

WAIVERS OF LIABILITY - CONSIDERATIONS WHEN RESUMING PRACTICE

If you are in a position to return to your practice and see clients/patients in person, there are additional measures you should consider implementing in order to minimize your risk of a claim and/or complaint.

A best practice would be to consider having your client/patient sign a waiver acknowledging they will not hold you and/or your clinic, employees or agents responsible if they are exposed to and/or contract COVID-19 as a result of attending at your clinic/office/facility.

Prior to having a client/patient sign a waiver, you should:

- ensure that you are aware of any restrictions/limitations on the provision of services and social distancing and sanitization requirements that are applicable in your jurisdiction; and
- you have taken steps to ensure that you, your employees, agents or other health care professionals that you work with and the operator of the facility where you will be providing services (if applicable) are in compliance with those restrictions.

More information about public health guidelines and occupational health and safety requirements can be found by accessing the websites of your provincial or territorial government, Health Officer, and regulatory body, if applicable. Professionals practicing in a public setting must also adhere to the protocols established within their workplaces.

Once you have determined that you are in a position to provide services in person to your clients/patients safely and in compliance with the applicable restrictions, you may decide to have your client/patient sign a waiver that acknowledges the risk of being treated in person and releases you from any liability should the client/patient contract COVID-19 as a result of their attendance.

Sample language is produced on the next page. If you choose to use this sample clause, it should only be used as a starting point for an informed discussion with your client/patient. You should consider adapting and amending it, if you choose to use it, to meet the particular circumstances of your practice and to comply with the applicable legislation, guidelines and regulations in your jurisdiction.

In addition, if you choose to have the client/patient sign the waiver, this should be completed prior to the client/patient attending at your physical location.

While a signed waiver may reduce the possibility of the health care provider or facility becoming involved in a lawsuit, the decision whether or not to incorporate liability waivers into your practice is an important one that requires careful consideration.

Asking a client/patient to sign away their legal right to compensation, while possibly offering some degree of protection to the provider, may end up disrupting efforts to establish good patient-practitioner rapport. You should consider your professional and ethical obligations prior to implementing a waiver into your practice, including whether your regulatory body (if applicable) or professional ethics allows you to condition the provision of healthcare services on a signed liability waiver and refuse treatment to a client/patient who chooses not to sign the waiver.

Whatever your final decision, your risk management strategy must be complemented with good patient-practitioner communication. This should include, for example, explaining the risks associated with a treatment intervention, encouraging your client/patient to ask questions before signing forms, and attending to your client/patient's concerns and well-being following an unexpected outcome.

BMS also recommends that you regularly review your insurance portfolio to ensure that you and your business have the appropriate liability insurance to respond should a claim come forward against you. Please contact the BMS broker team if you have any questions about your insurance policies and how they may respond if a client/patient were to contract COVID-19 as a result of attending at your clinic/office/facility.

Sample Language for Waiver

Release of Liability, Waiver of all Possible Claims and Assumption of Risk

****Please review before signing****

I hereby acknowledge that I have agreed to meet with _____ (the "HCP")
(insert name of professional here)

at _____ (the "Facility") for the purpose of receiving
(insert name and address of facility here)

_____ (the "Services").
(insert services provided here)

I acknowledge and accept that there is a risk that I could be exposed to COVID-19 while attending at the Facility. I also acknowledge and accept that while receiving services, the HCP may need to be closer than the recommended social distancing guidelines in order to assess and/or treat me. I acknowledge and confirm that I am willing to accept this risk as a condition of attending at the Facility to receive services from the HCP.

In consideration of the HCP agreeing to see me in person at the Facility, I agree to release the HCP and the Facility (if applicable), their officers, directors, employees, agents and volunteers (the "Releasees") from any and all causes of action, claims, demands, requests, damages or any recourse whatsoever in respect of any personal injuries or other damages which may occur or arise as a result of exposure to COVID-19 during my visit to the Facility and/or through the provision of services to me by the HCP.

I do hereby acknowledge and agree that notwithstanding the generality of the foregoing, I declare that I will not commence litigation or otherwise seek to recover damages or other compensation against the Releasees based on any action, claim, demand, request, loss or any recourse whatsoever arising from any potential or actual exposure to COVID-19 while attending at the Facility and/or through the provision of services to me by the HCP. I further acknowledge that the Releasees can rely on this Release of Liability, Waiver of all Possible Claims and Assumption of Risk as a complete defence to any and all claims, damages, causes of action, or recourse or liability that may arise at any time.

I have carefully reviewed this Release of Liability, Waiver of all Possible Claims and Assumption of Risk and acknowledge that I fully understand the terms as set out above. I acknowledge that I am signing this Release of Liability, Waiver of all Possible Claims and Assumption of Risk voluntarily.