

BULLETIN

Most HSA members dont need extra liability insurance

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There has been a great deal of discussion and some heated debate among many of our members lately regarding the requirement for professional liability insurance.

Certain professional bodies such as the Canadian Society for Medical Laboratory Science have made insurance mandatory and are refusing to process membership fees if professional liability insurance is not purchased at the same time. Others, such as the Registered Psychiatric Nurses Association of BC, while not making it mandatory, do encourage their members to purchase professional liability insurance.

With the strong position which some of the associations are taking, HSA investigated the liability of our members in the workplace. We have looked at the coverage that most of our members have when they work in health care facilities, as well as at the provisions of the collective agreement. Based on this review, we are of the opinion that *for most of our members*, there is no need to buy extra insurance.

HEABC employers are covered by the Health Care Protection Program (HCPP). This plan covers all acute-care hospitals in the province, as well as regional health boards, community health councils, community health services societies and any other health facilities that have been amalgamated into the regional bodies. Coverage is set at \$50 million per occurrence.

When an action is commenced against a hospital, typically a hospital and any employee(s) involved with the alleged incident are named in the action. Where the plaintiff does not know the name of the individual, the name Jane Doe will usually be inserted. The Health Care Protection Program represents the interests of the employee as well as the hospital. If the employee is found liable for any negligence resulting in injury to a patient, the hospital is automatically liable as well. The HCPP hires a lawyer to represent the hospital and the employee in any ensuing civil action.

Under Article 37.01 of the HSA collective agreement, the employer guarantees to "exempt and save harmless" each employee from any liability that may arise during the "proper performance of her/his duties for the Employer." This article would not provide coverage to a member who was engaged in a criminal act or any actions that may arise against an employee as a result of a criminal act by that employee.

As a rule, no insurance policies will provide protection against criminal conduct by the insured.

The plan does not contemplate trying to recover costs back from the employee when the lawsuit is completed. Historically, this has never been known to happen. The administrators of the HCPP interpret the plan in such a way that it is incumbent upon them to fully insure any employee, regardless of whether or not there has been negligence.

Some of the professional association literature threatens that the hospitals interests will be given priority in the event of a conflict that may arise during a lawsuit between the interests of the employer and the employee. The HCPP says unequivocally that this is not the case and that the interests of the employee are equally well represented. In fact, the obligations of a lawyer to their client under the *Legal Professions Act* are very specific. If a lawyer had knowledge relating to an employee/client that they then used against the employee/client in the interests of the employer, they would be in breach of their solicitor/client privilege and would be disciplined by the Law Society. While this situation has not arisen in recent history, it would be expected that in such a case the lawyer would withdraw and in all likelihood two lawyers would be appointed to represent the employee and the employer.

In our opinion any member who is working for a health care employer and performing their regular duties, is sufficiently insured and does not need to purchase other professional insurance. However, **remember that this applies only to employees in facilities covered by the Health Care Protection Program set out above.** Employers who are not with HEABC have other, individual plans. If you are concerned about the insurance coverage at your facility, call the HSA office and we will provide you with information about your employers insurance plan.

It is also vital to remember that the Health Care Protection Program will not cover any freelance work or private practice or work for any non-insured employers. In such a case, you should investigate the insurance the employer carries, or you should purchase professional liability insurance.

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