



New South Wales

Health Care Liability Amendment (Health Practitioners) Regulation 2007

under the

Health Care Liability Act 2001

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Health Care Liability Act 2001*.

JOHN HATZISTERGOS, M.L.C.,
Minister for Health

Explanatory note

The object of this Regulation is to amend the *Health Care Liability Regulation 2001*:

- (a) to require chiropractors, dental auxiliaries, dentists, optometrists, osteopaths, pharmacists, physiotherapists, podiatrists and psychologists to hold professional indemnity insurance, and
- (b) to exempt certain health practitioners from the requirement to hold professional indemnity insurance in certain circumstances.

This Regulation also makes an amendment in the nature of law revision.

This Regulation is made under the *Health Care Liability Act 2001*, including sections 25 and 34 (the general regulation-making power).

2007 No 49

Clause 1 Health Care Liability Amendment (Health Practitioners) Regulation 2007

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1 Name of Regulation

This Regulation is the *Health Care Liability Amendment (Health Practitioners) Regulation 2007*.

2 Amendment of Health Care Liability Regulation 2001

The *Health Care Liability Regulation 2001* is amended as set out in Schedule 1.

Schedule 1 Amendments

(Clause 2)

[1] **Part 1, heading**

Insert before clause 1:

Part 1 Preliminary

[2] **Clause 3 Definitions**

Insert in alphabetical order in clause 3 (1):

dental auxiliary means a dental auxiliary registered under the *Dental Practice Act 2001*.

pharmacist means a pharmacist registered under the *Pharmacy Act 1964* or the *Pharmacy Practice Act 2006*.

[3] **Part 2, heading**

Insert after clause 3:

Part 2 Medical practitioners

[4] **Clause 5 Exemption from approved insurance requirement**

Omit “practices” from clause 5 (1A). Insert instead “practises”.

[5] **Part 3**

Insert after clause 8:

Part 3 Health practitioners

9 Classes of health practitioner required to be covered by professional indemnity insurance

Section 25 of the Act applies to the following classes of health practitioner:

- (a) chiropractors,
- (b) dental auxiliaries,
- (c) dentists,
- (d) optometrists,
- (e) osteopaths,
- (f) pharmacists,

2007 No 49

Health Care Liability Amendment (Health Practitioners) Regulation 2007

Schedule 1 Amendments

- (g) physiotherapists,
- (h) podiatrists,
- (i) psychologists.

10 Exemption from insurance requirement

- (1) In accordance with section 25 (5) of the Act, the following health practitioners are exempt from the requirement for professional indemnity insurance:
 - (a) a person whose registration as a health practitioner is subject to the condition that the person does not practise,
 - (b) a health practitioner who practises primarily outside New South Wales and who is covered by professional indemnity insurance of any kind while practising in New South Wales,
 - (c) a health practitioner whose practice is limited to the rendering of assistance, in the practitioner's capacity as a health practitioner, on a voluntary basis in emergency situations,
 - (d) a health practitioner who practises in the course of being:
 - (i) employed by another person, or
 - (ii) engaged by another person under some contractual arrangement,
 - (e) a health practitioner whose practice does not include the provision of health care or of an opinion given in the practitioner's capacity as a health practitioner in respect of the physical or mental health of any person,
 - (f) a health practitioner who, while practising, is covered by an indemnity arrangement established or entered into by the State or the Commonwealth to cover civil liability,
 - (g) a health practitioner who, while practising in accordance with a function conferred or imposed by or under any State or Commonwealth Act or regulation, does not, under that Act or regulation, incur any personal liability.
- (2) An exemption under subclause (1) (b)–(g) applies to a health practitioner only to the extent to which the health practitioner practises in the circumstances described in the exemption concerned.

- (3) Without limiting subclause (2), the exemption under subclause (1) (d) applies only in relation to a health practitioner:
 - (a) to the extent that the health practitioner is practising as an employee of, or under contract to, the other person, and
 - (b) to the extent that the health practitioner is indemnified, under an insurance policy issued to the other person, for civil liability arising out of the provision of, or failure to provide, health care by the health practitioner, and
 - (c) if the other person is not the health practitioner's practice company.

11 Exemption for limited period after cessation of insurer's business

- (1) If a health practitioner ceases to be covered by professional indemnity insurance as a consequence of the cessation of business of the insurer who provided the insurance, the health practitioner is, in accordance with section 25 (5) of the Act, exempt from the requirement for professional indemnity insurance but only for a period of no more than 3 months (or such longer period as the Minister may specify by order published in the Gazette) commencing on the date on which the health practitioner ceased to be so covered.
- (2) The reference in subclause (1) to the cessation of business of an insurer includes a reference to the appointment of a liquidator, administrator or controller (within the meaning of the *Corporations Act 2001* of the Commonwealth) in respect of the insurer's business.

12 Interim exemption for health practitioners without insurance

A health practitioner who is not covered by professional indemnity insurance of any kind at the commencement of this Part is, in accordance with section 25 (5) of the Act, exempt from the requirement for professional indemnity insurance until the date that occurs 6 months after the commencement of this Part (or until such later date as the Minister may specify by order published in the Gazette).