



# Saskatchewan Society of Occupational Therapists

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## Frequently Asked Questions regarding Professional liability/malpractice Insurance

(Adapted with permission from a document created by the College of Occupational Therapists of Manitoba)

*"Very few professional men can honestly say that the standard of care which they brought to their work had never fallen below that which was appropriate. If we are honest, most of us would have to admit that on occasion – very rarely if you like – we have been negligent. Happily most of us – and I certainly count myself in this group – have been able to add that, whether by luck or good judgment, it was possible to retrieve the situation and neither the client nor the patient suffered any ill effects. But very occasionally good judgment is not enough, or luck runs out and the client or patient does in fact suffer thereby."*

(Quote by Lord Donaldson of Lymington, taken from the Foreword to the First Edition of the 1988 Medical Negligence: A practical guide By Charles J. Lewis

### 1. Q: Why do I need to have professional liability/malpractice insurance?

A: Professional liability insurance provides coverage for allegations of injury to a third party at the negligence of an Occupational therapist while providing services within her/his scope of practice (see [www.ssot.sk.ca](http://www.ssot.sk.ca) for definition of scope of practice). It is important that a professional liability insurance policy is in place to ensure the public has access to adequate resources for damages awarded. Therefore, the Saskatchewan Society of Occupational Therapists wrote bylaw XII.2.1.b. that went into effect on November 25, 2008 setting forth a requirement that there exists: "...proof of personal\* liability/malpractice insurance coverage for a minimum of \$5 million."

\*On June 26, 2009 SSOT Council passed a motion to revise Bylaw XXII.2.1b. to remove the word "personal". This bylaw change would allow Saskatchewan Occupational Therapists to use employer insurance to meet the SSOT regulatory requirement for insurance. This bylaw will be presented to the SSOT membership for approval at the Annual General Meeting on September 26 and if approved will be sent to the Minister of Health for final approval. Once this bylaw has been approved by the Minister of Health, SSOT will notify it's members of the requirement change.

### 2. Q: When do I need to confirm that I have this insurance?

A: SSOT will require:

- ◆ all new applicants for Practicing Membership to confirm adequate insurance effective the date of registration
- ◆ all members renewing Practicing membership to confirm adequate insurance effective the last day of February of each membership year with the SSOT Renewal Form.
- ◆ all members who are converting from the Non-practicing Register to the Register of Practicing Members or to another Register that permits practice, to confirm adequate insurance effective the date of commencement of or return to practice.

You are required to maintain insurance even if SSOT has not required proof. If you change jobs you must confirm that you have insurance even if SSOT has not asked you to show proof of insurance for the new position.

### **3. Q: What is professional liability or malpractice insurance?**

A: If someone feels wronged by your actions as an occupational therapist she/he can seek recourse by filing a civil suit in the courts. The insurance, in simple terms, will cover the costs of your defense and pay the damages that may be required. All insurance policies have definitions and exclusions and thus you are encouraged to either read the policy if you have a copy or speak to an insurance professional to gain an understanding of your particular coverage. For example, most professional liability policies are written on a "claims made" form, meaning that a policy must be in force when a claim is formally made regardless of when the incident actually occurred. This potential coverage gap can be addressed by an "extended reporting period" or tail coverage for a period after a professional ceases to practice.

### **4. Q: Where can I acquire this insurance?**

A: There are three options for acquiring this insurance:

- ◆ Your employer may carry this insurance for the work you do on its behalf. Employers' policies can vary in scope depending on what coverage's have been purchased and often share limits amongst a large number of professionals, therefore it is recommended that you review your employer's policy and the extent of coverage that it will provide you.
- ◆ You can purchase individual professional liability/malpractice insurance from an insurance broker. Unlike an employer's policy, an independent policy does not share limits with other professionals or an entity and provides coverage for situations where you are working independently and/or for an employer.
- ◆ If you are a member of the Canadian Association of Occupational Therapists (CAOT) you are eligible to purchase professional liability/malpractice insurance from CAOT at group rates. Their policies are tailored for an Occupational therapist and provide several distinct features not commonly found within an Employer's policy.

### **5. Q: Does SSOT provide this type of insurance? I believe that the local OT organizations do have insurance as a member benefit in some other provinces.**

A: It is true that some other provincial OT organizations offer their members the option of purchasing professional liability/malpractice insurance. This is not the case in Saskatchewan.

### **6. Q: Does professional liability/malpractice insurance provide me with protection if I am charged with a complaint by SSOT?**

A: As noted above, if someone feels wronged by your actions in your professional capacity they may do three things; none are mutually exclusive. Depending on the nature of the concern, the client can:

- ◆ File a complaint with the Saskatchewan Society of Occupational Therapists
- ◆ File a civil suit in the courts
- ◆ Go to the police and have them launch criminal proceedings against you

The insurance required by the OT Bylaw relates to the civil suit and is focused on the protection of the public. The insurance maintained by most employers on behalf of their employees is for such a defense and the payment of damages related to such actions. It is unlikely to cover a member's costs that relate to actions outside of a civil suit e.g. such as a criminal case or a

hearing by the SSOT Disciplinary Committee. Such actions can be extremely costly for the occupational therapist.

If you purchase an individual plan from a broker you can determine if it can include additional coverage to deal with the regulatory or criminal complaints. The CAOT insurance is designed so that it includes Legal Endorsement to deal with your defense costs in such situations as those related to a hearing stemming from a regulatory complaint (such as a disciplinary hearing) or a criminal allegation (if you are found not guilty).

**7. Q: I understand that my employer's insurance may not be adequate if I work with children because of the Statute of Limitations in *The Occupational Therapists Act*?**

A: If your employer's insurance meets the required limits as per The Saskatchewan Society of Occupational Therapists Bylaws XII.2.1.b., it will be adequate for SSOT purposes. However there are a number of things to consider from a personal point of view, related to Statute of Limitations. This can be a very confusing concept because many things come into play. First, Section 21 of *The Occupational Therapists Act, 1997* states:

*"No prosecution for a contravention of section 31 is to be commenced: a) after the expiration of 24 months from the date of the alleged offence; and b) without the consent of the Minister of Justice or the council."*

This statement relates only to civil suits. It does NOT relate to complaints made to the Saskatchewan Society of Occupational Therapists or to criminal proceedings for which there are no time limits for filing a complaint. Further, the Limitations Act of Saskatchewan further clarifies the statute of limitations as being two years beyond the date that the client becomes 18 years of age, meaning that a client that you treated as an infant, child or youth can file a civil suit many years after receiving occupational therapy services. SSOT will need to see that each of its members carries necessary insurance for their current employment. However you are urged to confirm if your current insurance will protect you in the future if you leave your position – especially many years into the future as may be the case when working with minors. In addition, you should ensure that, in the event that there are proceedings after you are deceased, your Estate is covered.

**8. Q: How will I know if my insurance is adequate?**

A: This question will be answered in two parts.

*i) Payout in damages to the client:*

The insurance will be considered adequate by SSOT if it is current, and provides a potential for a \$5,000,000.00 payout in damages per claim, and covers all areas of practice. (For e.g. if a member has 2 jobs, insurance must exist to cover practice in each of the different practice settings).

*ii). Your personal financial protection in terms of legal costs:*

You will need to determine if the insurance is adequate for you by:

- ◆ asking if you will have coverage should you leave that employer and then be charged with a civil suit,
- ◆ determining if you want criminal defense protection (criminal defense protection will reimburse you up to the limit of coverage you purchase, for the cost in defending a criminal proceeding provided that you are found to be not guilty or the charges dropped).
- ◆ determining if you want to have your defense costs covered if you are charged by SSOT and must participate in a regulatory hearing
- ◆ determining if your estate is covered in the event that you die either between the date of the incident and any action taken against you, or DURING proceedings.

**9. Q: What does SSOT mean by all practice settings?**

A: SSOT must see that you have current professional liability/malpractice insurance for each area of practice in which you are providing professional services. For e.g. if you have confirmed that your employer has insurance for you, but you also have a small private practice (however sporadic or limited in nature) then you must also carry professional liability/malpractice insurance for this independent practice. The same applies if you are providing occupational therapy services to clients as a volunteer.

**10. Q: How is SSOT defining “professional services”?**

A: To answer this it is helpful to consider why the government has introduced this requirement into the current OT Regulation. An individual who complains to SSOT is not awarded damages even if the occupational therapist is found guilty of the charges laid by SSOT. The ability for the individual to launch a civil suit in the courts offers the opportunity for the individual to potentially receive damages from the occupational therapist if he or she is found guilty of professional liability/malpractice or negligence. Thus, when determining if you are providing services one should ask if you deal with members of the public and are providing professional services. It is not required that you be operating in a health care setting to be providing professional services.

**11. Q: I have insurance through CAOT and it expires on September 30th, do I need to send you a new insurance certificate this fall?**

A: The SSOT requirement is that you must obtain and maintain adequate professional liability/malpractice insurance. SSOT will not be asking you to confirm adequate insurance until you renew the following February.

**12. Q: How do I confirm that I have employer insurance?**

A: You will be required to check a box on your SSOT application form or renewal form stating that “I carry liability/malpractice insurance for \$5 million for all professional occupational therapy services I provide”. This statement means that you are saying that you have insurance for all paid and unpaid occupational therapy services that you provide.

**13. Q: How do I go about obtaining CAOT insurance if I am not currently a member of CAOT?**

A: You must be a member of CAOT in order to be eligible to purchase the [Canada-Wide Personal Professional Liability Coverage](#) provided by BMS Healthcare Professionals Insurance Alliance (<http://www.bmsgroup.com/hpia>). You are eligible for membership with CAOT if you meet the following requirements:

- You are a Canadian citizen or have established your primary residency in Canada; and
- You have successfully completed the National Occupational Therapy Certification Examination (NOTCE); **OR** you are or have been registered, without restrictions, with a Canadian occupational therapy regulatory body.

You may find more information about Membership with CAOT [on their membership page](#). Please contact the CAOT Membership Department at **1-800-434-2268 ext. 236/246** or at [membership@caot.ca](mailto:membership@caot.ca) for further information or for assistance in determining your eligibility.