

Health and Children on
the Protection of Life during Pregnancy Bill 2013

Chairman, Deputy and Senators, on behalf of the Irish Medical Organisation (IMO), which represents over 5,000 doctors of all craft groups in Ireland, I want to thank you for inviting us to address the Committee today. I know that everyone here agrees that the matters before this Committee are of enormous importance and sensitivity for people across the country and deal with issues on which people have very strong, and often very opposing, views and opinions.

We in the Irish Medical Organisation have debated the issue of abortion on a number of occasions and when we have done so we have found that that diversity of opinion that we see in the wider community is mirrored closely amongst our own members.

Our official position on the issue dates back 20 years to 1993 and states that the IMO endorses the principle of respect for all human life, born and unborn, and that it rejects abortion.

More recently at our Annual General Meeting in April, the issue was debated in a number of motions but our policy did not change.

However the IMO accepts that that whatever our own policy position might be, our members operate within a legal framework. Therefore without turning our backs on the formal policy position we have adopted, we have an obligation to engage in the debate about the legal framework that is being established.

We understand that it is the role of the people through referendums and Deputies and Senators through the Oireachtas to frame the laws under which this country operates.

Furthermore we accept that the Government is now moving to introduce a legislative framework.

In that context we have a number of concerns as follows:

- The patient's health and welfare is paramount
- The legislation must provide adequate clarity and protection to healthcare professionals who have to operate under it.

- The legislation must be practical and realistic for application in a hospital environment
- The legislation must be sufficiently resourced
- Where issues of morals are concerned – such as abortion - the laws must provide adequate flexibility to ensure that an individual can abstain from engaging in an activity which he/she may deem, in conscience, to be immoral without jeopardising the right of the relevant patient to all the facilities and treatments which the law provides.

In respect of the Heads of the Bill we are considering today we would make the following points:

Head 1 – Interpretation

The term ‘reasonable opinion’ should be replaced by the term ‘opinion’ and the term ‘unborn’ should be replaced by the medical term ‘foetus’.

Head 2 - Risk of loss of life from physical illness, not being a risk of self-destruction

Under Head 2 the opinion of two medical practitioners is required to jointly certify that there is a real and substantial risk to the life of the mother and where the risk can only be averted by the termination of the pregnancy.

Where a pregnant woman presents with a physical condition that poses a real and substantial risk to her life, clear clinical guidelines are required in order to identify, monitor and treat such patients.

While such cases are rare, public obstetric units must be appropriately resourced to ensure that patients are adequately cared for according to clinical guidelines and that no delay to life saving procedures arises due to under-resourcing.

A system should be in place to allow Medical practitioners to declare a conscientious objection to participation in termination procedures.

Protocols must be in place to deal with such situations as they arise.

Medical practitioners that have no conscientious objection must receive appropriate training either during postgraduate training or as part of compulsory CPD programmes organised and resourced by the state.

The health and welfare of the patient is paramount and therefore women must be provided with appropriate follow-on care, both physical and psychological, following any termination.

Head 3 - Risk of loss of life from physical illness in a medical emergency

Head 3 provides that in a medical emergency a termination of pregnancy where there is a risk of loss of life may be carried out in a public healthcare facility other than an obstetric unit and the opinion of just one medical practitioner is required.

Such cases again are likely to be rare and again clear clinical guidelines must be in place, patients must be attended by a practitioner that has no conscientious objection and is appropriately trained to perform such procedures.

Patient consent must be obtained where possible.

Women must be provided with appropriate follow-on care, both physical and psychological, following any termination.

Head 4 - Risk of loss of life from self-destruction

Under Head 4 the opinion of three medical practitioners (one obstetrician/gynaecologist and two psychiatrists) is required to jointly certify that there is a real and substantial risk to the life of the mother and where the risk can only be averted by the termination of the pregnancy.

Imposing a requirement for three doctors may cause unnecessary delay and is in excess of the maximum of two doctors recommended by the expert group.

Obstetricians should not be required to certify risk of loss of the pregnant woman's life by way of self destruction. This should be done by two Psychiatrists in consultation with the woman's GP.

The Bill requires the Psychiatrists to be employed in an institution registered with the Mental Health Commission. This is an unnecessary specification. Specialists are required to be registered with the Medical Council and this should be the only stipulation.

Such cases again are likely to be rare and again clear clinical guidelines must be in place, patients must be attended by specialists that have declared no conscientious objection.

As it stands mental health services throughout the country are under-resourced. Adequate resources must be provided to ensure that patients at imminent risk of suicide must receive appropriate psychiatric care. Additional resources must be provided to ensure that there is no drop off in services as clinicians are tending reviews specified within this Act.

Head 5 - Medical opinion to be in the form and manner prescribed by the Minister
Medical opinion should be given in the form and manner prescribed through clinical guidelines established by the relevant professional colleges and not by the Minister.

Mental Capacity

Given the importance of this piece of legislation, and that decisions may be contentious, it is important that the legislation removes the potential for ambiguity and gives a clear definition of the criteria for determining capacity to make a medical decision. It is quite possible that in many of the cases that will actually occur the woman will lack capacity temporarily either due to a mental health problem or secondary to a severe physical illness.

The legislation should also clearly state what should be done in cases where a woman is found not to have capacity.¹

Also the legislation should define at what age a woman has the legal capacity to ask for a termination as the Non-Fatal Offences Against the Person Act 1997 defines the age to give consent for medical examination at 16 but the Mental Health Act 2001 defines the age of medical consent in mental health issues to 18.

Head 6 - Formal Medical Review Panels

Under Head 6 the HSE is to establish and maintain a panel of medical practitioners for the purpose of review. Practitioners that declare a conscientious objection must be excluded from such panels.

¹ Unless someone is a ward of court then the authority for making medical decisions rest solely on the medical practitioner and next of kin have no legal authority or responsibility. The ward of court system is based on the 1871 regulation of lunatics act which does not contain a definition of capacity and is only invoked when incapacity is quite prolonged and usually permanent (i.e. learning disability or dementia).

Head 7 - Review where risk arises from physical illness, not being a risk of self destruction and
Head 8 - Review in case of risk of loss of life through self-destruction
Under heads 7 and 8 the establishment and convening of a review committee and the review procedures combined may take up to 14 days.

During this time there is a risk that the patient's health could deteriorate significantly therefore 14 days is unacceptable. Resources must be in place to ensure that patients are adequately cared for and receive appropriate support during the period of review.

The opinion of the review committee should be made in accordance with appropriate clinical guidelines.

Head 10 Formal medical review reports to Minister and Head 11 - Notifications
Under Heads 10 and 11 the number of reviews and medical procedures permitted and carried out under this Bill are to be notified to the Minister. This seems unnecessarily prescriptive.

The HIPE currently records the numbers and types of procedures carried in acute hospitals and the Medical Council is the body authorised to investigate complaints relating to the performance of individual medical practitioners.

Patient confidentiality must be guaranteed and patient anonymity is welcomed. There must be no possibility of identification of the women in respect of whom the termination was carried out.

In order to protect both the patients and the medical practitioners involved and to avoid sensationalist media reporting of such procedures, the names of medical practitioners involved should not be publicised.

Head 12 Conscientious Objection

Recent debate at the IMO's AGM shows that there are a number of physicians who object strongly to the termination of pregnancy on moral and ethical grounds and the IMO welcomes the provision for conscientious objection under Head 12 of the Bill.

However patients who present with life threatening illness must be reassured that they will receive adequate care and the necessary termination to protect maternal life. Clear protocols must be in place to ensure appropriate and timely referral of patients to other colleagues in the case of conscientious objection.