

Medical Council Presentation to the Joint Committee on Health and Children on the Protection of Life During Pregnancy (Heads of) Bill 2013.

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Chairman and members, on behalf of the Medical Council, I welcome the opportunity to provide the Joint Committee on Health and Children with views to assist the Committee in formulating its report to Government on the Protection of Life During Pregnancy (Heads of) Bill 2013.

As you know, the Medical Council is the statutory body responsible for the regulation of doctors in Ireland. Its purpose is to protect the public by promoting and ensuring the highest standards among doctors.

In the interests of patient safety and the protection of the public, the Council has been vested by the Oireachtas with responsibility to ensure that only those doctors with the necessary education, training and skills are registered to practise in Ireland. The Council also specifies standards of practice for doctors in the areas of professional conduct and ethics.

The Medical Council provides principles based guidance to doctors on matters relating to conduct and ethics through its Guide to Professional Conduct and Ethics for Registered Medical Practitioners. The seventh edition of the Guide was published in 2009 following extensive consultation with doctors, the general public, medical schools, postgraduate medical training bodies, government departments, employers and a range of other stakeholders.

Doctors are expected to adhere to the Council's Guide in their professional practice. However, it is important to note that the Medical Council's Guide is not a legal code. In drafting its ethical guidance, the Council seeks to incorporate and reference relevant legislation in order to ensure doctors are aware of the legal framework within which they operate.

This Guide is a principles based document, which must be relevant to each of the approximately 18,000 doctors registered to practise in Ireland regardless of their speciality, interest or discipline. It covers issues as diverse as consent,

confidentiality, end-of-life care, advertising, clinical trials, prescribing practices and referral of patients. It has been designed to support doctors in decision-making regarding conduct and ethics and to complement other sources of clinical guidance developed by professional bodies, expert groups, the HSE and others.

The Council's guidance provides the principles which are the cornerstone of each doctor's practice. It is then the role of expert bodies and employers to devise procedures and protocols for use by doctors at practice level.

In relation to the Protection of Life During Pregnancy (Heads of) Bill 2013.

The Medical Council makes the following general comments in relation to certain matters arising in the Bill that, in the view of the Council, need to be provided for either in primary legislation or regulations.

- The Medical Council is of the opinion that the process underlying the certification of the decision regarding termination of pregnancy should be the same for grounds of risk of loss of life from physical illness and risk of loss of life from self-destruction. Accordingly, the Council is of the opinion that Head 2 and Head 4 should be merged into a single Head.
- In circumstances where the pregnant woman's capacity to consent is or may be impaired, the Council believes it is not clear from the draft Heads how a decision regarding termination of pregnancy will be made and how the woman will be enabled and supported to participate in this decision.
- The opinions of all registered medical practitioners certifying a procedure that will end unborn human life must be recorded in writing.
- The Council expresses concern about the ability of the pregnant woman to access treatment by the required registered medical practitioners as currently outlined under Heads 2 and 4 in all areas of the country.
- Processes for a monitoring system should incorporate appropriate requirements to preserve the confidentiality of the patient and the certifying practitioners.

Processes for an appeal mechanism either by way of High Court Appeal or Judicial Review should be incorporated where the pregnant woman is not satisfied with the decision.

The Council provides the following responses in relation to the Heads. Given time constraints today, I will provide an overview of the main points contained in the Council's submission.

In regard to Head 1 the Medical Council has no specific comment to make on these provisions. Council is of the view that it is in the public interest that doctors have legal clarity when making clinical decisions.

In regard to Head 2, the Medical Council is of the opinion that: Head 2 should be merged with Head 4 into a single head.

The text in subhead 1(a) should be amended to read: "that procedure is carried out by a registered medical practitioner registered in the Specialist Division in the relevant specialty at an appropriate location" to ensure the registered medical practitioner has completed specialist training recognised by the Council.

The text in subhead 1(b) should be amended to read: "two medical practitioners, registered on the Specialist Division of the register of medical practitioners established under section 43(2)(b) of the Medical Practitioners Act 2007 under a relevant specialty, have, in accordance with this head, jointly certified in good faith that –

- (i) There is a real and substantial risk of loss of the pregnant woman's life ,
- and
- (ii) In their reasonable opinion this risk can be averted only by that medical procedure

The amended subhead 1(b) thereby renders subhead (2) redundant.

Where the clinical decision is made to proceed with a termination of pregnancy, if neither of these registered medical practitioners is an

obstetrician, at least one of the two registered medical practitioners shall then consult with an obstetrician employed at the appropriate location.

In regard to Head 3, the Medical Council is of the opinion that:

The text in subhead 1 (a) should be amended to read “registered medical practitioner” to ensure it defines a medical practitioner who is registered with the Medical Council.

The text in subhead 1 (b) should be amended to read “immediate real and substantial risk” in line with drafting in other Heads.

The text in subhead 1 should be amended to include a provision that, in forming his/her opinion, the registered medical practitioner should consult with another registered medical practitioner, where practicable.

In regard to Head 4, the Medical Council is of the opinion that:

Head 4 should be merged with Head 2 into a single head.

The text in subhead 1(a) should be amended to specify that the procedure should be undertaken by a registered medical practitioner registered in the Specialist Division in the relevant specialty.

The text in subhead 1(b) should be amended to read: “two psychiatrists, have, in accordance with this head, jointly certified in good faith that –

- (i) There is a real and substantial risk of loss of the pregnant woman’s life by way of self-destruction, and
- (ii) In their reasonable opinion this risk can be averted only by that medical procedure

Where the clinical decision is made to proceed with a termination of pregnancy, at least one of the two certifying psychiatrists shall then consult with an obstetrician employed at the appropriate location.

Not all psychiatrists work in centres registered by the Mental Health Commission, as referenced in subhead 1 (b).

It is not clear why one of the certifying psychiatrists must be attached to a location where such a procedure is carried out. The majority of psychiatrists are not attached to such institutions.

In regard to Head 5, the Medical Council is of the opinion that the formal framework developed to record a medical opinion should be:

- Independent
- Accessible
- Transparent
- Timely, and
- Preserve the confidentiality of the pregnant woman

In regard to Head 6, the Medical Council is of the opinion that:

The text in subhead 1 should be amended to read “registered medical practitioner” rather than “medical practitioner.”

Subhead 1 does not make clear which registered medical practitioner is vested with the duty to inform the woman of the formal review option.

Criteria in subhead 1 have not been set out to ensure that information is conveyed to the woman in an effective, accessible and timely manner.

A time frame has not been set out in subhead 7 for notification to the woman who made the application and, if applicable, the person who made the application on her behalf and the Executive regarding the outcome of the committee’s review.

The Council is of the view that subheadings 5 – 6 are not necessary as these provisions are adequately covered under Heads 7 & 8.

In regard to Head 7, the Medical Council is of the opinion that:

Reflecting the Council’s recommendation that Heads 2 and 4 be merged, the Medical Council is of the opinion that Head 7 and Head 8 should also be merged and the processes from Head 8 adopted in the legislation.

The text in subhead 1 should be amended to read: “in the case of a pregnant woman who believes there may be a real and substantial risk of loss of her life, a committee established by an authorised person shall consist of two medical practitioners registered on the Specialist Division of the register of medical practitioners established under section 43(2)(b) of the Medical Practitioners Act 2007 under a relevant speciality.

The text in subhead 1 should be further amended to include an additional sentence: “Where the clinical decision is made to proceed with a termination of pregnancy, if neither of these registered medical practitioners is an obstetrician, at least one of the two registered medical practitioners shall then consult with an obstetrician employed at the appropriate location.”

A time frame has not been set out in subhead 4 for notification to the woman who made the application and, if applicable, the person who made the application on her behalf and the Executive of the outcome of the committee’s review.

The text in subhead 6 should be amended to read: “The procedures set out in this Head are without prejudice to Head 3, which shall apply where there is an immediate risk of loss of the life of the pregnant woman, and therefore the provision of Head 3 shall apply irrespective of review procedures which are in train”.

In regard to Head 8 specifically, the Medical Council is of the opinion that:

The text in subhead (1) should be amended to read: “in the case of a pregnant woman who believes there may be a real and substantial risk of loss of her life, a committee established by an authorised person shall consist of two medical practitioners registered on the Specialist Division of the register of medical practitioners established under section 43(2)(b) of the Medical Practitioners Act 2007 under a relevant speciality.

The text in subhead (3) should be amended to include a further sentence: “Where the clinical decision is made to proceed with a termination of pregnancy, if neither of these registered medical practitioners is an obstetrician, at least one of the two registered medical practitioners shall then consult with an obstetrician employed at the appropriate location.

It is not clear in subhead (1) why one of the certifying psychiatrists must be attached to a location where such a procedure is carried out. The majority of psychiatrists are not attached to such institutions.

As referenced in our submission on Head 7, there is no time limit set in subhead (4) for notification to the woman who made the application and if applicable the person who made the application on her behalf and the Executive of the outcome of the committee's review.

In regard to Head 9, the opinion of the Medical Council is that the text in subheads (1) and (2) should be amended to read "registered medical practitioner" rather than "medical practitioner"

A subhead should be inserted to enable the committee to have access to legal expertise on a formal basis.

In regard to Head 10, the Medical Council is of the opinion that the formal framework developed to support the collation of information on the workings of the formal medical review process should be:

- Independent
- Accessible
- Transparent
- Timely, and;
- Preserve the confidentiality of the pregnant woman.

In regard to Head 12, the Medical Council is of the opinion that:

Subheads (1) and (4): are largely consistent with the Medical Council's Guide to Professional Conduct and Ethics for Registered Medical Practitioners (2009) which states:

10.1 'As a doctor you must not allow your personal moral standards to influence your treatment of patients'.

10.2 'If you have a conscientious objection to a course of action, you should explain this to the patient and make the names of other doctors available to them'.

The Medical Council suggests that Head 12 should be expanded to ensure that the holding of a conscientious objection does not absolve the registered medical practitioner from their responsibility to a patient in emergency circumstances. The view of the Council is that the right to conscientious objection must be balanced against the right of the patient – particularly in the case of a medical emergency. The Medical Council’s Guide to Professional Conduct and Ethics for Registered Medical Practitioners states:

10.3 ‘Conscientious objection does not absolve you from responsibility to a patient in emergency circumstances.’

The text in subhead 1 should be amended to specifically include the term conscientious objection.

It is not clear whether subhead (1) applies exclusively to the carrying out of the procedure or whether it also applies to the involvement by certifying registered medical practitioners in the assessment of risk, the certification process and the review process.

Subhead 2 as currently drafted is unclear.

In regard to Head 14, 15 and 16, the Medical Council is of the opinion that the underlying principles to the development of regulations should ensure that procedures developed are:

- Independent
- Accessible
- Transparent
- Timely
- Preserve the confidentiality of the pregnant woman.

In regard to Head 19 the Medical Council is of the opinion that subhead (1) should be modified to read as follows: ‘It shall be an offence for a person to do any act with the intent to destroy unborn human life other than in accordance with the provisions of Heads 2, 3, and 4 of this Bill.’

We are grateful for the opportunity to engage with the Committee on this important issue and commend the Committee for seeking a range of expert views as part of this process. If our future input can provide support at later stages, we will engage with the Department of Health to assist in their processes.

Ends.