

Trinity College Dublin

Coláiste na Tríonóide, Baile Átha Cliath

The University of Dublin

REGULATING CONSCIENTIOUS OBJECTION

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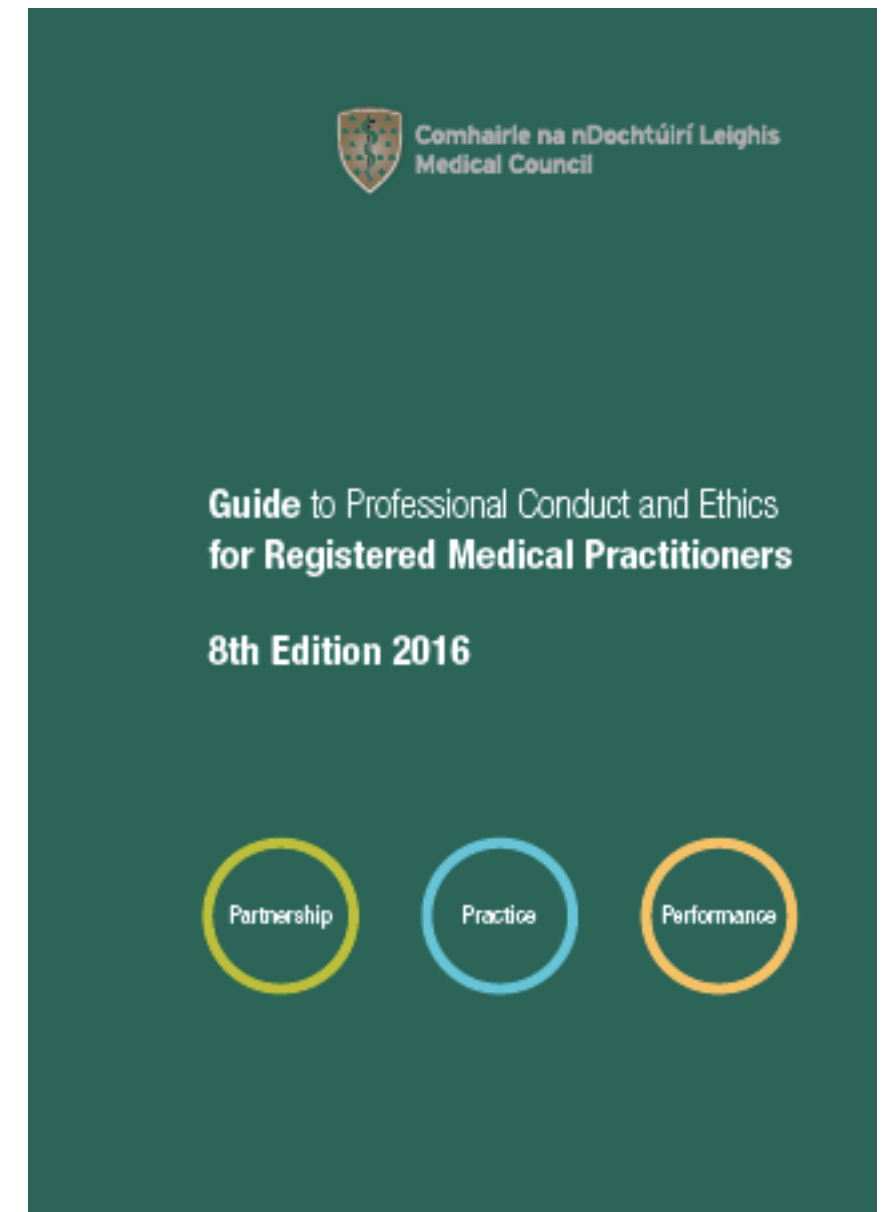
➤ Disclosure

➤ Content

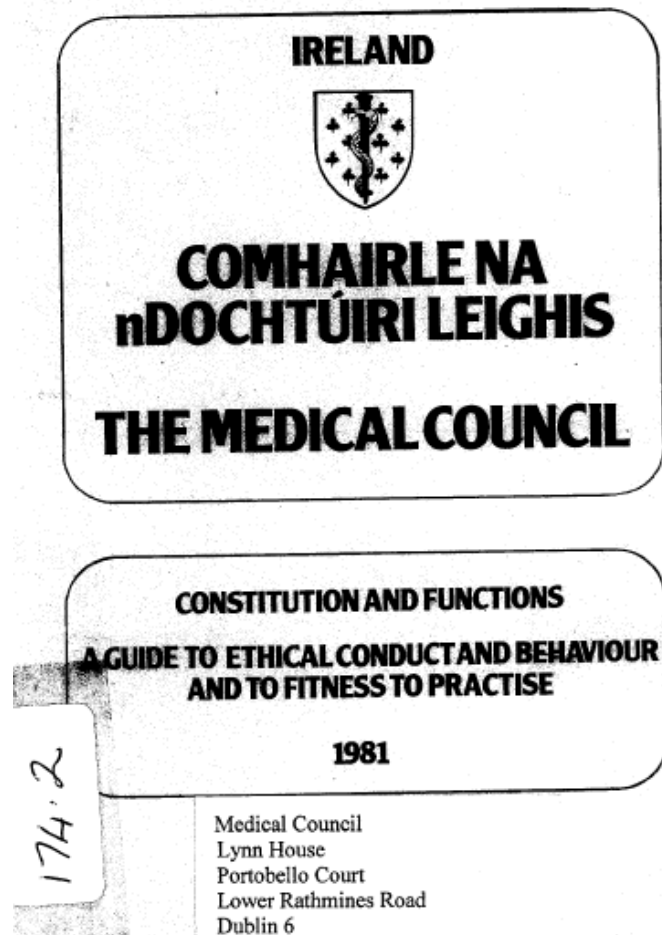
- ✻ Primary focus on Ireland
- ✻ Role and responsibilities of regulator
 - Expectations of practitioners
 - Responsibilities in respect of service provision
 - Vulnerabilities and power structures
 - Some possible implications



MEDICAL REGULATOR - IRELAND



IMC & CONSCIENTIOUS OBJECTION



- “Euthanasia involves actively causing the death of a person and is illegal.”
- “Abortion in any circumstances is professional misconduct and it is illegal in the Republic of Ireland.”

Doctors must be allowed an independence of thought, judgment and action if they are to carry out their essential functions. This independence can be threatened by economic and political pressures, against which the profession must be on its guard.



IMC & CONSCIENTIOUS OBJECTION

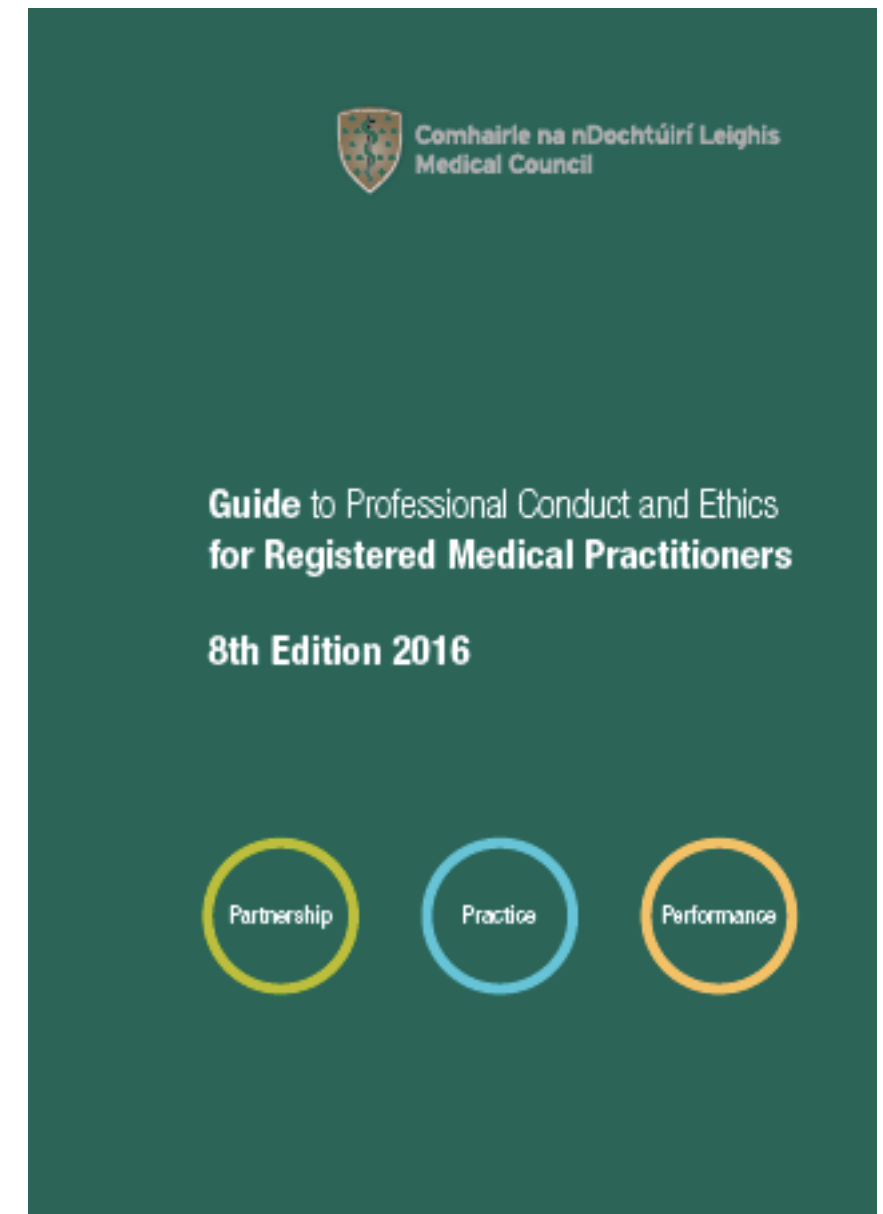
- 1989 (3rd ed) Section E: Reproductive Medicine.
 - “...doctors, while obeying the laws of the State, must always be informed by their own consciences”
- 1998 (5th ed) s2.6 Conscientious Objection.
 - “If a practitioner has a conscientious objection to a course of action this should be explained and the names of other doctors made available to the patient.”
 - Separate from Reproductive Medicine section.
 - But most likely issued in response to Constitutional Review Group Report 1996, and subsequent drafting of Green Paper on Abortion.



IMC & CONSCIENTIOUS OBJECTION

➤ 2016 (8th ed)

- s48 (abortion) and s49 (CO) drafted first in response to PLDP Act 2013.
 - May 2018 - Referendum on 8th Amendment
 - January 2019, Health (Regulation of Termination of Pregnancy) Act comes in to force.



HEALTH (REGULATION OF TERMINATION OF PREGNANCY) ACT

2018

s.22. Conscientious Objection

22. (1) Subject to subsections (2) and (3), nothing in this Act shall be construed as obliging any medical practitioner, nurse or midwife to carry out, or to participate in carrying out, a termination of pregnancy in accordance with section 9, 11 or 12 to which he or she has a conscientious objection.

(2) Subsection (1) shall not be construed to affect any duty to participate in a termination of pregnancy in accordance with section 10.

(3) A person who has a conscientious objection referred to in subsection (1) shall, as soon as may be, 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.



IMC & CONSCIENTIOUS OBJECTION

➤ 2016 (8th ed)

- Both s48, and s49 (amongst others) have been redrafted by an IMC EWG in response to Health (RoToP) Act 2018.
 - Not yet issued



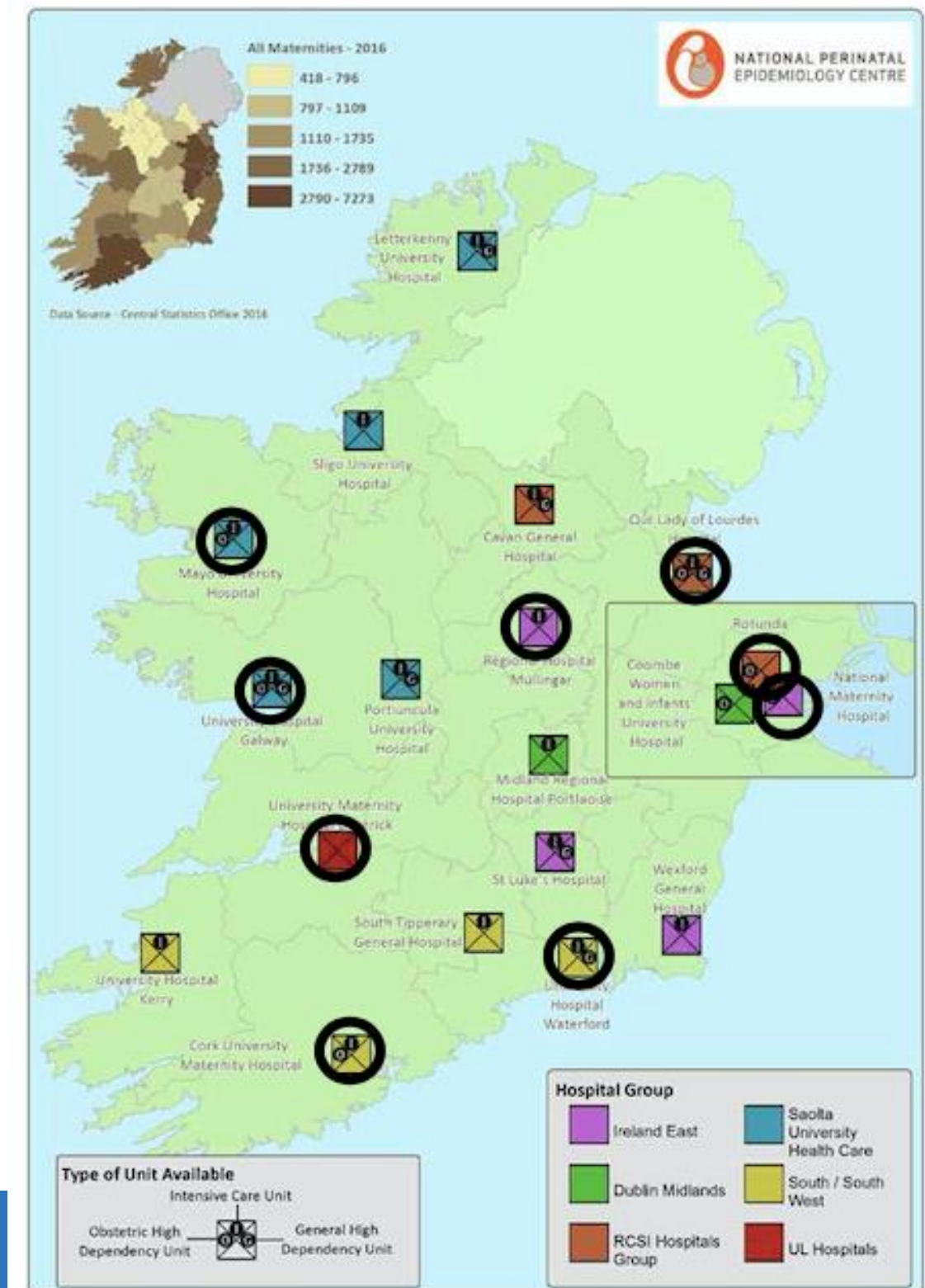
GUIDANCE OF THE IMC - PROFESSIONALISM

- “The role of the Medical Council is to safeguard the public by ensuring that the quality of the doctor’s competence, behaviours and relationships that underlie ...professionalism is maintained in the patient-doctor relationship.
- Doctors must always be guided by their primary responsibility to act in the best interests of their patients, without being influenced by any personal consideration.”



PRACTICAL DIFFICULTIES

- Tension around regulation and problems with service provision
 - The problem of a new service
 - Recognising power structures and vulnerability
 - Patient harms - material and dignitary



WHAT IS BEING REGULATED / PROTECTED ?

- Distinguishing true CO from other forms of non-provision
 - ✻ Objection to 'dirty work'
- Declaration of non-provision as a non-neutral act
 - ✻ Aim at service disruption
 - ✻ Patient harms



CONCLUSIONS

- ▶ Practical messiness of healthcare provision in the context of moral conflict.
- ▶ How might a regulator, with a serious commitment to patient welfare as its primary goal, impact upon
 - ✱ Real world problems of institutional, and individual power.
 - ✱ The problem, in a particular jurisdictional context, of the costs being borne by one side.
 - Ensure mutuality of respect
 - Expectations of the ‘minimally decent doctor’
 - ✱ Distinguishing between refusal claims.

