



IRISH MEDICAL
ORGANISATION
Cearrchumann Dochtúirí na hÉireann

Submission to the Law Reform Commission on the Consultation
Paper on Children and the Law: Medical Treatment

March 2010

IMO Submission to the Law Reform Commission on the Consultation Paper on Children and the Law: Medical Treatment

The IMO would like to comment on the following recommendations put forward by the Law Reform Commission in the Consultation Paper on *Children and the Law: Medical Treatment*.

- 7.07 The Commission recommends that it should be provided in legislation that a person who is 16 years of age is presumed to have capacity to consent and refuse health care and medical treatment. The word presumption in this regard is intended to reflect the presumption in law that a person of 18 years of age has full capacity. [Paragraph 5.147]
- 7.08 The Commission provisionally recommends that, in the context of refusal of life sustaining treatment a person who is 16 years of age may make an application to the High Court to have his or her purported refusal appraised. [Paragraph 5.150]
- 7.10 The Commission provisionally recommends that a person who is 14 years of age but less than 16 years of age could, subject to certain requirements, be regarded as capable of giving consent and refusal to health care and medical treatment, provided he or she has the capacity to understand the nature and consequences of the treatment being provided. Such requirements would include:
- In the opinion of the medical practitioner, the patient understands the nature and consequences of the proposed treatment
 - The medical practitioner shall encourage the patient to inform his or her parents or guardians
 - The medical practitioner must consider the best interests of the patient.
 - The medical practitioner shall have due regard to any public health concerns [Paragraph 5.153]
- 7.06 The Commission provisionally recommends that it shall be lawful for a health care professional to provide health care and medical treatment to a person who is 12 years of age but less than 14 years of age, provided that the health care professional has complied with certain requirements. Such requirements would include:
- It is mandatory for the medical practitioner to notify the parents or guardians of the child and take account of their views
 - The medical practitioner must take account of the views of the child in question
 - The medical practitioner must consider the best interests of the patient.
 - The medical practitioner shall have due regard to any public health concerns
- 7.12 The Commission provisionally recommends that children aged 12 years of age but less than 14 years of age may not be regarded as capable of refusing medical treatment. [Paragraph 5.157]

The IMO welcomes the above recommendations in that they would clarify legislation in relation to consent and refusal of medical treatment and that it safeguards the rights of 'mature minors' to make decisions in respect of their own healthcare.

The IMO also welcomes the recommendations on the understanding that in the case of refusal of life sustaining treatment, the best interests of the young person, in accordance Article 2 of the ECHR take priority over the right to refuse life-sustaining treatment.

As the assessment of the minor's maturity and the decision regarding the minor's level of comprehension would rest with the doctor. The IMO is concerned about what protection would be in place for a physician who deems a young person competent to make a decision regarding their healthcare but the young patient contests this position at a later date. The IMO is also concerned about what protection would be in place for a physician who deems a young person competent to make a decision regarding their healthcare but their parent or guardian contests this position at the time or at a later date. Practical guidance should be provided for physicians including examples of this complex area, and the importance of recording appropriate details of any discussions etc.

Members of the IMO agree that 'medical treatment' should be defined in the broadest sense encompassing diagnosis and care and that medical treatment should include treatment for mental illness as well as physical illness. Therefore the recommendations regarding consent and refusal of treatment should apply to children and adolescents admitted as voluntary, involuntary and informal under the Mental Health Act 2001.

- 7.14 The Commission provisionally recommends that the Mental Health Act 2001 be amended, with a separate section for people under the age of 18. [Paragraph 6.117]
- 7.15 The Commission recommends that all children and adolescents admitted and treated under the Mental Health Act 2001 should have access to an independent advocate. [Paragraph 6.119]
- 7.16 The Commission recommends the introduction of a third category of informal admission for children and adolescents who are admitted under the Mental Health Act 2001 by parental consent. [Paragraph 6.122]
- 7.22 The Commission provisionally recommends that a Mental Health Tribunal (with an age appropriate focus) rather than the District Court should review the admission and treatment of children and young people as involuntary patients for the purposes of the Mental Health Act 2001. [Paragraph 6.135]

Again the IMO welcomes the above recommendations regarding the admission of children under the Mental Health Act 2001 and believes that these recommendations should be enacted as a matter of urgency.