



## PROFESSIONAL LIABILITY INSURANCE

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Are you completely confused by the different liability policies — general, professional, Directors & Officers, association professional, errors and omissions, environmental, auto and fiduciary liability — just to name a few? And more importantly which of these policies do you need to protect your organization? We all know we need general liability insurance and pretty sure we need Directors and Officers, but what about professional liability insurance?

### General Liability

The commercial general liability (CGL) policy agrees to pay for damages the insured becomes legally obligated to pay because of *bodily injury* or *property damage*, *personal and advertising injury*, *medical expenses* for bodily injury caused by an accident. The scope of coverage is determined by the coverage form with its definition of terms, limitations, exclusions and exceptions to exclusions. Most general liability policies do not exclude coverage for professional acts or services unless the insurance company adds an exclusionary endorsement. However the “Professional Services Exclusion” endorsement is frequently attached to general liability policies written for nonprofits and associations. Your policy may not have the endorsement now but it may be on the renewal policy.

Unfortunately, the “Professional Services Exclusion” may not provide a clear definition of “professional services.” One company’s Professional Services Exclusion defined the term as “all activities of a trade association,” therefore any loss including a “slip and fall” claim could be denied as a professional service activity of a trade association. If your policy has a professional liability exclusion make sure it is not so broad as to eliminate coverage for your day-to-day activities.

If the CGL policy does not exclude professional services, the coverage only applies to damages for bodily injury, property damage or personal and advertising injury arising from a professional act or service. Few errant professional services except for healthcare result in a claim for bodily injury or property damage. The professional

services claim could include allegations of personal injury (libel, slander, defamation, false imprisonment, etc.) but that is usually excluded as a part of the “professional services exclusion.” To evaluate the potential need for professional liability insurance we need to explore who qualifies as a professional.

## Who’s a Professional?

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The designation of an individual or job as professional has expanded recently. Originally reserved for doctors, attorneys, accountants and other occupations that required special training or licensing, the term now applies to any profession that holds itself out as possessing special skills, experience and knowledge. These special skills and knowledge provides the person or professional with an elevated status within society. In other words, someone is deemed a professional based upon their intellectual judgment and expertise characterizing their work. Due to their elevated status, professionals are held to a higher duty of care than non-professionals. A professional’s actions are measured against the acts of a “reasonable member” of her profession. So the acts of a doctor are compared to the care expected from a doctor with similar experience and training.

The gray area for nonprofit organizations centers on whether a business activity is a professional act or service. If deemed as a professional service, special insurance coverage is needed. Any claim generated from these professional services generally will be excluded under a general liability policy.

## Professional Liability Policy

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Most professional liability policies cover claims involving allegations of a “wrongful act” or “error or omission” in rendering or failure to render professional services. The policies usually exclude claims involving bodily injury and property damage. The claimant’s reliance on your services or advice resulting in a “wrongful act” or “error and omission” will cause economic losses other than bodily injury or property damage.

There are numerous types of professional liability coverages so the policy must be tailored to meet your organization’s needs. The key to coverage is the policy’s definition of “professional services.” For example, Croydon Consulting, LLC needs a form designed for consultants but if your organization does not provide consulting services that form would be inappropriate. If you provide medical or counseling services your policy should include medical malpractice as well as coverage for counseling services. Do not rely upon the name of the policy to determine its coverages. An “association professional liability” (APL) policy is misleading when the policy has a professional services liability exclusion.

If your organization engages in any activities or programs where others depend upon your advice and guidance, you may need professional liability insurance. Discuss the nature of your organization’s operations with your insurance professional. Together evaluate the need for professional liability coverage and the type of coverage(s), if any, you should purchase.

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