

Health Care Liability Regulation 2001

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New South Wales

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The provisions displayed in this version of the legislation have all commenced.

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Health Care Liability Regulation 2001



New South Wales

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Health Care Liability Regulation 2001*.

2 Commencement

This Regulation commences on 1 January 2002.

3 Definitions

(1) In this Regulation:

approved insurance requirement means, in relation to a medical practitioner, the requirement under section 19 of the Act for the medical practitioner to be covered by approved professional indemnity insurance.

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*.

the Act means the *Health Care Liability Act 2001*.

(2) Notes in the text of this Regulation do not form part of this Regulation.

Part 2 Medical practitioners

4 Definition of “health care provider”—additional classes of medical practitioners

The following medical practitioners are prescribed for the purposes of the definition of **health care provider** in section 4 (1) of the Act:

- (a) a medical practitioner who causes or has caused (wholly or partly) an injury or death that gives rise to, or has given rise to, a health care claim and whose civil liability in respect of the injury or death is, irrespective of whether it occurred before or after 1 January 2002, covered by an indemnity arrangement established or entered into by

the State or the Commonwealth to cover civil liability,

- (b) a medical practitioner whose civil liability in respect of an injury or death that gives rise to a health care claim is not covered by approved professional indemnity insurance because the medical practitioner is or was exempt, as provided by clause 7, from the approved insurance requirement.

Note—

Section 4 (3) (a) of the Act provides that a reference to a medical practitioner includes, if the medical practitioner conducts his or her practice by means of a practice company, a reference to the medical practitioner's practice company.

5 Exemption from approved insurance requirement

- (1) In accordance with section 19 (4) (b) of the Act, the following medical practitioners are exempt from the approved insurance requirement:
 - (a) a person whose registration as a medical practitioner is, in accordance with section 9 of the *Medical Practice Act 1992*, subject to the condition that the person does not practise medicine,
 - (b) a medical practitioner who practises medicine primarily outside New South Wales and who is covered by professional indemnity insurance of any kind while practising medicine in New South Wales,
 - (c) a medical practitioner whose medical practice is limited to the rendering, on a voluntary basis, of medical assistance in emergency situations or first-aid,
 - (d) a medical practitioner who practises medicine in the course of being:
 - (i) employed by another person, or
 - (ii) engaged by another person under some contractual arrangement,
 - (e) a medical practitioner whose medical practice does not include the provision of health care or medical opinion in respect of the physical or mental health of a person,
 - (f) a medical practitioner who, while practising medicine, is covered by an indemnity arrangement established or entered into by the State or the Commonwealth to cover civil liability,
 - (g) a medical practitioner who, while practising medicine 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,
 - (h) a medical practitioner who, without fee or reward, refers a person to another medical practitioner for the purposes of providing health care,

- (i) a medical practitioner who, without fee or reward, prescribes a therapeutic substance in either of the following circumstances:
 - (i) the prescription involves the renewal of a prescription provided by another medical practitioner (other than a medical practitioner referred to in paragraph (a), (c) or (e)) within the previous period of 6 months and does not relate to a drug of addiction within the meaning of the *Poisons and Therapeutic Goods Act 1966*,
 - (ii) the prescription is provided to a person who requires temporary relief or first-aid pending attendance on that person by another medical practitioner (other than a medical practitioner referred to in paragraph (a), (c) or (e)).

(1A) An exemption under subclause (1) (b)-(i) applies to a medical practitioner only to the extent to which the medical practitioner practises medicine in the circumstances described in the exemption concerned.

(2) Without limiting subclause (1A), the exemption under subclause (1) (d) applies only in relation to a medical practitioner:

- (a) to the extent that the medical practitioner is practising medicine as an employee of, or contractor to, the other person, and
- (b) to the extent that the medical 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 medical practitioner, and
- (c) if the other person is not the medical practitioner's practice company.

(3) The exemption under subclause (1) (i) applies only in relation to a medical practitioner if the medical practitioner has, within the period of 12 months preceding the date on which the prescription is provided by the medical practitioner, undertaken professional education activities relating to the prescribing of therapeutic substances.

(4) In this clause, **therapeutic substance** has the same meaning as in the *Poisons and Therapeutic Goods Regulation 2002*.

6 Exemption in relation to existing insurance arrangements

In accordance with section 19 (4) (b) of the Act, a medical practitioner is exempt from the approved insurance requirement if:

- (a) the medical practitioner, while practising as such, was covered by professional indemnity insurance of any kind immediately before 1 January 2002, and
- (b) the insurer who provides that insurance was providing the insurance to the medical practitioner for a continuous period of at least 4 weeks leading up to 1 January 2002, and

- (c) the insurer does not provide, or ceases to provide, approved professional indemnity insurance during the period between 1 January 2002 and 1 July 2002 and continues not to provide approved professional indemnity insurance after 1 July 2002, and
- (d) the medical practitioner, while practising as such, continues (without any break in the cover) to be covered by professional indemnity insurance provided by that same insurer.

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

- (1) If a medical practitioner ceases to be covered by approved professional indemnity insurance as a consequence of the cessation of business of the insurer who provided the insurance, the medical practitioner is, in accordance with section 19 (4) (b) of the Act, exempt from the approved insurance requirement 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) immediately following the date on which the medical 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.

8 Interim exemption for medical practitioners without insurance

A medical practitioner who is not covered by professional indemnity insurance of any kind is, in accordance with section 19 (4) (b) of the Act, exempt from the approved insurance requirement until 30 June 2002 (or such later date as the Minister may specify by order published in the Gazette).

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,

- (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).