Insurance 101: Getting to know your “claims-made” policy

There are two different categories of professional liability insurance policies available in Canada: “occurrence based” and “claims-made”. Understanding 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. Using a practical example, this means that 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 occurring in 2013.

A claims-made policy is the type of professional liability insurance you hold through your association - and it has a number of advantages. Think of how your coverage limits have changed over the past few years. Today’s $1M, $2M, $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 adequately protect you 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” – a specific date on which coverage begins. No coverage is provided for claims arising out of occurrences that took place prior to the retroactive date. For policy holders in the CDHA program, the retroactive date is the date upon which the member first purchased an uninterrupted professional liability insurance policy.

There are some other things you should keep in mind…

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 with 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.

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. Purchasing 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 purchasing tail coverage, you can rest easy knowing that you and your clients are protected.

Tail coverage is not appropriate for temporary absences from professional practice. You must maintain an active policy for continuity of coverage.

CDHA Tail Coverage

Most insurance policies do not automatically provide coverage for claims that arise after the policy has expired, even if the incident on which the claim is based occurred during the policy period. If tail coverage is available, you must specifically request it, and the coverage comes at additional cost. The CDHA program provides “Non-Practicing” members with unlimited coverage upon retirement.

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, turned into something more substantial and the dental hygienist decided it was time to hire a lawyer. By that time, the 30 day reporting period had passed and the dental hygienist had to secure and pay for their legal representation and other associated fees out of pocket because the claim was not accepted.

You should also know that any costs associated with management of your claim that you incur before reporting 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.

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 is the policy that insures 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 against the clinic.

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 polices (both professional liability and CGL/business) if you are in active practice or taking a temporary leave of absence from the profession;

• Confirm tail coverage with your insurance broker to extend your professional liability coverage upon retirement or when leaving the profession permanently.

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.