A GUIDE TO PROFESSIONAL LIABILITY INSURANCE FOR REGULATED HEALTH PROFESSIONALS

This document has been prepared in collaboration with SCOT, CSASK, CAOT-SK, SAC, SCPT, CERS, SPA, BMS, and Anita G. Fraser, McKercher LLP.

KNOW YOUR COVERAGE

PLI (also referred to as malpractice insurance) protects regulated health professionals against errors, omissions, misconduct and negligent acts arising from their professional practice. It also acts as a public protection mechanism and safeguard, by assuring the public that sufficient coverage is in place for all professional activities.

The Saskatchewan College of Occupational Therapists (SCOT), the Saskatchewan College of Physical Therapists (SCPT) and the College of Speech-Language Pathologists and Audiologists of Saskatchewan (CSASK) registrants have a professional responsibility to:

- comply with the applicable regulatory requirements related to professional liability insurance (PLI).
- understand the distinctions between personal and employer-provided coverage.
- understand the scope and limitations of their insurance coverage.
- ensure appropriate coverage is in place for all areas of practice.

Note: This handout provides general information and is not a substitute for legal or insurance advice specific to a registrant's practice. The guidance within this document supports informed decision-making and promotes compliance with professional, ethical and regulatory obligations in the interest of public protection.

TYPES OF COMPLAINTS & CLAIMS

1. College/Regulatory Legal Complaints[i]

- Complaints on regulatory matters or investigations from a regulatory body alleging professional misconduct or professional incompetence. The regulatory body cannot award money (damages) to the patient, and they cannot require the professional to provide financial compensation to the patient. The regulatory body can impose fines and other disciplinary measures.
- Accounts for the majority of claim/complaint types.

- PLI should provide coverage for legal defense and may provide coverage for loss of earnings associated with time off work to assist in the defense of a claim.

2. **Criminal Claims**
    - Claims where a regulated health professional is charged with a criminal offence related to their professional practice (e.g. assault, sexual offenses, fraud, etc.).
    - PLI should provide coverage for legal defense.

3. **Civil Complaints**
    - Complaints where a regulated health professional is required to respond to a statement of claim threatening legal action alleging professional negligence or an error or an omission.
    - PLI should provide coverage for legal defense and compensation/settlement costs.

4. **Other Complaints**
    - Complaints where a regulated health professional is required to respond and participate in a legal process overseen by a legislated third party (e.g., Saskatchewan Human Rights Commissioner, Office of the Saskatchewan Information and Privacy Commissioner).
    - PLI should provide coverage for legal defense and compensation/settlement costs.

KEY DIFFERENCES BETWEEN INDIVIDUAL/INDEPENDENT AND EMPLOYER POLICIES

Employer-Provided Professional Liability Insurance[ii]:

- Typically, an individual health professional is not named on the employer/business policy, and limits of liability are shared with ALL employees, as well as the organization involved in a claim. Thus, there is risk that limits may be eroded/exceeded by other claims or by other employees under the policy.
- Provides coverage related to work done in the employment setting. Coverage does not extend to work, or advice provided (paid or volunteer) that occurs outside of the workplace or scope of employment.
- Does not generally include extended reporting periods and therefore only provides coverage while employed, with coverage typically ending as soon as the employee-employer relationship is terminated.
- Does not generally reimburse criminal defense costs.
- May not respond to allegations that the professional acted outside of employer policies or provide coverage for complaints made to the regulatory bodies where unprofessional conduct is alleged, as employer insurance policies often include clauses stipulating that professionals are expected to behave professionally in the workplace.
- Potential conflicts of interests may present when the complaint has been generated by the employer or when the professional's interests do not align with those of the employer.

Personal/Individual Professional Liability Insurance

- Refers to insurance obtained personally by the regulated health professional, issued in their name and separate from any employer-provided coverage.
- Widely recognized as a prudent aspect of professional risk management, as well as ethical and responsible practice.
- Assures the regulated health professional (as well as the public receiving services) that:
  - sufficient coverage follows the professional and is extended to all professional activities, regardless of workplace or practice settings (i.e. covers the full scope of work).
  - appropriate amounts of coverage are available to the individual, regardless of the type of claim.
  - 'tail end" coverage is extended after the individual has moved to a different place of employment or is no longer practicing (after retirement, on leave etc.).
  - Coverage continues even when professional and employer interests diverge.
- May include additional features such as:
  - Cyber and privacy breach event coverage (e.g. Data recovery costs, cyber extortion loss, breach response costs, fraudulent instruction funds transfer loss),
  - Pro bono legal advice services,
  - Loss of earnings coverage, etc.

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[i] CSASK and SCOT strongly recommend that registrants retain legal counsel to advise them throughout the college's complaint investigation and disciplinary process.

[ii] Although exceptions exist, the limitations above are based on trends noted in employer provided coverage. When considering relying solely on employer coverage, registrants should review the employer policy details to ensure they are making informed decisions to protect their professional practice and the public to whom they are providing services.