
Directors and Officers Insurance

Acting as a director and/or officer of a non-profit society carries with it certain responsibilities. Here are some key points to consider when purchasing insurance to protect the society and its directors and officers¹.

Directors and Officers Liability

It is advised the non-profit society has appropriate liability insurance for the business aspects of the society that will protect directors and officers financially for any claims arising from that relationship.

Exposure and the Need for Coverage

Directors and officers of a non-profit society are required by law to:

- act diligently and with due care;
- avoid conflicts of interest and activities that benefit them personally at the expense of the society; and
- both personally and corporately comply with the federal and provincial statutes regulating management and corporate conduct.

If directors and officers fail to act properly, they may be liable, depending on the circumstances, to members, employees, the general public, creditors, government regulators and other third parties.

A society may not be able to protect a director or officer if:

- indemnification by the society is not legally permissible; or
- the society is insolvent or financially distressed.

Coverage Overview

The directors and officers policy provides coverage for errors and omissions in a broad range of management decisions that could conceivably result in a lawsuit against directors and officers. The policy covers directors and officers for defence costs, settlements and judgements on account of claims by members, employees, creditors, the general public, creditors, regulators, governments and other third parties for a broad range of allocations such as:

- Unpaid wages, vacation and taxes
- Negligent misrepresentation
- Breach of Fiduciary Duty/Mismanagement (excluding pension plans)
- Negligence
- Antitrust
- Consumer protection violations

¹ Definition of Insured includes the Insured Organisation as well as past, present and future directors, officers, trustees, members of board of managers, in-house general counsel, executive director, risk manager, human resources manager, employees (and contract employees), volunteers and committee members

- Wrongful interference with a contract
- Copyright, trademark and patent infringements

The limit of liability should be at least \$1.0M and equivalent to the assets or annual revenues operating budget of the society or the annual funding budget. It is suggested the physician societies procure insurance with a liability limit of \$3.0M

Exclusions include:

- Claims which occurred before the policy was effective
- Dishonest acts
- Claims made by one director against another director²
- Claims alleging bodily injury
- Property damage
- Mental anguish
- Emotional distress

Coverage responds to many types of claims, not just lawsuits, for example:

- A written demand for money damages
- A civil lawsuit commenced by the service of a complaint
- A criminal proceeding commenced by the return of an indictment
- A formal administrative or regulatory proceeding commenced by the filing of notice of charges

² Some coverage may be available for past directors taking action against current directors.