

# Bill 41 Regulations – Issue and Options Analysis

## Issue # 2: Professional Liability Insurance



September 8, 2009 (revised)

## Introduction and Background

PricewaterhouseCoopers LLP (“PwC”) has been engaged to work with the Manitoba Pharmaceutical Association (“MPhA”) and the Manitoba Society of Pharmacists (“MSP”) to assist with building consensus around thirteen issues, which were identified by the Steering Committee (see Appendix A), and which relate to the Bill 41 Regulations, thereby facilitating progress towards approval of the Regulations.

On March 5, PwC facilitated a Stakeholder Mapping Workshop that was attended by members of the Steering Committee and a representative of Manitoba Health and Healthy Living (“MHHL”). This workshop resulted in validation of the key stakeholders and a documented understanding of which stakeholder organizations/groups were perceived to be most interested in being engaged in consultations regarding each of the thirteen issues.

On April 7, 2009, PwC facilitated a full-day retreat (“Retreat”) involving several representatives of MPhA and MSP, and a representative of MHHL. During the retreat, PwC facilitated a series of discussions regarding twelve of the thirteen identified issues; the “Distance Care” issue was not addressed during the retreat because it was deemed too complex for productive discussion within the time available. During the Retreat, MSP and MPhA agreed upon specific action plans for seven of the twelve issues that were discussed; MSP and MPhA also agreed that further facilitated consultation was merited in relation to the other five issues discussed at the Retreat.

The five issues that will be discussed in a series of Focus Groups are the following:

- Tele-pharmacy;
- Pharmacy Technicians;
- Pharmacists Prescribing, which will be discussed in combination with Extended Practice Pharmacists & Specialty Care Practice; and

Inducements.

The seven issues for which an action plan was agreed at the Retreat are as follows:

- Central Fill Component;
- Personal Health Information Number (“PHIN”);
- Practice Directions / Standards of Practice;
- Professional Liability Insurance;
- Record Keeping;
- Pharmacy Manager Qualifications; and
- Pharmacist Profiles.

With the agreement of the Steering Committee, the information presented herein will be used to develop an implementation plan that could ready the issue for a member vote.

## Overview of Issue

Section 97(1) of the December 2007 Draft Regulations requires that every member, except those registered under Section 14 of the Act, be covered by professional liability insurance that provides a minimum of:

- \$2,000,000 per claim or per occurrence; and
- a minimum \$4,000,000 annual aggregate.

These requirements are similar to the typical minimum requirements for professional liability insurance that are in effect in other Canadian jurisdictions, which is approximately \$2 million of insurance per claim or occurrence.

The results from surveys conducted by MSP and MPhA indicate that the membership of both organizations strongly support a mandatory requirement for liability insurance. Accordingly, MSP supports this section of the Draft Regulations. However, MSP has issued a Position Statement that advocates that this section of the Regulation be amended to further require that members must purchase only the highest quality insurance from the highest quality providers.

## Options Paper

The remainder of this document provides information and background related to this issue. Specifically, the following information has been provided:

- **Suggested Course of Action:** A summary of the course of action which has been agreed to by the MPhA Council and the MSP Board;
- **Summary of Positions:** A summary of the positions of MPhA, MSP, and the Government of Manitoba has been provided. This summary identifies each stakeholder's high-level concerns and/or opinions following a Retreat held with the MPhA Council, the MSP Board, and a representative of MHHL in April 2009;
- **Jurisdictional Comparison:** A high-level summary of how other jurisdictions in Canada have addressed and/or are addressing the issue; and
- **Background:** The background document provides additional detail regarding the issue, including pertinent sections of the proposed draft regulations, detailed information on stakeholder concerns and/or positions; and a more detailed summary of how other Canadian jurisdictions address the issue.

## Suggested Course of Action

At the April Retreat, MSP and MPhA agreed upon the following Action Plan.

### Proposed Action Plan:

This is an implementation issue. MPhA will keep regulation as written and MSP will provide their members with some direction/guidance regarding preferred insurance providers.

The above Action Plan does not require any change to the (December 2007) Draft Regulations; instead, it affirms that MSP may provide its members with guidance regarding preferred insurers and preferred policies.

The agreed Action Plan is in general alignment with the policies and minimum requirements for liability insurance that are in effect in the jurisdictions included in PwC's jurisdictional review.

## Issue # 2: Professional Liability Insurance

### Summary of Positions

MPhA Council	MSP Board	MHHL
<ul style="list-style-type: none"><li>▪ MPhA will keep (Sections 97(1) and 97(2) of the proposed) regulations as drafted in the December 2007 document.</li></ul>	<ul style="list-style-type: none"><li>▪ MSP Board would like members to be provided with some guidance as to what liability insurance the pharmacists should be using.</li><li>▪ MSP Board notes that it is not against the regulation; it wants to ensure that there is appropriate implementation of the requirement.</li></ul>	<ul style="list-style-type: none"><li>▪ MHHL believes MSP should provide advice regarding preferred insurers and types of insurance to its members.</li></ul>

### Jurisdictional Comparison

	Ontario	Saskatchewan	Alberta	British Columbia
<b>Is Professional Liability Insurance Required?</b>	<ul style="list-style-type: none"> <li>Yes.</li> </ul>	<ul style="list-style-type: none"> <li>Yes.</li> </ul>	<ul style="list-style-type: none"> <li>Yes.</li> </ul>	<ul style="list-style-type: none"> <li>Yes.</li> </ul>
<b>Criteria</b>	<ul style="list-style-type: none"> <li>Interns and Pharmacists in Part A of the Register must maintain personal professional liability insurance for an amount of \$2,000,000 per claim or per occurrence and \$4,000,000 annual aggregate is the acceptable minimum limit of coverage.</li> </ul>	<ul style="list-style-type: none"> <li>Provides a limit for each claim of a minimum of one million dollars.</li> </ul>	<ul style="list-style-type: none"> <li>Coverage for at least two million dollars. This coverage must be either claims-made or occurrence-based in nature.</li> </ul>	<ul style="list-style-type: none"> <li>The policy must provide for a minimum of two million dollars in coverage.</li> </ul>

## Background

Issue #2: Professional Liability Insurance	
Draft Pharmaceutical Regulations: Policy Document, December 3, 2007	
<b>Professional Liability Insurance</b>	<p>97(1) Every member unless registered under section 14 of the Act, must be covered by professional liability insurance that provides a minimum of”</p> <ul style="list-style-type: none"> <li>▪ \$2,000,000 per claim or per occurrence; and</li> <li>▪ a minimum \$4,000,000 annual aggregate.</li> </ul>
<b>Pharmacy Insurance</b>	<p>97(2) Every owner must be covered by commercial general liability insurance with a minimum limit of \$5,000,000.</p>
Positions	
<b>MPhA Council Position / Comments</b>	<p><b>Meetings: Retreat April 7, 2009</b></p> <ul style="list-style-type: none"> <li>▪ MPhA will keep (Sections 97(1) and 97(2) of the proposed) regulations as drafted in the December 2007 document.</li> </ul>
<b>MSP Board Position / Comments</b>	<p><b>Meetings: Retreat April 7, 2009</b></p> <ul style="list-style-type: none"> <li>▪ MSP Board would like members to be provided with some guidance as to what liability insurance the pharmacists should be using.</li> <li>▪ MSP Board notes that it is not against the regulation; it wants to ensure that there is appropriate implementation of the requirement.</li> </ul> <p><b>Document: MSP Position Statement December 9, 2008</b></p> <p>The Manitoba Society of Pharmacists recognizes that systemic changes in the delivery of health services although needed are difficult to achieve. A failure to require Manitoba pharmacists to carry professional liability insurance will create an additional barrier to pharmacists assuming a greater role in the delivery of health care. It is in the interests of both patients and other health professions for pharmacists to have adequate insurance coverage if they are given an increased scope of practice. To facilitate pharmacists more fully utilizing their skills and abilities and improving the health outcomes of Manitobans, mandatory professional liability coverage is necessary.</p> <p>The Manitoba Society of Pharmacists supports Part 16 of the MPhA Discussion Document. The Society is committed to ensuring that members are provided with comprehensive professional liability insurance coverage and encourages the MPhA to ensure that only the highest quality of insurance product is allowed.</p>

Issue #2: Professional Liability Insurance	
<b>MHHL</b>	<p><b>Meetings: Retreat April 7, 2009</b></p> <ul style="list-style-type: none"> <li>▪ MHHL believes MSP should provide advice regarding preferred insurers and types of insurance as a service to their members</li> </ul>
<b>Surveys</b>	<p><b>Document: MSP Questionnaire 2 – Liability Insurance</b></p> <ul style="list-style-type: none"> <li>▪ 84 percent of respondents agreed with section 97(1) and 55 percent believe that \$2 million is the appropriate minimum amount of professional liability insurance that should be required.</li> <li>▪ 87 percent of respondents agreed with section 97(2), and 47 percent believe that \$5 million is the appropriate minimum commercial general liability insurance that should be required.</li> </ul> <p><b>MPhA Regulations Discussion Document Response April 2007:<sup>1</sup></b></p> <p>89% of respondents indicated that they agreed with the intent of Section 97.</p> <p><b>MPhA Regulations Discussion Document Response July 2007:<sup>1</sup></b></p> <ul style="list-style-type: none"> <li>▪ 91% of respondents indicated that they agreed with the intent of Section 97.</li> </ul>
<b>MPhA Subcommittees</b>	N/A
<b>Professional Liability Insurance in Other Jurisdictions</b>	
<b>Ontario</b>	<p><i>The by-law came into effect January 1, 2008:</i></p> <p><b>College By-Law, Article II, Membership in the College</b></p> <p>2.2.1 (abbreviated) Interns and Pharmacists in Part A of the Register must maintain personal professional liability insurance for an amount of \$2,000,000 per claim or per occurrence and \$4,000,000 annual aggregate is the acceptable minimum limit of coverage. A certificate of professional liability insurance, provided by the insurance company, should be secured by the member for their records and may be required annually for registration with the college. The certificate will confirm compliance with the criteria prescribed by the College.</p> <p>The OCP reserves the right as a part of annual registration renewal process, to periodically secure the professional liability insurance wording for review.</p>
<b>Saskatchewan</b>	<b>SCP Bylaw</b>

<sup>1</sup> It is noteworthy that the surveys conducted by MPhA asked members whether they were in favor of the *intent* of the referenced section.

<b>Issue #2: Professional Liability Insurance</b>	
	<p>4.2 Membership and License Categories</p> <p>4.2.1. Practising Member: “Practising members...must maintain malpractice insurance as prescribed by Council.”</p> <p>4.4.4 Malpractice Insurance: “acceptable malpractice insurance” means personal insurance that:</p> <ol style="list-style-type: none"> <li>a) Insures a practicing member against liability claims relating to the performance, or alleged performance, of professional services;</li> <li>b) Provides a limit for each claim of a minimum of one million dollars;</li> <li>c) Is either of an ‘occurrence type’ or of a ‘claims type’;</li> <li>d) Has a maximum deductible of \$5,000 per claim;</li> <li>e) Includes as a term that the College will be notified by the insurer in the event of any cancellation or amendment to the coverage afforded to the practicing member there under; and</li> <li>f) It is underwritten by an insurer registered to do business in Saskatchewan.</li> </ol>
<b>Alberta</b>	<p><b>Professional Declaration of Professional Liability Insurance Coverage</b></p> <p><i>A Pharmacists Profession Regulation</i> came into effect on April 1, 2007, making professional liability insurance mandatory for clinical pharmacists. All practicing pharmacists must hold a professional liability insurance policy that provides coverage for at least two million dollars and that is either claims-made or occurrence-based in nature.</p> <p>Clinical pharmacists who are unable to provide proof of professional liability insurance will not be eligible to renew their practice permits.</p>
<b>British Columbia</b>	<p>Effective April 1, 2009, in accordance with the HPA, all registrants will be required to possess professional liability insurance. Minimum criteria:</p> <ul style="list-style-type: none"> <li>▪ The policy provides a minimum of \$2 million coverage, and</li> <li>▪ The policy provides occurrence-based coverage or claims-made coverage with an extended reporting period of at least three years, and</li> <li>▪ If not issued in the pharmacist's name, the group policy covers the pharmacist as an individual.</li> </ul> <p><u>Draft Bylaws pursuant to the HPA:</u></p> <p>82. Each full, limited, or temporary pharmacist must obtain and at all times maintain professional liability insurance in accordance with the policy approved by</p>

<b>Issue #2: Professional Liability Insurance</b>	
	the board from time to time.