BILLE NA LIA-CHLEACHTÓIRÍ (LEASÚ), 2012
MEDICAL PRACTITIONERS (AMENDMENT) BILL 2012

Mar a tionscnaíodh
As initiated

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[No. 119 of 2012]

Medical Practitioners Act 2007	2007, No. 25
National Treasury Management Agency (Amendment) Act 2000	2000, No. 39

BILLE NA LIA-CHLEACHTÓIRÍ (LEASÚ), 2012
MEDICAL PRACTITIONERS (AMENDMENT) BILL 2012

BILL

entitled

AN ACT TO PROVIDE FOR MANDATORY PROFESSIONAL INDEMNITY COVER FOR CERTAIN MEDICAL PRACTITIONERS; TO CONFER ADDITIONAL FUNCTIONS ON THE MEDICAL COUNCIL; AND FOR THAT PURPOSE TO AMEND AND EXTEND THE MEDICAL PRACTITIONERS ACT 2007 AND TO PROVIDE FOR RELATED MATTERS.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

Preliminary and General

Short title, collective citation and commencement.

1.—(1) This Act may be cited as the Medical Practitioners (Amendment) Act 2012.

(2) This Act and the Medical Practitioners Act 2007 may be cited together as the Medical Practitioners Acts 2007 and 2012.

(3) This Act comes into operation six months after its passing.

Interpretation.

2.—In this Act "Principal Act" means the Medical Practitioners Act 2007.

PART 2

Obligation to Hold Professional Indemnity Cover

Amendment of section 2 of Principal Act.

3.—Section 2 of the Principal Act is amended—

(*a*) by inserting the following after the definition of "Higher Education Authority":

" 'insurer or indemnity provider' means—

(i) a financial services entity which is licensed by the Central Bank of Ireland to issue policies of insurance in the State,

(ii) an indemnity provider which has been approved by the Council pursuant to Rules made under section 11(2C);",

(*b*) by inserting the following after the definition of "chief executive officer":

" 'Clinical Indemnity Scheme' means the scheme administered and managed by the State Claims Agency, for the purposes of section 9(1) of the National Treasury Management Agency (Amendment) Act 2000;",

(*c*) by inserting the following after the definition of "professional competence scheme":

" 'Professional Indemnity Committee' means the committee established under section 20(4A);

'professional indemnity cover' means:

(i) an agreement between a medical practitioner and an insurer or indemnity provider by virtue of which the patient is compensated for losses suffered by reason of the medical practitioner's practise of medicine, including actual or alleged medical negligence, and

(ii) which is wholly consistent with the guidelines published by the Council under section 11(2B);".

Amendment of section 10 of Principal Act.

4.—Section 10 of the Principal Act is amended by substituting the following for subsection (1):

"(1) No person to whom this subsection applies, acting in good faith, shall be personally liable in any civil proceedings for—

(*a*) any act done or default made in the performance or purported performance of any function under this Act, or

(*b*) any breach of duty by a medical practitioner in respect of obligations imposed on a medical practitioner pursuant to rules made under section 11(2A) provided the Council has acted reasonably in the circumstances.".

Amendment of section 11 of Principal Act.

5.—Section 11 of the Principal Act is amended by inserting the following after subsection (2):

"(2A) (*a*) The Council shall make rules specifying each category of medical practitioners who shall, in the public interest, be obliged to hold professional indemnity cover.

(*b*) Without prejudice to the generality of paragraph (*a*)—

(i) a medical practitioner shall be obliged to hold professional indemnity cover in respect of any claims arising from his or her medical practice including those claims which may arise after the date on which he or she ceases to practise for whatever reason;

(ii) a medical practitioner who is a participant in the Clinical Indemnity Scheme and whose practice is wholly within the terms of that Scheme shall be deemed to have complied with the requirement to hold professional indemnity cover.

(2B) The Council shall, having consulted with the State Claims Agency, publish on its website guidelines as to the form and scope of professional indemnity cover to be held by medical practitioners.

(2C) The Council shall make rules specifying the indemnity providers which are recognised by it for the purpose of providing professional indemnity cover to medical practitioners.

(2D) The Council shall not issue a certificate under section 43 to a medical practitioner unless the medical practitioner has furnished to the Council written evidence of there being in force the required level of professional indemnity cover.

(2E) When making rules under subsection (2A) or publishing guidelines under subsection (2B), the Council may, by reference to the speciality of each class of medical practitioner, specify the minimum level of professional indemnity cover to be in force for each category of medical practitioner having regard to—

(*a*) the public interest, and

(*b*) the risk posed to the public interest.

(2F) When making rules under subsection (2A), the Council may specify any such exceptions to those rules as may be consistent with the objects of the Council under section 6.

(2G) The Council may from time to time conduct audits of medical practitioners in order to ascertain the level of compliance with the rules made under subsection (2A) or the guidelines published under subsection (2B).".

Amendment of section 20 of Principal Act.

6.—Section 20 of the Principal Act is amended by inserting the following after subsection (4):

"(4A) Without prejudice to the generality of subsection (1) the Council may establish a committee, to be known as the Professional Indemnity Committee, to perform the functions under subsections (2A) to (2G) of section 11.".

PART 3

Offences

Amendment of section 41 of Principal Act.

7.—Section 41 of the Principal Act is amended by inserting the following after subsection (4):

"(4A) A person who practises medicine or purports to practice medicine, irrespective of whether that person is a registered medical practitioner, is guilty of an offence if the person—

(*a*) fails to comply with the rules made pursuant to section 11(2A),

(*b*) fails to maintain professional indemnity cover at all or at the level required by guidelines published under section 11(2B), or

(*c*) falsely represents that he or she has the required professional indemnity cover in place.

(4B) A person is guilty of an offence if the person contravenes sections 110, 111 or 112.".

PART 4

Lapse or Cancellation of Professional Indemnity Cover

Insertion of new section 44A into Principal Act.

8.—Part 6 of the Principal Act is amended by inserting the following section after section 44:

"Lapse or cancellation of cover.

44A.—(1) Where—

(*a*) a medical practitioner is required to hold professional indemnity cover by virtue of rules made under section 11(2A) or at the level required by guidelines published under section 11(2B), and

(*b*) an insurer or an indemnity provider becomes aware that such cover has lapsed or has been cancelled for any reason,

the insurer or indemnity provider shall notify in writing both the medical practitioner and the Council of that fact as soon as practicable.

(2) Upon receipt of a notification under subsection (1), the Council shall write to the medical practitioner seeking written confirmation and proof that the required professional indemnity cover is in place.

(3) Where the medical practitioner fails, within 30 days to respond, or respond in an adequate manner to a request made of him or her pursuant to subsection (2), the Council shall refer the

matter to the Preliminary Proceedings Committee pursuant to section 57(1)(*f*).".

PART 5

Proof of Existence of Cover

Insertion of new sections 110, 111 and 112 into Principal Act.

9.—Part 13 of the Principal Act is amended by inserting the following section after section 109:

"Duty of disclosure.

110.—In procuring professional indemnity cover, and at all times during the course of such cover, a medical practitioner shall make full disclosure of all relevant facts to his or her insurer or indemnity provider.

Existence of professional indemnity cover.

111.—(1) Any person who proposes to engage a medical practitioner on either—

(*a*) a contract of service, or

(*b*) a contract for services,

shall, prior to such engagement, require the production of written evidence of there being in force the required level of professional indemnity cover in respect of the medical practitioner.

(2) For the purposes of this section, the term "engages" does not include the engagement by a patient of a medical practitioner for the purposes of the provision of medical care or services to that patient.

Display of professional indemnity certificate.

112.—A medical practitioner who, pursuant to rules made under section 11(2A), is required to hold professional indemnity cover shall display evidence of such cover in a prominent position at their principal place of practice.".