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02nd January 2024

Deputy Toibin
Dáil Éireann,
Leinster House
Dublin 2

PQ 54625/23: To ask the Minister for Health the policies in place at all public hospitals providing abortions services for conscientious objectors; what protections are afforded to staff who wish to exercise their right to conscientious objection in performing or assisting with the provision of abortion services; and if he will make a statement on the matter.

PQ 54708/23: To ask the Minister for Health the mechanisms through which medical staff can report that their conscientious objection to carrying out or participating in an abortion procedure are not being respected by their employers; and if he will make a statement on the matter.

Dear Deputy Toibin,

The Health Service Executive has been requested to reply directly to you in the context of the above Parliamentary Questions, which you submitted to the Minister for Health for response. I have examined the matter and the following outlines the position on the various areas and issues you raised.

Section 22 of the Health (Regulation of Termination of Pregnancy) Act 2018 provides that no medical practitioner, nurse or midwife will be obliged to carry out, or to participate in carrying out, a termination of pregnancy to which he or she has a conscientious objection. 22(1)

A person who has a conscientious objection shall, as soon as possible, make such arrangements for the transfer of care of the pregnant woman concerned as may be necessary to enable the woman to avail of the termination of pregnancy concerned. 22 (3)

There is no statutory right to conscientious objection in an emergency i.e. where there is an immediate risk to the life, or of the serious harm to the health of the pregnant woman 10 (a), and; the foetus has not reached viability 10 (b), and; it is appropriate to carry out the termination of pregnancy in order to avert the risk to the life, or of the serious harm to the health of the pregnant woman 10 (c). Emergency care must be provided by any staff present to a person undergoing a termination of pregnancy or experiencing complications following a termination of pregnancy.

The Medical Councils, Guide to Professional Conduct and Ethics for Registered Medical Practitioners¹ sets out the principles of professional practice that all doctors registered with the Council are expected to follow. As per this Guidance, all medical practitioners should be aware of their obligations if they have a

¹ <https://www.medicalcouncil.ie/news-and-publications/reports/guide-to-professional-conduct-and-ethics-for-registered-medical-practitioners-amended-.pdf>

conscientious objection to providing a treatment. The following provisions as set out with regard to Conscientious Objection as it pertains to Termination of Pregnancy as a legally permissible healthcare service:

49 Conscientious objection

49.1 Subject to compliance with paragraphs 49.2 - 49.7 below, you may refuse to provide, or to participate in carrying out, a procedure, lawful treatment or form of care which conflicts with your sincerely held ethical or moral values.

49.2 If you have a conscientious objection to a treatment or form of care, you should inform patients, colleagues, and, where relevant, your employer as soon as possible.

49.3 If you hold a conscientious objection to a treatment, you must:

- inform the patient that they have a right to seek treatment from another doctor; and
- give the patient enough information to enable them to transfer to another doctor to get the treatment they want.

49.4 When you refer a patient and/or facilitate their transfer of care, you should make sure that this is done in a safe, effective and timely manner. You should help make it as easy as possible for the patient. When discussing the referring and/or transferring of a patient's care to another health professional, you should be sensitive and respectful so as to minimise any distress your decision may cause. (See paragraph 8 – Equality and Diversity.) You should make sure that patients' care is not interrupted and their access to care is not impeded.

49.5 You should not provide false or misleading information, or wilfully obstruct a patient's access to treatment based on your conscientious objection.

49.6 If the patient cannot arrange their own transfer of care, you should make these arrangements on their behalf.

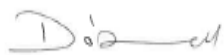
49.7 In an emergency situation, you must provide – as a matter of priority – the care and treatment your patient needs.

The NMBI Code of Professional Conduct and Ethics for Registered Nurses and Registered Midwives ²is the overarching structure that informs our framework of professional guidance to registered nurses and midwives. Principle 2 therein focuses on focuses on professional responsibility and accountability, personal and professional integrity, and advocacy. It also refers to professional boundaries, insurance and conscientious objection and states that:

- If a nurse or midwife has a conscientious objection based on religious or moral beliefs which is relevant to their professional practice, they must tell their employer and, if appropriate, tell the patient as soon as they can.
- If a nurse or midwife cannot meet the patient's needs because of this objection, they must talk with their employer and, if appropriate, talk to the patient about other care arrangements.
- If a nurse or midwife has a conscientious objection in relation to carrying out or participating in a woman's termination of pregnancy, they are required by law to make arrangements for the transfer of care of the pregnant woman as may be necessary, to enable the woman to avail of the termination of pregnancy concerned.
- A nurse or midwife must provide care to a patient in an emergency where there is a risk to the patient's life, even if you they have a conscientious objection.

With regard to policies in place at all public hospitals providing abortion services for conscientious objectors, there is not currently a formalised national workplace policy with regard to Conscientious Objection. Two Reviews of Termination of Pregnancy Services were undertaken in 2022/2023 that is the Department of Health commissioned Review of the Health Regulation of Termination of Pregnancy Act 2018, and the separate independent Review of the Operation of Section 11 of the Act, commissioned by the HSE's Chief Clinical Officer. A number of recommendations were set out in the reports arising from both Reviews. A National Termination of Pregnancy, Service Improvement Group has been established, one of the work-programmes established under the remit of the Group will look at conscientious objection and conscientious provision in the workplace and will consider roles and responsibilities, as-well-as contractual and workplace policies and arrangements.

Yours sincerely,



Davinia O'Donnell

General Manager | National Women and Infants Health Programme

² <https://www.nmbi.ie/NMBI/media/NMBI/Code-of-Professional-Conduct-and-Ethics.pdf?ext=.pdf>