



Comhairle na nDochtúirí Leighis  
Medical Council

## Presentation to Joint Committee on Health and Children 08.01.13

### Speaking Notes of Professor Kieran Murphy,

#### President, Medical Council

##### 1. Introduction

On behalf of the Medical Council, I welcome the opportunity to provide the Joint Committee on Health and Children with views which will be of assistance to the Committee in formulating its report to Government on issues which need to be addressed in the Heads of Bill and draft regulations.

I'd like firstly just to say a few brief words about the role of the Medical Council. This is very relevant in the context of a discussion about the recent Government decision and the publication of the expert group report.

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. From the day a student first enters medical school until the day they retire from practice, the Medical Council works to ensure that medical education and training remains up-to-date and is benchmarked to the highest international standards. The Medical Council sets standards for all undergraduate education and postgraduate training of doctors and also requires that all doctors fulfil ongoing professional competence requirements to ensure they keep their knowledge and skills up-to-date throughout their professional lives.

In the interests of patient safety and the protection of the public, the Council has been vested by the Oireachtas with sole 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.

##### 2. Medical Council Ethical Guidance

The Medical Council provides guidance to doctors on matters relating to conduct and ethics through its Guide to Professional Conduct and Ethics for Registered Medical Practitioners<sup>1</sup>, the

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<sup>1</sup> Medical Council (2009). Guide to Professional Conduct and Ethics for Registered Medical Practitioners; 7th Edition. Dublin: Medical Council.

seventh edition of which was published in 2009. It was developed following extensive consultation with doctors, the general public, medical schools, postgraduate medical training bodies, government departments, employers and a range of other stakeholders.

In order to ensure the Guide is as relevant as possible, taking on board the views of all those consulted with, the Council established an Ethics Working Group to oversee the development of the Guide. This multi-stakeholder working group, which included Council members and non-Council members including a number of medical and non-medical experts, was established to ensure that the guidance was both evidence based and developed in line with best practice.

This Guide is a principle based document, which must be relevant to each of the 18,000 doctors registered to practise in Ireland regardless of their discipline. It covers issues as diverse as consent, confidentiality, end-of-life care, advertising, clinical trials, prescribing practices and referral of patients.

The Council's guidance provides the principles which are the cornerstone of each doctor's practice. It has been designed to support doctors in decision-making regarding conduct and ethics and to complement other external sources of clinical guidance, procedures and protocols devised by expert bodies and employers.

Paragraph 21 of the Guide relates to Abortion:

**21.1** 'Abortion is illegal in Ireland except where there is a real and substantial risk to the life (as distinct from the health) of the mother. Under current legal precedent, this exception includes where there is a clear and substantial risk to the life of the mother arising from a threat of suicide. You should undertake a full assessment of any such risk in light of the clinical research on this issue'.

**21.2** 'It is lawful to provide information in Ireland about abortions abroad, subject to strict conditions<sup>2</sup>. It is not lawful to encourage or advocate an abortion in individual cases'.

**21.3** 'You have a duty to provide care, support and follow-up services for women who have an abortion abroad'.

**21.4** 'In current obstetrical practice, rare complications can arise where therapeutic intervention (including termination of a pregnancy) is required at a stage when, due to extreme immaturity of the baby, there may be little or no hope of the baby surviving. In these exceptional circumstances, it may be necessary to intervene to terminate the pregnancy to protect the life of the mother, while making every effort to preserve the life of the baby'.

Doctors are expected to adhere to the Council's Guide. However, it is important to note that Medical Council guidelines are not a legal code.

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<sup>2</sup> Regulation of Information (Services Outside the State for Termination of Pregnancies) Act, 1995

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.

### **3. Views of the Council on the implementation of the recent Government decision.**

The Medical Council, having examined the Report of the Expert Group<sup>3</sup>, considered it appropriate to provide the Joint Committee on Health and Children with views in relation to certain matters set out in Chapters 6 and 7 of that report. The views of the Council are set out in pages 3 to 6 of this Submission. To assist the reader the Council deals with each question sequentially using the same reference numbering as appear in the Report of the Expert Group.

#### **Report of the Expert Group. Chapter 6: Procedures for determining entitlement and access to termination of pregnancy**

##### **6.2 Test to Be Applied**

In regard to the question of the Test to be applied, the view of the Medical Council is:

1. Legislation and/or regulations should include a requirement that:
  - a. The treating doctors' opinions and rationale for decision-making must be documented.
  - b. The diagnosis should be evidence-based and made expeditiously/or within a defined time limit.
  - c. The diagnosis should be formally notified by the treating doctors to the woman.

##### **6.3 Qualifications of Doctors Involved in the Process**

In regard to the question of the qualifications of doctors, the view of the Medical Council is:

1. Clinical decision-makers must be registered in the Specialist Division of the Register of Medical Practitioners<sup>4</sup>.
2. Registration in the Specialist Division requires that a doctor has undertaken medical education and training benchmarked to the highest international standards. For the patient, it provides assurance that the doctor possesses the necessary knowledge and skills to engage in clinical practice at the appropriate level to be able to make appropriate clinical decisions.

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<sup>3</sup> Report of the Expert Group on the Judgement in A, B and C V Ireland, November 2012.

<sup>4</sup> Medical Practitioners Act, 2007

#### **6.4 Number and Role of Doctors**

In regard to the question of the number and role of doctors, the view of the Medical Council is:

1. Legislation and/or regulations should set out criteria for the number and role of doctors to be involved. The Council will actively engage with the Department of Health in the development of regulations in collaboration with other stakeholders.
2. The Legislation and/or regulations should include a requirement that doctors involved have sufficient knowledge and skills to facilitate appropriate clinical decision-making.

#### **6.5 Emergencies**

In regard to the question of emergencies, the view of the Medical Council is:

1. Special procedures do not need to be developed for emergency situations.

#### **6.6 Locations**

In regard to the question of locations, the view of the Medical Council is:

1. The locations of medical facilities is a matter for the Minister for Health to determine using criteria set out under licensing legislation.

#### **6.7 Formal Review Process**

In regard to the question of the formal review process, review process requirements and attributes (6.7.3), composition of the review panel (6.7.4) and convenor (6.7.5), the view of the Medical Council is:

1. Legislation and/or regulations should set out a formal framework to provide the woman with a review mechanism which is:
  - a. Independent
  - b. Accessible
  - c. Transparent
  - d. Competent
  - e. Timely
2. The review panel should include doctors with sufficient knowledge and skills to facilitate appropriate clinical decision-making.
3. The review panel should have access to legal expertise on a formal basis.

## **6.8 Access to the Courts**

In regard to the question of access to the courts, the view of the Medical Council is:

1. Following a negative decision of the Review Panel, the woman has a constitutional right of access to the Courts.

## **6.9 Conscientious Objection**

In regard to the question of conscientious objection, the view of the Medical Council is:

1. Legislation and/or regulations should set out clear criteria for enabling the exercise of an individual's right to conscientious objection.

The Medical Council's Guide to Professional Conduct and Ethics for Registered Medical Practitioners 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'.*

2. 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.'*

## **6.10 Monitoring**

In regard to the question of a monitoring system, the view of the Medical Council is:

1. Legislation and/or regulations should set out criteria for independent monitoring of the proposed structures.
2. Independently verified, anonymised data should be published on relevant matters (e.g. numbers of women who seek terminations, numbers of women who receive terminations, medical reasons that gave rise to the treatment for clinical purposes).

## **Report of the Expert Group. Chapter 7: Options for implementation**

### **7.2 – 7.4.3 Implement the judgment in *A, B and C v Ireland* of the European Court of Human Rights**

1. In regard to the question of options on how to implement the judgment in *A, B and C v Ireland* of the European Court of Human Rights, the Council's view is that it is in the public interest that doctors have legal clarity when making clinical decisions. Insofar as legislation, underpinned by regulations, will provide that clarification to doctors, the Council supports its introduction.

#### **7.4.4 New Legislation or Amendment of the 1861 Act**

2. The Council is of the view that Sections 58 & 59 of the 1861 Act should be repealed.

We are grateful for the opportunity to engage with the Committee on this important issue and are willing to actively engage with the Department of Health if our input can support their processes for the development of legislation and regulations.

**ENDS.**