

Policy

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| Type: | Registration | | |
| Number: | | | |
| Name: | Professional Liability Insurance Policy | | |
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Background

Liability insurance protects both Kinesiologists and the public they serve. Liability insurance enables a client to have adequate compensation should harm occur as a result of error, omission or a negligent act and it protects the Kinesiologist by providing legal and financial support should a client make a claim against them. Members may obtain liability insurance from any source, including their employer, the professional association, or directly from an insurance company.

The *Regulated Health Professions Act, 1991*, requires all practising regulated health professionals to carry professional liability insurance as follows:

- *Professional Liability Insurance*
13.1 (1) No member of a College in Ontario shall engage in the practice of a health profession unless he or she is personally insured against professional liability under a professional liability insurance policy or belongs to a specified association that provides the member with personal protection against professional liability.
- *Insurance requirements*
(2) A member mentioned in subsection (1) shall comply with the requirements respecting professional liability insurance or protection against professional liability specified by the College and prescribed in the regulations made under the health professions Act governing the member's health profession or set out in the by-laws.
- *Professional Misconduct*
(3) In addition to the grounds set out in subsection 51(1), a panel of the Discipline Committee shall find that a member has committed an act of professional misconduct if the member fails to comply with subsection (1) or (2).

In addition, *section 2(1) 12 of the Registration Regulation* requires that members provide proof of professional liability coverage specified in the bylaws of the College, or provide an undertaking to provide proof of such coverage within 30 days of being registered.

Policy

General

1. Registrants are responsible for their own actions and activities. In the event of committing a fault, error, omission, or negligent act while practising kinesiology, professional liability insurance must be in place to facilitate an appropriate level of accountability to the public.
2. Each member upon being registered for the first time, must sign an undertaking to provide proof to the College within 30 days of registration, that the member holds a policy of professional liability insurance that meets the requirements prescribed by the by-law.

Proof of Liability Coverage

3. Members are required to provide the College with a copy of their insurance certificate which includes a policy number and expiry date.
4. At annual renewal, members must provide updated information on applicable insurance coverage to maintain registration with the College.

Minimum Liability Insurance Requirements – General Certificate of Registration

5. The CKO by-law requires that active members engaged in the practice of kinesiology carry minimum liability insurance as follows:
 - a. A minimum amount of \$1,000,000 per occurrence,
 - b. A minimum aggregate amount of \$3,000,000 per year,
 - c. A deductible of no more than \$1,000 per occurrence,
 - d. The member shall have enduring (tail) insurance to provide coverage for at least five years after the termination of practice; and
 - e. The provider must either be licensed as an insurer with the Financial Services Commission of Ontario or must be in the form of membership in a protective association acceptable to the Registrar that provides equivalent protection.
6. At a minimum, coverage should also include conduct or omissions within the scope of practice of kinesiologists as defined in section 3 of the *Kinesiology Act*, the *Regulated Health Professions Act* and the Standards of Practice of the profession. The insurance coverage should only have standard exclusion clauses that do not materially detract from comprehensive professional liability coverage, for example, criminal or deliberate acts.

Employer-provided Insurance Coverage

If a member is covered by his/her employer's professional liability insurance plan in the amounts and coverage set out in the by-law (see above), the member is not obliged to obtain additional liability insurance coverage, although the member may wish to do so. Members should note that it is not sufficient for the employer's policy to cover the employer or the

facility. The *Health Professions Procedural Code* requires that members practising a health profession be “personally insured”. This means that a member must ensure that his/her employer’s insurance policy covers not just the organization, but individual employees as well. The policy does not have to list the member individually by name but must specify that it covers the “employees” of the organization as “added insureds”.

Where a member is covered by an employer’s insurance plan, the member must ensure the necessary individual coverage as described above. The member is advised to request a letter from the employer confirming coverage. If the employer’s insurance is insufficient in any way, the member must obtain additional insurance to meet the requirements stated by the College.

**Liability Insurance
Requirements –
Inactive Certificate of
Registration**

7. For members moving to inactive status from the General class, professional liability insurance which is enduring (tail) that was in place at the time of conversion shall provide protection to members of the public. The member applying to move to Inactive class must provide a declaration on his or her renewal form that he or she:
 - a. Is requesting an exemption from the professional liability insurance requirement on the grounds that he/she is not currently engaged in the practice of kinesiology;
 - b. Has enduring tail insurance coverage for five years; and
 - c. Has read and understood the College’s Policy on professional liability insurance and will obtain insurance before practising.

Ensuring the requisite Insurance Coverage

The College recommends that all kinesiologists review their liability insurance coverage from time to time, whether it be an individual plan or one provided by an employer, for paid or volunteer work. Members should be satisfied on the following:

- Does your plan cover reimbursement of legal or criminal defense expenses?
- Will your plan provide for the cost of legal representation in the event you are subpoenaed to appear as a witness?
- What type of coverage does your policy provide e.g., Malpractice, Errors & Omissions, and Legal Expenses?
- What is the liability aggregate limit?
- Do you have an "occurrence" type of policy (covers claims that occur after the policy has lapsed) or "claims made" policy (only covers you for claims made during the term of the policy)? If you

have a “claims made” policy (which is the most common form of liability insurance today) you should ensure that you have enduring coverage (often called “tail insurance”) to protect against any claims made after you leave or the particular insurance policy ends.

- What are the “exclusions” under the policy? Such exclusions should be standard provisions that do not materially detract from comprehensive professional liability

Decision Criteria for Registrar – initial members (for a General Certificate of Registration)

8. An applicant who is approved for registration must provide a declaration that he/she is eligible for professional liability insurance coverage and that he/she will submit the insurance policy to the Registrar within 30 days after his/her registration is approved.
9. A member or person approved for registration may meet the requirement by providing a copy of their certificate of insurance to the College which confirms the purchase of the insurance and includes the policy number and expiry date. This may be provided as a hard-copy, a photocopy/a fax, or a PDF. The policy content must demonstrate that it meets the College’s requirements

Decision Criteria for Registrar – members (General Certificate of Registration)

10. If for any reason the member ceases to hold professional liability insurance or the policy expires, the member must notify the Registrar in writing within two business days.
11. The Registrar may suspend the member’s certificate of registration if the member is in violation of the *Regulated Health Professions Act* and the regulations made under the *Kinesiology Act*, if he/she practises or is holding out as a regulated health professional. The member is required to cease practising if insurance is not in place.
12. The member cannot begin practising again until he/she provides proof of professional liability insurance coverage and, if suspended, until his/her certificate is reinstated.