



RISK NOTE

Subject: **JURISDICTIONAL ISSUES RELATED TO NON-RESIDENTS OF CANADA**

The Health Care Protection Program (HCPP) does not have a Territorial Limitation Clause in its coverage. Physicians, nurse practitioners and other healthcare practitioners who are employed by HCPP member Health Care Agencies (HCAs) have HCPP coverage for suits brought outside of Canada.

In contrast, Midwives Protection Program (MPP), the Canadian Medical Protective Association (CMPA), the Health Insurance Reciprocal of Canada (HIROC) and the Canadian Nurses Protective Society have indicated they either restrict legal assistance in matters initiated by non-residents of Canada or have a Territorial Limitation Clause. All four organizations recommend their healthcare practitioners have a governing law and jurisdictional agreement signed with their clients/patients.

As a risk mitigation strategy, HCPP also recommends HCAs have patients who are non-residents of Canada complete a governing law and jurisdictional agreement for the benefit of the HCA. ***In all cases, signing of a governing law and jurisdictional agreement should not delay the provision of urgent care*** and failure to have a governing law and jurisdictional agreement signed does not void the coverage provided by HCPP. It's important to recognize that the chance of legal action being brought outside of Canada increases when services are provided to non-residents of Canada. When legal action is brought outside of Canada it creates challenges for defense (increased costs, applicability of other laws, etc.) From a risk management perspective, treating non-residents for non-urgent care that is available in their own country is not recommended.

Many HCAs also include independent healthcare practitioners (e.g. physicians, midwives, nurse practitioners, dentists etc.) in the facility's jurisdictional agreement as part of the admissions procedure. The HCA is likely to be drawn into claims made against independent practitioners providing medical care within its facility. By including these practitioners on the facility's agreement form, the HCA is assured that all independent healthcare practitioners also have an appropriate governing law and jurisdictional agreement in place. The attached Governing Law and Jurisdiction Agreement is recommended for use in these situations. The language used mirrors that of CMPA, HIROC and MPP.

IN NO CIRCUMSTANCES SHOULD THE PROVISION OF URGENT / EMERGENCY CARE BE DELAYED BY THE FAILURE TO HAVE A GOVERNING LAW AND JURISDICTIONAL AGREEMENT SIGNED.

Updated, April 2021

Governing Law and Jurisdiction Agreement

[for Health Care Organizations]

This agreement ("Agreement") is entered into by and between _____ and _____
[Name of patient]
[Health Care Agency] (collectively, the "Parties").

Governing Law

The Parties hereby agree that:

- a) all aspects of the relationship between _____ and _____
[Name of patient]
[Health Care Agency] as well as her agents, delegates, employees, and any physicians and other independent healthcare practitioners providing medical or other healthcare and treatment to _____, or in association with _____,
[Name of patient] [Health Care Agency],
including without limitation any medical or other healthcare and treatment provided to _____,
[Name of patient]
- a) the resolution of any and all disputes arising from or in connection with that relationship, including any disputes arising under or in connection with this Agreement,

shall be governed by and construed in accordance with the laws of the province of British Columbia (other than conflict of laws rules) and the laws of Canada applicable therein.

Exclusive Jurisdiction

The Parties hereby acknowledge that the medical or other healthcare and treatment received by _____ from _____ will be
[Name of patient] [Health Care Agency]

provided in the province or territory of British Columbia, and that the Courts of British Columbia shall have exclusive jurisdiction to hear any complaint, demand, claim, proceeding or cause of action, whatsoever arising from or in connection with that medical or other healthcare and treatment, or from any other aspect of the relationship between _____ and _____
[Name of patient] [Health Care Agency]

Date: _____

Name of patient [Please print]

Signature of patient / substitute
decision-maker on behalf of patient

Date: _____

Per: _____
[Health Care Agency]

Name [Please print]

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It should be clearly understood that this document and the information contained within is not legal advice and is provided for guidance from a risk management perspective only. It is not intended as a comprehensive or exhaustive review of the law and readers are advised to seek independent legal advice where appropriate. If you have any questions about the content of this Risk Note please contact your organization's risk manager or chief risk officer to discuss.