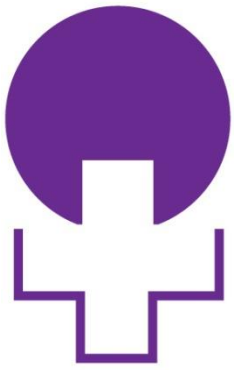

Doctors for Choice
Ireland

Submission to the Joint Oireachtas Committee on Health & Children Public Hearings on the Protection of Life During Pregnancy (Heads of) Bill 2013

by

Doctors for Choice
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Submission to the Joint Oireachtas Committee on Health & Children Public Hearings on the Protection of Life During Pregnancy (Heads of) Bill 2013

Executive Summary

Doctors for Choice welcome any improvement in the care of women who choose to have an abortion however it remains unclear whether this Bill would provide an 'effective and accessible' procedure for a woman in the position of Savita Halappanavar or in the X case.

- The risk of suicide in the X case arose in a situation where a pregnant child became suicidal when she was unable to travel, having decided to have an abortion following a pregnancy which arose as the result of rape by an adult neighbour. The risk of suicide is increased by having access to abortion restricted and this restriction in Ireland is most likely to arise as a result of inability to travel. This means that women who are too sick, young, poor or disabled to travel are at particularly high risk. Women who are migrants or whose pregnancy involves a fatal foetal anomaly or arose as a result of rape or child sexual abuse also experience difficulty accessing abortions through impairment of their ability to travel.

- Children are more likely to experience difficulties in their ability to travel for an abortion and to be at risk of suicide as a result. The costs of travel for an abortion are higher for children as they may require a parent/guardian to travel with them because of their greater requirements for practical and emotional support.

- There is no medical basis for differentiating between a medical emergency and a psychiatric emergency. All psychiatric emergencies are medical emergencies.

- This Bill may not lead to clarity for women or doctors where the illness is not yet life-threatening, as highlighted in the case of Savita Halappanavar.

- In the case of the risk of suicide, imposing a requirement for three doctors would cause unnecessary delay and is in any case in excess of the maximum of two doctors recommended by the expert group. Only one Psychiatrist or GP is required to certify eligibility for an abortion.

- Obstetricians should not certify eligibility in cases of suicide risk; this should be done by either a GP or a Psychiatrist.

- GPs manage early pregnancy, crisis pregnancy and most mental health problems in the State. They alone manage uncomplicated pregnancies until 16 weeks gestation. If a woman presents in early pregnancy with a crisis it will be GPs in liaison with psychiatrists who will be managing her care. Obstetricians will not and need not be involved, as the pertinent issue will be mental health rather

than obstetric health. GPs will not be “consulted” in clinical reality but will be the key clinician involved in the crisis pregnancy. Head 4 is therefore at odds with the clinical reality and what would happen in an X-case scenario. As it stands, it appears a woman could be seen by at least 4 doctors before being ‘certified’ as being eligible for an abortion. A GP and a Consultant Psychiatrist would be the most relevant combination if two doctors were required. We recommend that two doctors certify, or not, the procedure in the situation of a threatened suicide: a GP and a Consultant Psychiatrist.

- The Bill requires the Psychiatrist to be employed in an institution registered with the Mental Health Commission. This is currently not the case for most Consultant Child Psychiatrists. This is an unnecessary specification. Specialists are required to be registered with the Medical Council and this should be the only stipulation. Specialists should not be required to be attached to any specific institution. Most abortions in developed health services are medical abortions and do not need any hospital facilities.

- Women and children in situations of rape, child sexual abuse and fatal foetal anomalies will have to wait for further legislation to allow for the option of abortion in those cases. That this Bill does not provide for this is a serious limitation.

- The Bill does not clarify whether pregnant women that are unwell with severe heart disease or maternal cancer (requiring teratogenic treatment) will be entitled to access abortion services.

- There are valid concerns about the potential for conscientious obstruction.

- Fear of prosecution is a chilling factor and may make the legislation unworkable. It is unacceptable that doctors fear criminal prosecution when they are trying to act in the best interests of a patient. The inclusion of a 14-year prison sentence for women who have an abortion outside of these guidelines and describing that as due to the ‘gravity of the crime’ is particularly offensive. The prospect of prosecuting children and/or their parents or those carrying out a home abortion with medication bought on the Internet is also very concerning. This will encourage secrecy, terror and desperation and increase risk in vulnerable patients. Criminal sanction should be removed from the Bill.

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

- The Joint Oireachtas Committee on Health and Children should take advice from a relevant health care agency that has experience in providing an abortion service. The British Pregnancy Advisory Service (BPAS) provides a majority of the abortions availed of by women from Ireland every year and the BPAS have already offered their assistance to the Committee.

- We believe that the safest way to protect all women in Irish society is to decriminalise abortion, leaving medical matters outside the criminal law. This way we avoid legalistic terms and sanctions, which have so far served solely to intimidate those who work in the field of medicine. Women should have the choice to access safe abortion services with fully informed consent. To achieve this we will need to repeal the 8th amendment.

Introduction

Doctors for Choice is an organisation that represents doctors in Ireland who support a woman's right to control their own reproductive health outcomes. The organisation represents many medical specialties including obstetricians, General Practitioners (GPs) and psychiatrists. In the exercise of that right the organisation respects the right of women to choose abortion.

Doctors for Choice, since 2002, has been a leading advocate for the Irish State to appropriately legislate for the Supreme Court decision of 1992, to provide for lawful abortion services if there is a real and substantial risk to the life of the mother, including the risk of suicide and situations where the risk is not imminent. Doctors for Choice provided one of three Amicus briefings that the European Court of Human Rights (ECHR) accepted in its deliberations in the ABC V's Ireland case.

Accordingly, Doctors for Choice would like to commend the government parties for their commitment, so far, to deal with the X Case, as we have been compelled to do by the ECHR. Though it is 21 years after the Supreme Court decision, Doctors for Choice would like to commend the government in providing the first draft of legislation that will give those women who have a life -threatening illness, and their doctors, clarity on whether a termination of pregnancy can be legally performed.

Mindful that the scope of the legislation is already restrictive, Doctors for Choice has concerns regarding the practical implications and limitations of this bill.

While Doctors for Choice welcome any improvement in the care of women who choose to have an abortion, it remains unclear whether this Bill would provide an 'effective and accessible' procedure for someone in the position of Savita Halappanavar or the X case.

Concerns and list of recommendations regarding the Protection of Life During Pregnancy (Heads of) Bill 2013

Head 2, 3 and 4

- There is no medical basis for differentiating between a medical emergency and a psychiatric emergency. All psychiatric emergencies are medical emergencies.

Head 2 and 3: Physical illness and emergency situations

- Doctors for Choice is of the opinion that both Head 2 and Head 3 are satisfactory when medicine is predictable and when cases are uncomplicated. The organisation however has concerns that this Bill will not lead to clarity for women or doctors whose illnesses are not yet life-threatening, as highlighted in the case of Savita Halappanavar.

- Medicine is by its nature unpredictable and has uncertainty at its heart; this uncertainty does not lend itself to regulation through legislatory semantics. At what point, along a nebulous grey line between ill-health and life-threatening illness does a "real and substantial risk" arise? Can a life threatening illness be demarcated from a condition that jeopardises health? This grey zone of uncertainty and unpredictability in medicine was shown with the case of Ms. Halappanavar. At what point did her condition become life-threatening and warrant a termination of pregnancy? Whilst the coroner's inquest mentioned system failures, which must be acknowledged, it was clear that Ms. Halappanavar would have survived had a termination been performed, as requested by her on the Monday or Tuesday of her admission. Both her treating obstetrician and Dr. Peter Boylan, who provided expert evidence at the coroner's inquest, highlighted that the staff felt unable to proceed to a termination as the Rubicon of a "real and substantial risk" had not been crossed. Despite being an inevitable miscarriage, the law in Ireland prevented action until the last minute and though system failures were present, this was too late to allow for a life-saving termination. Doctors for Choice has concerns that this legislation will not prevent another case like Savita Halappanavar's.

- Certain rare conditions in pregnancy, such as maternal cancer requiring teratogenic treatment or maternal cardiac disease which could deteriorate, can require the termination of that pregnancy. However those Irish women with these conditions have up to now been forced, in a state of ill-health, to travel abroad for abortion services. It is uncertain, as the explanatory notes on page 6 describe, whether such women will be eligible for lawful abortion services, if they fall pregnant. This will have to be clarified.

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

Doctors for Choice has a variety of concerns pertaining to Head 4.

Subheading 1b:

- In the case of the risk of suicide, imposing a requirement for three doctors will cause unnecessary delay. There is no basis in medicine for differentiating between a medical and a psychiatric emergency. Only one doctor should be required as for medical emergencies.

Subheading 1b: Obstetricians

- Obstetricians should not be one of the doctors that certify a woman's eligibility for a termination where there is a) a real and substantial risk to the life of the woman arising from suicide risk, and b) this risk can only be averted by the termination of her pregnancy. Only psychiatrists and GPs are appropriately trained to manage mental health problems and assess suicide risk. Obstetricians do not normally provide an expert opinion on the risk of suicide and indeed may not be indemnified to provide such an opinion.

- That an obstetrician could veto the decision of a psychiatrist leading to a review will serve only to restrict access and cause delay.

Subheading 2a: Primary Care:

- Doctors for Choice acknowledges that the role of the GP is mentioned in the explanatory notes on page 11 (As the Expert Group's Report indicated General Practitioners often have a long-term relationship with their patients and therefore have in-depth knowledge of a patient's personal circumstances), however we think the role of primary care in this Bill is not developed enough.

- Almost all ante-natal care up to 16 weeks gestation is undertaken by GPs alone in Ireland. Only from 16 weeks onwards do most women have their first scheduled hospital based obstetric appointment.

- Women with crisis pregnancies first seek medical help in a primary care setting. GPs have a long-term continuity-of-care relationship with their patients, often understand the events that precipitated the crisis, and should therefore be integral to any decision making process. The sentence on page 11: "*Therefore, it may be appropriate that GPs are consulted as a matter of best practice in the course of the diagnostic process"* is at odds with the clinical reality of a crisis pregnancy and what would happen in the case of X.

- If a woman presents in early pregnancy with a crisis it will be GPs in liaison with psychiatrists who will be managing her care. Obstetricians will not and need not be involved as the pertinent issue will be mental health rather than obstetric health. The sentence on page 11 "*.. it may be appropriate that GPs are consulted as a matter of best practice in the course of the diagnostic process"* is at odds with the clinical reality of a crisis pregnancy and what would happen in an X-case scenario**.**

- In reality therefore a woman could be seen by at least 4 doctors before being 'certified' as being eligible for an abortion. A GP or a Consultant Psychiatrist would be the most relevant doctors to certify in cases of a risk of suicide.

<u>Subheading 3:</u> The location of the procedure in the case of Head 4

- Subheading 2 in Head 2 outlines the *"professional expertise of the relevant certifying medical practitioners."*
  The explanation states: *"Except in emergency circumstances, an obstetrician/ gynaecologist will always be one of the certifying medical practitioners. This provision is deemed appropriate for two reasons. Firstly, in accordance with current clinical practice, an obstetrician/ gynaecologist is obliged to care for the pregnant woman and the foetus and, therefore has a duty of care to both patients and to have regard to protecting the right to life of the unborn and to bring that to bear on the care of the woman and her unborn child. Secondly, a termination of pregnancy will most likely be carried out by, or under the care of, an obstetrician/ gynaecologist, and therefore their inclusion here should be central in accessing services and ensuring patient safety."*

  When a case under Head 4 arises in Ireland, eg a child of 14 who cannot travel and is thinking of killing themselves if they are refused access to an abortion as in the X case, where possible an early, medical abortion, could and should follow international best practice and take place in a general practice setting with medical supervision being provided by GPs (with the licensing of mifeprostone).

  In this regard, Subhead 2 should be amended to reflect the nature of crisis pregnancy management and primary care. Any proposed legislation must have at its centre General Practice-based care and should regulate for GPs to be primary abortion providers in early pregnancy.

<u>Note about medical practitioners:</u>

Specialists should not be required to be attached to any specific institution. Most abortions in developed health services are medical abortions and do not need any hospital facilities.

The Bill also requires the certifying Psychiatrist to be employed in an institution registered with the Mental Health Commission. This is currently not the case for most Consultant Child Psychiatrists. This is an unnecessary specification.

Specialists are required to be registered with the Medical Council and this should be the only stipulation regarding their suitability.

Head 6: Formal medical review procedures

Subheading 2: (See comment under Head 12)

Subheading 3:

- The review panel should include General Practitioners on account of the reasons outlined above. The total time taken from referral to review decision should not exceed 3 days. Delays mean more distress and more complications for later abortions which should be avoided.

Head 8: Review in the case of risk of life through self -destruction

Subheading 1:

- The "committee established by an authorised person" should include a General Practitioner, for the reasons outlined above.

Head 12: Conscientious Objection

- Doctors for Choice welcomes the 4 subheadings in Head 12. However there are valid concerns about the potential for conscientious obstruction.

Head 19: Offence

- Fear of prosecution is a chilling factor and may make the legislation unworkable. It is unacceptable that doctors fear criminal prosecution when they are trying to act in the best interests of a patient. The inclusion of a 14-year prison sentence for women who have an abortion outside of these guidelines and describing that as due to the 'gravity of the crime' is particularly offensive. The prospect of prosecuting children and/or their parents or those carrying out a home abortion with medication bought on the Internet is also very concerning. Every day more than a dozen women will have an abortion outside of these guidelines; only in a different country. The right to travel for an abortion means that no-one in Ireland believes that choosing to have an abortion is a grave or serious crime and this

particularly inappropriate section on criminal punishment should be removed. UN Special rapporteur on the Right to Health, Anand Grover, has emphasized the 'chilling effect' of criminalisation on access to services causing stigma and a loss of dignity for women accessing abortion services. Criminalisation will encourage secrecy, terror and desperation and increase risk in vulnerable patients. Criminal sanction should be removed from the Bill. Oversight of good practice should remain with the post-graduate colleges and the Medical Council who should explore and implement good practice guidelines in the provision of abortion services as such expertise is lacking in Ireland.

- Doctors for Choice advocates the decriminalisation of abortion in Ireland with the subsequent regularisation of its provision in a publicly funded health service. As an organisation we suggest the Canadian model be followed. Canada has not had any criminal legislation on abortion since 1988. It has a regulated, publicly funded abortion service provided through the general health service. The abortion rate in Canada continues to fall and is one of the lowest in developed countries.

Regards,

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Dr Mary Favier is a Founder member of Doctors for Choice. She is a GP in Cork. She was principal author of the Doctors for Choice submission to the Oireachtas committee hearings on A,B and C vs Ireland (Jan 2013). She co-wrote the Doctors for Choice amicus brief in A, B and C v Ireland at the European Court of Human Rights (2009).