



THE CANADIAN DENTAL  
HYGIENISTS ASSOCIATION  
L'ASSOCIATION CANADIENNE  
DES HYGIÉNISTES DENTAIRES

Dear CDHA 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 CDHA Insurance Program, including Ecclesiastical Insurance (Ecclesiastical). 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 Ecclesiastical 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 many Dental Hygienists 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 CDHA members have access to tailored insurance policies at cost-effective premiums, including Professional Liability, Commercial General Liability, Clinic Professional Liability, Clinic 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 CDHA 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

### Clinic Package Coverage

#### What does the CDHA Clinic Package cover?

The CDHA Clinic Package, insured by Ecclesiastical, 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 CDHA Clinic 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. 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 Ecclesiastical Policy Wording.

The Clinic 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.

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

#### 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.

The CDHA Clinic Package policy also provides additional coverage through a Business Interruption Extension Endorsement, which includes an Infectious Disease Extension. Coverage is provided for an occurrence at the insured's premises subject to a 3 month indemnity period and limit of \$100,000. However, as the Business Interruption Extension Endorsement is attached to the main policy wording, it is subject to all terms, conditions, exclusions, stipulations and provisions of the policy.

For coverage to be provided under the Infectious Disease Extension, conditions set out in the Appendix wording must be met, including the following:

1. The claim arises directly from the necessary interruption or interference of "operations" at the insured "premises" due to a human infectious or contagious disease manifested by a person while at the "premises"
2. Which causes restrictions on the use of the "premises" on the order or advice of a civilian authority; and
3. There must be Business Interruption cover in place and a Business Interruption loss.

In the event all 3 of the above are met, coverage may be afforded for items such as lost revenue and rental cost.

We are having dialogue with the Insurer to advocate on behalf CDHA insured members that the requirement for property damage will not be applied if the 3 criteria noted above are met.

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 CDHA Clinic 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 Clinic 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 Clinic 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 Clinic 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 Clinic Package policy, throughout this period.

**My clinic isn't open. Does my Clinic 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 CDHA's Clinic 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, Ecclesiastical 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 policy during the COVID-19 crisis. This means that your coverage will not be reduced, restricted, or otherwise impacted if your clinic remains closed for longer than 30 days.

In order to waive the 30 day vacancy exclusion, Ecclesiastical requires that all insured members complete, date, and sign the checklist found within [this resource](#) and linked below, upon each visit to your clinic, and to keep each of the checklists on file. You do not need to send the completed checklists to BMS or Ecclesiastical, but if a claim were to arise, Ecclesiastical will ask for these documents. Please also 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 Ecclesiastical.

Ecclesiastical is also recommending 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, as well as take care of any housekeeping items such as removing trash, and checking exterior lighting and heating systems, for instance.

[https://ecclesiastical.ca/riskcontrolkit/covid-19-keeping-idle-buildings-safe/?utm\\_source=mailchimp&utm\\_medium=email&utm\\_campaign=covid-19\\_faq&utm\\_source=Brokers&utm\\_campaign=8fdde8727e-covid-19\\_faq\\_COPY\\_01&utm\\_medium=email&utm\\_term=0\\_6167ce9fd5-8fdde8727e-64774843](https://ecclesiastical.ca/riskcontrolkit/covid-19-keeping-idle-buildings-safe/?utm_source=mailchimp&utm_medium=email&utm_campaign=covid-19_faq&utm_source=Brokers&utm_campaign=8fdde8727e-covid-19_faq_COPY_01&utm_medium=email&utm_term=0_6167ce9fd5-8fdde8727e-64774843)

## Professional Liability

**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 Dental Hygienist. 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.

**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 Dental Hygienist. Your policy also responds if a complaint is made against you to your regulatory body (College). PLI protects Dental Hygienists 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 CDHA PLI Wording, there are no exclusions relating to transmission of a virus or disease from the insured during delivery of their professional services, except for in relation to alleged or actual abuse. However, there are standard policy exclusions relating to claims arising out of, or attributable to any dishonest, fraudulent, criminal, or malicious 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 CDHA 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 CDHA Clinic Package?**

Please contact BMS at 1-855-318-6557 or email [cdha.insurance@bmsgroup.com](mailto:cdha.insurance@bmsgroup.com) with the following information:

- Certificate of Insurance
- Date of Loss
- Contact details

Please also advise us if you operate a mobile practice, including any details about interruption in your business resulting from inability to access other premises.

A broker will then pass this onto Ecclesiastical on your behalf. Within 24 hours, Ecclesiastical 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 Ecclesiastical. 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 CDHA Clinic Package and received a declination letter from the insurance company.**

If your Insurer, Ecclesiastical, 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.

Ecclesiastical may also provide you with 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).

Ecclesiastical has indicated that there is a one 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 one year of the date of the loss. Failure to do so may adversely affect your right to claim.

If you disagree with Ecclesiastical'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: [ombudsman@ecclesiastical.com](mailto:ombudsman@ecclesiastical.com) or by telephone: 416-484-4929.

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

<https://ecclesiastical.ca/regulatory/complaints/>

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

Please contact BMS at [cdha.insurance@bmsgroup.com](mailto:cdha.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.