

The Adelaide Hospital Society

Submission on legislation to replace the Medical Practitioners Acts 1978 to 2002

September 2006

Summary of Adelaide Hospital Society response

The Adelaide Hospital Society welcomes the publication of the draft Medical Practitioners Bill, 2006 which has been long required. The Adelaide Hospital Society strongly supports a comprehensive approach to provide the required legislative basis for the Medical Council. The Adelaide Hospital Society welcomes in general the proposed Heads in relation to registration, fitness to practice, maintenance of professional standards and education and training. The Adelaide Hospital Society, however, regrets very much the general distrustful approach to the medical profession indicated in a number of the proposed Heads of the Medical Practitioners Bill, 2006. The key issue here is whether the Medical Council ought to be composed in such a way that it has a majority of medical practitioners on the Council. There is a fudge in the proposed Head 19 (which may admit of a majority of medical practitioners indirectly). However, it should be stated clearly that the very essence of a profession is autonomy and self-regulation. In the case of the medical profession this essence is critical given the need for doctors to have freedom to exercise their professional judgement in regard to their medical practice, particularly freedom from political interference. The proposed Bill has great dangers in respect of political interference; in particular the proposed Head 9 in respect of the powers of the Minister of the day to direct the policies of the Council and the enforced compliance of the Council with such policies.

The last thing the Irish health service needs is a largely politically appointed Medical Council, one which is forced to comply with whatever ministerial policy happens to be current from time to time and to be subject to such bureaucratic, administrative and political control as proposed in the Medical Practitioners Bill, 2006.

The Adelaide Hospital Society believes that the assurance patients and citizens properly require in respect of medical practice ought to be achieved in respect of proper and well resourced registration, fitness to practice procedures, maintenance of professional standards and continuing education and training. It will not be achieved through 'politicising' the governing body of the medical profession. Particular comments or reservations are included in the detailed responses to the various proposed Heads which comprise the balance of this Submission.

Head 7 Object of the Council

This should be reformulated. The prime object of a Medical Council should be to govern the medical profession so as to promote the highest standards of professional conduct and professional education, training and competence, including knowledge, skills and attributes among registered medical practitioners, so as to, as far as possible, secure for patients their optimum healthcare and their protection from possible malpractice. The key role of doctors is to care for patients to the best of their knowledge and skill. The current formulation suggests immediately that the public needs primarily to be 'protected' from doctors; instead the public primarily needs access to doctors who, they are assured, are properly registered and qualified to practice the arts and sciences of medicine.

Head 9 Ministerial Directions to Council

This Head should be deleted. It is dangerous to the independence of the Medical Council to be forced to comply with policy directions from the Minister of the day. The Minister

has the power under Head 8 of drafting regulations to assign additional functions to the Council (Head 8 and Subhead (3)). Such draft regulations require to be laid before each House of the Oireachtas and to be passed by each House. This ought to be sufficient for any Minister given the great dangers to the trust the public should be able to repose in the Medical Council if the public perceive that it is in effect an arm of the Government of the day and subject to enforced policy compliance.

Head 14 Council to prepare and submit statement of strategy

This proposed Head reflects a controlling bureaucratic mindset and one which is inappropriate to an independent Medical Council properly governing a profession. It is another example in the proposed Bill of the attempt to coerce and confine the Medical Council to be an instrument of day to day Government policies.

Such a Council, as envisaged in the proposed Bill, will rapidly lose the confidence of the public given the public degree of disillusionment which generally obtains about the efficacy and effectiveness of any particular Government's health policies.

A general requirement of the Council to produce a Strategic Plan with regard to all its functions as outlined in the proposed Head 8 would suffice and this Strategic Plan might be laid before the Oireachtas if public accountability is thought necessary in this regard. The Minister will have under the proposed Head 16 enormous control of the Medical Council in respect of the annual Business Plan of the Council. For example, the Minister can direct the form of the Plan and the Council to amend the Plan. It is not clear from the proposed Bill to what extent the Medical Council will be funded by direct Government grant-in-aid or by fees and other sources of income which it will raise itself. It is to be noted and welcomed that the Business Plan is to be laid before both Houses of the Oireachtas within 21 days after the Plan is received by the Minister and published generally.

Head 19 Membership of the Council

The Adelaide Hospital Society submits that the majority of the 25 members should be medical practitioners and they should be directly elected to membership of the Council by registered medical practitioners. It should not be necessary for such elected members to be also appointed by the Minister. It is vital that doctors support the Medical Council and have the fullest possible confidence in it as they will be required properly to submit to its very rigorous requirements throughout their professional lives. This can only be achieved if doctors perceive that the Council is independently able to act in the best interests of promoting the highest standards of medical practice. Such standards can only be secured by peer review and international peer review if required. Political appointees and lay people depend upon medical advice in regard to such standards in any event.

The bodies outlined in Head 19 with nomination rights should also have appointment rights. Why should a body like the Royal Irish Academy, if it has nomination rights, not be able to appoint directly to Council?

The Minister's key importance and proper expectations of the Medical Council by Government on behalf of the public are sufficiently recognised by direct Ministerial appointees and by the other large powers given to Minister in the proposed Bill.

Head 22 Committees of Council

The proposed Professional Conduct Committee is to have a majority of persons who are not medical practitioners (Head 22 (6)(a)). This should be deleted and each Committee of Council should be formed by Council as appropriate from time to time and they will include as appropriate persons who are not members of Council. The proposal makes a legislative statement that doctors are not to be trusted in relation to professional conduct which is quite inappropriate.

Head 25 Removal of member of Council from office

Section (c) should be deleted. This would give a legislative base to the removal, by the Minister, from office of a member who opposed certain Government policies, for example, and therefore erodes the independence of the Council from political interference. The whole Head needs to be carefully reviewed to ensure that the Minister's powers are appropriate. For example, a Minister who forms the view that the Council's functions are not "being performed in an effective manner" (Head 25 (7)(d)) should be required to place a motion before the Houses of the Oireachtas seeking approval to remove such a Council.

Head 91 Duty of HSE

There needs to be more clarity as to the responsibilities of the Health Service Executive to resource and support the maintenance of professional standards and competence of registered medical practitioners as set out by the Medical Council and approved by the Minister. More than 'facilitation' by HSE is required if the clinical settings are to be appropriate for the maintenance of standards and competence – what is required is often substantial investment in service provision and clinical facilities. The HSE duties are spelled out in Head 95 much more clearly in respect of education and training and a similar approach should be taken in respect of continuing professional development and maintaining of standards and competence by the HSE for all doctors.