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**BILLE NA LIA-CHLEACHTÓIRÍ (SLÁNAÍOCHT  
GHAIRMIÚIL) (LEASÚ) 2009**  
**MEDICAL PRACTITIONERS (PROFESSIONAL  
INDEMNITY) (AMENDMENT) BILL 2009**

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*Mar a tionscnaíodh  
As initiated*

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ARRANGEMENT OF SECTIONS

Section

1. Short title, collective citation and commencement.
  2. Definition.
  3. Provision for Mandatory Professional Indemnity Insurance.
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**BILL**

*entitled*

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10 AN ACT TO AMEND AND EXTEND THE MEDICAL PRACTITIONERS ACT 2007; TO PROVIDE FOR MANDATORY PROFESSIONAL INSURANCE FOR CERTAIN MEDICAL PRACTITIONERS AND TO PROVIDE FOR CONNECTED MATTERS.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—(1) This Act may be cited as the Medical Practitioners (Professional Indemnity) (Amendment) Act 2009. Short title, collective citation and commencement.

15 (2) This Act shall come into effect one month after its passing by the Houses of the Oireachtas.

(3) This Act and the Medical Practitioners Act 2007 may be cited together as the Medical Practitioners Acts 2007 and 2009.

20 2.—In this Act “Principal Act” means the Medical Practitioners Act 2007. Definition.

3.—Section 43 of the Principal Act is amended by the insertion, after subsection (4), of the following new subsections: Provision for Mandatory Professional Indemnity Insurance.

“(4A) The Council:

25 (a) shall, within six months of the date of the passing of this Act, make rules under section 11 specifying—

(i) the category or categories of practitioner who shall, in the public interest, be obliged to hold medical indemnity cover, and

30 (ii) the form of such medical indemnity cover to be held by such practitioners, and

(iii) the bodies recognised by the Council for the purposes of providing such medical indemnity cover,

(b) shall not issue a certificate under this section to any practitioner who makes application to the Council for such certificate and who is, by virtue of the rules made under subsection (a), a practitioner obliged to hold such medical indemnity cover, unless the practitioner has furnished to the Council written evidence of there being in force the prescribed minimum medical indemnity, as prescribed by the Council in the rules made under subsection (a) and

(c) shall, not less than annually, review and maintain the list of approved bodies but shall not, without good reason, refuse to approve any body providing medical indemnity cover to registered medical practitioners.

(4B) In this section ‘medical indemnity cover’ means an agreement between a practitioner and any approved body such that by virtue of that agreement, the practitioner will be compensated to the extent required by the Council, pursuant to rules made under subsection (4A)(a), in the event that the practitioner suffers loss by reason of civil liability arising out of medical negligence or alleged medical negligence in the practitioner’s practice of medicine.

(4C) In this section ‘approved bodies’ means a body recognised by the Council for the purposes of providing medical indemnity cover under subsection (4A)(a)(iii).

(4D) The Council may specify in rules made under subsection (4A) the minimum sum of medical indemnity cover to be in force for each class or classes of practitioner having regard to the public interest and the risk posed to the public interest by the speciality of each class of medical practitioner.

(4E) The Council may specify any such exceptions to the general obligation created pursuant to the rules made under section 43(4A)(a) as may be consistent with the Council’s duties under section 6.

(4F) (a) Where—

(i) a practitioner is a practitioner required to hold medical indemnity cover by virtue of rules made under subsection (4A), and

(ii) a body approved of by the Council under subsection (4A) becomes aware that such cover as required under subsection (4A) has lapsed or has been caused to lapse for any reason,

that body shall notify in writing both the practitioner and the Council of that fact as soon as practicable.

(b) On receipt of a notification under paragraph (a), the Council shall write to the practitioner as soon as is practicable to inform the practitioner that it has been informed by an approved body that the practitioner no longer has medical indemnity cover.

5 (c) The Council shall be entitled to consider the failure or failures of any approved body to comply with paragraph (a) when reviewing and maintaining the list of approved bodies pursuant to section 43(4A)(d).

10 (4G) Where medical indemnity required under subsection (4A) has lapsed or has been caused to lapse for any reason the Council shall, after the expiration of thirty days from any notification provided by the Council to the practitioner under subsection (4F), refer the matter to the Preliminary Proceedings Committee, pursuant to section 57(1)(f), unless the practitioner has prior to the expiration of thirty days provided the Council with written evidence of there being in place medical indemnity cover as required under subsection (4A).

15 (4H) A practitioner who is required by rules made under subsection (4A) to have medical indemnity cover and who practices medicine without having in place medical indemnity cover is guilty of an offence.

20 (4I) A practitioner who falsely represents to have medical indemnity cover is guilty of an offence.

(4J) A person guilty of an offence under this section is liable—

25 (a) on summary conviction, to a fine not exceeding €5,000 or to imprisonment for a term not exceeding 6 months or both,

(b) on conviction on indictment—

(i) in the case of a first conviction, to a fine not exceeding €130,000 or to imprisonment for a term not exceeding 1 year or both,

30 (ii) in the case of any subsequent conviction, to a fine not exceeding €320,000 or to imprisonment for a term not exceeding 5 years or both.

35 (4K) It shall be a defence in proceedings for a first offence under subsection (4H) for the person charged with the offence to prove that the person took all reasonable steps to avoid the commission of the offence.

40 (4L) Where a person is convicted of an offence under this section, the court recording the conviction shall, unless it is satisfied that there are special and substantial reasons for not doing so, order the person to pay to the prosecution the costs and expenses, measured by the court, incurred by the prosecution in relation to the prosecution of the offence.”.



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**EXPLANATORY MEMORANDUM**

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*Purpose of the Bill*

The purpose of this Bill is to regulate doctors so that they must have appropriate insurance in order to practice medicine in Ireland.

The majority of doctors are responsible and carry appropriate medical negligence insurance however as in all professions some may not have an appropriate level of insurance cover either through inadvertence or design.

This Bill will make medical indemnity cover compulsory for all practising doctors and provide that the Medical Council will have the power to set appropriate levels of insurance to be held by different classes of practitioners. Currently the medical council have no such power and they only recommend that doctors carry such insurance.

The Bill will further provide that before the Medical Council can issue a certificate to practice to the practitioner, written evidence of the appropriate insurance being in place must be produced to the Council

The Bill also provides for circumstances in which insurance may lapse and makes it an offence to practice without insurance where such insurance is required.

At present someone irresponsible could practice in Ireland without the appropriate medical negligence insurance and in the event of negligent or unsatisfactory treatment an aggrieved or injured patient may have no redress to compensation.

This Bill is intended to apply to Doctors who are not domiciled in Ireland but who practise here often in private clinics, as well as practitioners normally resident in Ireland.

*Provisions of Bill:*

*Section 1* provides that the Bill on enactment shall be known as the Medical Practitioners (Professional Indemnity) (Amendment) Act 2009.

*Section 2* defines the Principal Act as being the Medical Practitioners Act 2007.

*Section 3* provides that the Medical Council can make rules to provide for a system of mandatory medical indemnity cover for doctors in Ireland.

Under this section the Medical Council is given the discretion to determine which practitioners need medical insurance, the type of insurance appropriate to each class of practitioner according to risk, public interest and the indemnity, the monetary amount of indemnity for different categories of doctors and the approved bodies by which those indemnities can be provided.

Under this Bill, the possession of medical indemnity is an essential pre-requisite for applying for registration as a medical practitioner with the Medical Council.

In the event that the practitioner's medical indemnity is lapsed for any reason, the provider of insurance is required to notify both the practitioner and the Medical Council, which is also obliged to notify the practitioner. Failure to hold medical indemnity cover is an offence, but is mitigated by having made every effort to ensure it does not lapse. Where the insurance remains lapsed for more than 30 days, the Council is obliged to notify the matter to the Preliminary Proceedings Committee.

It is an offence without mitigation to falsely represent the fact of having medical indemnity cover.

The penalty for failure to have insurance is a fine of up to €5,000 at summary conviction, or imprisonment for a maximum term of six months. Where the offence is prosecuted at indictment, the maximum penalty for failure to have medical indemnity cover shall be a fine not exceeding €130,000 or to imprisonment for a term not exceeding 1 year or both in the case of a first conviction. In the case of any subsequent conviction, the maximum penalty is a fine not exceeding €320,000 or to imprisonment for a term not exceeding 5 years or both.

*An Teachta James Reilly,  
Iúil, 2009.*