



Dear CPA Member,

This is an exceptionally challenging and uncertain time.

As your Broker, we are your advocate. We are on your side.

We are your eyes and ears monitoring what is happening in the insurance industry in unprecedented circumstances so that your interests are protected.

We are listening to you, answering your questions and providing information as it becomes available in relation to specific coverage and the insurance industry generally.

While Brokers do not adjudicate or determine claims we are here to provide guidance to you throughout the claims process and to monitor the response from the Insurer. If you do not receive the level of service you expect from the Insurer, or want further detail about the Insurer's claim response, we will escalate the concern on your behalf and will work with all parties to seek a solution.

BMS Canada Risk Services Ltd. (BMS) works with many different Insurers. We are a separate entity and have no business affiliation with any Insurance Companies underwriting the CPA Insurance Program, including Novex Insurance Company, an affiliate of Intact Insurance (Novex). Our remuneration is not tied to the outcome of claims under this policy.

This means that we are working entirely on your behalf to make sure that your interests are represented at all times, and particularly if you have a claim.

We are reviewing the feedback being shared by Novex to ensure it aligns with your policy wording and where it does not we are working to promote a more favourable interpretation for you. We remain engaged with our legal partners to further review policy wordings and case law which may set new precedent and impact any current or future claims. We also continue to advocate on your behalf in collaboration with your association and key stakeholders.

BMS has assisted hundreds of physiotherapists through the claims process during the past several years. From the independent practitioner who receives notice of a regulatory complaint or malpractice suit, to the business owner who suffers a break-in, to the manager who has been named in a lawsuit alleging workplace discrimination, BMS is here to help. Our team will help you navigate the steps to report a claim and will be engaged throughout the process, coordinating with you, the Insurer, and the legal team to see the claim through to resolution.

What is our role as your Insurance Broker?

- We work with a range of specialist insurance companies, each offering different insurance policies and coverage, to ensure CPA members have access to tailored insurance policies at cost-effective premiums, including Professional Liability, Commercial General Liability, Business Professional Liability, Business Package, Cyber Security & Privacy Liability, and Employment Practices Liability;
- Negotiate ongoing coverage enhancements with Insurers across product lines, including higher sub-limits, bespoke coverage, and wordings that are tailored to meet your specific practice needs. Each year, BMS has successfully negotiated improved coverage across CPA member policies;
- Negotiate with Insurers to keep premiums as stable and cost-effective as possible, and consistent with the program risk profile and market conditions;
- Assist you in identifying your individual and business risks to help you decide what insurance you need for your practice circumstances;
- Explain the different coverage available so you can make an informed insurance purchase. It is important to note that as your Broker, the availability of coverage will be highly dependent upon what is available in the market at any one particular point in time;
- Arrange and place your coverage with the Insurer(s) and provide you with confirmation of purchase and a certificate of insurance;
- Assist you in making changes to your coverage, such as increasing limits, adding additional policies when needed, adding additional insureds, and others;
- If you need to make a claim on your policy, we will assist you through the process and liaise with the Insurer on your behalf;
- Review Insurer responses to claims, seek further clarification where required, and advocate on your behalf when needed throughout the claims process;
- Facilitate expediting any payment delays from the Insurer for claims insured under the policy;
- Continually engage with Insurers, legal, and claims adjusters throughout the claims process;
- Monitor claims and trends, report aggregated data regularly to your association and develop resources to enhance professional practice, improve patient safety, and mitigate claims;
- Ensure coverage continues to be available to members, particularly in challenging market conditions where Insurers may look to restrict or remove coverage.

What additional steps are we taking as your Broker during this Pandemic?

- Provide valuable practice-related information to assist you to navigate a very uncertain time;
- Review policy wordings and challenge definitions to try to identify any potential avenues of coverage;
- Monitor the number of claims submitted and the Insurer responses;
- Review Insurer responses to claim submissions to ensure these are aligned with policy wording and challenge Insurers where required;
- Engage continuously with all stakeholders, including Insurers, legal, and claims adjusters;
- Monitor insurance law cases across Canada and abroad, which may be relevant to your coverage and any current claim;

- Engage with a range of leading insurance companies to seek additional information, such as any changes they plan to implement within their policies as a result of the current COVID-19 crisis;
- Ensure coverage continues to be available to members, during and following the pandemic, where insurers may look to restrict or remove coverage.

Questions & Answers

Business Package Coverage

What does the CPA Business Package cover?

The CPA Business Package, insured by Novex, includes Commercial General Liability, Property/Contents coverage, Crime coverage and Business Interruption.

Generally, there are two types of Commercial Property policies: 1) Named Perils and 2) All Risks. The first is narrower in coverage, as it only covers perils that are specifically outlined in the policy wording, known as “Named Perils”. However, the second, which is the type of policy provided to CPA Business Package buyers, is more comprehensive as it covers “All Risks” of direct physical loss of or damage to the insured property, except those that are specifically excluded.

The Business Package policy provides 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).

The policy also provides coverage if your business is sued for damages arising from a bodily injury or property damage to a third party that occur as a result of your business operations and/or premises. 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.

Each claim submitted to the insurance company, Novex, is assessed based on its own facts. Hundreds of claims have been paid out in the past few years, including for water damage, burglary and theft, for example, and the business interruption loss associated with these.

How does the Business Interruption part of the CPA Business Package coverage work?

The Business Interruption Extension that is included within the CPA Business Package has 12 extensions of coverage, including for Extra Expenses, Off-Premises Service Interruption, and Mortgage Rate Guarantee, among others.

Because the Business Interruption Extension is attached to the main policy wording, it is subject to all terms, conditions, exclusions, stipulations and provisions of the policy. This means that each extension will only apply if the loss of business income resulted from the necessary interruption of or interference of the business caused by direct

physical loss or direct physical damage by an insured peril. Common examples of insured perils are fire and water damage.

Excluded Perils are outlined under Exclusions within the policy wording. While there are some nuances between policies from different Insurers, this language is common in the insurance industry. Virus and disease are not listed under Excluded Perils in the Novex Policy Wording.

Will my Business Interruption insurance respond during the current COVID-19 circumstance?

Upon review of the policy wording, coverage is triggered if there is a physical loss or damage to the premises that is caused by insured peril. For instance, if you had a fire in your clinic, or a pipe burst and caused water damage to your premises, or if there was a break-in and you couldn't operate until you replaced the front door and windows. This is common in the insurance industry.

Business Interruption Insurance that includes specific Pandemic coverage and that may be triggered in the current COVID-19 circumstance, is rare. This fact has been widely publicized in the media throughout Canada and the United States. The general absence of business interruption coverage for pandemics is already prompting governmental review and consideration, which is occurring in the United States. Several states have proposed bills that would require commercial property Insurers to retroactively cover losses that insureds across the state have accumulated because of the pandemic. In Canada, a national class action lawsuit was filed on April 6, against some of Canada's largest insurance companies for their alleged refusal to pay coronavirus-related business interruption claims.

There is a central aspect of policy wordings that is being scrutinized and debated at this time. This is, what constitutes direct physical loss or damage and whether the presence of COVID-19 falls within the definition.

As part of our role as your Broker, we are monitoring this situation closely, including any legal precedents, changes in legislation or governmental intervention.

Does my Business Interruption insurance respond if access to my clinic is prohibited by order of Civil Authority?

The CPA Business Package policy will extend to cover loss of business income during the period of time, not exceeding 30 days, while access to the insured premises is prohibited by order of civil authority. However, this is only when such order is given as a direct result of direct physical loss of or damage to neighbouring premises by an insured peril.

Will Pandemic coverage be available moving forward?

It remains to be determined if Pandemic coverage will be available moving forward.

Prior to the COVID-19 outbreak, and in respect to policies available to health care professionals, Pandemic coverage was included in a specialized policy sold through Canadian Dental Service Plans Inc. (CDSPI) specifically for Dentists. The Insurance Brokers Association of Ontario has advised that this plan was not made available by the Insurer to any other brokers.

As of the date this document was produced and based on information publicly available, pandemic coverage for new policies is no longer available to participants under that program.

We remain in close contact with many insurance companies on this topic and are continuing to monitor the industry more broadly for any new pandemic-related coverage or products that become available.

My clinic isn't open. Can I cancel my Business Package policy or get a refund?

Even if you have shut your clinic doors and are no longer operating, it's recommended that you keep your Business Package policy in place. While certain risks will diminish, other exposures continue and may even increase; risk of undetected water damage at an unoccupied premises, for example. We have also had clients tell us that they are facing increased crime in the neighbourhoods where they operate as a result of offices being vacant.

If you were to cancel your Business Package policy, your premises would become uninsured and you would be without coverage to respond to insured losses, such as theft, water damage, fire, and General Liability exposures for example. It is also common to have a condition within your lease agreement that you continue to have active insurance in place. We strongly recommend that you maintain your current policies, including your Business Package policy, throughout this period.

My clinic isn't open. Does my Business Package policy have any requirements in relation to how often someone will need to enter and inspect the premises?

Similar to your home-owners policy, business property policies including CPA's Business Package have a vacancy provision that applies after the location has been empty more than 30 consecutive days. This means that if your clinic is vacant, unoccupied or shut down for more than 30 consecutive days, the policy will restrict coverage unless you have notified the Insurer, Novex and updated your policy accordingly, often at additional cost.

We know that many of our clients have had to temporarily close locations because of COVID-19 and that these closures are ongoing. BMS has negotiated for the automatic removal of the 30 day vacancy exclusion on your Business Package policy at this time. This means that your coverage will not be reduced, restricted, or otherwise impacted if your clinic remains closed for longer than 30 days. Please make sure that all pre-existing site security measures remain operational, such as sprinkler protection, security and theft prevention measures, if applicable. If you are not able to do so, please let us know so that we can communicate this to Novex.

Some Insurers are suggesting that if your clinic is temporarily closed, and there has been no health and/or government authority advice to the contrary regarding being out in public, then it would be prudent to check on the property every 72 hours. This will allow you to inspect and monitor for any property damage or security breaches, and take care of any housekeeping items such as removing trash, and checking exterior lighting and heating systems, for instance.

Professional Liability – Individual & Business

Does my Professional Liability Insurance (PLI) policy follow me if I provide care by other means such as telehealth?

The CPA PLI policy has no additional restrictions for physiotherapists delivering their professional services via telehealth, as long as the insured is acting within their scope of practice and licenced jurisdiction(s). Standard policy conditions apply.

There are additional considerations for professionals utilizing technology. Please refer to the Virtual Health Care Services – Ensuring Continuity of Care article linked [here](#). If you are transitioning your practice to telehealth it's recommended that you consider Cyber Security & Privacy Liability coverage.

CPA members have access to a \$1M Cyber Security & Privacy Liability policy. This provides first and third party coverage, including but 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
- Coverage for “Cyber Extortion” incidents
- Third party liability for privacy breaches
- First Party data protection
- Website media content liability

Please visit www.cpa.bmsgroup.com for more information or contact BMS to speak to a broker.

If my earnings are negatively impacted because I have been required to stop working or reduce my practice hours due to the current crisis, do I have insurance to cover this loss of income under my Professional Liability Insurance policy?

Professional Liability Insurance (PLI) protects you against liability or allegations of liability for injury or damages that have resulted from a negligent act, error, omission, or malpractice that has arisen out of your professional capacity as a physiotherapist. Your policy also responds if a complaint is made against you to your regulatory body (College).

Under the PLI policy there is a Loss of Earnings endorsement. This is to provide you with up to \$750 per day to cover the expenses associated with taking time away from work to assist the Insurer in the investigation or defence of a claim.

For example, you have to attend court to defend yourself in a civil suit that’s been brought against you alleging professional negligence. In this scenario you could potentially claim under the Loss of Earnings section of the policy.

Does my Clinic Professional Liability Insurance extend to cover claims related to telehealth services?

It’s recommended that business owners secure Clinic Professional Liability Insurance, which protects the business and its assets if the business is named in a professional liability claim.

This includes while employees of the business/clinic are delivering services via telehealth. If your Clinic is named in a professional liability claim based on the telehealth services provided by your employees, you would report the claim and coverage would respond similar to if the services were delivered in person.

If I infect a patient without knowing I have COVID-19 while rendering care and am sued, will my Professional Liability Insurance protect me?

Professional Liability insurance (PLI) protects you against liability or allegations of liability for injury or damages that have resulted from a negligent act, error, omission, or malpractice that has arisen out of your professional capacity as a physiotherapist. Your policy also responds if a complaint is made against you to your regulatory body (College). PLI protects physiotherapists by ensuring that your legal defence is coordinated and paid for if a claim is made against you. Your PLI also covers the cost of patient compensation, or damages.

A Claim means any demand upon the Insured for damages or services alleging liability of the Insured as the result of any “injury”, act, error or omission. “Injury” includes bodily injury, sickness, or disease.

Upon review of the CPA PLI Wording, there are no exclusions relating to transmission of a virus or disease from the insured during delivery of their professional services. However, there are standard policy exclusions relating to claims arising out of, or attributable to any dishonest, fraudulent or criminal act by an insured.

Commercial General Liability

If I infect a third party without knowing I have COVID-19, will my Commercial General Liability Insurance cover me?

Commercial General Liability (CGL) insurance protects you against claims arising from “bodily 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 and not related to your delivery of professional services. The definition of “bodily injury” in the CPA CGL policy includes disease.

There may be coverage under a CGL policy to respond in present circumstances, provided there were allegations of bodily injury, property damage or personal injury claimed by a third party arising from your handling of the COVID-19 pandemic. As with any CGL claim under the policy, the loss must also have occurred during the policy period and in the Coverage Territory. There are also standard policy exclusions that would be reviewed in the case of a claim.

Claims

How do I submit a claim under my CPA Business Package?

Please contact BMS at 1-855-318-6136 or email cpa.insurance@bmsgroup.com with the following information:

- Certificate of Insurance
- Date of Loss
- Contact details

A broker will then pass this onto Novex on your behalf. Within 24 hours, Novex will appoint a claims adjuster to your file who will begin reviewing the details and will contact you via the phone number or email that you provide. You will then be able to have direct dialogue with your adjuster about your claim.

However, if at any time you have any concerns about the level of service you are receiving, please contact BMS. A senior team member will escalate this issue to the appropriate person at Novex. Once apprised of a concern we can participate in the dialogue with the adjuster to assist in the process moving forward.

I submitted a Business Interruption claim under my CPA Business Package and received a declination letter from the insurance company.

If your Insurer, Novex, has taken the position that there is no coverage under your policy, they will send you a letter of declination outlining their reasoning and citing policy wording, where appropriate.

BMS is monitoring these coverage decisions individually and collectively, and reviewing the feedback from your Insurer to ensure it is aligned with your policy wording. We are challenging decisions and definitions within policy wordings, while keeping a close eye on legal commentary and cases appearing that may set new precedent and set grounds to re-open or contest any declined claims. This includes the definition of direct physical loss or damage to

the insured property which many Insurers have communicated as grounds to decline claims across many business sectors.

Novex may also include a blank Proof of Loss Form, which you can complete and submit to them for additional consideration. You will need to include the following when completing the Proof of Loss Form:

- a complete inventory of the lost or damaged property and showing in detail quantities, costs, actual cash value and particulars of amount of loss claimed,
- a statement of when and how the loss occurred,
- a statement that the loss did not occur through any wilful act or neglect or the procurement, means or connivance of the Insured,
- the amount of other insurances and the names of other Insurers,
- the interest of the Insured and of all others in the property with particulars of all mortgages, liens, encumbrances and other charges upon the property,
- any changes in title, use, occupation, location, possession or exposures of the property since the issue of the insurance contract.

You will also need to have your Proof of Loss verified by a statutory declaration (i.e. witnessed by a designated official such as a justice of the peace, attorney, or other).

Novex has indicated that there is a two year limitation period on the policy. This means that if you disagree with their position that your claim is not covered, you must bring legal action against them within two years of the date of the loss. Failure to do so may adversely affect your right to claim.

If you disagree with Novex's position, please let us know and BMS will facilitate in escalating your complaint.

The Insurer also has a formalized complaints resolution process that you can initiate:

By email: customer.experience@intact.net

By telephone: 1-866-405-6763

By completing their [online form](#)

Further information about Novex's complaints resolution process can be found here:

<https://www.intact.ca/on/en/customer-satisfaction.html>

If you have a Professional Liability, Commercial General Liability or Cyber Security & Privacy Liability claim:

Please contact BMS at cpa.insurance@bmsgroup.com.

What can I expect in the months ahead?

BMS is your partner in this process. We will continue to work with you, your association, and the industry to ensure that your Insurer treats you fairly and to deliver timely information and tailored risk management resources to assist you wherever possible. BMS has also created an internal task force to work with other industry stakeholders to communicate to government the widespread implications that the standard coverage restrictions related to Pandemics are having on professionals and business owners.

Disclaimer: this document was made available on April 20, 2020 as a response to the COVID-19 outbreak in Canada. The circumstances surrounding COVID-19 continue to change rapidly and BMS Canada Risk Services Ltd. (BMS) wanted to provide members access to information relating to Liability Insurance Coverages that they may have purchased through their respective Professional Association Program. As the environment and realities related to COVID-19 are still in their infancy and continue to change rapidly, this information is provided merely as a guide and must be interpreted reflecting on when the information was delivered recognizing that the expert advice may change as the situation develops. This document is a summary of coverage and is for information purposes only. It is not, nor should it be considered, broker advice and should not be relied upon as such. Full terms and conditions of the policy, including all exclusions and limitations are described in the policy wording, a copy of which can be obtained from BMS. For more information on the coverage please contact us.