



FACT SHEET

MALPRACTICE INSURANCE INFORMATION

Why do I need to have malpractice insurance?

Effective December 2005, the *Occupational Therapists Regulation* states;

“Every member who provides clinical services must obtain or be covered by, and maintain liability insurance coverage to a minimum of \$5,000,000.00.”

When do I need to confirm that I have this insurance?

COTM requires:

- all new applicants to confirm adequate insurance effective the date of registration,
- all renewing members to confirm adequate insurance effective June 1st,
- all members who are converting from the Non-practising Register to the Register of Practising Members or another Register that permits practice to confirm adequate insurance effective the date of commencement of or return to practice.

What is malpractice insurance?

If someone feels wronged by your actions they can seek recourse by filing a civil suit in the courts. The professional liability insurance will cover the costs of your defence and pay the damages that may be required. All insurance policies have definitions and exclusions and therefore you are encouraged to read the policy or speak to an insurance professional to gain an understanding of your coverage.

Where can I acquire this insurance?

There are three options for acquiring this insurance.

1. Your employer may carry this insurance for the work you do.
2. If you are a member of the Canadian Association of Occupational Therapists (CAOT) you are eligible to purchase malpractice insurance at group rates.

You can purchase individual malpractice insurance from an insurance broker.

Does COTM or the Manitoba Society of Occupational Therapists provide this type of insurance?

It is true that some other provincial professional OT organizations offer their members the option of purchasing malpractice insurance; however, this is not the case in Manitoba.

Does malpractice insurance provide me with protection if I am charged with a complaint by COTM?

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 College of Occupational Therapists of Manitoba,
- file a civil suit in the courts,
- go to the police and have them launch criminal proceedings against you.

The insurance required by the *Occupational Therapists Regulation* relates to a civil suit and the insurance maintained by most employers on behalf of their employees is for the defense and payment of damages related to such actions. If you purchase an individual plan from a broker you can determine if it can include additional coverage to deal with regulatory complaints or criminal charges.

The CAOT insurance is designed so that it includes legal endorsement to deal with your defence costs related to a regulatory complaint if it goes to a hearing and/or your criminal defence.

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

If your employer's insurance meets the required limits as per the *Occupational Therapists Regulation* it will be adequate for COTM purposes however, there are a number of things to consider from a personal point of view as it relates to statute of limitations.

Firstly, Section 61 of *The Occupational Therapists Act* states:

“No member is liable in any actions for negligence or malpractice by reason of professional services requested or rendered, unless the action is commenced within two years after the date when, in the matter complained of, those professional services terminated.”

This statement relates only to civil suits and does not relate to complaints to the College of Occupational Therapists of Manitoba or to criminal proceedings for which there is no time limit for filing a complaint.

Secondly, the *Interpretation Act* of Manitoba defines the statute of limitations as being two years beyond the date that the client becomes 18 years of age. Therefore, a client that you treated as an infant, child or youth can file a civil suit many years after receiving occupational therapy services.

COTM is required to ensure that each of its members carries sufficient 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.

How will I know if my insurance is adequate?

The insurance must be considered adequate by **COTM**. Adequate insurance is current and provides a potential for a \$5,000,000.00 pay out in damages for one claim, and covers all areas

of clinical practice (e.g. if you have two jobs you must have insurance coverage for each of these practice settings).

You will need to determine if the insurance is adequate for you on a **personal basis** by;

- asking if you will have coverage should you leave that employer and then be charged with a civil suit, (please note that if you work in a health facility in MB covered by HIROC then you will be covered for prior acts as long as the policy for the facility with HIROC is in place at the time of the claim),
- determining if you want criminal defence protection (criminal defence protection will reimburse you up to the limit of coverage you purchase, for the cost of defending a criminal proceeding provided that you are found to be not guilty or the charges are dropped),
- determining if you want to have your defence costs covered if you are charged by COTM and must participate in a regulatory hearing.

How is COTM defining “clinical” services. How will I know if the insurance requirement applies to me?

An individual who complains to COTM is not awarded damages even if the occupational therapist is found guilty of the charges laid by COTM. 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 malpractice or negligence. Therefore, when determining if you are providing clinical services consider 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 “clinical” services.

Notwithstanding the generality of the statement, COTM considers educators, administrators, researchers not working with clients as not providing clinical services.

Even if you are not covered by this requirement in the *OT Regulation*, it does not prevent an individual from filing a civil suit against you. (e.g. If you are an administrator in a hospital and an individual who you supervise is charged with malpractice, you may also be named in the suit).

If you are unclear as to whether or not the requirement applies to you then contact COTM.

What does COTM mean by “all practice settings”?

COTM must receive confirmation of malpractice insurance for each area of practice in which clinical services are provided including, regular employment, private practice, contract and volunteer positions.

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

COTM requires that you must obtain and maintain adequate malpractice insurance. COTM will not be asking you to confirm that you have renewed your insurance certificate until you renew your registration the following June 1st.

How do I confirm that I have employer insurance?

Please refer to the COTM Application of Initial Registration Guide or COTM Application for Renewal of Registration Guide to determine if your employer is on this list. If your employer is **not listed**;

- you will need to obtain a letter from your employer confirming that adequate insurance is provided on your behalf.
- if you are returning to work after a leave and converting your registration from Non-Practising to Practising then you will be required to include the letter from your employer with your COTM Request for Conversion Form.

How do I go about obtaining CAOT insurance if I am not currently a member of CAOT?

You must be a member of CAOT in order to be eligible to purchase the group insurance provided by BMS. You may be eligible for CAOT membership and should consult with the CAOT Membership at membership@caot.ca. For more information see

<http://www.caot.ca/site/mbrp/insurance/PLI?nav=sidebar>

What are the consequences of not having adequate insurance?

COTM will apply the Misconduct Levy which is a financial penalty for not meeting registration requirements. COTM has a separate information sheet that deals with Misconduct Levy and can be found at http://www.cotm.ca/index.php/resources/registration_fact_sheets.

For more information, please contact COTM at (204) 957-1214 or by email at OTinfo@cotm.ca

This publication is provided for general information. For more specific information see
The Essential Competencies of Practice for Occupational Therapists in Canada,
The COTM *Code of Ethics* for Occupational Therapists and
The Occupational Therapists Act and Regulation.
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