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Senator Colm Burke  
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Washington House  
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Dear Senator Burke

The Irish Medical Organisation would like to thank you for the opportunity to comment on the Draft Medical Practitioners (Amendment) Bill 2012 which you are proposing to introduce in the Seanad in September, which will require certain medical practitioners to have professional liability insurance.

Currently, under the Guide to Professional Conduct and Ethics for Registered Medical Practitioners, Doctors are required to have appropriate indemnity in place. The vast majority of physicians have appropriate indemnity cover in place. However, there is no legal requirement for medical practitioners to hold professional indemnity insurance. Clinical activities of Hospital Consultants and Non-Consultant Hospital Doctors (NCHDs) employed by the HSE are covered by the Clinical Indemnity Scheme as are the clinical activities of Public and Community Health Doctors employed by the HSE. Under the GMS contract, the HSE also requires General Practitioners to present certificates of professional indemnification. Those involved in private practice also have professional indemnity cover (as recommended by the IMO).

The IMO agrees that all medical practitioners should be covered by professional indemnity insurance. However, mandatory professional indemnity insurance will require a precise definition of Adequate Medical Indemnity Cover and Regulation of the Professional Indemnity Insurance Market. In addition, under the regulations as proposed in the bill, this would place a significant additional burden on the Medical Council in requiring them to establish whether indemnity arrangements offered are appropriate or sufficient. Regulation of the activities of financial organisations such as those offering indemnity cover would significantly extend the role of the Medical Council into areas best dealt with by Financial Services regulation.

In addition, the nature of medical indemnity cover differs from other “insurance”. The Medical Protection Society, one of the largest indemnifiers does not provide insurance but offers a discretionary indemnity. The conversion of the Medical Defence Union to insurance based cover underwritten by large insurers effectively made their service uneconomic more than ten years ago and resulted in their disorganised withdrawal from the market.

#### Definition of Adequate Medical Indemnity Cover

The introduction of mandatory professional liability insurance will require a definition of Adequate Cover to ensure that medical practitioners are neither under-insured nor over-insured.

- Cover must be appropriate to the specialty or area of practice, part-time or full-time practice and temporary or full-time contract;
- As clinical negligence claims are often made two-or three years after the event, there must be no gaps in cover as practitioners move from one insurer to the next, take career breaks, maternity breaks or retire.

It is also unclear if the legislation excludes a requirement for doctors working in the public service (and already indemnified by the State Claims Agency) to have additional private indemnity cover. This should be specified.

#### Regulation of the Professional Indemnity Insurance market

Mandatory professional indemnity insurance will also require tight regulation of the professional indemnity insurance market to ensure that:

- indemnity insurers are compelled to quote for all doctors and that no doctor is left unable to practice because they could not get insurance;
- doctors are protected from extortionate prices if just one indemnifier is willing to provide indemnity to a particular specialty or area;
- cover for medical practitioners is guaranteed should an indemnity insurer pull out of the market or go bankrupt.



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It should be noted that the Clinical Indemnity Scheme was established in 2002, at a point when the commercial insurance market was no longer willing to provide insurance cover to obstetricians/ gynaecologists or to hospitals with obstetric units due to the escalation in the size of court awards and costs in cases of birth-related cerebral dysfunction (See [www.stateclaims.ie](http://www.stateclaims.ie)).

Finally, medical indemnifiers have been experiencing a sharp increase in the number and cost of claims in recent years. For patients and doctors alike there is also a need to ensure that policies and procedures are in place in all health care settings to minimise risk of injury. Representatives from the IMO would be happy to discuss these issues further if required.

Yours sincerely

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