

FEATURE



Professional Liability Insurance 101 from CDHA Insurance Partner Getting to Know Your “Claims-Made” Policy

There are two different categories of professional liability insurance policies in Canada: “occurrence based” and “claims-made.” Recognizing the fundamental differences between the two will help you better understand your policy and any future insurance requirements.

HOW DOES AN OCCURRENCE BASED POLICY WORK?

With an occurrence based policy, the insurance you had in place when an incident occurred is the policy that would respond, regardless of when the claim is reported. In other words, if a client was injured while undergoing treatment with you in 2013 but only filed a claim yesterday, it would be your 2013 insurance policy that would respond to the claim, not the insurance you have in place today.

WHAT IS A CLAIMS-MADE POLICY?

A claims-made policy responds to claims as they are reported. Using the same example above, it would be your current policy that would respond to the claim, despite the incident’s occurrence in 2013.

A claims-made policy is the type of professional liability insurance you hold through CDHA, and it has a number of advantages. Think of how your coverage limits have changed over the past few years. Today’s \$1M, \$2M, and \$5M per claim policy limits are significantly higher than in the past. With a claims-made policy you don’t have to worry that your old policy limits were too low to protect you adequately or that your old policy had exclusions that would deny you coverage.

WHAT SHOULD I KNOW ABOUT THE “RETROACTIVE DATE”?

Many claims-made policies have a “retroactive date”, which is usually the inception or start date of the first claims-made policy held by the insured person. Any claims produced by wrongful acts that took place prior to the retroactive date would not be covered, even if the claim is first made during the policy period.

For newly registered dental hygienists who join the CDHA program, the retroactive date is indicated as the *Policy Period from* date on the members’ first professional liability insurance policy. For those already registered and practicing, the retroactive date is the date upon which the dental hygienist first purchased an uninterrupted professional liability insurance policy.

THINGS TO CONSIDER WITH YOUR CLAIMS-MADE POLICY:

1. ***Claims need to be reported when you first find out about them***

With the CDHA claims-made policy, your insurer needs to hear about any claim the moment you are made aware of it. In fact, your policy states that you must report a claim within 30 days and, if this window is missed, your coverage may be compromised. Early reporting allows the insurer to start managing the situation. It also gives you the peace of mind that comes from knowing insurance experts specialized in professional liability are working with you to achieve the best possible outcome for all involved.

And remember, reporting a claim will NOT jeopardize your ability to secure coverage in the future. It’s not like car insurance — your rate won’t go up just because a claim has been made.

So what happens if you don’t report the claim?

Some of your colleagues have experienced the repercussions of failing to report a claim against them.

Often this is because the issue seemed like a small matter, easily resolved without involving the insurance company. Consider this: a dental hygienist receives a letter of complaint from their regulatory college and decides to handle the issue themselves. But what seemed small initially turns into something more substantial and the dental hygienist decides it is time to hire a lawyer. By then, the 30-day reporting period has passed and the dental hygienist has to secure and pay for legal representation and other associated fees out of pocket because the claim is not accepted.

You should also know that any costs incurred while managing your claim before you report it (for instance, legal fees) may not be covered. There is a standard claims process that must be followed whereby the policy and the allegations are reviewed to determine coverage. You jeopardize your potential for recovery of expenses if the insurer disagrees with the actions you took prior to reporting the claim.

2. *You should have tail coverage in place to protect you upon retirement or when leaving the profession*

“Tail coverage” (also called “extended reporting period” coverage) provides coverage to respond to claims made against you for insured incidents that occurred before retirement, but that were not reported until after your active policy expired. Securing tail coverage means that you are extending the coverage from your previous policy to provide protection for the future. This is important to consider when you retire or leave the profession because claims may arise months, or even years, after care was provided. Many regulatory colleges also require that their members continue to hold professional liability insurance for a certain number of years after providing client care. By securing tail coverage, you can rest easy knowing that you and your clients are protected.

CDHA TAIL COVERAGE

While most insurance policies do not automatically provide coverage for claims that arise after the policy has expired, the CDHA program provides retired members with free, unlimited coverage upon retirement. All formerly insured members who have permanently discontinued practice and surrendered their license to practice are automatically eligible for this coverage.

Even if you are only taking a temporary leave of absence from the profession, the CDHA program has you covered. The CDHA policy automatically protects all formerly insured members with up to two years of tail coverage at no charge. That’s one less thing to worry about when taking maternity leave, temporarily working in another field, traveling, or in cases of illness.

But remember, tail coverage only provides protection against potential future claims arising from prior incidents and exposures that occurred during your past practice as an insured dental hygienist. You must have an active insurance policy in place if you want to return to professional practice.

GENERAL LIABILITY INSURANCE, PROPERTY, AND CRIME COVERAGE

Dental hygienists who operate their own business or who are self-employed can protect their business assets with commercial general liability insurance (CGL). This policy insures you against bodily injury and/or property damage to a third party that is not caused by professional negligence. CGL is commonly referred to as “slip and fall” insurance. Property insurance and crime protection can also be secured for insurance against property and crime incidents such as damage to office contents and theft.

Unlike your claims-made professional liability insurance policy, most CGL, property and crime policies are “occurrence based.” This means that an active policy must be in place to respond to any incident that occurs in that policy year. If your clinic sustains an insured property loss today (for instance, your clinic contents need to be replaced due to flood damage), you must have an active policy in place to respond to the claim. Or alternatively, if someone was injured because they slipped on your wet clinic floor in 2013, but they only filed a claim against you today, it would be your 2013 CGL policy that would respond.

With an occurrence based policy, you do not need to secure additional coverage upon retirement.

THE BOTTOM LINE

- ▶ Consider your personal and business insurance circumstances and select the coverage option(s) that best suit your needs;
- ▶ Maintain active insurance policies (both professional liability and CGL/business) if you are in active practice;
- ▶ CDHA’s tail coverage is free and automatically included for all formerly insured members who are taking a temporary (up to 2 years) or permanent leave of absence from the profession. Be sure to secure an active insurance policy if you decide to return to professional practice.



For further information about CDHA’s insurance program, please contact BMS Group at 1-855-318-6557 or cdha.insurance@bmsgroup.com, or visit

www.cdha.bmsgroup.com.

The BMS team are experts in healthcare professional liability insurance products and services, and are the exclusive professional liability and clinic insurance brokers for CDHA.