanked us for the valuable feedback in response to the proposed changes to Manulife's FollowMe™ plan. Manulife considered the insights shared, in relation to the proposed plan changes, and they emphasized their understanding of the importance of the physiotherapy benefit for seniors (65+). In response to the combined efforts of the OPA and the CPA, Manulife shared that they are removing these proposed changes from the renewal entirely and that FollowMe™ customers will continue to have the same access to physiotherapy benefits.

### We're in This Together

The CPA would like to thank its members for continuing to vocalize their concerns and needs with the Association and the community writ large. We would also like to thank the Ontario Physiotherapy Association for their continued collaboration, leadership, and guidance on issues in Ontario. Finally, we would like to thank Manulife for their timely consideration of the evidence, recognition of the importance of physiotherapy, and expedient changes to their decision. 🙏

# CPA MEMBER RELIEF PACKAGE 2020

**Megan Griffiths**, Director, Membership Growth and Engagement, Canadian Physiotherapy Association

THE COVID-19 PANDEMIC BROUGHT FEAR, uncertainty, business closures, and financial strains. In a time of unprecedented hardship, the Canadian Physiotherapy Association banded together to support its members, including lobbying to health authorities to designate physiotherapy services as essential and providing resources to help members navigate the new reality. To address the economic impact of the pandemic, we introduced the CPA Member Relief Package 2020, which included membership and liability insurance discounts and alternate payment arrangements for members in 2020. To address the financial strain of students and new grads during these challenging times, we implemented a Student Member Relief Year in which these groups were able to extend their free student membership until September 30, 2021, or when they needed to purchase Professional Liability Insurance, whichever came first.

How was the CPA able to do this? Since 2009, the CPA has been fortunate that its members have been participating in a for-member by-member insurance program. In addition to providing cost-effective and comprehensive insurance products that offer specialized coverage designed to meet the needs of physiotherapists, physiotherapist assistants, and physical rehabilitation therapists,\* the CPA's program is structured to support members in exceptional circumstances, such as the COVID-19 pandemic. Unlike other insurance programs where profits are retained by the insurance company, we worked with our broker, [BMS Canada Risk Services Ltd.](#), to design a program structure that would benefit our insured members, with a portion of funds returned to the CPA in years of low claims activity. These funds are held in the CPA's Insurance Reserve Fund on behalf of the program and our participating members. Given the unprecedented impact of COVID-19 and the needs of our members, the CPA decided to utilize these funds to provide a 40% discount on Professional Liability Insurance policies for the 2020 registration and renewal period.

In addition to the 40% Professional Liability Insurance discount, the CPA provided additional financial relief to support its members through two options: 15% off national membership fees when paying in full or a complimentary administration fee for monthly payments, both applicable for the 2020 registration and renewal period. All of these offers were available for those members registering or renewing before the October

1, 2020, deadline and could not be combined with any other offers. The result of these discounts on CPA membership was substantial. There was a 10% increase in total membership over the same period of time the year before! The CPA was proud to see the membership grow, strengthening our position as we advocate through the pandemic and support the profession through uncertainty.

The CPA Member Relief Package 2020 was developed to ensure our members were still able to access their Professional Liability Insurance, critical member benefits offered by the CPA, and a continued sense of belonging in our community of physiotherapists, physiotherapist assistants, and physical rehabilitation therapists.\* Now that we have succeeded at lobbying health authorities to deem physiotherapy services as essential, the CPA has returned to pre-pandemic membership fees to ensure that CPA and its insurance program are financially equipped to achieve our mission of leading, advocating, and inspiring excellence and innovation to promote health in the new, post-COVID reality. 🌟



oping a comprehensive member benefit program that increases the value of a CPA membership.

**Megan Griffiths** joined the Canadian Physiotherapy Association in April 2013 as a Member Services Representative and, after eight years, is now the Director of Membership Growth and Engagement. Megan and her Member Services team are passionate about providing excellent member service and becoming the foremost experts on CPA members, with the goal of devel-

\*Physical rehabilitation therapists are now called physiotherapy technologists.

# Cyber Attacks on the Rise:

## Reduce Your Risk When Working Remotely

BMS Canada Risk Services Ltd., BMS Global Affinity

AS MANY PROFESSIONALS ADAPT to the changing circumstances brought on by the COVID-19 pandemic, an ever-increasing number of physiotherapists are utilizing technology to communicate with clients and deliver their services. One of the consequences of this shift to working remotely is an increase in cyber insurance claims, including those related to ransomware, social engineering, and other cyber attacks. While many physiotherapists may not think they present an appealing target to attackers, insurer data shows that small to medium-sized businesses in the health care sector are targeted most frequently.

According to Beazley, the specialist Lloyd's insurer underwriting – the stand-alone Cyber Security & Privacy Liability Insurance policy available to CPA members, the global pandemic provided the perfect environment for an increase in cyber-related attacks. “Coinciding with the increase in remote working, our global data has shown professionals have been more likely to fall for social engineering scams.”<sup>1</sup>

Outlined in a recent Beazley Breach Insight report, data shows that the majority of social engineering attacks result in a Business Email Compromise (BEC), where the cybercriminal gains access to an email account. However, recently, cybercriminals were most successful in stealing funds using social engineering techniques to provide fraudulent payment instructions without a system compromise.

### SOCIAL ENGINEERING

Techniques such as email phishing used to manipulate someone into providing confidential information (e.g., log-in credentials) or taking other actions that bypass normal security to help the attacker commit theft or fraud.

### PHISHING

An email created to look like it comes from a trusted source that is designed to induce a recipient into sharing sensitive information, downloading malware, or visit an infected website.

### FRAUDULENT INSTRUCTION

A social engineering attack in which compromised email credentials or spoofing are used to induce an employee to make a wire transfer or other electronic payment to a bank account controlled by a cyber-criminal.

“With the expansion of the remote workforce, detecting and preventing social engineering scams has become more difficult. Employees are typically the first line of defense, but working remotely can make it harder for employees to maintain a culture of compliance. Physical separation from the workplace is also a factor. Without a co-worker to converse with, employees are less likely to do a ‘sense check’ of a suspicious email.”<sup>1</sup>

## How Can You Reduce Your Risk?

Protecting yourself and your business from cyber attacks doesn't need to be expensive and you don't need to know everything about cyber security to help reduce your risk. Beazley notes that modest investment in training and process changes can provide outsized returns, reducing the likelihood of falling victim to cyber attacks. To do so, the following tips are recommended:

- **Alert employees**, particularly those in accounting, finance, HR, and benefits, to be alert to these scams through security awareness campaigns.
- **Establish an out-of-band verification process** to confirm the identity of the person requesting a funds transfer, a change to banking information or payment instructions, or access to sensitive data such as tax and payroll information.
  - Require voice verification for all changes involving banking information.
- **Don't trust** contact details provided in the request. If the request is fraudulent, the criminal will have supplied fake contact information too.
  - If the request is by email, call and speak to the person at a number you know to be correct.
  - If the request is by phone, use an email address you know to be correct.
  - Instead of using "Reply," forward the email and type in the email address you know to be correct.
- **Set up Multi-Factor Authentication (MFA)** for remote access to your email system, your VPN, your ACH system, and other sensitive applications. Many platforms now provide for MFA at little or no cost.
- **Tell clients** that you will not change banking instructions without authentication and to treat any such request as possibly fraudulent.

**Quick Tip:** Before clicking on links or downloading files, check the full email address of the sender. Cyber criminals are becoming more sophisticated, adding legitimate looking email signatures and signing off with the name of a person who actually works with you, which they may have uncovered through trolling social media and/or business websites. However, the email address is usually where you can verify the sender's credentials. Often, it can be just a small detail that can help you recognize whether it's genuine or not (for example, John.Doe@business.com vs. John.D0e@business.com).

## Insurance

If you are participating in the CPA's insurance program, your individual Professional Liability Insurance includes \$50,000 of Cyber Privacy Liability coverage. This means that you already have some coverage for sums you become legally obligated to pay in respect of loss arising from lost or compromised electronic data and caused by your error or negligence, resulting in breach of confidential information.

However, BMS recommends that physiotherapists who deliver professional services and/or those responsible for maintaining and safeguarding confidential client information purchase additional Cyber Security and Privacy Liability Insurance to address their increased risk and exposure.

CPA members have access to a specialized and comprehensive Cyber Security & Privacy Liability Insurance policy that provides first- and third-party coverage, as well as coverage for expert services in the case of an incident. This includes, but is not limited to, costs involved with a regulatory proceeding relating to the violation of a Privacy Law, including penalties (where insurable), coverage for Business Interruption and Cyber Extortion incidents, and website media liability.

Visit [www.cpa.bmsgroup.com](http://www.cpa.bmsgroup.com) for more information, as well as to secure coverage or contact BMS to speak to a broker.

## Take the Cyber Security Pop Quiz

As cyber risks continue to evolve, it's important that your knowledge does too. Below is a short quiz to test your cyber security savviness. Answers at the end.

1. What does the "https://" at the beginning of a URL denote, as opposed to "http://" (without the "s")?
  - a) That the site has special high definition.
  - b) That the information entered into the site is encrypted.
  - c) That the site is the newest version available.
  - d) That the site is not accessible to certain computers.
  - e) None of the above.
2. Which of the following is an example of a "phishing" attack?
  - a) Sending someone an email that contains a malicious link that is disguised to look like an email from someone the person knows.
  - b) Creating a fake website that looks nearly identical to a real website in order to trick users into entering their login information.
  - c) Sending someone a text message that contains a malicious link that is disguised to look like a notification that the person has won a contest.
  - d) All of the above.
  - e) None of the above.
3. Which of the following four passwords is the most secure?
  - a) Boat123
  - b) WTh!5Z
  - c) into\*48
  - d) 123456
  - e) Password
4. If a public Wi-Fi network (such as in an airport or café) requires a password to access, is it generally safe to use that network for sensitive activities such as online banking?
  - a) Yes, it is safe.
  - b) No, it is not safe.
5. If you are in an airport, is it generally safe to charge your phone using a USB wall plug?
  - a) Yes, it is safe.
  - b) No, it is not safe.

## Did you know?

Vyas Sekar, a professor at CyLab – a security and privacy research institute at Carnegie Mellon University, told the New York Times, "Like scammers who steal debit card numbers by putting illegal card-reading devices, or skimmers, on A.T.M.s, hackers can easily rip out USB ports and replace them with their own malicious hardware."<sup>2</sup> And, while experts are still unsure of how often hacking attacks like these happened, the growing commonality of USB charging ports in places like hotels, public transportation, and airports has translated into an increased risk of falling victim to such scams. "People want the convenience of charging their phones and tablets wherever they go," Professor Sekar said, adding, "Obviously I would like it too, but there is a risk."<sup>2</sup>

## Cyber Security Pop Quiz Answers:

1-B, 2-D, 3-B, 4-B, 5-B

## References

1. Beazley. (2020, September 16). Beazley Breach Insights – Q2 2020. Retrieved from [https://www.beazley.com/news/2020/beazley\\_breach\\_insights\\_september\\_2020.html](https://www.beazley.com/news/2020/beazley_breach_insights_september_2020.html)
2. Oritz, A. (2019, November 18). Stop! Don't Charge Your Phone This Way, New York Times. Retrieved from <https://www.nytimes.com/2019/11/18/technology/personaltech/usb-warning-juice-jacking.html>

# Are You Covered?

## How Physiotherapists Can Protect Themselves From Risk & Liability

BMS Canada Risk Services Ltd., BMS Global Affinity

*First, let's start with a case study. Farah is employed as a physiotherapist in a hospital. Recently, she was notified by her provincial regulatory body that a former client had made a complaint against her alleging that Farah behaved unprofessionally and was biased in her provision of care. Farah turned to the hospital's Professional Liability Insurance policy for representation and protection. Unfortunately, as is the case with many hospital policies, Farah is only covered if she is named in a Civil action. Complaints made to a regulatory body of physiotherapists, such as claims of unprofessional attitude or improper conduct, are often excluded from an employer's policy. Farah is unsure what to do next and she's worried about her ability to finance an adequate legal defence.*

A REVIEW OF CLAIMS made to the CPA's Liability Insurance program suggests that regulatory complaints make approximately 60% of claims against participating physiotherapists. Those relying on employer coverage would be left to independently secure legal representation to defend against these claims and would be responsible for the associated costs.

The above scenario illustrates one of the reasons why many physiotherapists employed in public practice have decided to purchase their own independent Professional Liability Insurance (PLI). Another common reason is to secure protection for work delivered outside of the employment setting, such as advice, volunteer work, or when working in multiple places of employment.

The PLI coverage available through the CPA's member insurance program provides insurance protection for actual or alleged injuries, negligent acts, and errors or omissions arising out of the rendering of, or failure to render, your professional services as a physiotherapist. Coverage ensures payment of both compensatory damages and legal costs associated with a claim.

PLI through the CPA's member program provides up to \$10M aggregate limits and comprehensive coverage, including for:

- Regulatory Legal Expense
- Criminal Defence Reimbursement
- Breach of Copyright
- Libel and Slander
- Loss of Documents
- Coroner's Inquest Expense
- Abuse Therapy and Counselling Fund
- And more!

For physiotherapists providing e-services, it's important to note that the CPA's PLI policy will extend to protect you for professional services you provide to your clients anywhere in the world, provided the claim or complaint is filed within Canada. Prior to working with clients in another jurisdiction, it is always important to verify with your regulatory body and the regulatory body in the province, territory, or jurisdiction (for instance, country or State) in which your client resides to confirm that you are adequately licensed to practise in your client's place of residence.

If you are interacting remotely with clients and are managing your client files electronically, as many physiotherapists now are, it's also important to be aware of additional exposures in relation to potential security breaches or cyber incidents, such as phishing emails or ransomware attacks. A privacy breach can be triggered by something as simple as someone overhearing a telehealth session or as complex as a computer hack that results in the involuntary disclosure of the private information of hundreds of clients.

Cyber security continues to be one of the fastest growing areas of risk and the health care sector is not immune. Physiotherapists may benefit from securing a separate Cyber Security and Privacy Liability Insurance policy to better manage the risk of holding increasingly large quantities of personally identifiable data of clients, employees, and others, as well as to mitigate the reputational damage that could result from a data security breach.

Cyber and other specialized insurance products, such as Commercial General Liability and Business Insurance, are available to physiotherapists through the CPA program.

Participating physiotherapists also have direct access to a range of experts, including knowledgeable brokers at BMS Canada Risk Services Ltd. (BMS) for any coverage-related questions. We encourage you to visit [www.cpa.bmsgroup.com](http://www.cpa.bmsgroup.com) for more information. You can also connect with BMS through the toll-free CPA line at 1-855-318-6136 or send an email to [cpa.insurance@bmsgroup.com](mailto:cpa.insurance@bmsgroup.com).



# Top Calls to the CPA's Pro Bono Legal Hotline

BMS Canada Risk Services Ltd., BMS Global Affinity

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**DID YOU KNOW?** All members participating in the CPA's Professional Liability Insurance program have access to free legal advice on professional practice issues.

If you have ever received a request to release confidential client records and wondered about your legal and professional obligations or if you are faced with a clinical situation where you suspect you may be required to make a mandatory report but you're unsure if that's truly the case, then the legal team staffing the pro bono line are there to help you.

Since launching the CPA's pro bono hotline, hundreds of physiotherapists have accessed the free, specialized legal support for answers to their professional practice questions. Calls in 2020 were up over 50% since first launching the CPA hotline and the legal team is assisting more physiotherapists than ever before.

In addition to COVID-related enquiries, the top five categories of calls to the CPA's pro bono legal hotline in 2020 were as follows:

1. Complaints and College investigations
2. Potential liability following an incident
3. Consent/request for file information
4. General practice-related enquiries (i.e., record keeping, reviews, standards of practice, challenging clients)
5. Confidentiality

Let's take a closer look at some of the more common questions and topics CPA members had for the Gowlings legal team over the past year.



“Every year, Gowlings addresses questions around disclosure of client records to third parties.”

### Regulatory Investigations/Complaints

Physiotherapists continue to ask questions about actual or potential regulatory investigations. This is not surprising, as **approximately 60% of claims against CPA members participating in the insurance program continue to be complaints to the provincial regulators.**

Regulatory complaints can include issues of poor communication, failure to obtain informed consent, boundary violations, or discriminatory treatment, among many others. Clients and their family members could even make a complaint to the College if they felt that treatment wasn't effective or that your office space wasn't well maintained.

In the case of a College complaint, your regulatory body has a duty to review any concern about your practice that has been brought to their attention. Anyone who has a concern about the care they received from a physiotherapist, or the actions or conduct of a physiotherapist, is able to lodge a complaint with the College through an accessible process.

If you find yourself involved in a complaint, try to stay calm and know that you're not alone. Although being faced with a claim may be one of the most stressful things that you can experience in your professional career, the CPA and your insurance program partners are here to help you through this process and should be notified as soon as possible. Learn more about how to access legal services to respond to a regulatory complaint or investigation into your practice in the article entitled, *“Navigating the College Complaint Process”* of this issue.

The pro bono legal hotline is in place to provide assistance with practice-related questions in order to help avoid or reduce the probability of a claim or complaint.

The free, confidential legal advice available through the CPA's hotline can be accessed for questions involving professional practice issues, such as:

- Privacy and confidentiality
- Conflicts of interest
- How to respond to requests for information from third parties
- Inquiries from your regulatory body
- How to respond to a subpoena
- Professional misconduct
- Ethical obligations
- Professional obligations

To access the pro bono legal advice program, please contact Gowlings at 1-888-943-0953.

If you have called the pro bono legal advice line to report a claim, they will direct you to contact the CPA's broker, BMS Canada Risk Services Ltd., or the program claims adjuster, Crawford & Company. **Claim reporting is a confidential process that will not impact your entitlement to future insurance coverage.** ❄️

### Consent/Release of Records

Do you want to make a referral to another health care provider, but are wondering if you need your client's consent to do so? Every year, Gowlings addresses this and other questions around disclosure of client records to third parties. In fact, questions about the release of records and consent regularly feature in the top three most frequently asked questions of the Gowlings team year over year.

The requirement to disclose personal health information to third parties can arise in a wide variety of circumstances. It's important to carefully consider whether informed consent to disclose the information has been obtained or is required for the particular situation. Your legal partners at Gowlings can provide guidance when faced with requests to disclose client information.

Failure to properly protect a client's confidential information can result in complaints to, and investigations by, your regulator, as well as the privacy commissioner. It can also expose you to independent civil liability under common law and privacy legislation.

### Record Keeping/Billing Practices

In 2020, approximately 10% of all calls into the hotline were in relation to record keeping and billing practices. Common questions about record keeping include how to document changes or additions to a client record, requirements around record retention, record transfer obligations, and electronic records. Members also asked about best practice tips on billing, including accountability when working with assistants, effective communication strategies, and examples of what is deemed to be professional misconduct in relation to billing.

# Navigating the College Complaint Process:

How to Access Legal Services to Respond to a Complaint or Investigation Into Your Practice

**Gowling WLG (Canada) LLP and  
BMS Canada Risk Services Ltd., BMS Global Affinity**

*Keep in mind that each province has its own legislation which regulates the practice of physiotherapy and the way complaints are processed. This article is intended as an overview and we strongly recommend that you review the website of your regulator for more details about the complaints process in your particular jurisdiction.*

PHYSIOTHERAPISTS ARE SUBJECT to many of the same legal and liability risks facing other regulated health professionals in Canada. These legal exposures range in scale from College investigations into a physiotherapist's billing practices to six-figure lawsuits alleging that a physiotherapist was negligent in their use of manual therapy which led to serious injury of a client.

The good news is that the chance of a physiotherapist requiring legal assistance as it relates to professional practice is fairly low. However, in the event that you do require such legal assistance, it is most likely because you have found yourself subject to a complaint made to your provincial regulatory body rather than any kind of civil or criminal action. Complaints to regulators comprise of over half of all matters that are handled by legal counsel for physiotherapists participating in the CPA's Liability Insurance program and is in line with what we commonly see across many other Canadian regulated health professions.

## College Complaints & Investigations

In the case of a College complaint, your regulatory body has a duty to review any concern about your practice that has been brought to their attention. Anyone who has a concern about the care they received from a physiotherapist or the actions or conduct of a physiotherapist is able to lodge a complaint with the College through an accessible process. Upon receipt of a complaint, the College will notify you by letter or telephone. If a response is required, the College will typically give directions on how and when to respond, including deadlines.

While navigating a complaint and/or investigation from your regulator may seem fairly straightforward, you need to be aware of the significant powers that provincial regulators have that can impact upon your ability to practice. For this reason, you should always communicate with your insurance representative before responding to an inquiry from your regulator. Your insurance representative will examine your policy, identify your coverage, and assist you with next steps, including coordinating your legal defence.

## Legal Support

The cost of legal representation to defend complaints made to professional Colleges is included in the CPA's Professional Liability Insurance policy. Unfortunately, some CPA members are unaware of this benefit and, instead, attempt to participate in the College complaints process without external assistance. Tackling complicated submissions and preparing for informal or formal hearings can be daunting. Through the CPA's Professional Liability Insurance program, members are provided with specialized legal representation to assist in responding to a College complaint, from support in drafting your first letter of response through to defence at a Disciplinary or Fitness to Practice Hearing.

## Responding to the College

Once you have reported your claim to your insurance representative and legal counsel is assigned, your lawyer will assist you in preparing your letter of response. The College will send a copy of your response to the complainant. This might satisfy the complainant; however, some complainants will provide a reply, which the College will forward to your

“Claims reporting is a confidential process that will not impact your entitlement to future insurance coverage.”

attention for any further comments. You should provide a second response, again with the assistance of your lawyer, if there are any clarifications required or new issues to be addressed.

Legislation typically provides each College with broad powers to investigate complaints filed against their registrants. All the information collected during the course of the investigation will be provided to a panel assigned to deliberate the matter. Once the panel has considered the matter, you will receive a written decision, along with reasons for the decision.

In many cases, physiotherapists successfully demonstrate that their care and conduct was appropriate. In those cases, the College will typically dismiss the complaint and take no further action. However, when issues are identified with regards to the practice or conduct of a physiotherapist, the College may respond as follows:

- Refer the matter to alternative dispute resolution.
- Counsel (advise) the member on how to improve their practice by making recommendations or providing guidance.
- Caution (warn) the member that more serious consequences may be considered if the issue reoccurs.
- Require that the member participates in a specified continuing education and remediation program.
- Request that the member enters a contract with the College imposing some restrictions, limitations, directives, or requirements on the member's certificate of registration.

In cases where the College is concerned that a physiotherapist is suffering from a health condition or disorder, including a substance abuse problem, the College may refer the matter to a committee responsible for assessing the member's fitness to practice.

Where there are serious concerns identified with regards to a member's conduct or practice, the matter is referred to a committee responsible for assessing professional misconduct and competency (Discipline Committee). Unless the member is willing to plead guilty to the charges, a hearing is required where the College will have the burden of proving its case against the member. The decision from the panel presiding at the hearing may range from a dismissal of the charges to the revocation of the member's license to practice.

### Common Complaints

In most provinces, regulators are mandated to investigate every complaint they receive, regardless of how frivolous it may seem. Over the course of a year, provincial regulators receive complaints addressing a broad range of concerns, including, but not limited to, poor communication, disputes about billing, and allegations of substandard care.

A common issue addressed by physiotherapy regulators relates to complaints around billing practices. This includes misunderstandings about the appropriate amount to be charged, billing for services not covered by provincial health plans, and poor record keeping practices that lead to the conclusion that a member is billing for services not provided, among others. Provincial regulators take billing issues very seriously. Inaccurate or false billing creates a negative perception of the profession and, as a result, regardless of whether the acts are intentional or not, ethical concerns abound and the regulatory penalties can be severe. As a result, inaccurate, false, or misleading billing can lead to disciplinary sanctions, civil liability, and even criminal liability for fraud.

The following are common examples of professional misconduct related to billing:

1. Submitting invoices for assessments or treatments under a physiotherapist's name and registration number when the assessments or treatments were completed by non-physiotherapists.
2. Assigning assessments, reassessments, and the development of treatment plans to non-physiotherapists.
3. Failing to receive client consent to use assistants or support personnel in the provision of care.
4. Submitting invoices to clients that are false, misleading, and inaccurate.
5. Falsifying records.

The simplest way to avoid billing related claims is to:

- Review all relevant guidelines, standards, and regulations.
- Undertake frequent reviews of billing systems and software with staff.
- Participate in continuing education that focuses on interpretation and understanding of guidelines.
- Take advantage of the pro bono legal advice available to participants of the CPA's Liability Insurance program for guidance about any issues that you may be facing.

It is also important to remember that the billing component of the services is a reflection of the entire scope of service which you, as a physiotherapist, provide. To invoice in accordance with your professional standards, you must also understand and apply all of the guidelines, including those not directly related to billing, such as record keeping, informed consent, and delegation.

If you become aware of a complaint made against you to your regulatory College, please contact the CPA's program claims adjuster, Crawford & Company, at [BMSclaims@crawco.ca](mailto:BMSclaims@crawco.ca) as soon as possible. Crawford's experienced and professional staff is dedicated to working with you to achieve peace of mind and the best possible outcome for all involved. Claims reporting is a confidential process that will not impact your entitlement to future insurance coverage. ❄



# Life of an Employment Practices Claim

**Berkley Canada and BMS Canada Risk Services Ltd. BMS Global Affinity**

*Please note that the following article has been provided for information purposes only. Berkley Canada will not be responsible for any loss arising out of reliance on this information. Whether or not, or to what extent, a particular loss is covered depends on the facts and circumstances of the loss and the terms and conditions of the policy as issued.*

WE OFTEN HEAR OF A BUSINESS OR KNOW OF SOMEONE who, as a result of terminating an employment relationship, has been sued or has settled an employment claim. But, do we know what really happened? Employment claims often have two very different versions of events and can be emotionally charged, making them uniquely difficult to navigate. Employment Practices Liability Insurance, known as EPLI, provides employers with the tools, legal representation, and financial support to manage these claims.

To illustrate some of the pitfalls of an employment claim and benefits of EPLI, we will use a simple example. Shannon has worked as a physiotherapist for Clinic X for four years. Clinic X hired a new Clinic Director last year. The Clinic Director wants to better understand the therapists' caseloads and treatment strategies and makes numerous requests for transparency, including regular chart audits. Shannon feels like she is being antagonized and harassed with the constant questions, which she views as an attempt by the Clinic Director to find fault with her work. The Clinic Director has not focused as much on Matthew, another physiotherapist, and often just talks about the new microbrews he has recently tried. The Clinic Director determines that Shannon's treatment plans lack accuracy and finds fault with her clinical reasoning and program selection. The Clinic Director has a stern discussion with Shannon, advising that the issue must be remedied in short order or she will be terminated. Shannon takes a mental health leave and is terminated upon her return "without cause". Shannon sees an employment lawyer's advertisement and retains his/her information. Shannon's lawyer sends a demand letter to Clinic X alleging wrongful termination, emotional distress, a hostile work environment, and discrimination based on gender and disability. The clinic tries to pay her a severance of four weeks and get a release signed. This is unsuccessful and Shannon sues the company.

This is not an uncommon hypothetical in today's environment; employees are inundated by "know your rights" messaging through law firm advertisements, newspaper columns, and other forms of mass media. Businesses should anticipate having to deal with an employment claim at some point. Of course, there are things that can be done to help prevent employment claims or, at the very least, help defend one if it arises. For example, a business can be proactive by setting up an employee handbook and using a professional to help do so. When contemplating a termination or when confronted with employee disputes, obtain legal advice and very carefully document disputes with employees and reasons for termination. In the above case, the Clinic Director could have provided written instructions as to what his expectations were of the staff physiotherapists and timelines that could be met. In addition, the termination of an employee after returning from any type of leave provides an argument to be made that the employee was terminated for taking a legal leave and that any other reason for the termination is simply pretense.

Knowing when a claim is first made under the policy is important. In the instant case, when Shannon sent a demand letter to Clinic X, a claim had been made and Clinic X should put its EPLI insurer on notice. If Clinic X waits for Shannon to file a lawsuit, Clinic X could be prejudicing its coverage, as EPLI policies generally require that a claim be reported as soon as it is made; the failure to do so may result in coverage being unavailable. The benefit of reporting is that the EPLI insurer will review if the matter is covered under the policy and, if so, the EPLI insurer will provide a defence to the claim. There are several advantages to having an experienced employment lawyer involved at this stage. First, it may result in the claim being settled before a lawsuit is filed. Second, much of what is going to be alleged in the demand letter may be viewed as misstatements and inflated demands and, thus, an emotional response is normal. A lot of the emotional element of an employment claim is neutralized when a lawyer is negotiating, and lawyer-to-lawyer negotiations are often successful. Third, lawsuits can be very expensive and time-consuming; having a

lawyer retained by the EPLI insurer at the outset will eliminate that expensive burden from the business and transfer it to the insurer.

When it comes time to settle a claim or, in much rarer cases, paying a judgment, it is important to note that some losses that the business was obligated to pay the employee regardless of a claim are not insured under the policy, such as severance pay, earned but unpaid wages or employee benefits, etc. Effectively, the damages often sought in employment cases are those damages that the employee was entitled to be paid, whether through statute, common law, or contract, and EPLI is not intended to pay what an employer is legally required to pay. Severance pay is a good example. If an employee is terminated with cause, which is a very difficult standard to meet, then the employee is not entitled to severance pay. However, most employees are terminated "without cause" and, thus, severance pay is due under the Employment Standards Act, under the common law, and sometimes pursuant to an employee contract. Employers know that this is their responsibility upon hiring any employee and, thus, cannot attempt to transfer this obligation through insurance.

Employment claims do not always arise from an employee but may come directly from a Human Rights Tribunal or Equal Employment Opportunity Commission. That being said, Shannon is not required to send a demand letter or file a Human Rights complaint; she can directly file a lawsuit in civil court. Again, it is very important to notify your EPLI insurer immediately, as there are short timelines to respond to lawsuits, often 20 days.

In our example, Shannon has filed her lawsuit. What's next? The lawyer will now prepare a statement of defence on behalf of Clinic X. To do so, the lawyer will need Clinic X's complete file and to interview the decision makers and people involved in Shannon's termination. The defence lawyer will have to produce documents to Shannon's lawyer and, in doing so, will first determine what documents are privileged and what documents are material. The lawyer will also begin identifying witnesses, obtaining statements, and determining who from Clinic X will be required to sit for an Examination Before Trial (EBT). EBTS are part of the discovery process and occur after document production takes place. The person with the knowledge of the events from Clinic X will be examined by Shannon's lawyer to "discover" what is the clinic's position or what was known by the clinic. Shannon will also sit for an EBT where the defence lawyer will try to understand her allegations by asking questions about what is alleged.

"A lot of the emotional element of an employment claim is neutralized when a lawyer is negotiating, and lawyer-to-lawyer negotiations are often successful."

“EPLI is the coverage physiotherapist business owners can rely on if a claim is made against you, your business, or your employees.”

Throughout the life of the claim, the lawyer and the EPLI insurer will constantly be reviewing the possible exposure and the strengths and weaknesses of the case to develop a strategy that will be best for the insured, including when it may be best to try to settle. This analysis becomes more developed as more discovery through documents and EBTs takes place. The litigation process is long, often taking years, and can be time-consuming for the business, whether it's producing documents, reviewing pleadings for accuracy, preparing to be examined, sitting for an EBT, attending mediations, settlement conferences, and preparing and attending trial.

Often, employment cases resolve at a mediation or settlement conference, or shortly thereafter. A mediation is non-binding, meaning that the parties go to mediation with the intention of trying to settle, but are not required to, and anything said during a mediation is considered confidential and cannot be used during the case. Mediations are generally half a day or a full day where a mediator, who is a third-party neutral, is paid to try to facilitate a resolution. The mediator will often have a brief opening statement and then discuss the matter with both Shannon and Clinic X, separately, often going back and forth between the parties with demands and offers. Of course, the sign of any good mediation is that neither party leaves happy; ideally, both parties will have moved from their positions and settled in the middle. The reality is that all parties face risk of losing a case if it is tried and a settlement is a middle ground.

As you can appreciate from this description of a life of a claim, employment matters can be very costly and time-consuming. An EPLI policy provides your business with the security of knowing that those expenses will be covered and, possibly, some of the loss as well.

### EPLI Available Through the CPA Program

Physiotherapist business owners who employ staff and/or engage volunteers, students, or contractors will want to consider EPLI. This policy can help protect you and your business when allegations of employment practice violations arise, including wrongful termination, discrimination, and workplace harassment, such as described above.

The EPLI policy available as part of the CPA's insurance program has been designed with health care professionals in mind. We understand that clinic business environments vary, with professional staff, non-professional staff, students, volunteers, contractors, and any combination thereof. That's why your EPLI policy is designed to protect you, your business, and your employees against allegations made by any of these individuals.

### What Does EPLI Cover?

EPLI is the coverage physiotherapist business owners can rely on if a claim is made against you, your business, or your employees to the human rights tribunals, in civil court, or to a regulatory body, alleging wrongful termination. Beyond this, EPLI also provides coverage for a wide variety of other employment-related activities.

Your policy provides coverage for:

- Legal costs to defend against Employment Practices Wrongful Acts, including:
  - Retaliation
  - Discrimination
  - Employee harassment, including sexual harassment, bullying, and a hostile work environment
  - Wrongful termination
  - Failure to employ or promote
  - Breach of employment contract
- Legal costs to defend against employment-related allegations of:
  - Deprivation of a career opportunity
  - Defamation
  - Negligent evaluation
  - Wrongful discipline
  - Misrepresentation
- Legal costs to defend against claims from independent contractors alleging breach of contract, loss of revenue, or loss of commissions.
- Monetary damages, judgements, or settlements you are required to pay as a result of a covered claim.

Whether you employ two, twenty, or even more staff, employers may want to seriously consider adding EPLI coverage to protect your line of business. Recent events, the increasingly litigious environment, and more frequent use of social media platforms all position this to continue to be a topic that employers won't be able to completely avoid, even if there is no intentional wrongdoing.

There are a range of limit options available to CPA members and coverage is tailored specifically to meet the needs of health care employers, including physiotherapist owners of clinics of all sizes.

Contact a BMS broker today to discuss your individual circumstances or to apply for coverage. You can also find out more and purchase EPLI online at [www.cpa.bmsgroup.com](http://www.cpa.bmsgroup.com).

# What Coverage Do I Need?

A Quick Guide to Deciding What Insurance You Need – And What You Don't

**BMS Canada Risk Services Ltd.**, BMS Global Affinity



AS A PHYSIOTHERAPIST, YOU REQUIRE PROFESSIONAL LIABILITY INSURANCE to register with your regulatory College. We all know that. But things get a bit more complicated if you are an independent contractor or business owner. There are a lot of different insurance products out there and, sometimes, it's difficult to figure out what coverage you need – and, just as importantly, what coverage you don't.

The table below helps to identify the most appropriate coverage(s) for your practice circumstances. While we've tried to make this table as comprehensive as possible, it provides an outline of common practice scenarios only and may not include all possible professional and business structures.

We recommend that you use this table as an initial framework for decision-making. It does not replace individualized broker advice, so please speak with an insurance professional at BMS if you have questions about the most appropriate coverage for your specific practice circumstances.

I am a/an:

## Employee (Public or Private Sector)

**Consider:**

- Professional Liability Insurance (PLI)
- Cyber Security & Privacy Liability

## Independent Contractor/ Sole Proprietor (No Staff)

Do you have valuable contents?

**YES – Consider:**

- Professional Liability Insurance (PLI)
- Clinic Package (with Building Coverage if you own the building where you operate)
- Cyber Security & Privacy Liability

**NO – Consider:**

- Professional Liability Insurance (PLI)
- Commercial General Liability (CGL) Insurance
- Cyber Security & Privacy Liability

## Private Practice Owner

Do you have other health professionals working for or on behalf of your business and/or billing under your business name?

**YES – Consider:**

- Professional Liability Insurance (PLI)
- Clinic PLI
- Clinic Package (with Building Coverage if you own the building where you operate)
- Employment Practices Liability Insurance (EPLI)
- Cyber Security & Privacy Liability

**NO, non-health professional staff only (for instance, receptionist, bookkeeper, etc.) – Consider:**

- Professional Liability Insurance (PLI)
- Clinic Package (with Building Coverage if you own the building where you operate)
- Employment Practices Liability Insurance (EPLI)
- Cyber Security & Privacy Liability

“There are a lot of different insurance products out there and, sometimes, it's difficult to figure out what coverage you need – and just as importantly, what coverage you don't.”

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Now that you've identified the recommended coverage, read on to learn more about the different types of insurance.

### CPA Professional Liability Insurance (PLI)

This policy provides insurance protection for actual or alleged injuries, negligent acts, errors, or omissions arising out of the rendering of, or failure to render, your professional services as a physiotherapist.

Your policy also responds if a complaint is made against you to your regulatory College. In both cases, your legal defence is coordinated and paid for by the insurance company to the limits of your policy – even in circumstances where you are found to be at fault. And if damages or patient compensation are awarded by the court, your PLI policy covers this too.

Although uncommon, criminal charges can also be filed against health care professionals, including physiotherapists, based on interactions with patients. In these circumstances, your PLI policy will reimburse the legal costs associated with your defence if you are found not guilty.

### Clinic Professional Liability Insurance

This policy responds if your business name is brought into a statement of claim or lawsuit alleging negligence or malpractice. Following an incident, a patient's legal counsel will commonly name all individuals involved in the patient's care, including the business or clinic as the larger provider of services. Clinic PLI policies protect your business assets in these circumstances.

Business owners should consider purchasing this coverage if other health professionals (i.e., co-owners, employees, associates) are working for, or on behalf of, your business and/or billing under your business name.

Don't worry about purchasing this if you work independently or are a sole proprietor with no other health professionals associated with your business. Your CPA individual PLI policy will automatically extend to cover your business name in these circumstances.

### Cyber Security & Privacy Liability

This policy protects you if you or your business has been involved in a cyber breach or privacy violation. The optional comprehensive policy, available through the CPA's program, will cover the costs of your legal defence, investigative costs, notification and response costs, costs awarded to the patient(s) affected by the breach/violation, and more.

With consequences ranging from investigation and prosecution at the provincial level to College disciplinary action, fines, and lawsuits, a cyber security or privacy violation can have a significant impact on your reputation, career, and livelihood.

### Commercial General Liability (CGL)

This policy protects you against claims arising from injury or property damage that you (or your business, including your staff) may cause to another person as a result of your operations and/or premises. For example, a patient comes into your clinic for her appointment on a snowy day. When heading to reception, she slips and falls on the wet floor, breaking her arm. The patient may look to hold you (as the business owner) or your business responsible for her injury. CGL is often referred to as "slip and fall" insurance because this is such a common example of injury to a third party as a result of your premises.

Let's look at the other reason physiotherapists buy CGL – to protect against claims of property damage. This applies to both

physiotherapists working as independent practitioners who contract out their services and to business owners. If you are an independent contractor and accidentally cause damage to the property in which you are working, the property owner may look to hold you responsible for compensating them for the costs of repairs. For instance, you plug in a piece of equipment and a power shortage causes an electrical fire. Your CGL policy would respond in this circumstance. Or, you are working with a patient in their home when you accidentally break a piece of their furniture. Your patient may want you to compensate them for the damage. If you are an independent contractor, your CGL policy would respond. If you are a business owner and it was one of your staff who was providing the homecare services, your business CGL policy would also respond.

Since business owners generally have other insurance needs associated with physical office space and its contents, CGL coverage often comes bundled in a package product, the Clinic Package.

### Clinic Package (With or Without Building Coverage)

This policy includes CGL, Property, Crime, and Business Interruption coverage and is designed for business owners and independent contractors with valuable contents.

In addition to the CGL coverage described above, the Clinic Package includes coverage to protect against damage to property, including professional equipment, and loss of revenues caused by an interruption of business activities arising from an insured peril (such as fire). You are also protected against financial loss due to dishonesty, fraud, or theft of money, securities, or other property owned by the business/office.

Physiotherapist business owners who own the building in which their clinic is located can also add Building Coverage to their policy. This insures the bricks and mortar of your property, protecting the business against loss or damage from a broad range of causes, including fires and other threats to business operations, such as vandalism.

### Employment Practices Liability Insurance (EPLI)

Physiotherapist business owners who employ staff and/or engage volunteers, students, or contractors will also want to consider EPLI. This policy protects you and your business against allegations of employment practice violation, including wrongful termination, discrimination, workplace harassment, and others.

Your decisions about hiring, compensation, promotions, accommodating disabilities, and terminations, for instance, impact the individuals working in your business environment. Any of these decisions could lead to a claim for a wrongful employment practice, even if handled correctly. As an example, following a promotion of one of your reception staff to the position of office manager, you are sued by another staff member. Your employee is alleging age discrimination and failure to promote because the office manager position was filled by a younger, less qualified person. Your EPLI policy would respond to cover the costs of your legal defence and any compensation to your wronged employee. ❄️

For more information, or if you have more questions about Professional Liability and Business Insurance protection, contact a broker at BMS – we're here to help.

Toll Free: 1-855-318-6136

Email: [cpa.insurance@bmsgroup.com](mailto:cpa.insurance@bmsgroup.com)

Web: [www.cpa.bmsgroup.com](http://www.cpa.bmsgroup.com)



# FAQs From Physiotherapists

BMS Canada Risk Services Ltd., BMS Global Affinity

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## Will my policy cover me for tele-practice even after the COVID-19 crisis is over?

The CPA's Professional Liability Insurance (PLI) policy has no additional restrictions for physiotherapists delivering their professional services via tele-practice as long as you are acting within your scope of practice and licenced jurisdiction(s). Standard policy conditions apply.

There are additional considerations for professionals utilizing technology, including potential privacy breaches or ransomware attacks, among others. We would encourage you to refer to the article entitled, "[Cyber Attacks on the Rise: Reduce Your Risk When Working Remotely](#)" in this issue for more information.

BMS recommends that physiotherapists, businesses delivering tele-practice services, and/or those responsible for maintaining and safeguarding confidential client information purchase additional Cyber Security and Privacy Liability Insurance to address their increased risk and exposure.

Please visit [www.cpa.bmsgroup.com](http://www.cpa.bmsgroup.com) for more information about Cyber Insurance or contact BMS to speak to a broker.

## Can I purchase the CPA's Professional Liability Insurance (PLI) policy if I have an existing insurance policy with another carrier?

Absolutely. CPA members can join the insurance program at any time throughout the year.

## I am discontinuing practice. Will I still be protected against future PLI claims?

Yes. Depending on how long you have been participating in the CPA's insurance program, you will remain protected from 10 years to an unlimited period of time after you have discontinued practice. Although rare, claims can come forward months or even years after a health professional has discontinued practice.

Picture yourself in this scenario, which has actually happened – you've been practising for 10 years and decide to take some time off before pursuing a different career. Two years later, your former colleague sends you an email explaining you've both been named in a lawsuit that's arisen from a session with a client almost three years ago.

Thankfully, your CPA's PLI automatically includes at least 10 years of Extended Reporting Period (ERP) coverage at no additional charge. This means that the last CPA policy you had in place before discontinuing practice will extend to respond to this and other future insured claims that may arise within that 10-year period, provided the claims are based on incidents and exposures that occurred during your past practice.

## I am a Physiotherapist Assistant (PTA). Is there coverage specific to my practice needs?

Yes. As a CPA PTA member, you have access to your own \$3M CPA Professional Liability and Commercial General Liability Insurance policy tailored for your specific practice needs. Find out more about the CPA's insurance for PTAs at [www.cpa.bmsgroup.com](http://www.cpa.bmsgroup.com).

## I am moving to a different province. Will my CPA Professional Liability Insurance (PLI) cover me?

The CPA's PLI policy is not limited to province of place of work. As long as you are working within your professional scope of practice and abiding by the regulations in your jurisdiction (for instance, the province where you are relocating), your coverage will follow you anywhere throughout Canada. 🇨🇦

# Helpful Contacts



You don't have to do this on your own. The CPA's insurance program partners are here to help.

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**BMS:** 1-855-318-6136 or [cpa.insurance@bmsgroup.com](mailto:cpa.insurance@bmsgroup.com)

**Gowlings Pro Bono Legal Advice:** 1-888-943-0953

**CPA Membership Services:** 1-800-387-8679 or [information@physiotherapy.ca](mailto:information@physiotherapy.ca)



## About BMS Global Affinity

BMS Canada Risk Services Ltd. (BMS) is the headquarters for BMS Global Affinity and was established in 2012 to provide member-centric insurance programs to associations, particularly in the health care sector, focused on specialist service, from knowledgeable brokers, comprehensive and competitive coverage, industry-specific risk management, and access to additional value-added services.

Collectively, the BMS teams in Canada, Australia, New Zealand, and Europe provide coverage and additional services to more than 700,000 health care and regulated professionals globally through 100+ associations.

As the exclusive broker and provider of professional liability and practice risk insurance to CPA members, BMS is committed to delivering the very best the global insurance market has to offer. For more information, please [click here](#).

Contributors include the CPA's insurance program partners Gowling WLG (Canada) LLP, Beazley, Berkley Canada, and BMS.

Please note that the content of this magazine is provided for information purposes only. It is not, nor should it be considered, legal or broker advice and should not be relied upon as such. Please contact BMS if you have any questions about liability insurance and how it may respond in your practice scenario.

### **Gowling WLG (Canada) LLP (Gowlings)**

Members who participate in the CPA's Professional Liability Insurance program are eligible for 30-minute pro bono and inclusive legal claims defence services from Gowlings, one of the largest and most highly recognized legal firms specializing in medical defence and professional liability in Canada.

### **Beazley**

A Lloyd's of London insurer, Beazley has helped clients handle thousands of data breaches since the launch of Beazley Breach Response (BBR) in 2009 and is the only insurer with a dedicated in-house team focusing exclusively on helping clients handle data breaches. Beazley's BBR Services team coordinates the expert forensic, legal, notification, and credit monitoring services that clients need to satisfy all legal requirements and maintain patient and customer confidence.

### **Berkley Canada**

A Specialty Commercial Insurer that delivers exceptional customer service and expertise to small and mid-sized clients who need Employment Practices Liability solutions over the long term. Berkley applies product experience, industry expertise, and underwriting knowledge to develop fully featured and realistically priced protection that physiotherapists can rely on now and into the future.

