



COLLEGE OF RESPIRATORY THERAPISTS OF ONTARIO

TITLE:	Professional Liability Insurance Policy
NUMBER:	RG-INS-404
Date originally approved	2004 -Nov-6
Date(s) revised:	2007-July-15; 2010-June-18

Policy

Purpose

Government recently passed legislation that 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 the 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 profession 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, subsection 57(2) of Regulation 596/94 (Part VIII - Registration) requires that Members provide the College with satisfactory evidence of professional liability insurance coverage (also known as malpractice insurance) in the amounts and coverage set out by the College as follows¹:

It is a condition of a certificate of registration of any class that the holder provide the College with satisfactory evidence of professional liability insurance coverage in the amounts and coverage set out in the policies of the College.

¹ Since the College does not currently require Members to provide evidence of coverage, an amendment to the regulation has been requested as follows: *It is a condition of a certificate of registration of any class that the holder carry professional liability insurance coverage in the amounts and coverage set out in the policies of the College.*

This document provides members with the requirements and rationale for the CRTO's position on liability insurance. In addition, a number of questions are listed for members' consideration when reviewing individual/employer's policies and determining if coverage is adequate.

Rationale

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

Policy – Minimum Liability Coverage

Active members engaged in the practice of respiratory therapy: The CRTO by-law requires that active Members engaged in the practice of respiratory therapy as outlined in subsection 59(3) of the Registration Regulation ²carry minimum liability insurance as follows:

- a) The minimum coverage shall be no less than \$2,000,000 per occurrence;
- b) The aggregate coverage shall be no less than \$4,000,000;
- c) The insurer must be licensed with the Financial Services Commission of Ontario; and
- d) The Member must be personally insured under the insurance policy.

At a minimum, coverage should also include conduct or omissions within the scope of practice of respiratory therapy as defined in section 3 of the *Respiratory Therapy Act*, the *Regulated Health Professions Act* and 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.

Inactive members or active members who are not engaged in the practice of respiratory therapy: For inactive Members, or for active Members who are not currently engaged in the practice of respiratory therapy as outlined in subsection 59(3) of the Registration Regulation (*see footnote*), the amount of coverage required by the College is set at "zero" providing that the Member has declared on his or her renewal form that he or she:

- Is requesting an exemption from the professional liability insurance requirement on the grounds that he/she is not currently engaged in the practice of respiratory therapy (either inactive or active non-practicing), and

² (3) An inactive member shall not,

- (a) provide direct patient care within the scope of practice of the profession;
- (b) act as an administrator, supervisor or educator in the field of health care;
- (c) sell products or services related to respiratory therapy;
- (d) provide consultations for respiratory care and related care, equipment and services; or
- (e) conduct research related to respiratory therapy.

- Has read and understood the professional liability insurance policy of the CRTO and will obtain insurance before practicing.

Examples of available coverage for Respiratory Therapists

- **Employer (hospital, home care company, educational program)**
If you are covered by your employer's professional liability insurance plan in the amounts and coverage set out in the by-law (see above), then you are not obliged to obtain additional liability insurance coverage, although you may wish to. Members should note that it is not sufficient for the employer's policy just to cover the employer or the facility. The *Health Professions Procedural Code* requires that members practicing a health profession be "personally insured". This means that you must ensure that your employer's insurance policy covers not just the organization, but you as an individual as well. The policy does not have to list you individually by name but must specify that it covers the "employees" of the organization as "added insureds". **A member who performs any respiratory therapy services, even on a part time or temporary basis, outside of the employing organization must obtain additional professional liability insurance coverage.**
- **Canadian Society of Respiratory Therapists (CSRT)**
Details are available from the CSRT at www.csrt.com
- **Respiratory Therapy Society of Ontario (RTSO)**
Details are available from the RTSO at www.rtsso.ca
- **Private insurance providers**
Consult with your insurance broker.

Individual considerations

The majority of Members will likely have insurance coverage of at least 2 million dollars with their employer. However, Members should determine if these amounts are sufficient according to their specific circumstances (see "Examples of available coverage for Respiratory Therapists – Employer" above). The College recommends that all Respiratory Therapists review their liability insurance coverage from time to time, whether it be an individual plan or one provided by employing agency, for paid or volunteer work. In determining if you have sufficient coverage you may wish to ask yourself the following:

- Does your plan cover reimbursement of legal or criminal defence 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, 4 million, 10 million?
- 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.

- Is there a deductible, if so how much? It should not be more than \$1,000.00.
- What are the "exclusions" under the policy? Such exclusions should be standard provisions that do not materially detract from comprehensive professional liability coverage (for example, criminal or deliberate acts).
- If you are covered by an employee insurance plan, you should check your coverage and make sure you are an "additional insured" under the policy. You may wish request a letter from the employer confirming coverage. In addition, if you practise outside of your employment you will need to obtain additional insurance to cover those services.
- Finally, you may want to consider if you should purchase additional individual coverage through one of the professional associations.