



Professional missteps

How improper conduct can lead to complaints

When people think of a medical or professional liability claim, what often comes to mind is a patient who has been injured during treatment and is claiming damages as a result of this injury. Unfortunately, this initial reaction is usually true, as unintended injuries or complications are altogether too common in the health system. Such injury claims involving physiotherapists may include patient falls, burns, increase or exacerbation of symptoms, bruising, dislocation, muscle or ligament damage, and others.

But professional liability doesn't only refer to physical injury. In fact, between 30-50 per cent of claims made each year to the Canadian Physiotherapy Association's (CPA) professional liability insurance program do not involve physical damage. Instead, these claims are based on patient or public (family, colleagues, employer, third-party payors, etc.) complaints made to the physiotherapy professional registration boards, or Colleges. Anyone who has a concern about the practice or conduct of a physiotherapist is able to lodge a complaint with the College through an accessible process, which in most provinces, is available online. This is a relatively easy and cost-effective method for the public to pursue an allegation of wrongdoing or misconduct against a physiotherapist.

Complaints

Complaints about a physiotherapist's **professional conduct** are one of the most common non-injury claims seen in the CPA program. These complaints include things like inappropriate or insensitive comments, biased or discriminatory treatment, and unprofessional business practices, among others.

The following scenarios represent typical incidents for which unprofessional conduct claims have been made:

- 1 Joan has been treating Robert regularly for several weeks. Both she and her patient are of similar age and share an interest in home renovation. Over the course of treatment, Joan and Robert have developed a good rapport, and Joan finds herself talking about her current renovation project during Robert's treatment sessions. She has been bouncing ideas off Robert because he has worked as a contractor in the past and she has been able to apply some of the advice that Robert has given her to advance her project. Meanwhile, Robert has been slowly recovering from his upper extremity injury, but is becoming frustrated with the pace of his progress. After a few weeks, Joan notices that Robert is no longer on her caseload. Shortly thereafter, she receives a call from her regulatory College informing her that Robert has complained that Joan's behaviour during treatment was unprofessional. He feels that he should have recovered more quickly and that Joan was keeping him in treatment so that she could get free renovation advice.

If you become aware of a complaint made against you to your provincial/territorial regulatory College, please contact Maltmans at 1-800-699-0914 or claims@maltmans.com. Their 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.

For further information about the claims reporting procedure, please see [Insurance Program Claim Reporting Procedures](#)





2 Brad has been treating his patient, Stephanie, for a workplace injury and she has progressed to performing functional tasks in the clinic gym. The gym is an informal environment where patients are encouraged to interact with one another, and with clinic staff, as they carry out their exercise programs. Brad has been coaching Stephanie in proper body mechanics and has developed a treatment plan that progresses her lifting and carrying tasks. Over the past few treatment sessions, Brad noticed that Stephanie hasn't progressed her functional tasks as outlined and seems to just be going through the motions. He takes Stephanie aside and jokingly calls her out on her lack of effort. Later that week, Stephanie asks to transfer to a different physiotherapist and lodges a complaint with the College. Stephanie's claim referenced that Brad's comments made her feel embarrassed and she felt it was inappropriate for him to speak to her that way in front of the other patients and staff.

3 Sandra and Helene are colleagues working in a large hospital. They have been friends for years and often commiserate on work-related and personal issues. When interacting with their patients and co-workers, both Sandra and Helene are extremely professional. But when the two women are together alone, their conversations are much more informal. One afternoon, Sandra and Helene stop to chat in the hallway. Sandra tells Helene about the young post-surgical patient on her caseload who is refusing to participate in her physiotherapy. The patient has made rude comments to the staff and is hostile when Sandra attempts to engage her in therapy. Helene listens as Sandra complains about her patient and they both laugh about trying to work with 'such a monster'. The patient's husband was in the hallway at the time and overheard the conversation. He reported both physiotherapists to the College, citing that the comments were insensitive and unprofessional. He was also upset that his wife's medical condition was discussed so freely in what was essentially a public space.

The situations described here are serious in nature, and unfortunately, can arise without warning. According to Maltman Group International (Maltmans), the claims adjuster for CPA's Professional Liability Insurance policy, most physiotherapists are surprised when a complaint is made about them. Worry over the complainant's motives and uncertainty about the defence process can cause significant stress for the physiotherapist involved.

Legal Support

The cost of legal representation to defend complaints made to professional Colleges is included in 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. In these situations, members are not often aware that handling these complaints independently and without reporting to Maltmans can jeopardize their entitlement to legal defense coverage for this circumstance under the policy. Tackling complicated submissions and preparing for informal or formal hearings can be daunting. Many physiotherapists find themselves unprepared for such an undertaking and in some cases this is reflected in the outcome. CPA is aware of complaint cases in which the outcome would have been significantly better for the physiotherapist had they taken advantage of the legal services available to them through their policy. Through the CPA insurance program members are provided with specialized legal representation from Gowlings, regarded as Canada's leading law firm in defending College complaints for regulated health professionals.

If you would like further information on reducing practice risks, please contact one of our risk and insurance professional staff at risk@physiotherapy.ca or **1-800-387-8679**.

