

Professional Liability Insurance

Risk considerations for physical therapists with current SCPT regulations– Anita Fraser

- Overall purpose of Professional Liability Insurance- protect the public, who then has the ability to be financially compensated for harm caused
- Each province outlines the requirements for liability insurance for professionals and amount of coverage that is mandatory
- Sources of professional liability
 - Negligence – when a physical therapist causes harm, compensatory damages will be awarded, with the goal of returning to the state previous to the harm
 - Wrongful acts to 3rd party
 - Criminal acts - assault or sexual offenses
 - Regulatory matters – professional misconduct/incompetence (largest number of claims)
- Components of Coverage
 - Professional liability – coverage for compensation and legal defense
 - Regulatory matters – coverage for legal defense
 - Criminal matters – coverage for legal defense (may depend if found not guilty)
- Common Exclusions from insurance policies
 - Punitive damages (financial penalty to punish the defendant)
 - Misconduct (intentional actions that cause harm)
 - Regulatory matters (including fines from SCPT, and their costs to execute the process, such hiring experts to testify)
 - Criminal matters (if found guilty)
- Additional considerations to look for in your coverage
 - Privacy liability insurance – risks increase with large amounts of health information and technology in practice
 - Commercial general liability – liability insurance for injuries or property damage to third parties not related to your professional interactions in your practice, i.e.) slip on the floor,
 - Important for physical therapists entering client’s homes also
 - Business structure – if an employee does something on your behalf, are you liable? (called Vicarious Liability)
 - Tail Insurance - how many years after leaving practice or retiring are you covered? (claims could be made up to 20 years after practice)
 - Prompt Notification - insurance providers need to be informed on a claim ASAP, or you may not be covered if there is a delay in notification
- Risk factors for increased number of claims
 - We are a “hands on” profession
 - 3rd party payers involved
 - Experience level – with more experience professionals take on more complex/controversial cases

Risk considerations for the public with current SCPT regulations – Merrilee Rasmussen

- Purpose of self-governing profession
 - Has the duty to the public to regulate the profession
 - Focuses more on protecting the public vs. professionals
 - Provincially based regulations
- Liability of professionals – individual members of a profession are required to meet the minimum standard of insurance coverage
- Working within an incorporation
 - General act covers many professionals
 - An individual is still responsible for their own claims made against them (this may apply with in a large organization such as a health authority as well)
- Insurance requirements
 - The Physical Therapists Act, 1998 sets the overarching regulations for the profession
 - The SCPT creates bylaws that have more details
 - The SCPT can make changes to the bylaws, such as specific insurance requirements, by passing it by membership, by government and then the change will be published in The Gazette to inform the public
- Discipline measures regarding insurance coverage
 - Failure to have sufficient professional liability insurance is a breach of professional misconduct
 - In recent times, the public is more aware of their rights and they are more aware of processes to make a complaint
 - Over time, there may be an increase in discipline proceedings due to an increase in the public's expectations

Liability insurance product considerations – Maggie Green, BMS Canada Risk Services

- Types of claims in Canada
 - Regulatory Claims – 58% of claims made against PTs on the CPA program, the professional is accused of not acting within the SCPT's bylaws / standards of practice; legal expenses will be paid for by the insurance policy
 - Civil Claims – 40% of claims against PTs, the professional is accused of being negligent and causing harm to a client; legal expenses and damages will be paid for by the insurance policy
 - Criminal Claims – Small % of claims against PTs, the professional is accused of criminal offense such as assault or sexual offenses; legal expenses will be reimbursed when found not guilty
 - Both Civil and Regulatory claims can co-exist at the same time
- Employer's policy vs own policy
 - Examples of Employers include hospitals, health authorities (public sector)

- The employer's insurance will only designate the "employees" of the organization and not your specific name on the certificate.
- Employer's insurance only covers work done in the site of employment (no coverage for work done elsewhere, or volunteer events external to your work)
- Care that is not considered within your scope of work, or beyond expectation of the position, may not be covered
- Employer's insurance coverage doesn't typically cover your legal defence or the legal costs associated with regulatory claims (largest % of claims made) or reimburse for criminal defence costs
- With an employer policy, you do not have control over your own legal defence strategy
- Employer's policies have liability limits shared with employees and the organization. Large and/or frequent claims within the same policy period erode the policy limits and can impact the coverage available to you if you were to be named in a subsequent claim
- There may be Insured vs Insured exclusions
 - If the same policy is covering the complainant and the treating physical therapist, you may not be covered, ie) if your complainant patient is a physical therapist insured under the same policy
- Additional Benefits of having your own policy (from BMS's perspective and specific to the CPA professional liability insurance policy)
 - Loss of earnings will be reimbursed
 - Pro bono legal advice is available, just a phone call away
 - Additional coverage is built in:
 - fund available for therapy and counseling for patients
 - Cyber and privacy breach coverage (growing area of risk)
 - Tail Insurance coverage is for 10 years (or unlimited period if participating in the program for at least 2 years)
 - Covers full scope of practice across Canada and across places of employment
- In Canada, 4 provinces have already implemented mandatory individual insurance coverage for physical therapists. With the scope of our practice expanding and the public's awareness and expectations changing, our profession should consider evolving with the insurance coverage that is required