



## Business Insurance and Professional Practice

This is a draft of the document i've written for the AHG website on the topic of insurance. It's the result of about a year of research including discussion with as many herbalists as possible about their experiences with insurance, as well as contacting all of the insurance companies who currently offer this type of insurance, and discussions with insurance agents about what's available and what the coverage is.

### **It's current as of August 2023.**

Since the AHG website is in the midst of a redesign, i'm not sure whether this document will be added to the current site or the coming site – so instead of a URL i am forwarding you a copy of this draft.

You'll find the names of the companies that currently offer professional liability and product insurance for herbalists at the end of the document.

And if you need more support in your business or practice, definitely check out our school! We have a complete program for clinical training, including mentorship and support through the RH application process (as well as many of the international professional organizations). We also have a complete Business Program that covers not just issues like insurance but also building your website, all aspects of GMP/FTC compliance, marketing, and more – as well as live Q&A sessions and more!

You can find all of our courses and programs at:

<https://online.commonwealthherbs.com>

You can find the free AHG Registered Herbalist Requirement Tracking Tool, which also has everything you'll need to track the requirements for many of the international professional organizations included as well, here:

<https://online.commonwealthherbs.com/courses/ahg-registered-herbalist-requirements-tracker>

love and chamomile,  
katja



## Business Insurance and Professional Practice

As you are making the shift into clinical practice, you likely will start thinking about things like professional insurance – whether you need it to go into practice, and if you do, which policy you should get.

It turns out, that is not a simple question.

There are a lot of issues wrapped up in the concept of “professional insurance”, as well as a lot of misconceptions. Ultimately, the idea of “insurance” is much larger than finding a policy that will (in theory) pay for legal problems that might come up. Instead, the concept of insurance should encompass all the actions you take to practice professionally, safely, and responsibly – because all of those actions will play a role in protecting you legally if there ever is any trouble. In fact, they may be much more important than whether or not you have an actual insurance policy!

Let’s start with a look at common reasons that people think about getting professional insurance:

### **People think it is required for clinical practice/product sales by law**

A lot of people assume that it’s a legal requirement to carry professional insurance in order to start a business. In the United States, there is no legal requirement to carry insurance, though there may be other people who make that a requirement, such as a landlord or a combined practice you might want to join, or a merchant to whom you wish to wholesale. But there is no requirement to have insurance just because you’re starting a business.

### **Insurance required by landlord or an integrated practice, etc**

There may be a group you want to join or a space you want to rent that requires insurance. Different entities will require different types of insurance.

If you are renting space – maybe an office for your clinical practice – the landlord may require that you carry insurance. In this case, they are usually referring to General Liability insurance, which covers both you and the landlord if someone should trip on the stairs or slip in the bathroom, etc. This kind of insurance does not cover your WORK in any way – it only covers someone injuring themselves if they trip and fall.

This type of insurance is not costly – typically not more than \$500/year – and you won’t have any choice about whether or not to get it: if the landlord requires it as a part of the lease terms, then it’s just simply a requirement for getting the space. The landlord may have a preferred agency to work with, or you can just choose someone local – the cost of this kind of policy is fairly standardized.

It’s possible, but uncommon, for landlords to also require professional liability insurance. If the landlord requires it, then you will need to get it in order to lease the space: more information about getting it below.



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There may be an integrated practice in your area that you would like to join. In this kind of situation, often the practice requires that all their practitioners carry professional liability insurance. Some types of practitioners have better professional liability insurance options than herbalists do, and they may not really understand that the insurance options we currently have are not the same as the insurance options that many other modalities have available.

You may be able to have a conversation about that, but most likely it will come down to having to get the insurance if you want to join the practice. More on how to get it below.

### **Produce liability insurance may be required by a wholesaler**

If you want to sell your products in someone else's store – ie, you want Whole Foods to sell your artisanally crafted Fire Cider – that store may (quite likely will) require product liability insurance. This is very common, and is typically required of any product the store is going to carry – whether it's herbs or cookies or peas.

Herbal product liability insurance is just as complicated as professional liability insurance, but the bottom line is, if you want the wholesaler to carry your product and the wholesaler requires that you carry insurance, then you will need to get it even if you would otherwise not do it. It's just part of doing business with that retailer. More on how to get it below.

### **“Everybody's doing it” – ie, it's a perceived standard**

A lot of professions do have standard insurance options. If you do home construction, there's insurance for that. If you are a plumber, or a doctor, or a solar panel installer – there's insurance for that. These professions have standardized insurance options, and in many cases the coverage is mandated through agreements between large professional organizations or unions and the insurance companies.

But for herbalists, insurance is quite uncommon, and that's one of the reasons it's so complicated. Because there is a very limited group of people interested in purchasing this kind of insurance, there are very few insurance products available, and they have very limited features. Our industry is not yet prominent enough to have the power to mandate what features should be included in insurance policies, so the few insurance products that are available are written in such a way that they will never have to pay out. We can buy the insurance, but it won't actually cover us.

### **People want insurance because they think it will protect them**



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So many things we do in life include insurance: driving a car, owning a home, and other types of businesses. Often there is a perception that insurance keeps us "safe", and that we would be risking our business to practice without it.

In reality, the insurance available to herbalists right now is written in such a way as to exclude all forms of real-life practice. There is not currently any policy on the market as of 2023 that would pay out if you ran into trouble, because anything that could be "trouble" is explicitly excluded from the policy. This might be surprising!

It's important to recognize that insurance is a business. The purpose of insurance is not actually to pay for things when there is a problem. The purpose of insurance is to make money for the insurance company.

They are allowed to decide what they will cover and what they will not (except in cases where required standards have been set for certain industries). In this business, it is better for them if they don't have to pay anything – that's how they make money.

That's why it's so critically important to carefully read every policy (not the website marketing material, but the actual binder), and especially the section on Exclusions – ie, things they are specifically saying that they will not cover, or activities that will void the coverage. This is how you can know if the activities that you want to do will actually be covered by the insurance that you are buying.

Currently, the activities that an herbalist typically does are not covered by any of the insurance policies that are offered to herbalists - these activities are specifically listed in the Exclusions in the policy binder.

There may be reasons to purchase the insurance even though it will not actually cover you if there is trouble: because a landlord or a particular integrated practice/wholesaler requires it, for example. That's ok. In business, sometimes you have to pay for things that are required but don't really serve you.

### How Insurance Works

Many people have auto insurance, health insurance, or homeowner's insurance, and that gives us some expectations when we go to get business insurance.

It's important to really internalize that those expectations are not reality, and just because we think insurance works a certain way doesn't mean that it does.

Of course, if you've ever had to battle a health insurance company, you already know that. Or if you've made a claim on your home owner's insurance and immediately had your rates raised, you know that.



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So when we're thinking about professional liability insurance, it's important to set aside all of our own expectations about how it should work or how we think it works, and to very carefully read the actual policy binder - not the website! - to determine how it really does work.

Keep in mind that insurance companies make the rules. Except in some special circumstances, no one is regulating what is covered or what is excluded. The insurance companies have teams of lawyers who write the policies intentionally in the insurance company's favor. That's how they ensure that their business is successful.

When we purchase insurance, we are entering into a contract with specific rules, and it's very much like going to a casino: usually, the house wins.

It's important to have a clear understanding on this issue, because it's not what we expect. If we go in without a clear picture of how the game works, then we end up with false comfort and miss the further steps we need to take to protect ourselves.

It's also important to recognize that even in cases where insurance is required by custom or by regulation, that doesn't necessarily mean that the insurance is available, or available on terms that are acceptable to you. Insurance companies get to decide what insurance products they will offer; very rarely are they required to offer certain products simply because those products are required for some other contract. Here's an example:

It's really not possible to buy product liability insurance for herbal products, but some places require it anyway. Why do they require it if you can't really get it? Often it is because they are accustomed to dealing with food, and although food product liability insurance is available, it is not available for all types of foods and it has most of the same problems that herbal professional liability has: it is written in such a way that it won't likely ever pay out. If you have farmer friends, and would like an entertaining evening, ask them about the product insurance they have for their vegetables!

### How to make decisions about whether to get insurance

All of that may seem kind of intimidating. Here's how to make decisions about what you need with regard to insurance:

**If it's required by your landlord or another entity you want to work with, then it's required for you.**



## Business Insurance and Professional Practice

Business often feels like it is “pay-to-play”, and sometimes that's just the way it is. If the people you want to work with or the space you want to rent comes with this requirement, then you have to either get the insurance or not get the space/work with that group. In this case, they care less about whether the insurance will actually cover you, they have told you what they care about is that you HAVE it.

And there is an argument to be made that even if insurance won't pay out, having it is still a good thing - their requirement is not necessarily wrong. More about that in a later section - but i just want to make a note of it now so you don't feel discouraged.

**If you are renting space that will be open to the public**, it's probably a good idea to have general liability even if it isn't required. It's not typically very expensive: most likely it's less than half of your monthly rent. And in this case, it's a pretty straight forward insurance that will pay out specifically in the situations it lists - so make sure that you read the binder and you meet their requirements (for example, have railings on your stairs that are up to code, or non-slip mats on tile - whatever is required by the binder). As long as you do, this insurance is there for you, much like auto insurance.

### **If it gives you peace of mind, then it might be worth it**

Insurance for herbal businesses will probably never actually pay out: that's how they're written. And even if you know that, sometimes it just feels safer to go ahead and get it. There's nothing wrong with that! There's something to be said for showing that you took the effort, and it is one of many factors that can contribute to your professionalism in practice.

So as long as you have clear expectations about what it will and won't cover, there's nothing wrong with having insurance as just one of the various things you do to show your due diligence.

### **One important note: homeowner's insurance will not provide sufficient coverage for a home business**

If you have a home office with a computer, your home owner's insurance may cover your computer in the event of damages. However, if you are running a business in your home, almost all homeowner's insurance policies have exclusions for that. Make sure to read your actual policy binder very carefully before assuming that any business activities are covered in your home, especially if you have clients or customers coming to your home.

How to select insurance if you've decided to get it



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There aren't very many insurance products available for herbalists, and they're all fairly similar in terms of what they do and don't cover. It's very important that you understand what's covered and what's not - and you won't get that from the website. In order to really know what you're getting, you have to read the policy binder first. It's very important to understand that the website is non-binding, and currently, the websites for the insurance policies available for herbalists actively contradict what the policy binders say. The policy binder is the only legal document - if trouble happens, they will not honor what is written on the website, only what is written in the policy binder.

Here is an example:

This is the website of one of the companies that offers professional liability insurance for herbalists:

HERBALIST CONSULTATION LIABILITY INSURANCE

> BUY NOW

POLICY LOGIN/RENEW

### HERBALIST CONSULTATION LIABILITY INSURANCE

Herbalist (Herbal) Consultation insurance can be difficult to find. Not too many insurance companies understand the specific types of risks that herbal practitioners face. That's why we have partnered with one of the top insurance companies in the world to bring you a wellness liability insurance policy designed specifically for practitioners in the wellness industry.

#### How do I protect my business?

You take your clients' health very seriously, but there are times when bodies react differently than we expect them to, sometimes causing bodily injury or even mental anguish. Unfortunately, best intentions don't count when it comes to lawsuits. You need to protect your practice and your personal interests. Do it with the right insurance policy by your side. With the Alternative Balance Professional Group, you can relax and focus on your business. You won't find a policy like this anywhere else! Our policy includes professional and general liability, defense costs, premises liability, and much more. This program is available to full-time workers, part-time workers and trainees.

#### What coverage is included in my herbalist liability insurance?

Visit our [Coverage page](#) for more specific information about the types of coverage included in our plan.

> BUY NOW





# Business Insurance and Professional Practice

If you click the link for the "Coverage Page", this is the chart they show you:

> BUY NOW	> BUY NOW	POLICY LOGIN/RENEW
<b>COVERAGE DETAILS</b>		
Your membership includes the following liability insurance coverage.		
<i>Coverage applies internationally for members based in the U.S.</i>		
<b>General &amp; Professional Liability Aggregate</b> ⓘ	.....	<b>\$3,000,000</b>
<small>General Liability is Occurrence; Professional Liability is Claims Made</small>		
<b>General &amp; Professional Each Occurrence</b> ⓘ	.....	<b>\$2,000,000</b>
<b>Products-Completed Operations Aggregate</b> ⓘ	.....	<b>\$2,000,000</b>
<b>Damage to Premises Rented to You</b> ⓘ	.....	<b>\$300,000</b>
<b>Third-Party Medical Expenses</b> ⓘ	.....	<b>\$5,000</b>
<b>Personal &amp; Advertising Injury</b> ⓘ	.....	<b>Included</b>
<b>Defense Costs</b> ⓘ	.....	<b>Included</b>

That all looks very good! But those numbers are not a guarantee - they are a suggestion. In order to find out what it really means, you need to look at the binder itself. Here are two examples from this company's policy binder exclusions list:

If you provide a client with any herbs, and they have an adverse reaction, that will not be covered:

- (p) to any **Claim** based on or arising out of, or **Occurrence** involving, any **Named Insured's Products**:
- (1) manufactured by any **Insured**;
  - (2) rebottled by any **Insured**;
  - (3) packaged by any **Insured**;
  - (4) sold under the label of an **Insured**; or
  - (5) which are sold or distributed intending to be ingested, injected or used invasively.



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If you work with a person who has Covid, any claim rising out of that work is excluded:

- (ah) to any **Claim, Accident or Occurrence** caused directly or indirectly, in whole or in part, by:
- a. the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, or presence of, any "virus", whether related, in any manner, to a declared or undeclared "epidemic or pandemic" that induces or is capable of inducing physical distress, illness or disease regardless of whether any other cause, event, material or product contributed concurrently or in any sequence to such injury or damage.
  - b. This exclusion applies, whether or not due to the insured's negligence, unintentional act or wrongdoing in the:
    1. Abating, testing for, monitoring, clean up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to, or assessing the effects of a "virus", by any insured or by any other person or entity.
    2. Failure to provide any state or governmental mandated personal protective equipment;
    3. Failure to prevent the spread of any disease;
    4. Failure to report any disease to authorities; or

These are just two examples - the exclusion list for this policy is 9 pages long, and includes most of the things herbalists do or could be accused of doing.

So the key here is that you can't believe the website - you have to read the binder. If there's something about the policy that you don't understand, ask the company before you buy it, and/or ask a business lawyer (lawschool clinics offer low-cost legal advice).

But for the most part, just recognize that most likely, if there actually is a problem, it is probably going to be excluded from coverage.

Based on that, how do you make your choice?

There are only four companies in the US currently offering this insurance. Contact each of them and ask for their **sample policy binder** so that you can inspect it before you purchase. They are all very similar, but you might find one that you like better than the others. If not, just pick the company you like best: if you've established that it won't really cover you, then you can make your choice based solely on price or any other factor you prefer.



# Business Insurance and Professional Practice

## Insurance is not the end of the story

Making the decision about an insurance policy is just the beginning of this work.

If we go back to the original reason people want insurance to begin with - a lot of it has to do with protecting yourself from litigation in practice. Litigation is very unlikely, but if it should happen, insurance alone - even if it did pay out, is not enough to protect you - it's just one part of the picture.

Let's think about what happens in litigation - and first, it's worth saying again that this happens very rarely. But that's what most people are concerned about, so even though it's rare, it's worth thinking this through as you set up your practice or herbal business.

If you're accused of malpractice or irresponsible practice, or of practicing medicine without a license, you will need to defend yourself.

Keep in mind, just being accused isn't enough: someone has to find a lawyer who will prosecute the accusation and that accusation needs to be valid. But if that should happen, you would need to get a lawyer - and we hear that phrase all the time, "get a lawyer". They're not products that you can just go pick up at the store!

When you want to enter into a contract with a lawyer, it goes both ways. You contact a lawyer and ask them to represent you, and they will find out more about you and then decide if they're willing to do that.

So the two questions that are actually MORE important than whether or not you're going to get insurance are:

1. what can i do to have a safe, responsible practice that won't be accused of malpractice or practicing medicine without a license in the first place and,
2. how can i demonstrate my safe-responsibleness so that a lawyer would be willing to represent me, and so that i would have the best chance of proving my safe-responsibleness to a jury if that is ever necessary

Insurance might be a part of demonstrating your safe-responsibleness: even though it probably won't really pay out for you if you are ever accused of wrongdoing, you might decide that having it is part of the way that you show that you are trying to take every step to be responsible.



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But there are many more ways to show that responsibility:

**Be well-educated and well-trained**, both about herbalism and about your particular practice (whether that's clinical herbalism or product making or elsewhat).

That means:

- knowing and following the GMP and FTC guidelines, including as it relates to clinical practice. (You can find all of the FDA and FTC requirements at their websites: FDA.gov and FTC.gov. Several herb schools have programs to help you understand and implement these requirements.)
- staying in your scope of practice, and having awareness of the legal definition of the practice of medicine in your state.
- maintaining good informed consent documentation.
- maintaining a list of medical practitioners you can refer out to.
- maintaining a mentorship relationship or a peer group of herbalists you can contact for support and consultation.

As clinical herbalists, we are not required to keep Standard Operating Procedures on file, but i absolutely recommend that you do.

**Document your education:** Associate Membership in the AHG or recognition as a Registered Herbalist is important, not because it confers licensure, but because it shows that even though herbalism is unregulated, you have gone to the trouble to seek out all of the options to show you are safe and responsible. Because we don't have state board exams, the RH application is the only national way to show that. If you aren't eligible yet for RH, have your AH and clearly document all of your education along the way to meeting the RH requirements.

It is also important to keep your membership current. The AHG is our professional organization, and it's the way important shifts in the legal landscape can be communicated to herbalists across the country. In many professions, maintaining membership in the national professional organization is required to maintain licensure/accreditation, and is considered necessary for professional practice. Although we don't have laws governing this, when we uphold the professional standards that other types of practitioners are held to, we are showing our commitment to safe, responsible practice.

Even if you choose not to apply to be an RH, you can still use the requirements as a guideline, and you can still document your education in that manner. If you qualify



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for membership in other professional organizations, it's recommended that you stay current with those memberships as well.

If you are a product maker, don't slouch on your **GMP requirements**. Schedule time every month and every quarter to stay up to date, and also to review the FDA warning letters. Document the times where you checked to make sure you were operating in accordance with FDA requirements - ie, if a warning letter goes out that has pertinence to your business, document that you double-checked that you were not doing that same violation. Document all of your monthly and quarterly work in this area.

Make sure to adhere to the guidelines about "don't tell and sell". This is one of the areas you're most likely to encounter difficulties, so build your habits now to protect you in the future. This is relevant to anyone who sells a product, and is particularly relevant to clinical herbalists or herbal teachers who want to also produce a product line.

Even if you don't live in a safe-harbor-law state, **adhere to the safe-harbor-law guidelines in your practice**. In this way you are saying that even though your state doesn't have such a law, you are holding to the legal standards as they are available in other parts of the country. If you do live in a safe-harbor-law state, make sure that you are in compliance with the rules in your state's law.

Some states have laws regarding herbalism included in their state definition of the practice of medicine, or in other statutes.

If you are a clinical herbalist, **document your state's legal definition of the practice of medicine** and your own philosophy of practice in light of that law. You can write a short document that states how you intend to follow the law (ie, how to not practice medicine without a license). Include the specific actions you are taking to ensure that you are not practicing medicine as it is defined in your state. You would certainly be asked this question in legal proceedings, so define these boundaries for yourself BEFORE you have any problem, and run your practice accordingly.

All of this documentation should be kept in one location that is easily accessible. You can use the GMP guidelines for SOP documentation as an outline for how you keep your records.



# Business Insurance and Professional Practice

## Your herbal business in the world

Part of going into business is making decisions about how your business exists in the world. What values guide your business, and how do you respond to things that happen in your professional capacity? It's important to take some time to sit down and think these things through before you get going.

Thinking through how you document your safe, responsible practice - whether you're teaching, making products, seeing clients, or something else - is a big part of that work.

While you're at it, take some time to think about how your business treats its employees - that's you! Do you get vacation time? Do you get sick days? Do you have a community of support that you can call on regularly? You should! Take time before you get started to make those decisions too, and then take your "company policy" seriously, so that you don't burn yourself out <3



## Business Insurance and Professional Practice

### Professional Liability & Product Insurance Providers for Herbalists

*please note: i don't endorse any of these providers! make sure you request a sample policy binder and read the entire binder before you purchase coverage; when i read the binders, it looks to me like it would be extremely difficult to make a claim against these policies. keep in mind that what they say on the website is not the same as what is in the binder. there may be other providers.*

The **American Acupuncture Council** offers consultation insurance that is mostly geared towards acupuncture providers (as the name implies!) but they do also insure herbalists. There is very little information about the policies themselves on their website, and some herbalists have reported difficulties in making a claim on their policy.

<http://acupuncturecouncil.com/>

The herbalist application is here: <https://api.councilservice.com/AAC/GetApp?N=HER>

Note that they ask for a license number, which is dumb since there's no such thing as licensure for herbalists in the US. This company does not require you to be a Registered Herbalist to apply.

**Alternative Balance** offer consultation insurance here, as well as lots of other modalities, including movement arts, wellness coaching, personal training, etc.

<https://alternativebalance.com/herbalist-consultation-liability-insurance/>

This provider does not require you to be a Registered Herbalist to apply.

**Lockton Affinity Health** offers "holistic medicine practitioner" liability insurance. I find that more vague than most, so if you are interested in their coverage, make sure to ask lots of questions.

<https://locktonmedicalliabilityinsurance.com/coverage/holistic-medicine-liability-insurance/>



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**Energy Medicine Professional** is focused first on energy and movement modalities, but does also cover educational and informational consultation (not prescriptive), including teachers:

<https://get.energymedicineprofessionalinsurance.com/liability-insurance-coverage>

This provider does not require you to be a Registered Herbalist to apply.

Also, you can talk to your own insurance agent for this type of insurance. Most of them do sell professional liability insurance, and you might find that an insurance agent with whom you already have a good relationship can help you to navigate this situation better.

**If you are practicing in Canada**, you can find insurance here:

<https://www.therapistinsurance.ca/>

<https://www.holisticinsurance.ca/>

**If you are practicing in the EU**, you can find insurance here:

<https://www.liabilitycover.ie/herbalists-professional-indemnity-insurance/>

And Balens, which offers a discount with professional membership in some of the EU herbal organizations. That doesn't make it better, it's just a marketing relationship. Still, if everything else is the same, then a better price is better!

<https://www.balens.co.uk/>

If you are practicing or making products in Australia, you can find insurance here:

<https://business-insurance.aon.com.au/professional-indemnity-insurance>

<https://www.guildinsurance.com.au/industry/natural-therapists>



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For **General Liability insurance**, i recommend you work with an established local insurance agent, because it's good to have a real person to talk to when you need it! General Liability insurance is not herbalism-specific, so you can get it from whomever.

Some people have worked with Veracity for **Product Liability insurance**. They will sell you herbal product insurance, though it's unclear the extent to which their products actually cover herbal products; read the binder carefully. They do have a CBD product option.

<https://www.veracityinsurance.com/vitamins-supplements-insurance>