



**BILLE NA LIA-CHLEACHTÓIRÍ (LEASÚ), 2013
MEDICAL PRACTITIONERS (AMENDMENT) BILL 2013**

EXPLANATORY MEMORANDUM

Background

There is currently no statutory obligation on medical practitioners to hold professional indemnity cover. In contrast, financial intermediaries, solicitors and a whole host of other professionals are obliged to hold professional indemnity cover. In view of the nature of their work, it seems implausible that medical practitioners are not currently required to hold such cover.

Paragraph 50.1 of the Medical Council's "Guide to Professional Conduct and Ethics for Registered Medical Practitioners" simply states that medical practitioners "must ensure" that they have "adequate professional indemnity cover for all healthcare services" provided. This cannot be equated with a statutory obligation to have in place such cover and consequently patient protection measures are not what they ought to be.

In 2009, when in opposition, the current Minister for Health, James Reilly TD published his own Bill — Medical Practitioners (Professional Indemnity) (Amendment) Bill — for the purpose of introducing a requirement for professional indemnity cover for medical practitioners.

Purpose of the Bill

The purpose of this Bill is to require medical practitioners to hold professional indemnity cover and to confer responsibility for administering and enforcing the terms of this Bill on the Medical Council.

Provisions of the Bill

The Bill is divided into five Parts and contains nine sections, the effect of which are now summarised.

Section 1 sets out the short title of the Bill and provides for the collective citation of the Bill. Section 1 also provides for the commencement of the Bill six months after the Bill has been passed by the Houses of the Oireachtas.

Section 2 provides a definition of the term "Principal Act" so that it refers to the Medical Practitioners Act 2007.

Section 3 amends section 2 of the 2007 Act so as to insert four new definitions, those being “insurer or indemnity provider”, “Clinical Indemnity Scheme”, “Professional Indemnity Committee”, and “professional indemnity cover”.

Section 4 amends section 10 of the 2007 Act by substituting a revised text of subsection (1), the purpose of which is to expand the immunity of the Medical Council so as to ensure that the Medical Council will not be held liable for the wrongdoings of medical practitioners in respect of their obligation to hold professional indemnity cover.

Section 5 amends section 11 of the 2007 Act by inserting seven new subsections. Subsection (2A)(a) empowers the Medical Council to make rules specifying each category of medical practitioner who will be required to hold professional indemnity cover. Subsection (2A)(b) also provides that a medical practitioner is obliged to hold cover for claims which arise even after his or her practice has ceased. Subsection (2A)(b) also clarifies that a medical practitioner who is a member of the Clinical Indemnity Scheme will be deemed to have met the requirement to hold professional indemnity cover.

Subsection (2B) provides that, following consultations with the State Claims Agency, the Medical Council is required to publish guidelines which stipulate the type of cover which medical practitioners are required to hold.

Subsection (2C) requires the Medical Council to make rules specifying the indemnity providers which have been recognised. Subsection (2D) states that the Medical Council must not issue a certificate of registration to a medical practitioner unless he or she has provided evidence of the required level of cover being in place. Subsection (2E) permits the Medical Council to specify, in its rules, the minimum level of cover to be held by practitioners.

Subsection (2F) empowers the Medical Council to exempt practitioners from the requirement to hold professional indemnity cover. Subsection (2G) provides that the Medical Council may carry out random checks for the purpose of ascertaining the degree of compliance with the requirements concerning professional indemnity cover.

Section 6 empowers the Medical Council to establish a Professional Indemnity Committee to carry out its functions relating to medical indemnity cover.

Section 7 states that it is an offence for a person to practise medicine whilst either, not being in compliance with the Medical Council’s rules, or not having in place professional indemnity cover, or falsely representing that he or she has the correct level of cover in place. Section 7 also makes it an offence for a person to contravene sections 110, 11 and 112 which are proposed to be inserted into the 2007 Act by section 9 of this Bill.

Section 8 inserts a new section 44A into the 2007 Act so as to place a duty on insurers to notify the Medical Council if they become aware that a medical practitioner’s professional indemnity cover has lapsed or been cancelled. Section 44A(2) provides that having received notification under section 44A(1), the Medical Council must then write to the medical practitioner in order to seek proof that the required cover is in place. Section 44A(3) states that where the medical practitioner fails to respond, or responds in an inadequate

way to the Medical Council's request, then the Council is obliged to refer the matter to its Preliminary Proceedings Committee.

Section 9 inserts three new sections into the 2007 Act. The proposed new section 110 imposes a general obligation of full disclosure on medical practitioners who are seeking professional indemnity cover.

Section 111 provides that where a person or a business (other than a patient) proposes to engage a medical practitioner, he or she is obliged to seek proof of the existence of the required level of professional indemnity cover in respect of that practitioner.

Section 112 obliges a medical practitioner to display evidence of their professional indemnity cover at their principal place of practise.

Senator David Norris,
July, 2013.