



Frequently Asked Questions and Answers about C of A

Q1 Does a member practising as a sole proprietorship require a C of A, and therefore require professional liability insurance?

A No. The Act, in section 16(2)(a), is quite specific. A Certificate of Authorization can only be issued to a partnership, corporation or other legal entity. A sole proprietorship is not a legal entity separate from the sole proprietor.

To be clear though, a sole proprietorship is not the same as a single, or sole, practitioner corporation, the latter is a separate legal entity and requires the C of A.

Also a practitioner operating as a sole proprietorship is obliged to disclose the absence of insurance and obtain authorization from the client before proceeding to provide services.

Q2 Why professional liability insurance? Why isn't my comprehensive general liability insurance good enough?

A Because professional liability insurance is different from both comprehensive general liability insurance and product liability insurance. Professional liability insurance provides coverage against negligent errors or omissions. The test of liability is also different, it is the "standard of care" relative to that established by ones peers.

Q3 Why can't an entity – say a Sole Practitioner Entity, be permitted through the by-laws, not to have professional liability insurance as long as it discloses the absence of such insurance to the client.

A While clause 12(1)(w) of the Act in the by-laws section seems to allow the Association to create a by-law that would permit disclosure by a holder of a Certificate of Authorization, such a by-law would be in conflict with the mandatory requirements of clause 16(2)(e) which requires "...evidence of an existing contract for the partnership, corporation or other legal entity...".

The Association cannot create a by-law which would override a requirement of the Act.

Q4 Why can't my company be permitted to be self-insured and still have a C of A?

A Same reason, because of 16(2)(e), self-insurance does not constitute evidence of an existing contract of professional liability insurance.

Q5 Does APEGM have a group plan for professional liability insurance available?

A No. The price of professional liability insurance is determined by a number of factors such as the nature of practice, the claims record of the entity and the volume of business. A group plan is not practical.

Q6 What about section 59 of the Act? Does it not require that all professional members must hold a Certificate of Authorization before they can be employed?

A No. While section 59 reads, “No person shall knowingly engage, employ or contract with any person, corporation, partnership or other legal entity that does not hold a certificate of authorization for any work that requires the services of a professional engineer or professional geoscientist.”, there is no requirement.

The reason is that clause 16 (2) (a) of the Act provides that no “person” shall be entitled to hold a Certificate of Authorization unless that “person” is “a partnership, corporation or other legal entity other than a natural person.” Therefore, the word “person” in section 59 excludes a natural “person”, and the section does not affect an individual member who is an employee of a corporation or a partner in a partnership.

Q7 What about design-builders? Would section 59 prohibit a customer from contracting with a design builder if that design-build entity does not have a Certificate of Authorization?

A Yes. If the design-build entity is designing a system or structure, or making design modifications to a packaged system or structure, the entity would be providing professional engineering services and will require a Certificate of Authorization.

Q8 What about a joint venture?

A No. Not if the design-build team is, in its strictest sense, a joint venture. If it is comprised of a contractor and one or more engineering firms, then only the engineering firms would be required to hold the C of A. The reason is that, at law, a true joint venture is not a legal entity, and each of the venturers continues to be responsible for its own separate liabilities and obligations.

However, if not all of the engineering being provided to the customer originates from within the venturers holding a C of A, then the others, such as the contractor, would require one also.

Q9 What about a partnership of corporations?

A Yes. If the design-build entity is a partnership of corporations it will require a C of A regardless of whether one or more of the partners already holds one. The partnership of corporations is a separate legal entity.

Q10 Does a manufacturing company require a C of A if its customer provides it with a requirement and the company then designs and builds the product to meet the requirement?

A Yes. Associated engineering services are being delivered to the customer along with the product.

Q11 Does a manufacturing company providing products with associated engineering services exclusively to customers outside of Manitoba require a C of A?

A No. The jurisdiction of APEGM does not extend beyond the borders of the Province of Manitoba. However, if some portion of the work product is to be consumed in Manitoba, then a C of A is required.

Q12 Are there agreements between provinces which allow a manufacturing company providing products with associated engineering services to customers to only hold a C of A in its home jurisdiction?

A No. None that we are aware of.

Q13 What about a geology report on a Manitoba property prepared for an out-of-province client or going to an out-of-province agency? Does the company require a C of A?

A Yes, the corporation would need a C of A. The work product is site specific to Manitoba being used to develop a property with in Manitoba.

Q14 Is a C of A required if the corporation is engaged only in prospecting?

A No. The Act has an exemption for prospectors.

Q15 Is the member, who is named in the application as being in charge of the practice of a profession on behalf of the holder of the C of A, personally responsible for all of the practice and personally subject to discipline for the actions of others?

A No. The heading for section 16(5) in the Act “Responsibility for practice”, is misleading. The wording only obliges the named person to “respond” on behalf of the holder of the C of A. That is not to say, however, that the named person will not be subject to discipline if a problem of unskilled practice or professional misconduct is attributed to him or her.

Q16 I noticed that the C of A stamp no longer has an expiry date on it. How long is the stamp valid?

A Your stamp is only valid for use when your fees are paid, and you are in possession of the current certificate bearing the current year validation sticker.