



Commonwealth of Australia

Health Insurance Act 1973

Section 19AB Guidelines

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Part 1 PRELIMINARY

- 1.1 These Guidelines commence on 18 October 2001.**
- 1.2 These Guidelines may be cited as the Health Insurance Act Section 19AB Guidelines.**
- 1.3 These Guidelines provide policy direction for the grant of exemptions under section 19AB of the *Health Insurance Act 1973* “the Act”. The Guidelines also describe, specific circumstances under which exemptions are likely to be favourably considered and the process for making applications.**
- 1.4 While the Guidelines specify particular issues that will be considered by a delegate in making decisions regarding exemptions, all applications will be decided on individual merit.**
- 1.5 Interpretation of terms in these Guidelines:**
 - **Temporary Resident Doctor means a medical practitioner who does not hold an Australian permanent resident visa or citizenship.**
 - **Permanent resident means the holder of a permanent resident visa****Medical Practitioners has the same meaning as that found in section 3 of the *Health Insurance Act 1973* (the Act)**

Part 2 RELEVANT LEGISLATION

2.1.1 *Health Insurance Act 1973*

Section 19AB

Section 19AC

Note: Section 19AA may also apply to medical practitioners who are subject to section 19AB

Section 3 of the Act defines a “medical practitioner” as follows:

“*medical practitioner* means a person registered or licensed as a medical practitioner under a law of a State or Territory that provides for the registration or licensing of medical practitioners but does not include a person so registered or licensed:

(a) whose registration, or licence to practise, as a medical practitioner in any State or Territory has been suspended, or cancelled, following an inquiry relating to his or her conduct; and

(b) who has not, after that suspension or cancellation, again been authorised to register or practise as a medical practitioner in that State or Territory.”

19AB Medicare benefits not payable in respect of services rendered by certain overseas trained doctors etc.

- (1) Subject to subsection (3), a medicare benefit is not payable in respect of a professional service rendered by a person who is an overseas trained doctor or who is a former overseas medical student, unless:
 - (a) the person first became a medical practitioner before 1 January 1997; or
 - (b) the person:
 - (i) was, at a time before 1 January 1997, an overseas trained doctor; and
 - (ii) before 1 January 1997, the Australian Medical Council received an application from the person to undertake examinations, successful completion of which would ordinarily enable the person to become a medical practitioner; and
 - (iii) on the day the application was so received, the person was eligible to undertake those examinations under the rules of the Australian Medical Council as in force on the day the application was so received; or
 - (c) at the time the service was rendered, paragraphs 3J(1)(c) and (d) applied to the person; or
 - (d) both of the following conditions are satisfied:
 - (i) the person first became a medical practitioner before the commencement of this paragraph;
 - (ii) the service was rendered after the end of the period of 10 years beginning when the person first became a medical practitioner; or
 - (e) both of the following conditions are satisfied:
 - (i) the person was a permanent Australian at the time when the person first became a medical practitioner;
 - (ii) the service was rendered after the end of the period of 10 years beginning when the person first became a medical practitioner; or
 - (f) both of the following conditions are satisfied:
 - (i) the person became a permanent Australian after the time when the person first became a medical practitioner;
 - (ii) the service was rendered after the end of the period of 10 years beginning when the person became a permanent Australian.

- (2) Subject to subsection (3), a medicare benefit is not payable in respect of a professional service rendered on behalf of a person who is an overseas trained doctor or who is a former overseas medical student, unless:
- (a) the person first became a medical practitioner before 1 January 1997; or
 - (b) the person:
 - (i) was, at a time before 1 January 1997, an overseas trained doctor; and
 - (ii) before 1 January 1997, the Australian Medical Council received an application from the person to undertake examinations, successful completion of which would ordinarily enable the person to become a medical practitioner; and
 - (iii) on the day the application was so received, the person was eligible to undertake those examinations under the rules of the Australian Medical Council as in force on the day the application was so received; or
 - (d) both of the following conditions are satisfied:
 - (i) the person first became a medical practitioner before the commencement of this paragraph;
 - (ii) the service was rendered after the end of the period of 10 years beginning when the person first became a medical practitioner; or
 - (e) both of the following conditions are satisfied:
 - (i) the person was a permanent Australian at the time when the person first became a medical practitioner
 - (ii) the service was rendered after the end of the period of 10 years beginning when the person first became a medical practitioner; or
 - (f) both of the following conditions are satisfied:
 - (i) the person became a permanent Australian after the time when the person first became a medical practitioner
 - (ii) the service was rendered after the end of the period of 10 years beginning when the person became a permanent Australian.
- (3) The Minister may, by writing, grant an exemption from the operation of subsections (1) and (2) in respect of a person or a class of persons.
- (4) An exemption under subsection (3) may be made subject to such conditions (if any) as the Minister thinks fit.
- (4A) In exercising powers under subsection (3) or (4), the Minister must comply with guidelines determined by the Minister under subsection (4B).
- (4B) The Minister must, in writing, determine guidelines that apply to the exercise of powers under subsections (3) and (4).
- (4C) Without limiting subsection (4B), the guidelines may require that a person must have a qualification of a specified kind in order to qualify for an exemption.
- (4D) A determination under subsection (4B) is a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901.
- (5) If a person to whom an exemption under subsection (3) applies breaches a condition of the exemption, the exemption ceases to apply to the person at all times during which the person is in breach.
- (6) Despite anything contained in subsection 488(1) of the *Migration Act 1958*, the Secretary to the Department of Immigration and Multicultural Affairs may, for the purpose of:
- (a) the granting of an exemption under subsection (3); or
 - (b) assisting the Minister or the Commission to ascertain whether a condition of such an exemption has been breached;
- disclose to the Minister or to an officer of the Department of Health and Family Services, or to an officer of the Commission, information about the conditions on which a person has entered or remains in Australia.
- (7) In this section:
- former overseas medical student* means a person:
- (a) whose primary medical qualification was obtained from a medical school located in Australia; and

- (b) who was not a permanent resident or an Australian citizen when he or she first enrolled at a medical school located in Australia.
- overseas trained doctor*** means a person whose primary medical qualification was not obtained from a medical school located in Australia.
- permanent Australian*** means an Australian citizen or permanent resident.
- permanent resident*** has the same meaning as in the *Migration Act 1958*.
- professional service*** has the same meaning as in section 19AA.

Part 3 EXEMPTIONS UNDER SECTION 19AB

3.1 General

- 3.1.1 Under subsection 19AB(3) of the Act the Minister for Health and Aged Care, or a delegate appointed by the Minister in accordance with section 131 of the Act, is authorised to grant an exemption to the restrictions that provide that a Medicare benefit is not payable for professional services rendered by a person who is not included under subsections 19AB(1) or (2).
- 3.1.2 Exemptions under subsection 19AB(3) of the Act may be granted to doctors to allow them to provide professional services that attract a Medicare benefit for work in rural areas where shortages in the medical workforce are apparent, or where a class exemption applies to particular applicants.
- 3.1.3 The Minister's delegate is located in the Workforce Distribution Programs Section of the Department of Health and Aged Care. The delegate assesses the merits of individual applications with reference to these Guidelines before making decisions on the grant of exemptions.
- 3.1.4 As all applications for an exemption are assessed on their individual merit, these Guidelines do not limit the range of issues which may be taken into account when a decision is made concerning the grant of exemptions.

3.2 How to apply for an exemption under subsection 19AB(3)

- 3.2.1 Who can apply
- Overseas-trained doctors who are permanent residents or Australian citizens.
 - Temporary resident doctors.

- 3.2.2 Applications can only be made by applying to the HIC for provider numbers. The HIC will forward the appropriate parts of the application to the Workforce Distribution Programs Section, in Department of Health and Aged Care, for consideration of a section 19AB exemption.

3.3 Forms

- 3.3.1 There is no prescribed form for applying for an exemption under section 19AB, because the applications for provider numbers are processed through the Health Insurance Commission (HIC). Must be in writing and should contain details of specific documents as listed in 3.4.
- 3.3.2 The form that doctors fill out when applying to the Health Insurance Commission for provider numbers contains these details so a separate application is normally not required. Once the Health Insurance Commission determines that doctors are subject to section 19AB from the information submitted, applications are forwarded to the Workforce Distribution Programs Section in the Department of Health and Aged Care for decisions regarding the grant of exemptions. The delegate may require the applicant to provide further information in writing, and may also require the applicant or any other person to make a statutory declaration to the effect that any claims that have been made in support of the application are true.

3.4 Applications for exemptions should include certified copies of the following documents:

- 3.4.1 Current medical registration
- 3.4.1.1 As overseas-trained medical practitioners are frequently registered subject to conditions on the type of work and the locations in which they can practise, copies of current registration must be provided to the delegate in order to ascertain that doctors seeking to gain exemptions are permitted to perform work in specialties or locations in which they propose to work.
- 3.4.1.2 Under no circumstances will an exemption be made under section 19AB to permit medical practitioners to work in Australia in breach of conditions imposed by medical registration. It is applicants' responsibility to ensure that proposed medical employment does not jeopardise their medical registration.
- 3.4.2 Recognition of Specialist Qualifications
- 3.4.2.1 Copies of evidence of recognition of specialist qualifications by the relevant specialist colleges or the Specialist Recognition Advisory Committee (SRAC) should be provided if applicants wish to gain access to specialist items under the Medicare Benefits Schedule.
- 3.4.3 Proof of citizenship and/or visa
Temporary resident doctors including citizens of New Zealand who are not dual citizenship holders, must provide satisfactory evidence that they hold

an Australian temporary visa within the Migration Act 1958 and regulations which permits the medical practitioner to work.

3.4.3.1 Permanent residents or citizens must also provide proof of residency or citizenship

3.4.4 Letter of support from employer

3.4.4.1 Applicants for exemptions must provide letters of support from prospective employers. These letters must specify the location or locations at which medical practitioners are to be employed and duration of employment.

Good quality copies of these documents are normally acceptable provided that they are completely legible and have been duly certified as true copies by a person who is qualified to witness statutory declaration, however, applicants may be required to submit original documents for inspection and certification prior to the granting of exemptions or when revocation of an exemption is being considered.

3.5 Time for decision

3.5.1 Section 19AC of the Act provides that decisions regarding 19AB exemptions must be made within 28 days of receipt of applications.

3.6 Conditions

3.6.1 Subsection 19AB(4) allows the Minister or a delegate to attach conditions to exemptions.

3.6.2 Any conditions will be determined on a case by case basis.

3.6.3 Conditions may specify:

3.6.3.1 The location, usually an individual medical practice or hospital site, at which applicants are able to provide professional services that attract Medicare benefits. (The delegate may impose conditions relating to a location that ensure the appropriate work in *districts of workforce shortage*.)

- 3.6.3.2 the type of work that applicants are permitted to perform (for example, locum work or work in a specified medical specialty); or
- 3.6.3.3 requirements for supervision;
- 3.6.3.4 time limits for exemptions;
- 3.6.3.5 that Medicare benefits will only be available for the purposes of work performed on section 3GA placements for which applicants appear on the Register of Approved Placements; or
- 3.6.3.6 any other conditions that the delegate considers relevant to the grant of the exemption.

3.7 Period of exemption

- 3.7.1 Time limits are normally imposed on exemptions, but these are discretionary.
- 3.7.2 The duration of the time limit varies on a case to case basis, but the following matters will be taken into account:
 - 3.7.2.1 expiry dates of approved placements under section 3GA of the Act; or
 - 3.7.2.2 expiration of employment at the location/s as notified by employers; or
- 3.7.3 maximum periods of exemption. These are: two years for temporary resident doctors and five years for Australian citizen or permanent resident doctors.
- 3.7.4 Applicants whose exemptions are due to expire should make new applications for subsection 19AB(3) exemptions prior to the expiration of existing exemptions. This task is solely the responsibility of applicants.
Note that once exemptions have expired, applicants will no longer be able to claim Medicare benefits for professional services rendered.

3.8 Procedure where there is a problem in the application.

- 3.8.1 If significant information is omitted from, or incorrectly stated on applications, the Minister's delegate in the Department of Health and Aged Care will notify the Health Insurance Commission which will inform the applicant.
- 3.8.2 The decision-maker will then allow a specified time for applicants to supply information which has been either omitted, incomplete or inaccuracy supplied.
- 3.8.3 Failure to supply information as requested may result in a refusal to grant section 19AB exemptions.

3.9 Backdating

- 3.9.1 Section 19AB of the Act does not confer power to make exemptions with retrospective operation.

3.10 Appeals

- 3.10.1 The applicant will be advised of the decision pertaining to his/her applications on or before the expiration of a period of 28 days.
- 3.10.2 An application for review of a decision may be made under section 19AC of the Act if a delegate does not make an exemption within 28 days of receipt of the application.
- 3.10.3 Appeals must be made in writing and addressed to:
- The Director
Workforce Distribution Programs Section
MDP 50
Department of Health and Aged Care
GPO Box 9848
CANBERRA ACT 2601
- 3.10.4 The review process involves a fresh decision on an application by an alternative delegate.
- 3.10.5 An application for review of decision may also be made in respect of a refusal to make a decision or in respect of a condition imposed on an application under subsection 19AB(4). Applicants may apply to the Administrative Appeals Tribunal to seek review of decisions made under section 19AC.

Part 4 DISTRICT OF WORKFORCE SHORTAGE

4.1 Work located in a district of workforce shortage

- 4.1.1 In most cases the primary consideration for a decision maker on the granting of exemptions under section 19AB, except class exemptions, is that applicants must work in *districts of workforce shortage*.
- 4.1.2 A *district of workforce shortage* is a geographic area in which the general population need for health care is not met. Population needs for health care will be unmet if a district has significantly less access to medical professional services of the type provided by applicants than the national average.
- 4.1.3 A district is determined by reference to the geographic area (metropolitan or rural) immediately surrounding the specific practice locations at which applicants have applied for exemption. The size of the area considered will vary depending on the types of practice to be engaged in by applicants.
- 4.1.3.1 For example, the 'district' considered in relation to applicants seeking exemption for work as medical practitioners, could be surrounding postcodes or the areas that make up a shire or local district or a Division of General Practice, or 'statistical local area' as defined by the Australian Bureau of Statistics.
- 4.1.4 The requirement that workforce shortage exists in a district before exemptions can be granted for practice locations is determined by evaluating material relevant to the population need for professional services of the type that an applicant has proposed to perform in the district. To assist in understanding the population needs of the particular district, the decision-maker may:
- 4.1.4.1 seek specific information from authorities such as State Health Departments and Rural Workforce Agencies;
 - 4.1.4.2 examine Medicare statistics and other relevant health workforce data (for example, Australian Medical Workforce Advisory Committee reports and Australian Bureau of Statistics data);
 - 4.1.4.3 examine the number of medical practitioners in the district with the same or similar skills as applicants;
 - 4.1.4.4 in the case of specialists, seek information concerning the number of other doctors practising in either the same recognised speciality or providing services similar to speciality services to be provided by applicants.

4.2 Other consideration which, depending on the nature of the application, the delegate may take into account, include:

- doctor to population ratio
- socio-economic circumstances of the proposed work locality
- local special needs

Part 5 PARTICULAR CLASSES OF APPLICANTS FOR WHICH SPECIAL CONDITIONS APPLY.

5.1 Decisions for the following categories of applicants are made based on considerations other than *district of workforce shortage*, although this may also be taken into account.

5.2 Academics

5.2.1 This category consists of medical practitioners working in academic positions.

5.2.2 Exemptions for academic positions normally do not require consideration of the issue of workforce shortage because there is a clear public interest in practitioners undertaking academic medical work. If persons can show that a University medical school has engaged them in an academic position, they will be granted an exemption. Such exemptions cease to apply when academic appointments cease.

5.3 Rural Locum Relief Placements under section 3GA of the Act

5.3.1 This category consists of medical practitioners undertaking approved placements under section 3GA of the Act.

5.3.2 Exemptions are normally granted for medical practitioners undertaking rural locum relief.

5.3.3 The delegate must be satisfied that Rural Locum Relief Placements are *in districts of workforce shortage*.

5.4 General practice training program placements under section 3GA of the Act

5.4.1 This category consists of medical practitioners who are accepted by the Australian General Practice Training Program.

5.4.2 Exemptions for medical practitioners in this category are granted for work performed as part of their training program on the condition that the work is performed in a rural area. This area of need not necessarily be a *district of workforce shortage*.

5.5 Contracts of service predating 1 January 1997

5.5.1 This category consists of medical practitioners who entered into contractual arrangements before 1 January 1997, with Australian residents to provide medical services.

5.5.2 Exemptions may be granted for medical practitioners in this category for work performed under the existing contract provided the work is in a *district of workforce shortage*.

5.6 Spouses

5.6.1 This category consists of medical qualified spouses of medical practitioners (who are not subject to restrictions under the Act), or have been granted

exemptions under the Act or spouses of persons skilled in occupations listed on the Migration Occupation in Demand list for those migrating to work in Australia.

5.7 State overseas-trained doctor rural recruitment schemes

- 5.7.1 This category consists of medical practitioners who are participating in a State or Territory general practitioner recruitment scheme that conforms to the model agreed at the Australian Health Ministers' Conference on 4 August 1999.
- 5.7.2 The Commonwealth has also agreed to modify the restrictions imposed by section 19AB for medical practitioners participating in State and Territory schemes that recruit overseas trained doctors with postgraduate qualifications in general practice.
- 5.7.3 Restrictions under section 19AB will be modified for these medical practitioners provided they:

5.8 Occupational trainees

- 5.8.1 This category consists of overseas-trained doctors who hold a primary medical qualification and have completed their internship and who enter Australia to undertake a structured training program which will contribute to their expertise in a specialist discipline.
- 5.8.2 Exemptions for occupational trainees are not considered in the context of workforce shortage because the doctors are in training positions. These doctors are not able to work away from the supervision of the area in which they are training and will be required to show that their position is a bona fide training position. A condition may be placed upon the exemption to limit it to 12 months duration.
- 5.8.3 Occupational trainees are also eligible to access Medicare benefits for refer and prescribe services, but will not need to apply for an individual exemption to provide such services, although they will still need to apply to the Health Insurance Commission for a Medicare provider number.

5.9 Non-specialists in hospitals

- 5.9.1 The category of consists of medical practitioners who do not hold postgraduate qualifications in a specialist discipline.
- 5.9.2 Section 19AA of the Act requires all doctors first registered in Australia on or after 1 November 1996 to be a recognised general practitioner, specialist or consultant physician in order to provide services which attract Medicare benefits. The operation of these guidelines facilitates the use of doctors without these qualifications to work in areas where there are shortages. Applicants from doctors without postgraduate qualifications suitable for recognition as a general practitioner, specialist or consultant physician will be assessed for district of workforce shortage on the basis of analysis of all non specialists in the district in which the hospital is located. Specialists are defined in section 3 of the Act.

5.10 Existing 3J Exemptions

5.10.1 This category consists of overseas-trained doctors who hold exemptions issued prior to 18 October 2001

5.10.2 A class exemption applies to overseas-trained doctors who provide medical services under individual exemptions issued prior to 18 October 2001 until such time as these exemptions expire.

The delegate would normally make exemptions to section 19AB only for those medical practitioners who provide evidence of agreement of work in a rural or remote *district of workforce shortage* under the terms imposed by the relevant State or Territory recruitment scheme.

This evidence should be supplied by medical practitioners or recruitment agencies prior to commencement on the scheme.

A delegate must be satisfied that rural or remote placements are in a *district of workforce shortage* prior to granting exemptions.

Exemptions will include a condition that they are location specific for the period a medical practitioner is engaged on the scheme.

At the time exemption are granted, the delegate will issue 'in-principle' approval for the location specific condition to be removed after practitioners have served the period prescribed by the State or Territory.

This 'in-principle' written agreement is necessary for medical practitioners seeking to apply later for removal of the location specific exemption, as it will assist a future delegate to consider removal of the condition with reference to the agreement.

Once practitioners have served the five year period prescribed by the relevant State or Territory, they may then apply to have the location-specific condition removed. Removal of the condition will allow them to work in any location for the remainder of their ten-year moratorium period under section 19AB.

Part 6 Appendix 1. Background to the Legislation

- 6.1.1 The Section 19AB Guidelines arose from the Government's perception that there was a maldistribution of the medical workforce in Australia and that this resulted in difficulties experienced by some rural communities in accessing the professional services of medical practitioners.
- 6.1.2 Although Australia produces enough doctors to meet population needs, there is a significant maldistribution problem resulting in oversupply in metropolitan areas and an undersupply in rural and remote areas. The preferred solution to this problem is that permanent resident and citizen medical practitioners enter rural medical practice in these areas.
- 6.1.3 In 1996 the Act was amended to provide that Medicare benefits are not payable for professional services provided by overseas-trained doctors and former overseas medical students for a period of ten years from the time that they first become "medical practitioners" as defined under section 3 of the Act. This restriction on providing medical services that attract Medicare benefits is sometimes called the ten-year moratorium.
- 6.1.4 Before they can provide services which attract Medicare benefits medical practitioners affected by section 19AB are restricted for a period of 10 years from when they first became recognised as Australian *medical practitioners*, as defined in the Act, unless they obtain exemptions to the Act for this purpose.
- 6.1.5 The 1996 changes meant that section 19AB of the Act was applicable to all overseas-trained doctors and former overseas medical students who were permanent residents or citizens and who were first recognised as medical practitioners (as defined in the Act) on, or after, 1 January 1997.
- 6.1.5.1 An *overseas-trained doctor* is a person whose primary medical qualification was obtained from a medical school not located in Australia.
- 6.1.5.2 A former overseas medical student is a person:
- 6.1.5.2.1 whose primary medical qualification was obtained from a medical school located in Australia; and
- 6.1.5.2.2 who was not a permanent resident or an Australian citizen when he or she first enrolled at a medical school located in Australia.
- 6.1.5.3 An overseas-trained doctor who had applied to the Australian Medical Council (AMC) before 1 January 1997, and who was eligible at the time of that application to have his or her qualifications assessed, is considered outside of the scope of section 19AB of the Act and is thus not affected by it. Persons seeking confirmation from the Health Workforce Distribution Programs Section that they are outside the scope of section 19AB on this ground should provide a copy of documentation showing acceptance or assessment of their application by the AMC.

- 6.1.6 In June 2001 further changes to the Act were introduced under the *Health Legislation Amendment (Medical Practitioners' Qualifications and Other Measures) Act 2001*. These changes repealed section 3J. From 18 October 2001 temporary resident doctors are subject to a revised section 19AB.
- 6.1.7 The new section 19AB therefore provides a simple streamlined process for all overseas-trained doctors to attract Medicare benefits for work performed in *districts of workforce shortage*.
- 6.1.8 The new section 19AB also significantly reduces inequities previously evident in the treatment of overseas trained doctors on the basis of their resident status.
- 6.1.9 On 18 October 2001 sections 3J and 3K of the Act which had previously applied to temporary resident doctors (TRDs) were repealed.
- 6.1.9.1 Section 3J of the Act stated that persons who were not Australian citizens or permanent residents and who entered Australia on temporary visas for the principle purpose of practising as medical practitioners were not medical practitioners for the purposes of attracting Medicare benefits.

6.2 Other relevant legislation - section 19AA of the *Health Insurance Act 1973*

- 6.2.1 Medical practitioners who are subject to the ten-year moratorium on Medicare provider numbers may also be subject to restrictions under section 19AA of the Act which is intended to encourage medical practitioners to undertake postgraduate training in recognised specialities or general practice. This section requires medical practitioners to be recognised specialists, general practitioners or consultant physicians in order for them to attract Medicare benefits.
- 6.2.2 Medical practitioners who do not have the postgraduate qualifications necessary for registration under the Act as specialists, general practitioners or consultant physicians, can only attract Medicare benefits for the medical services they provide if they undertake a course or program prescribed under section 3GA of the Act.

Part 7 Appendix 2

7.1 Class exemptions under subsection 19AB(4) of the *Health Insurance Act 1973*

Should doctors consider that they fall into one of the following categories, they will need to supply evidence to the Health Insurance Commission before it issues a Medicare provider number.

7.2 Academic appointments

7.2.1 Class exemption for medical practitioners appointed to academic positions at one of the following medical schools;

- Monash University
- University of Adelaide
- University of Sydney
- University of New South Wales
- University of Newcastle
- University of Melbourne
- University of Queensland
- Flinders University of South Australia
- University of Western Australia
- University of Tasmania
- James Cook University Medical School - Townsville

7.2.2 This class exemption ceases to apply when academic appointments are terminated.

7.3 Australians studying medicine outside Australia at 1 January 1997

7.3.1 Class exemption for medical practitioners who at 1 January 1997 were Australian citizens or permanent residents, and who commenced overseas study prior to 1 January 1997 at a medical school listed in the World Health Organisation's World Directory of Medical Schools (6th edition), including updates contained in the World Health Organisation's World Forum

