

Medical Board of Australia

REGISTRATION STANDARD: PROFESSIONAL INDEMNITY INSURANCE ARRANGEMENTS

1 January 2016

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Summary

This registration standard sets out the Medical Board of Australia's requirements for professional indemnity insurance (PII) arrangements for medical practitioners.

Does this standard apply to me?

This standard applies to all registered medical practitioners except those with non-practising registration. It does not apply to registered students.

What must I do?

When you practise as a medical practitioner, you must ensure that you are insured or indemnified for every context in which you practise. This applies to all practice contexts, including private and public practice, self employed practitioners, those employed or contracted by others or working in an unpaid or volunteer capacity.

To meet this registration standard, you must fulfil the requirements set out in one of the following categories.

If you are specifically precluded from cover for any aspect of practice under your insurance or indemnity arrangements, you must not practise in that area.

The following is a guide to the usual nature of PII arrangements for particular practice contexts.

1. Private practice

Insurance while practising in Australia, with an insurer registered with the Australian Prudential Regulation Authority and who meets the minimum product standards that apply to all medical indemnity insurers as defined in the *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003 (Cth)*. The insurance cover must include appropriate retroactive cover for otherwise uncovered matters arising from prior practice undertaken in Australia.

2. Employment or contractual arrangements in the public sector

Medical practitioners who are employed in the public sector or who work in the public sector

under a contractual arrangement may have cover under a master policy, an employer's indemnity arrangements, or be covered by legislation.

3. Other indemnified employer

Medical practitioners who are employees or have a contractual arrangement with a non-government employer may be covered by third party insurance arranged by the employer.

Are there exemptions to this standard?

The following registered medical practitioners are exempt from requiring PII:

- where the scope of medical practice of an individual medical practitioner does not include the provision of health care or medical opinion in respect of the physical or mental health of any person
- where a medical practitioner has statutory exemption from liability. That is, they are employed as a medical practitioner or are in another arrangement and are exempted from liability under state or commonwealth legislation
- medical practitioners who are registered in Australia but are practising exclusively overseas.

Note: run-off cover is required for past practice in Australia.

What does this mean for me?

The National Law provides that a registered health practitioner must not practise their profession unless appropriate professional indemnity insurance arrangements are in force in relation to the practitioner's practice of the profession (section 129 of the National Law).

When you apply for registration

When you apply for registration, you must declare that you will not practise the profession unless you have professional indemnity insurance arrangements in place

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that meet this standard. This is a requirement under the National Law.

At renewal of registration

You will be required to declare annually at renewal of registration:

- whether during the preceding period of registration, you practised the profession in accordance with the requirements of this standard, and
- that you will not practise the profession unless you have PII arrangements in place that are consistent with this standard.

During the registration period

You must notify the Board within seven days if you no longer have appropriate professional indemnity insurance arrangements in place in relation to your practice that meets the requirements of this standard (section 130 of the National Law).

Your compliance with this standard may be audited from time to time.

When you cease practice

When you decide to cease practice in Australia, you must take out appropriate run-off cover for matters that would otherwise be uncovered arising from previous practice as a registered medical practitioner.

Evidence

The Board may, at any time, require you to provide evidence that you have appropriate PII arrangements in place.

If you hold private insurance in your own name, you must retain documentary evidence of your insurance for five years for audit purposes.

If you are covered by a third party insurance arrangement, you are not required to obtain documentary evidence of the insurance policy unless the Board requests it. If requested by the Board, you must provide a certified copy of the certificate of currency or a letter from the third party declaring that you are covered.

What happens if I don't meet this standard?

The National Law establishes possible consequences if you don't meet this standard, including that:

- the Board can impose a condition or conditions on your registration or can refuse your application for registration or renewal of registration, if you don't meet a requirement in an approved registration standard for the profession (sections 82, 83 and 112 of the National Law)
- practising without appropriate PII arrangements, or failing to notify the Board within seven days that appropriate PII arrangements are no longer in place, is not an offence but may be behaviour for which health, conduct or performance action may be taken (sections 129 and 130 of the National Law), and
- registration standards, codes or guidelines may be used in disciplinary proceedings against you as evidence of what constitutes appropriate practice or conduct for health professionals (section 41 of the National Law).

More information

The provision of professional indemnity insurance is governed by the *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003 (Cth)*.

Medical practitioners who are taking out their own PII are advised to ensure that their:

- PII provider is registered with the Australian Prudential Regulation Authority as a general insurer or that it is a Lloyd's underwriter, and
- PII is provided through a contract of insurance.

Further information is available on the Medical Board of Australia website.

The Australian Prudential Regulation Authority website contains a list of registered general insurers.

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Authority

This registration standard was approved by the Australian Health Workforce Ministerial Council on 27 August 2015.

Registration standards are developed under section 38 of the National Law and are subject to wide-ranging consultation.

Definitions

National Law means the Health Practitioner Regulation National Law, as in force in each state and territory.

Practice means any role, whether remunerated or not, in which the individual uses their skills and knowledge as a health practitioner in their profession. For the purposes of this registration standard, practice is not restricted to the provision of direct clinical care. It also includes using professional knowledge in a direct non-clinical relationship with clients, working in management, administration, education, research, advisory, regulatory or policy development roles, and any other roles that impact on safe, effective delivery of services in the profession.

Professional indemnity insurance arrangements means arrangements that secure, for the practitioner's professional practice, insurance against civil liability incurred by, or loss arising from, a claim that is made as a result of a negligent act, error or omission in the conduct of the practitioner. This type of insurance is available to practitioners and organisations across a range of industries and covers the cost and expenses of defending a legal claim, as well as any damages payable. Some government organisations under policies of the owning government are self-insured for the same range of matters.

Retroactive cover means PII arrangements which cover the insured against claims arising out of or as a consequence of activities that were undertaken in the course of the practitioner's professional practice, prior to the date of the commencement of the insurance.

Run-off cover means insurance that protects a practitioner who has ceased practice in Australia against

claims that arise out of or are a consequence of activities that were undertaken when they were conducting that practice. This type of cover may be included in a PII policy or may need to be purchased separately.

Third party cover means the cover that an individual holds through a third party's insurance arrangement such as through an employer, education provider or union.

Review

This registration standard will be reviewed from time to time as required. This will generally be at least every five years.

Last reviewed: 1 January 2016

This standard replaces the previous registration standard dated 1 July 2010.